

Pg Md Hasrin Bin Pg Hassan

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 26 of 2022)**

Steven Chong, CJ; Seagroatt and Woolley, JJA.

Date of Hearing: 5th June, 2024.

Date of Judgment: 22nd June, 2024.

*Criminal law – House-breaking by night – Criminal trespass with intent to commit theft –
Assisting in disposing stolen property – Receiving stolen property – Sentence*

Applicant In Person.

PO Hjh Siti Mu'izzah Hj Sabli for Public Prosecutor.

Case cited:

Shamsuddin Bin Mohammad v Public Prosecutor [2014] 1 JCBD 241

Steven Chong, C.J.:

Introduction

On 21 March 2022 in the Intermediate Court the applicant faced six charges under the Penal Code: two charges of assisting in disposing stolen property contrary to section 414 (1st and 3rd Charges); one charge of criminal trespass to commit theft contrary to section 447 (2nd Charge); two charges of house-breaking by night to commit theft contrary to section 457 (4th and 5th Charges); and one charge of receiving stolen property contrary to section 411 (6th Charge).

The applicant contested the 1st Charge and pleaded guilty to the remaining five charges. The Public Prosecutor upon convictions being recorded on these five charges then withdrew the 1st Charge.

Judge Radin Safiee Bin Radin Mas Basiuni imposed an aggregate sentence of 5 years 6 months' imprisonment and 2 strokes.

The applicant applies for an extension of time to appeal against that sentence.

The facts

Briefly stated and in chronological order the facts are as follows.

5th Charge

On the night of 3 March 2021 the applicant and an accomplice went to a goldsmith shop at Jalan McArthur where they broke in by using a metal cutter to cut the padlock.

CCTV footage capturing the images of the duo stealing "*several items*" in the shop led to the identification of the applicant by the police.

6th Charge

Sometime in September 2021, at night, the applicant used his boat to bring two men to the Waterfront at Bandar Seri Begawan. While the applicant waited in the boat the two men walked to a mobile phone store where they broke in and stole 34 mobile phones, \$500 worth of easi cards and \$2,500 in cash. The applicant received two of the stolen mobile phones from the two men when they returned to the boat.

The applicant sold the two stolen mobile phones for \$500.

4th Charge

On the night of 23 October 2021 the applicant and an accomplice used a boat to go to Kampong Serdang where they broke into a grocery store after cutting the padlock. Inside, they stole food items including several sacks of rice, a mobile phone and over \$2,800 in cash.

CCTV footage from the store led to the identification of the applicant by the police.

3rd Charge

On the morning of 27 January 2022 an employee of a grocery store at Kampong Saba Darat B found the front door open and the padlock cut. Several items had been stolen including a "*waterjet*" and a welding machine.

Police investigations revealed that the applicant sold the two stolen items to an unidentified buyer for \$80.

2nd Charge

In the early hours of 12 March 2022 the applicant and an accomplice broke into a food stall in Gadong by cutting the padlock. They rummaged about in the stall but did not find anything of value to steal.

As the two men were leaving the food stall a police patrol spotted them and the applicant was caught but his accomplice managed to escape.

The sentence

In sentencing on the house-breaking offences the Judge relied on the decision of this court in *Shamsuddin Bin Mohammad v Public Prosecutor* [2014] 1 JCBD 241, in which Burrell JA said (244):

“House-breakings at night are serious crimes. In a typical case a sentence of up to 5 years’ imprisonment may be upheld by the court because of the distress and potential fear caused to home owners.”

The Judge gave the applicant the full one third reduction for pleading guilty to the offences and sentenced him to 2 months’ imprisonment for criminal trespass (2nd Charge); 6 months’ imprisonment for assisting in disposing stolen property (3rd Charge); 2 years 8 months’ imprisonment and 2 strokes for each offence of house-breaking (4th and 5th Charges); and 4 months’ imprisonment for receiving stolen property (6th Charge).

Applying the principle of totality the Judge ordered the sentences of imprisonment on the 3rd and 6th Charges to run concurrently with the consecutive sentences of imprisonment on the 2nd, 4th and 5th Charges and the strokes to be non-cumulative resulting in an aggregate sentence of 5 years 6 months’ imprisonment and 2 strokes.

Previous convictions

The applicant has six prior convictions in 2018 for theft, mischief and carrying offensive weapons in public places.

The appeal

The applicant was aged 34 and unemployed at the time of the offences.

He appeals for his sentence to be reduced on the ground that it is too high and will cause hardship to his elderly mother who is caring for his child born out of wedlock.

Decision

The applicant's family circumstances are unexceptional and cannot mitigate his offences.

Considering the multiplicity of offences committed by the applicant over a span of one year and his antecedent history of committing similar offences there is no arguable basis for suggesting that the overall sentence imposed by the Judge was too high.

As it would serve no useful purpose to grant an extension of time to appeal the application is dismissed.

STEVEN CHONG, C.J.

SEAGROATT, J.A.

WOOLLEY, J.A.