

ZOOL AMALI BIN MAHARI

AND

PUBLIC PROSECUTOR

**Court of Appeal of Brunei Darussalam
(Criminal Motion No. 19 of 2022)**

Before: Burrell P, Seagroatt and Lunn JJ A.

Date of hearing: 14th November 2022

Date of judgment: 24th November 2022

Appellant in person

PO Khalillah binti Hussin and PO Syazwani binti Jumat for Respondent

Seagroatt, JA.:

This 39 year old Bruneian pleaded guilty on 22nd June 2020 to two offences of housebreaking and appeared before Intermediate Court Judge Masni on the 7th July 2020 for sentence.

His Notice of Appeal is dated 10 November 2021 and so is approximately 15 months out of time. By way of explanation he said he was not informed by the prison authorities so did not know when and how to make an appeal. He had also lost contact with his family.

The first offence of housebreaking by night (s.457) resulted in his stealing an Acer laptop and a mobile phone. The second (s.451) was the trespass into a staff house and the theft of two mobile phones from one of the bedrooms. Both were committed in the month of June 2020.

He tried to sell the laptop and mobile phone from the first house for \$50, and did in fact sell the two mobile phones for \$50.

The laptop was recovered but only the Samsung mobile phone, from the second house. The VIVO phone, valued at \$300, was not recovered.

On his arrest he admitted both offences, explaining he needed money to pay off his debts. He was recorded on the CCTV camera in respect of the second offence.

Both offences were committed within a year of being released from prison.

He has previous convictions between 2004 and 2013 essentially for offences of theft. In 2019 a term of imprisonment of 2 years and 8 months was imposed for housebreaking with effect from 30 September 2017.

In approaching the matter of sentences the judge referred to his pleas of guilty and concern for his family as well as his re-offending so soon after release from prison. She considered that he showed signs of being a repeat offender who was not showing signs of genuine remorse having committed an aggravated offence under s.457.

She accordingly decided on a higher starting point to achieve a deterrent element. This was 4 years and 2 strokes which she discounted to 2 years 8 months and 2 strokes.

For the second offence (under s.451) from a starting point of 3 years and 6 months she imposed a sentence of 2 years 4 months. She made these sentences consecutive thereby achieving a total of 5 years and 2 strokes.

He was employed as head chef yet resorted to this course of crime allegedly to pay his debt. He stole valuable equipment some of which was recovered. His only valid point in mitigation was his admission of guilty at the outset. His submission referred to the need to pay of his debts which he explained totalled about \$42,000 being in respect of a loan to purchase a car and a personal loan. As a result of his indebtedness he had been made bankrupt and his wife had divorced him complaining that she was not prepared to wait for him to be released from prison. He asked for concurrent sentences. Unhappy though that situation must be for him, these factors are not ones we can take into account.

In the course of his comments he revealed that he was also serving a prison sentence for a drugs offence. On inquiry by the court it was revealed that he had been arrested on the 16th May 2017, now nearly 5 ½ years ago for consumption of a quantity of ice (syabu). For some reason which the prosecution could not explain, he was not brought before a court for this offence until 13th August 2020, some 3 years and 3 months after arrest. The consent to prosecute was itself not given until 6th September 2018.

By the time he was sentenced in August 2020 he had already been sentenced by Judge Masni to a term of 5 years and 2 strokes. No mention was made to Judge Masni of his pending appearance at the Magistrates Court for the drug offence. Fortunately the transcript of the proceedings in the Magistrates Court was in the possession of the prosecutor. The prosecution did not even mention it in its submission and ought to have disclosed it to this court with the other papers supplied. Furthermore the prosecution had failed to disclose an up-to-date list of previous convictions. There was no mention of this offence and appearance, and over 2 years had passed by.

Again for a reason unknown the urine sample taken from the appellant on his arrest was not analysed until 7th February 2018, a lapse of 8 months.

The sentencing Magistrate on this occasion was aware of his recent appearance before Judge Masni and that he was serving a period of imprisonment as a result.

She therefore sentenced him to the minimum period of 3 years, ordering that it be concurrent with his current sentence save that 12 months of it was to be consecutive to the total term which he was serving.

Looking at the overall picture of the sentences imposed by the two courts – an effective total of 6 years and 2 strokes - it is necessary in our view to reflect the delay already referred to, and the unsatisfactory result of piecemeal sentencing, in order to achieve a degree of fairness. A sentence of 4 years imprisonment and 2 strokes achieves that.

We make only part of the sentence imposed by Judge Masni on the second count i.e. 1 year and 4 months, consecutive to the 2 years and 8 months and 2 strokes, thus totalling 4 years and 2 strokes. The sentence for the drug offence of 2 years will be wholly concurrent with the sentence of Judge Masni which we have varied. The total is therefore 4 years and 2 strokes.

To that extent the appeal is allowed.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A