

MUHAMMAD SHAHRIMAN BIN RAHMAN

AND

PUBLIC PROSECUTOR

**Court of Appeal of Brunei Darussalam
(Criminal Motion No. 18 of 2022)**

Before: Burrell P, Seagroatt and Lunn JJ A.

Date of Hearing: 10th November 2022

Date of Judgment: 23rd November 2022

Headnote: Sentence: Guilty pleas to 5 charges contrary to s.380A CAP 22. Principle of totality considered. Sentence reduced from 42 months to 32 months and 2 strokes.

Applicant in person

PO Sabrina binti Hj Mahmud for Respondent

Case cited in the judgment

P.P vs Md Afandi bin Ag Damit (Criminal Appeal No 27 of 2015)

Burrell, P.:

On 9th April 2022 the applicant now aged 37, was sentenced to 3 ½ years imprisonment and 2 strokes having pleaded guilty before Judge Masni on 16th March 2022 to 5 charges of theft, contrary to s.380A of the Penal Code CAP 22.

His notice of appeal against sentence is dated 5th July 2022 and is therefore approximately 2 months out of time. His explanation for lateness was that he was unaware of the time limit and lodged his appeal when he became aware. As is our usual practice we shall consider the merits of the proposed appeal first.

Facts

The five thefts were all of valuable property in different mosques in Brunei. The first three charges were committed in February and March 2022. The 4th and 5th were earlier, in May 2021 and September 2020. On charge 5 he acted alone, on charges 1-4 he was with a co-accused who originally pleaded not guilty but subsequently changed his pleas to guilty on charges 1- 4 and on 4th July 2022 was also sentenced to 3 ½ years imprisonment without whipping as he was aged 51.

The first charge concerned the Kampong Labi Mosque in Belait. 2 vacuum cleaners, a water purifier and a thermometer, with a total value of \$2,450 were stolen. The items were recovered.

The second theft was from the Kampong Menengah Mosque in Tutong. A PEVY speaker was stolen, it too was recovered. Charge 3 concerned the Kampong Danau Mosque from which the applicant stole a microphone and cable, also later recovered.

Charge 4, in May 2021, was the theft by the applicant of an amplifier, worth \$1,000 from the Kampong Bukit Udal Mosque. As with the other property this was recovered from the applicant's home as a result of the police investigation.

On the last charge, committed in September 2020, the applicant was unaccompanied when he entered the Kampong Keriam Mosque in Tutong and stole a standing thermometer valued at \$150. This was later recovered from the home of the person to whom the applicant had sold it for \$10. It was the applicant who provided the information to the police.

Sentence

The applicant had no previous convictions. He is a married man with 4 young children. He explained that neither he nor his wife were employed and that the reason for committing the offences was financial gain to support his family. He co-operated with the police investigation from the outset. The judge took these matters into account together with the fact that he pleaded guilty at the earliest opportunity.

The judge noted the case of *P.P vs Md Afandi bin Ag Damit (Criminal Appeal No 27 of 2015)* in which the Court of Appeal upheld a starting point of 2 years and 3 strokes reduced to 16 months and 2 strokes on pleas of guilty for a number of thefts of money from mosques. That case is similar to the present appeal save that in the earlier case the stolen property was cash whereas in the present case the property was functional items used in the everyday running of the mosques.

Nonetheless, the judge rightly in our view, adopted the same sentence, namely 16 months imprisonment and 2 strokes in each case. The respondent has brought to our attention further Brunei cases which are entirely consistent with the judge's sentences.

Totality

The judge ordered the 16 months on charges 1 and 2 to be consecutive and also consecutive to 10 months of the sentence on charge 3. The remainder to be served concurrently. She directed that all strokes be non-cumulative making a final total of 3 years and 6 months with 2 strokes. It follows that had there been a trial the sentence would have been 5 years and 3 months with 3 strokes.

Decision

We recognise that stealing property from sacred buildings is very serious. The individual sentences for an offender with no previous convictions of 2 years reduced to 16 months for a plea of guilty is entirely correct.

Bearing in mind the significant mitigation in this case we have decided that the correct sentence would have been achieved by making the recent offences concurrent with each

other but consecutive to the earlier offences in 2020 and 2021 (which should be concurrent with each other). Thus we order that charges 1, 2 and 3 be served concurrently with each other but consecutively to the concurrent 16 month sentences on charges 4 and 5. Thus making a total of 32 months. We make no alteration to the 2 strokes.

Late notice of appeal

We finally accept his explanation for the 2 months delay and grant leave to appeal out of time.

Application granted. Appeal allowed in terms of the above decision.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A