MOHD AZWAN BIN IBRAHIM

AND

PUBLIC PROSECUTOR

(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 37 of 2018)

Before: Burrell P, Seagroatt and Lunn JJ A.
7th November 2018

Headnote: Sentence – 3 offences of housebreaking by night contrary to s.457 of the Penal Code. Valuable property stolen – 4 years and 2 strokes not manifestly excessive following pleas of guilty.

Applicant in person
DPP Dr Mohammad Hussin Ali bin Idris and DPP Siti Nurjauinah@Karmila binti Haji Kula for Respondent

Cases cited in the Judgment:

Mohammad Joll bin Tumih & another v Public Prosecutor [Criminal Appeal 5/2005]
Md Ihsan bin Awg Saini v Public Prosecutor [Criminal Motion 12/2013]
Shamsuddin bin Mohammad v Public Prosecutor [Criminal Motion 4/2014]
Haji Shahrul Alim bin Haji Sulaiman [Criminal Appeal 11/2003]

Burrell, P.:

This is an application for leave to appeal out of time against a total sentence of 4 years and 2 strokes imposed by Intermediate Court Judge Masni on 7th March 2018. The notice seeking an appeal is dated 1st September 2018 and is therefore about 4 months out of date. No explanation for the delay was made in the Notice however at the hearing the applicant informed us that he has only recently been able to pay the court fee for lodging an appeal.

We will therefore consider the merits of the appeal first. The applicant had pleaded guilty to three offences of housebreaking by night contrary to s.457 of the Penal Code. The 2nd and 3rd offences were committed on his own whereas the first was committed with another who has entered a plea of not guilty. All three offences were committed between December 2017 and January 2018. Residential premises in the Tungku area of Brunei were broken into during the night. Although the premises were not occupied at the time, instruments such as screwdrivers or metal bars were used to force open locked doors in order to gain entry. A variety of different sorts of property was stolen after each break in for example, in the first charge there were tyres (which were later sold for $350), a chainsaw, DVD players and like equipment, much of which was

recovered. From the second charge, mobile phones, a television (which was the only item recovered from this particular break-in), laptops, handbags and other items with a total value of $4,000. From the 3rd charge, a drill, gas burner and copper piping worth $1,000. The drill and burner were recovered. The values referred to formed part of the agreed statement of facts. Where the value of stolen property is known it should be included as a particular in the charge itself.

The judge took a starting point of 6 years and 2 strokes for each offence which she discounted to 4 years and 2 strokes following the applicant's pleas of guilty. She then considered the question of totality and ordered the sentences to be served concurrently and the strokes non-cumulative making a final sentence for the overall criminality of 4 years and 2 strokes.

Unfortunately there is no information in either the notes of proceedings or in the judge's reasons for sentence concerning the applicant himself. However, we have now seen and read a letter from the applicant dated 13th October 2018. He is 31 years old, married but getting divorced. There are two children of the marriage aged 5 and 2. He also expresses concern for his parents who are in poor health. His explanation for the commission of the offence was a shortage of money. He expresses remorse for his criminal activities and reminds this court that he pleaded guilty at the earliest opportunity and that this is his first criminal conviction.

Discussion

The Respondent has brought to our attention a number of earlier Court of Appeal decisions on sentencing in s.457 cases. These include:

Mohammad Joll bin Tumih & another v Public Prosecutor [Criminal Appeal 5/2005]
Md Ihsan bin Awg Saini v Public Prosecutor [Criminal Motion 12/2013]
Shamsuddin bin Mohammad v Public Prosecutor [Criminal Motion 4/2014]
Haji Shahrul Alim bin Haji Sulaiman [Criminal Appeal 11/2003]

Whilst there is, inevitably, some variation in the sentences passed in these cases due to the differing circumstances and facts of each case it can be seen that for a single offence contrary to s.457, absent any particularly unusual circumstances pertaining to either the offence or the offender, a sentence of up to 5 years after trial would be correct.

In the present case the judge was faced with an offender who had committed three such offences within a short time and stolen a total of 43 items of property intending to sell them for his own benefit.

It cannot therefore be said that her starting point of 6 years for three offences was manifestly excessive. The applicant was then afforded the full 1/3 discount for his pleas and ordered to serve the three sentences concurrently so that the final sentence of 4 years and 2 strokes properly reflects his overall criminality.

The judge's approach resulted in a proper sentence and there are no grounds upon which it can be reduced.

Accordingly the application for leave to appeal out of time is dismissed.

Order: Application dismissed.

Burrell, P.

Seagroatt, J.A. **Lunn, J.A**