

KRISTANTO

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 2 of 2018)**

KARNAWI

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 3 of 2018)**

Before: Mortimer P, Burrell and Seagroatt JJ A.

3rd May 2018

Headnote: *Leave to appeal against sentence granted in both cases. Multiple offences of housebreaking by night, housebreaking and theft in a dwelling together with immigration offences. Appeals allowed. Karnawi's sentence of 8 years and 11 months imprisonment with 7 strokes together with a fine of \$400 with 2 months in default reduced to a total of 6 years imprisonment with 4 strokes and the fine. Krisanto's sentence of 10 years and 4 months imprisonment with 9 strokes reduced to 7 years imprisonment with 5 strokes.*

Applicants in person

DPP Pg Hajah Hazirah Binti Pg Mohd Yusof for respondent

Cases cited in the Judgment:

Mohammad Joll bin Tumih (D1) and Mohammad Sharifuddin bin Abdullah (D2), Criminal Appeal number 5 of 2005;

Wahid bin Mazid, Criminal Appeal number 9 of 2014;

Mohammad Iron Mia Md Chan Mia, Criminal Appeal number 23 of 2014;

Muhammad Zulazlamie bin Zoelaliffin, Criminal Appeal number 28 of 2014;

Pg Roni Ferra bin Pg Ramli and Mohammad Aliakbar bin Jufri, Criminal Appeals numbers 9 and 11 of 2016.

Mortimer P:

Leave to Appeal.

The 2 applicants are Indonesian. They each seek leave to appeal out of time and it is trite law that in the circumstances they must satisfy the court that there is a good and acceptable reason for the delay and that, in any event, any appeal has a reasonable chance of success.

Each applicant has cleared these hurdles. We accept that neither had the fees to file a notice of appeal and that they had to wait until they were visited by their families from abroad to provide the fees and file the notices.

As for the chances of success, DPP Pg Hazirah was unable to support the total sentences passed having cited to us the following cases decided by this court: (*Mohammad Joll bin Tumih (D1) and Mohammad Sharifuddin bin Abdullah (D2), Criminal Appeal number 5 of 2005; Wahid bin Mazid, Criminal Appeal number 9 of 2014; Mohammod Iron Mia Md Chan Mia, Criminal Appeal number 23 of 2014; Muhammad Zulazlamie bin Zoealaliffin, Criminal Appeal number 28 of 2014; Pg Roni Ferrera bin Pg Ramli and Mohammad Aliakbar bin Jufri, Criminal Appeals numbers 9 and 11 of 2016.*)

Leave to appeal against sentence out of time is granted to each applicant.

Proceedings Below

Karnawi pleaded guilty to 12 offences and the Krisanto also pleaded guilty to 12 offences; of these 9 were joint offences. The pleas were made on 16 July 2015 in the Intermediate Court before Judge Hanani who sentenced the applicants on the 11 August 2015.

The 9 joint offences consisted of 7 offences of housebreaking by night contrary to section 457 of the Penal Code; one offence of housebreaking and theft (section 454 of the Penal Code); and one offence of theft in a dwelling (section 380 of the Penal Code).

Karnawi pleaded guilty to 3 further offences; one of displaying a false identification mark on a vehicle contrary to section 89 of the Road Traffic Act; 1 of driving without a licence (section 16 of the Road Traffic Act); and one immigration offence of overstaying (section 15 (1) of the Immigration Act).

Krisanto also pleaded guilty to 3 further offences; 2 offences of theft in a dwelling (section 380 of the Penal Code); and one offence of entering Brunei without a valid pass contrary to section 6 (3) (a) of the Immigration Act.

The Sentences

For his offences the judge sentenced Karnawi to a total of 8 years and 11 months imprisonment with 7 strokes together with a fine of \$400 with 2 months imprisonment in default. Krisanto was sentenced for his offences to a total of 10 years and 4 months imprisonment with 9 strokes.

The sentences passed for each of the joint offences were:

1. For each s.457 housebreaking by night (Charges: 2, 4, 6, 8, 9, 10 and 11) Karnawi was sentenced to 36 months and 3 strokes reduced for the pleas to 24 months and 2 strokes. Krisanto to 42 months and 3 strokes reduced to 28 months and 2 strokes.

2. For the housebreaking and theft (S. 454) 30 months and 3 strokes reduced to 20 months and 2 strokes. (Charge 5)

3. For theft in a dwelling (S. 380). 30 months imprisonment reduced to 20 months. (Charges 1 and 7).

The individual sentences passed on the Karnawi were on each charge 2, 4, 6 and 8 (S. 457) 24 months imprisonment consecutive; 3 months imprisonment consecutive on charge 13 (S. 89 RTA); and 8 months imprisonment consecutive on charge 14 (S. 15 (2) (b) Immigration Act). She ordered the strokes on charges 2, 4 and 14 to be cumulative making 7 strokes in all. On charge 12 (section 16 of the RTA) she imposed a fine of \$400 with 2 weeks imprisonment in default. All other sentences were to be concurrent or non-cumulative making the total of 8 years 11 months imprisonment and 7 strokes together with the \$400 fine.

Krisanto was also sentenced to consecutive sentences of 28 months on the same section 457 charges (2, 4, 6 and 8) and a consecutive sentence of 12 months imprisonment with 3 strokes on charge 15, (section 6 (1)(c) of the Immigration Act). She ordered the strokes on charges 2, 4, 6 and 15 to be cumulative making 9 strokes in all. The remaining sentences were to be all concurrent and noncumulative. This resulted in his total sentence of 10 years and 4 months imprisonment with 9 strokes.

Discussion

Total sentences of imprisonment and strokes involved starting points after trial of 13 ½ years imprisonment with 10/11 strokes in the Karnawi's case and over 15 years imprisonment with at least 14 strokes in Krisanto's case. These sentences are manifestly too high in both the length of incarceration and the strokes.

This series of offences were serious, carefully planned and professionally executed. Homes were violated and ransacked. Each appellant was illegally in Brunei but only Krisanto came over the border to make money and commit offences in an attempt to fund a kidney operation required by his wife. Karnawi overstayed for 4 years but was in employment before he turned to crime.

Krisanto had a previous conviction under the Immigration Act and when he came into Brunei was banned from entry.

When planning the offences they clearly tried to find houses where the occupants were out. Only on one occasion was the house occupied and they had left before the householder descended to investigate.

The chief mitigation for each is his pleas of guilt as the practical expression of remorse which each advances in his submission. Each also recognises that his acts were 'vile and

despicable' and that the offences were 'a great sin in Islam'. Each expresses a determination not to offend in future.

Conclusion.

When a judge is sentencing for pleas of guilt to multiple offences and considers the total sentences which ought to be passed in respect of the overall criminality involved, he would find it useful to decide the notional starting point for the total sentence after trial. This is a ready indicator as to whether the sentence to be passed is appropriate and avoids depriving a defendant of the benefit of pleading guilty.

In the cases cited the range of sentences passed for similar multiple cases varies from 5 years and 4 months with 6 strokes to 7 years and 4 months imprisonment with 7 strokes depending greatly upon a number of offences involved in the particular facts of the offences and the offender. 7 years and 4 months imprisonment was passed upon a man with a bad previous record for similar offences and not able to benefit from the mitigation of a clear record. Each case depends upon its own particular facts but starting points of between 9 and 11 years is the general standard.

Taking into account the factors to which we have referred in the instant appeals we consider that the appropriate starting point in Karnawi's case is in the region of 9 years and in Krisanto's case in the region of 10 years and 6 months imprisonment. Giving the appropriate discount for their early pleas of guilt the resulting total sentences are 6 years imprisonment for Karnawi and 7 years for Krisanto. As for the strokes imposed, again the notional starting points after trial are manifestly too high. Giving effect to the pleas we order 7 strokes in Karnawi's case be reduced to 4 and the 9 strokes in the Krisanto's case be reduced to 5.

The individual sentences passed by the judge on each charge are proper and unassailable.

Accordingly we make the following orders;

1. In each appeal the individual sentences imposed on each charge shall stand.
2. Karnawi's appeal against the total sentence of 8 years and 11 months imprisonment with 7 strokes is allowed and a total sentence of 6 years imprisonment with 4 strokes be imposed as follows. The sentences of 24 months imprisonment on charges 2 and 4 and 6 will be consecutive making 6 years imprisonment in all. The 2 strokes imposed on charges 2, 4, 5, 6, 8, 9, 10 and 11 shall be noncumulative but cumulative with 2 of the 3 strokes imposed on charge 14 making 4 strokes in all. The remaining sentences will be concurrent and noncumulative.
3. On charge 12 the fine of \$400 with 2 weeks imprisonment in default imposed upon the Karnawi will stand.
4. Krisanto's appeal against his total sentence of 10 years and 4 months imprisonment together with 9 strokes is allowed and reduced to a total sentence of 7 years

imprisonment with 5 strokes achieved as follows. The sentence of 28 months imprisonment imposed on charges 2, 4 and 6 shall be consecutive making 7 years imprisonment in all. The 2 strokes imposed on counts 2, 4, 5, 6, 8, 9, 10 and 11 shall be noncumulative but cumulative with the 3 strokes imposed on charge 15 making a total of 5 strokes. The remaining sentences will be concurrent and noncumulative.

5. The total sentence imposed upon Karnawi is 6 years imprisonment, 4 strokes and a fine of \$400 with 2 weeks imprisonment consecutive in default.
6. The total sentence imposed upon Krisanto is 7 years imprisonment and 5 strokes.

Mortimer, P.

Burrell, J.A.

Seagroatt, J.A