

MICHELLS JACKSON ANAK AWIL

AND

PUBLIC PROSECUTOR

**Court of Appeal of Brunei Darussalam
(Criminal Motion No. 47 of 2020)**

Before: Burrell P, Seagroatt and Lunn JJ A.

Date of hearing: 31st October 2022

Date of judgment: 12th November 2022

Applicant in person

DPP Muhammad Qamarul Affyian bin Abdul Rahman for Respondent

Seagroatt, JA.:

This 31 year old applicant appeared before Judge Norismayanti Ismail on the 5th September 2020 after a 3 day trial on a charge under rule 2 of the Arms and Explosives Rules of the Arms and Explosives Act, Cap. 58 in that he had possession of a self-made rifle without a licence.

He was convicted on the said date and on the 9th September 2020 was sentenced to a term of 6 years and 6 months imprisonment and 3 strokes. The minimum sentence is 5 years imprisonment with 3 strokes. He now appeals against his sentence.

His defence was essentially that, on a search of his motor car, a home-made rifle having been found wrapped up in a black plastic bag, he explained to police officers that he used it to chase away monkeys.

This changed at trial to a denial that he owned the weapon and lead pellets, and an assertion that it belonged to a friend. He accepted nonetheless, that he was in possession of the weapon and the ammunition.

However his main line of defence became that it was not a functional weapon. In his police statements, the contents of which he did not deny, he made it clear that the item was functional and he had observed it to be so.

The judge had little difficulty in concluding that all the elements of the offence had been proved, and accordingly convicted him.

His notice of appeal against this sentence is dated the 23 November 2020 which is over two months outside the limitation period. He says that he was unaware of the period within which such a notice should have been filed.

We will return to this shortcoming after considering the merits of the appeal. The judge took into account his previous good character and the fact that his loss of freedom would occasion hardship to his young family. This is an inevitable consequence of criminal activity which results in a period of imprisonment, as this court has often stated. It is not a valid factor in mitigation. She reviewed a number of cases of this type of offence.

This was a serious offence which carries with it a threat to life and limb when in the hands of a criminally minded and irresponsible person. That is why there is a statutory minimum term of imprisonment. The appellant did not admit his offence and so could not be given any reduction of sentence. However the facts and admissions made by him made his conviction inevitable. He confirmed at the hearing that he had not received any legal advice. The term imposed was a justifiable increase upon the minimum period of 5 years. Photographs of the weapon were produced belatedly by the prosecutor who has also undertaken to produce the weapon itself on the day judgment is given.

We are grateful to the officers who brought the weapon to court and regret that they had to make a special journey to court. All members of this court have been able to examine the home-made rifle and see the pellets.

There were no mitigating factors other than those already taken into account by the trial judge.

In the circumstances the delay in filing the notice of appeal is not of consequence and having considered the merits of the appeal, we dismiss it.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A