

Awangku Ahmad Azem Bin Pengiran Mostafa

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 30 of 2024)**

Steven Chong, C.J.; Lunn and Woolley, JJA.

Date of Hearing: 4 November, 2025.

Date of Judgment: 25 November, 2025.

Criminal law – Sentence – Attempted armed robbery – Theft in a building – Consecutive sentences – Whether aggregate sentence manifestly excessive – Approach to backdating of sentence.

Applicant In Person.

DPP Syafina Abd Hadzid for the Public Prosecutor.

Cases cited:

Ahmad Aidyl Arman bin Abdullah@Yu Chek Seng v Public Prosecutor [Criminal Appeal No. 19 of 2011]

Public Prosecutor v Hj Hamdillah bin Hj Othman & Another [Criminal Appeal No. 11 of 2008]

Muhammad Zami'Ulhayat@Izzat bin Mohsin v Public Prosecutor [Criminal Motion No. 15 of 2020]

Mohammad Nurilham bin Mohamad Nasri v Public Prosecutor [Criminal Motion No. 18 of 2024]

Steven Chong, C.J.:

Introduction

1. On 15 February 2024, in the Intermediate Court, the applicant pleaded guilty to two charges under the Penal Code. The 1st Charge was for attempted armed robbery, contrary to section 393, read with section 398. The 2nd Charge was for theft in a building, contrary to section 380.
2. The Judge imposed an aggregate sentence of 9 years' imprisonment and 12 strokes. The applicant now seeks leave to appeal against the sentence out of time.

The facts

3. Sometime between January 2018 and June 2023, the applicant was employed at Burger King fast food restaurants at various branches in Brunei Darussalam, including the City Square and Hua Ho Manggis branches.

Facts relating to the 1st Charge

4. On 22 January 2024, at about 11.05 p.m., the applicant went to the Burger King outlet at City Square with the intention of committing an armed robbery. Prior to his arrival, he parked his Kia Cerato vehicle near a bus stop in the vicinity and proceeded on foot towards the restaurant, carrying with him a machete measuring 46 cm in length, which he had concealed in a bag. He was dressed in a green hoodie and wore a mask to conceal his identity.
5. Upon reaching the restaurant, the applicant entered through an unlocked side entrance and drew the machete. He pointed it at an employee behind the counter and demanded that the employee hand over the money. Startled by the applicant's actions, the employee attempted to shut the door leading to the counter and kitchen area to prevent him from entering. However, the applicant managed to force his way in and continued to point the machete at the employee, ordering him to open the safe deposit box. The employee informed him that he did not have the password to the safe.
6. While the applicant persisted in demanding that the safe be opened, another employee approached and poured cooking oil on him. The applicant then fled the restaurant, still carrying the machete and the bag he had used to conceal it. He ran towards the area where his vehicle was parked, but on the way, near a petrol station along Jalan Berakas, he discarded the bag and the green hoodie by throwing them into a drain beside the station. He then proceeded to his parked vehicle, carrying only the machete, and drove home.
7. At about 11.20 pm on the same night, the employee lodged a report with the police via the emergency line 993. Subsequent police investigations identified the applicant as the perpetrator. CCTV footage from the City Square branch captured the incident, and a 46 cm machete used in the attempted robbery was later recovered from the applicant's residence.
8. During police investigations, the applicant admitted he had attempted to commit theft at the Burger King City Square branch while armed with a machete. He also confirmed he had disposed of the bag and the hoodie by throwing them into the drain near the petrol station.

Facts relating to the 2nd Charge

9. Police investigation in relation to the 1st Charge further revealed that approximately ten days prior to the attempted armed robbery, on 11 January 2024, at about 6.15 a.m., the applicant had gone to the Burger King branch at Hua Ho Manggis with the intention of committing theft. Before proceeding there, he parked his Kia Cerato vehicle near the Sunway Centre at Jalan Manggis and walked to the restaurant. On that occasion, he was wearing the same green hoodie later used in the attempted armed robbery and a mask to conceal his identity.
10. Upon arrival, the applicant entered the restaurant and went behind the counter in search of the safe deposit box. Having located it, he successfully opened the safe using the password PIN number which he had obtained from his previous employment at the branch as an assistant manager. He then stole from the safe deposit box cash amounting to \$1,745.96, one Samsung Galaxy A8 Tablet, and one Samsung E8.0 Tablet. Thereafter, he left the premises with the stolen items.
11. Later that morning, at about 9.40 a.m., an employee of the branch discovered that the safe deposit box had been opened. Upon checking, he found the cash and the two tablets were missing. A police report was lodged, and CCTV footage retrieved from the restaurant revealed the involvement of the applicant.
12. During investigation, the applicant admitted to committing the theft of the said items from the Hua Ho Manggis branch. He further admitted that he had used the stolen cash and the proceeds from selling the two tablets for \$180 through Facebook to buy food and to engage in online gambling. Only the Samsung Galaxy A8 tablet was subsequently recovered and identified by the employee of the Hua Ho Manggis branch.

The sentence

13. In respect of the attempted armed robbery charge, the Judge imposed the statutory minimum sentence of 7 years' imprisonment and 12 strokes, taking into account the applicant's guilty plea. As for the theft charge, the Judge noted that the applicant had abused the trust reposed in him by using the knowledge he had acquired during his previous employment to facilitate the commission of the offence. In view of this aggravating factor, the Judge adopted a starting point of 3 years' imprisonment, which was then reduced to 2 years to reflect the applicant's guilty plea.
14. Given that the offences were committed on separate occasions and at different branches of the same restaurant, the Judge determined that the sentences should properly run consecutively. This resulted in a total sentence of 9 years' imprisonment and 12 strokes. The Judge further ordered that the sentence of imprisonment take effect from the date on which the applicant entered his plea of guilty.

The appeal

Grounds of appeal

15. The applicant, aged 28, seeks a reduction in sentence, principally on the ground that his father, a pensioner, would experience hardship in his absence. He further submits that he had fully cooperated with the police following his arrest and that his early plea of guilt reflected his remorse and facilitated the administration of justice by saving the court's time.

Respondent's submissions

16. The Deputy Public Prosecutor (DPP) submits that the individual sentences imposed by the Judge are not excessive. In respect of the attempted armed robbery charge, the sentence imposed represents the statutory minimum and is consistent with the decision of this Court in *Ahmad Aidyl Arman bin Abdullah@Yu Chek Seng v Public Prosecutor* [Criminal Appeal No. 19 of 2011], where a sentence of 7 years' imprisonment and 12 strokes was upheld for a similar offence involving the robbery of a shop employee of \$11 by an offender armed with a kitchen knife.

17. As for the theft charge, the sentence of 2 years' imprisonment accords with the High Court's observations in *Public Prosecutor v Hj Hamdillah bin Hj Othman & Another* [Criminal Appeal No. 11 of 2008], where it was held that for theft committed in a building, a starting point of 3 years' imprisonment, reduced to 2 years upon a plea of guilt, was appropriate.

18. With regard to the global sentence, the DPP acknowledges that while the individual sentences cannot be faulted, the total sentence appears to be on the higher side. Reference was made to *Muhammad Zami'Ulhayat@Izzat bin Mohsin v Public Prosecutor* [Criminal Motion No. 15 of 2020], where this Court upheld a sentence of 10 years' imprisonment and 12 strokes for an offender convicted after trial of one charge of armed robbery and one charge of theft. By contrast, in the present case, the applicant pleaded guilty at an early stage. In these circumstances, the DPP accepts that an adjustment to the overall sentence may be justified.

19. The DPP further concedes that, in fairness to the applicant, the sentence of imprisonment ought to be ordered to run from the date of remand rather than from the date of plea as directed by the Judge.

Our decision

20. While we acknowledge the applicant's cooperation with the police following his arrest, his plea of guilt at the earliest opportunity, his previously clean record, and the difficult family circumstances he faces, we are nonetheless of the view that a sentence of

sufficient severity must be imposed in the public interest to serve the purpose of deterrence.

21. The principal issue of determination in this appeal concerns whether the aggregate sentence of 9 years' imprisonment and 12 strokes is manifestly excessive.
22. We find no basis to interfere with the individual sentences imposed by the Judge. In relation to the charge of attempted armed robbery, the sentence of 7 years' imprisonment and 12 strokes represents the statutory minimum sentence and is therefore unassailable. As regards the charge of theft, the sentence of 2 years' imprisonment, reduced from a starting point of 3 years to take into account the applicant's early plea of guilt, is consistent with the sentencing approach endorsed by the High Court in *Hj Hamdillah*.
23. In our view the Judge was correct in ordering the sentences to run consecutively, given that the offences were committed on separate occasions - approximately ten days apart - and at different branches of the same restaurant. It was therefore appropriate that the distinct offences be reflected by consecutive sentences.
24. That said, it remained necessary to assess the overall criminality of the applicant's conduct, particularly since both offences involved targeting his former employer and exploiting information obtained during his previous employment. In our judgment, however, ordering the full 2-year sentence for the theft charge to run consecutively to the 7-year term for the attempted armed robbery resulted in an aggregate sentence that is manifestly excessive.
25. We consider that the totality of the applicant's criminal behavior would be adequately reflected if only one year of the sentence for the theft charge were ordered to run consecutively to the 7-year sentence for the attempted armed robbery.
26. Turning to the Judge's decision to order the sentence to commence from the date of the applicant's plea, we note that no reason was provided for doing so. As this Court observed in the recent case of *Mohammad Nurilham bin Mohamad Nasri v Public Prosecutor* [Criminal Motion No. 18 of 2024], in the interest of fairness to the offender, and in recognition of the period spent in custody awaiting trial, the proper approach – consistent with established sentencing principles – is for the sentence of imprisonment to be backdated to the date of the offender's remand in custody.

Conclusion

27. For the reasons set out above, we allow the application for an extension of time to appeal against sentence and treat the application as the substantive appeal. Having considered the matter in full, we allow the appeal. The total sentence of 9 years' imprisonment and

12 strokes is set aside and substituted with a sentence of 8 years' imprisonment and 12 strokes, to commence from the date of the applicant's initial remand in custody. The appeal is accordingly allowed to that extent.

28. We wish to record our appreciation to the prosecution for the fair and measured approach taken in presenting the submissions on sentence, especially given that the applicant was without legal representation.



Dato Seri Paduka Steven Chong, CJ



Lunn, JA



Woolley, JA