

**AK MD IBNU BIN PG HJ OTHMAN**

**AND**

**PUBLIC PROSECUTOR**

---

**Court of Appeal of Brunei Darussalam  
(Criminal Motion No. 24 of 2021)**

---

Before: Burrell P, Seagroatt and Lunn JJ A.

**Date of Hearing: 15<sup>th</sup> November 2022**

**Date of Judgment: 26<sup>th</sup> November 2022**

*Headnote: Sentence: s.457 Housebreaking by night; reduced discount of 1/6<sup>th</sup> for late plea approved: 4 years and 2 months and 2 strokes approved: Application dismissed.*

Applicant in person

DPP Pg Norsuzanawati binti Pg Hj Abas and PO Syazwani bitu Jumat for Respondent

**Burrell, P.:**

On 20<sup>th</sup> April 2021 the applicant was sentenced to 4 years and 2 months imprisonment and 2 strokes in the Intermediate Court by Judge Radin Safiee having, on 8<sup>th</sup> April 2021, pleaded guilty to a single charge of housebreaking by night contrary to s.457 of the Penal code.

His notice of appeal is dated 31<sup>st</sup> July 2021 and is therefore over 2 months out of time. To this court his explanation for the late filing was that his family were unaware of the procedure.

We shall first consider the merits of this proposed appeal.

Facts

The applicant, a 32 year old divorced man, initially pleaded not guilty to the charge. A trial commenced on 1<sup>st</sup> February 2021. However, towards the end of the prosecution case he changed his plea to one of guilty and agreed the statement of facts.

The offence was committed with another man, who remains at large, on 1<sup>st</sup> September 2020 in the late evening. Wearing masks they broke into an occupied house gaining entry through a window.

A large number of items were stolen including 4 sets of car keys, various house keys, a laptop, pendrives, an iPhone, gold and silver coins, a watch and cash.

The owner of the stolen property, who was in the house at the time of the break-in, valued the gold and silver coins at \$2,000 - \$4,000.

With the assistance of the house owner and CCTV the applicant was arrested a week later. Many of the items stolen were recovered but not the gold and silver coins, the laptop, the watch and the small amount of cash. The total value of the items stolen was estimated to be \$5,500 - \$7,500.

### Sentence

Given that the applicant had 2 previous convictions for theft in March 2018 and January 2020 for which he received 5 months and 8 months imprisonment respectively and given the aggravating features of the offence, namely that the house was occupied at the time, it was at night, and a considerable amount of property was taken, the judge's starting point of 5 years imprisonment cannot be faulted. It is entirely in line with many previous decisions of this court.

When stating his starting point the judge did not refer to the number of strokes to be imposed.

### Discount for plea of guilty

It is well established that in almost all cases an early plea of guilty will earn a 1/3 discount on sentence.

In this case the prosecution case was nearly completed when the applicant changed his plea thereby saving some court time. We regard the judge's decision to halve the normal discount from 1/3 to 1/6<sup>th</sup> to be entirely fair and appropriate in all the circumstances.

The final sentence of imprisonment was therefore 4 years and 2 months. To this he added 2 strokes which we also regard as appropriate.

### Decision

We find there to be no merit in this proposed appeal. It is therefore unnecessary to comment on the reasonableness or otherwise of the explanation given for the late filing of the notice of appeal.

### Order

Application dismissed.

**Burrell, P.**

**Seagroatt, J.A.**

**Lunn, J.A**