

MOHAMMAD SAIFUL ZAKY BIN HAJI SIMPOL

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 29 of 2018)**

Before: Burrell P, Seagroatt and Lunn JJ A.
15th November 2018

Applicant in person
DPP Dr Mohammad Hussin Ali bin Idris for Respondent

Seagroatt, JA.:

This is an application for leave to appeal against an overall sentence of 9 years, 8 months and 6 strokes imposed by Judge Muhammed Faisal on 3rd May 2018.

The nine offences to which the applicant eventually pleaded guilty were two of voluntarily causing grievous hurt (s.326), one of putting a person in fear of injury (or attempting to do so) in order to commit extortion (s.385), one of wrongful restraint (s.344), one of dishonestly receiving stolen property (s.411), one of theft in dwelling house (s.380), one of theft (s.379) and one of obstructing police officers in the exercise of their duties (s.186).

He had originally pleaded not guilty to all charges and trial had been fixed for the 30th April 2018, on which date he changed his pleas. His application for leave was made on the 10th July 2018 and was thus out of time. The explanation for this delay is that his family were not aware of the time requirement until they saw him on 22nd May and also needed to accumulate sufficient money to pay the filing fee. The delay does not appear to be significant. Many such appeals are delayed in their inception for such economic reasons. We now have regard to the merits of the appeal.

The earlier offences were committed in the period September/November 2016 with one dated March 2017, and came to light following his arrest for much more serious offences committed in the early hours of 30th May 2017.

Police Officers with a warrant for the applicant's arrest, went to his address on that date shortly after 1.00a.m. On noticing their arrival he attempted to escape in a Suzuki motorcar but drove it into a ditch. He then ran back to his house and armed himself with a machete and a kukri. He approached the officers swinging the weapons but a stand-off ensued for several hours during which the police tried to calm him down.

Officers in the team surrounded him, some with anti-riot shields but others were without any protection. They were attacked by him and, using his weapons, he was able

to break through their front line and followed up with an attack on unarmed officers, one of whom sustained serious injuries to his right arm as he tried to ward off the knife blows. One of the police officers, seeing the attack on the unprotected officer, used his riot shield to push the appellant away. However the appellant was able to push that intervening officer to the floor and proceeded to strike him with his knives.

Eventually a Riot Unit arrived in support of the officers already in the house who had been unable to affect an arrest. At about 10.15a.m. They were able to arrest the applicant. The police officers injured by the knife attack upon them, were taken to hospital. The incident involving serious violence lasted about 9 hours.

In due course the applicant was interviewed and the investigation revealed a series of earlier offences, the most serious of which were two other offences of violence in circumstances whereby the applicant used weapons against individuals known to him. The first involved the use of a machete to demand money and eventually to cause, happily, minor injuries to the victim. No doubt it was a terrifying experience. The second was an equally gratuitous attack on an acquaintance with a metal rod which caused a fracture to the skull of the victim and lacerations to his head and body.

Compared with these offences of violence the other offences were less significant, though in their own context, serious enough. They were offences in relation to motor vehicles which are all too prevalent.

The applicant is 38 years of age with previous convictions.

The judge took into account the matters advanced by the applicant in his mitigation. He also considered a number of recent sentencing decisions not all of which bore parallels to the case before him. He very properly stressed the circumstances of the attacks using lethal weapons on police officers.

His sentences were as follows:

- 1st charge: grievous harm to one of the police officers
From a starting point of 8 years and 9 strokes, he imposed 5 years, 4 months and 6 strokes.
- 2nd charge: injury to the second police officer.
From a starting point of 5 years and 6 strokes, he imposed 3 years 4 months and 4 strokes.
- 3rd charge: using a machete to extort money.
He imposed the minimum term of 3 years imprisonment.
- 4th charge: restraining the victim in 3rd charge.
From a starting point of 6 months he imposed 4 months.
- 5th charge: grievous harm by using a metal rod.
From a starting point of 6 years and 4 strokes he imposed 4 years and 4 strokes. (The judge's sentencing record in fact refers to a starting point of 6 years and 6 months but this must be an error = he meant 6 strokes instead of 6 months).

- 6th charge: dishonesty retaining stolen property (motor vehicle).
From a starting point of 12 months, he imposed 8 months.
- 7th charge: Theft of a motor car.
From a starting point of 24 months he imposed 16 months.
- 8th charge: Theft of a motorcycle.
From a starting point of 24 months he imposed 16 months.
- 9th charge: Obstruction of police officers (victims in 1st and 2nd charges)
From a starting point of 3 months he imposed 2 months.

The judge clearly and properly discounted the sentences to reflect the pleas of guilty. Applying himself to the totality of the sentence he ordered that the sentences on the 1st, 2nd, 5th and 9th charges should run concurrently with each other making a total of 5 years, 4 months and 6 strokes. Those on the 3rd and 4th charges were to be concurrent with each other thus totaling 3 years; and those on the 6th, 7th and 8th charges (he wrongly stated the 9th charge when he clearly meant the 8th charge) were also to be concurrent with each other totaling 16 months. He ordered the strokes to be non-cumulative the total therefore being 6 strokes.

The judge omitted to state that the groups of concurrent sentences were to be consecutive to each other but that is implicit from his sentence: "Total sentence 9 years 8 months (and 6 strokes)."

It is also the clear understanding of the applicant because that is the total sentence against which he seeks leave to appeal. He too is in error in referring to 9 strokes in this his letter when in fact it is 6 strokes as the judge made clear.

The Public Prosecutor, somewhat belatedly, produced medical reports on both police officers after a request by the court, and at the hearing disclosed the photographs of their injuries.

The offences of violence in particular called for heavy sentences. In our view the total sentence reached by the judge was appropriate to the first two charges alone to reflect the gravity of the attack with two lethal weapons upon two police officers. Two other offences clearly demonstrate this applicant's propensity to use violence using such weapons. The overall sentence after pleas of guilty reflects an overall sentence after trial of 14 years 6 months (and 9 strokes) which is an appropriate approach.

Of course we have had regard to sentences in other cases but their facts and decisions are of limited value by reason of varying circumstances.

This appeal has no merit and is dismissed.