

**AK HJ RADIMAN BIN PG RAHMAN**

**AND**

**PUBLIC PROSECUTOR**

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**Court of Appeal of Brunei Darussalam  
(Criminal Motion No. 17 of 2022)**

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Before: Burrell P, Seagroatt and Lunn JJ A.

**Date of hearing: 9<sup>th</sup> November 2022**

**Date of judgement: 22<sup>nd</sup> November 2022**

Appellant in person

PO Hjh Siti Mu'izzah binti Hj Sabli for Respondent

**Seagroatt, JA.:**

This 33 year old applicant appeared before Judge Radin Safiee in the Intermediate Court on the 19<sup>th</sup> January 2022 having pleaded guilty to three charges on the 20<sup>th</sup> December 2021. These offences were one of theft under section 379 of the Penal Code and two offences of housebreaking by night under section 457.

The sentences imposed by the judge totalled 4 years and four months with two strokes. His Notice of Appeal is dated the 28<sup>th</sup> June 2022 and is therefore is more than four months out of time. However he stated that his family did not know about the appeal requirement until the 28<sup>th</sup> March 2022. Even then the Notice, if lodged at that stage, would have been over a month late. He further relies on the difficulties created by the COVID epidemic as explaining further delay.

We consider the matter of delay in due course having assessed the applicant's explanation fully. In the meantime we will have regard to the merits of the appeal.

The offences

The first, in mid-December 2021, concerned the theft of a Nissan Sunny motor car parked in a garage at the owner's house. The vehicle was recovered on the same day. He was involved in this theft with another person. Somehow the vehicle became stuck in some soft ground. He fell asleep nearby and was arrested.

It became apparent that the two of them were on a housebreaking expedition and on the first occasion of housebreaking by night, they used a hoe to force open a window to gain entry to a house in Mukim Liang. There they stole a Dell laptop, a backpack, a Gucci purse, a sling bag, a Garmin watch, gold bars, a silver bar, some currency, four car keys

and a house key. The Lipault Paris bag and an album only were recovered and the houseowner's loss amounts to about \$2,000.

The final offence concerned the entry after midnight of a house. This appellant acted as lookout whilst his colleague rummaged through the occupant's bedroom, disturbed her, and then made off when she shouted for help. He took her bag and contents which included personal documents such as a passport, and watches, money, jewellery, mobile phones, car keys and a house key. Of all that property only a mobile phone and a certificate were recovered. The value of the loss is about \$7,000.

### The sentences

Thefts of cars are prevalent offences. The sentence needs a deterrent element. The judge rightly stated these considerations. Having duly taken into account the appellant's criminal record, the judge took a starting point of 18 months imprisonment, reducing it to 12 months by virtue of his plea of guilty.

House breaking at night is a serious offence. The judge rightly reflected the courts' approach to such offences which cause distress and potential fear to home owners. The extent of the loss occasioned can add to the distress experienced.

In both cases he took a starting point of 5 years and, discounting that figure by one third, fixed upon a term of 3 years and 4 months and 2 strokes.

He then ordered sentences for the latter two offences to be concurrent with each other, therefore 3 years 4 months and 2 strokes, but consecutive to the sentence of 12 months on the first charge, thus totaling 4 years and 4 months and 2 strokes, the strokes being non-cumulative.

As far as the matter of delay is concerned it may well be that the COVID crisis made some formal actions or requirements difficult to achieve but we have gone on to determine the merits of the appeal.

Having heard and read the submissions of the appellant we are, in all the circumstances to be taken properly into account, satisfied that the sentences are proper ones and this appeal is dismissed.

**Burrell, P.**

**Seagroatt, J.A.**

**Lunn, J.A**