

**MOHAMAD FADILLAH BIN HAJI MUSLIM**

**AND**

**PUBLIC PROSECUTOR**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Motion No. 30 of 2019)**

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Before: Burrell P, Seagroatt and Lunn JJ A.  
**25<sup>th</sup> November 2019**

Appellant in person  
DPP Raihan Nabilah binti Haji Ahmad Ghazali for Respondent

**Cases referred to in the judgment**

*Mohammad Zahiruddin bin Hj Junaidi (Criminal Appeal No 38 of 2013)*

**Seagroatt, JA.:**

This 37 years old applicant appeared before Judge Mohammed Faisal on the 17<sup>th</sup> October 2018 when he pleaded guilty to two offences. The first was house-trespass by night, in fact breaking into a storebuilding, from which he stole two grass cutting machines, and two containers of fuel, in April 2018 (s.451 of the Penal Code). The second was one of dishonestly retaining stolen goods, a motor vehicle, which he knew to be stolen (s.411), an offence committed with three others on the day before the first offence.

He had borrowed the car from a friend and drove it to the scene of the first charge where it ran out of petrol. He used the fuel he stole from the building to fill the petrol tank of the car and then he put the machines in the car and drove off.

He was sentenced to a period of 3 years and 4 months imprisonment for the first charge (reduced from a starting point of 5 years) and 8 months imprisonment for the second charge (reduced from a starting point of 12 months imprisonment) the sentences were ordered to be concurrent making a total of 3 years and 4 months.

The judge took the view that the pleas of guilty were the only mitigating factors. The sentences were imposed on the 27<sup>th</sup> October 2018. His application for leave to appeal is dated the 17<sup>th</sup> July 2019, almost 8 months out of time. It was entered by his wife. She pleaded that the children needed their father to assist in their education and he needed to observe their development. It is to be noted that he has previous convictions in 1994, 2003 and 2013. The last involved offences of housebreaking by night for which he received a total sentence of 8 years and 4 strokes reduced on appeal to 4 years. He was released after this on 16 June 2016, 22 months before he committed these offences.

In his written submission of 12 September 2019 he refers to four cases in which the sentences were lower than that imposed upon him. As this court has stated on several occasions, the facts and circumstances of each case vary and accordingly the sentences vary, but some of those cases lend support to his submission.

In particular he cited the decision of the Court of Appeal in *Mohammad Zahiruddin bin Hj Junaidi (Criminal Appeal No 38 of 2013)* as illustrating circumstances in which sentences were reduced for, in general, similar offences under s.451 of the Criminal Code. The prosecutor had also cited this case but did not seem to concede that it had some application to this appellant's circumstances.

However we consider the starting point in this appellant's case was excessive for this store-breaking offence and accordingly we reduce it from 5 years to 4 years.

Applying the discount for his plea of guilty the sentence for that principal offence is now one of 2 years 8 months. The sentence for the ancillary offence imposed as 8 months from a starting point of 12 months was ordered by the judge to be concurrent with the principal sentence. However we consider that 4 months of that sentence should be consecutive to reflect the use of a vehicle, which he knew to have been stolen, to facilitate the principal offence and the disposal of the machines. The total sentence is therefore 3 years imprisonment.

There is therefore some merit in the appeal and leave is therefore granted.

**Burrell, P.**

**Seagroatt, J.A.**

**Lunn, J.A**