

**MOHD ZULAINI BIN HAJI SANI**

AND

**PUBLIC PROSECUTOR**

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**(Criminal Motion No. 27 of 2022)**  
**(Court of Appeal of Brunei Darussalam)**

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Before: Steven Chong, C.J., Burrell and Seagroats, JJA

**Date of Hearing: 7<sup>th</sup> June, 2023.**

**Date of Judgment: 10<sup>th</sup> June, 2023.**

*Criminal law – Housebreaking – Sentence*

Applicant In Person.

PO Md Kamal Ariffin Ismail and PO Shamsuddin Hj Kamaluddin for Public Prosecutor.

**Cases cited:**

*Mohammad Sharifudin Bin Haji Abdullah v Public Prosecutor* [Criminal Appeal No. 3 of 2018]

*Mohd Izzat Bin Mohd Yunus v Public Prosecutor* [Criminal Motion No. 31 of 2019]

**Steven Chong, C.J.:**

On 24 July 2021 in the Intermediate Court the applicant pleaded guilty to the charge of housebreaking in order to commit theft together with a co-defendant (“D1”) contrary to section 454 of the Penal Code read with section 34 of the same.

In respect of the applicant it was also stated in the charge that he had previously been convicted of housebreaking offences and was therefore liable to imprisonment for up to 10 years under section 75 of the Penal Code.

On 29 September 2021 Judge Muhammed Faisal Bin PDJLD DSP Hj Kifli sentenced the appellant to 4 years 4 months’ imprisonment and 3 strokes.

This is an application to appeal out of time against that sentence. The applicant’s Notice of Appeal is dated 8 September 2022 which is almost one year after the sentence was imposed and is well out of time. The applicant explains that the covid pandemic resulted in restrictions on family members visiting prisoners and he was unable to ask his father to pay the filing fee.

In accordance with our usual practice we will review the merits of an appeal before reverting to the matter of delay.

### The facts

Briefly summarized the facts were that on the morning of 18 July 2021 the applicant and D1 were driving around in the applicant's car and noticed a house at STKRJ Tungku with a light still showing at about 7.00 a.m.. From this fact they assumed the house was unoccupied. The appellant parked his car outside the compound of the house. Both men then climbed over the fence and gained entry into the house after the appellant forced open a side door by using a machete. They found a number of valuable electrical items including a 42 inch television, a DVD player, a Sony play station, some game discs, an Alexa smart speaker and a CCTV router which they loaded into the car and drove off.

The houseowner who was in Kuala Belait at the time discovered the theft after viewing CCTV footage on his mobile phone capturing the images of both the appellant and D1 in his house. A police report was made and the duo were arrested. Fortunately, all the property stolen, with the exception of the CCTV router, were recovered including the television and DVD player which D1 had sold for \$50.00 and \$30.00 respectively.

### Prior convictions

The applicant was previously convicted of four offences of theft and one offence of housebreaking the first committed in 2005 and the most recent in 2018. He was sentenced to 4 years' imprisonment and 2 strokes for the housebreaking offence.

### The sentence

The Judge relied on two decisions of this court relating to housebreaking offences for guidance: *Mohammad Sharifudin Bin Haji Abdullah v Public Prosecutor* [Criminal Appeal No. 3 of 2018] in which a starting point sentence of 6 years' imprisonment was considered appropriate; and *Mohd Izzat Bin Mohd Yunus v Public Prosecutor* [Criminal Motion No. 31 of 2019] in which a sentence of 2 years 9 months and 2 strokes for a single offence was upheld.

A starting point sentence of 6 ½ years' imprisonment and 4 strokes was considered appropriate. This was reduced by one third for the guilty plea resulting in a sentence of 4 years 4 months' imprisonment and 3 strokes.

At the outset we make the observation that it was unnecessary for the prosecution to refer to section 75 of the Penal Code in the charge. It is plain that the appellant committed housebreaking in order to steal under the second limb of section 454 of the Penal Code which provides for a term of imprisonment of up to 10 years and this is the same maximum term of imprisonment under section 75.

We need not consider the issue of delay in the appeal. There is no arguable case against the sentence imposed. Considering the applicant's previous convictions which is an aggravating factor the sentence could be regarded as being on the lenient side.

The application is therefore dismissed.

**STEVEN CHONG, C.J.**

**BURRELL, J.A.**

**SEAGROATT, J.A.**