

**MOHD RAFIUDDIN BIN GARIP**

**AND**

**PUBLIC PROSECUTOR**

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**Court of Appeal of Brunei Darussalam  
(Criminal Motion No. 24 of 2023)**

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Before: Steven Chong CJ, Seagroatt and Woolley JJ A.

**Date of Hearing: Tuesday, 11<sup>th</sup> June 2024**

**Date of Judgment: Tuesday, 18<sup>th</sup> June 2024**

Applicant in person

PO Aqilah @ Syafina binti Abd Hadzid of Public Prosecutor for Respondent

## **JUDGMENT**

**Seagroatt, JA.:**

This applicant appeared before Judge Zelda Skinner in the Intermediate Court on the 27<sup>th</sup> December 2022 when he pleaded guilty to two offences committed on the 25<sup>th</sup> November 2022 in which he set fire to his father's Honda Civic car causing approximately \$500 worth of damage. Before that he had caused damage to his father's other car, a Kia Sorento, by pushing it down a slope until it eventually hit the wall of a house, causing damage to the car. He also used a metal bar to cause further damage to it by breaking the glass of the rear window and rear lamp. The estimated cost of the damage to the Kia is \$1,120.

Very sensibly the prosecution arranged for him to be referred to the Mental Health Unit in view of the odd circumstances of the applicant's attitude to his father's property. The seemingly strange aspect of these offences was further illustrated when a passer-by, seeing the Civic on fire offered help, made his presence felt, no doubt to help, but was deterred by the applicant threatening him with a stick. Nevertheless the member of the public notified the Fire Department who in turn informed the police.

The mental health report, which was not available to us at the time of the hearing, had been put before the sentencing judge but not reflected in any detail in the transcript. It is clear from what he said to the judge that he held a grudge against his family because "[It] doesn't

give me much help for example like renewing my identity card or to help me buy my necessities. I just need a car.....”

He had worked offshore but appears to have lost this employment following a fight with a colleague over a debt concerning cigarette.

For some unexplained reason the prosecutor asked for and obtained a week’s adjournment in order to prepare its submission on sentence. The submission in writing before us consists of 8 pages, is unnecessarily long and detailed and some what repetitive. Most of the cases concern trite law.

It makes no mention of the report from the Mental Health Unit, a surprising and regrettable decision. This 37 year old man has no previous conviction. He was obviously a troubled man at odds with his family which he felt did not given him support to enable him to cope with what he perceived to be very stressful problems. It is surprising and worthy of rejection that the prosecutor should – in her own words – regard the applicant as “rather fortunate for the number of whippings on both charges to be ordered as non-cumulative.” Coupled with the failure even to consider the mental health report, her consideration of the importance of whipping shows an alarming failure to strike a balance in her submission.

Even if one thought the number of strokes ordered was inadequate, it was unprofessional to include it in the submission and outside her function before this court to give vent to such an approach. The appellant was and is unrepresented. The prosecution should adhere to a sense of fairness.

The report from the Mental Health Unit concludes that he has no mental illness but makes no comment on his odd behaviour which induced the offences. The judge imposed sentence on the 4<sup>th</sup> January 2023 but the application for leave is dated 20<sup>th</sup> November 2023, some nine months out of time. We will consider the merits of the appeal before deciding on the application.

The judge took a starting point of 4 years and 6 months and allowing a discount of one-third for his pleas of guilty, reached a sentence of 3 years and 6 strokes. In respect of the second offence she decided upon a concurrent sentence of 8 months and 2 strokes after the same discount. The final sentence was 3 years and 6 strokes the latter being the statutory minimum.

The judge emphasised the nature of the offences in particular the burning of the vehicle and the heavy loss to the father, and referred to his previous good character. There was no threat to the public at large and the motive was anger against the family. He appeals only against the number of strokes but those ordered are the minimum fixed by law and cannot be reduced.

The appeal is therefore dismissed.

**Steven Chong, CJ.**

**Seagroatt, J.A.**

**Woolley, J.A**