

**Ak Muhammad Nazri Bin Pg Mohd Jasni**

AND

**Public Prosecutor**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Motion No. 49 of 2019)**

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Before: Steven Chong, C.J., Burrell, P., and Seagroatt, J.A.  
**8<sup>th</sup> June, 2021.**

*Headnote: Criminal law – Multiple offences of housebreaking – Sentence – 4 years 8 months and 4 strokes upheld.*

Applicant In Person.  
DPP Norhafiza bte Hj Ahmad for the Public Prosecutor.

**Cases cited in the Judgment:**

*Shamsuddin Bin Mohammad v Public Prosecutor* [2014] 1 JCBD 241  
*R v Ingham* (3 October 1974) (Court of Appeal (Crim.Div), UK)  
*R v Basil Bernard* [1997] 1 Crim Appeal R (S) 135  
*Amiruddin Bin Haji Junaidi v Public Prosecutor* [2017] 1 JCBD 172

**Steven Chong, C.J.:**

Introduction

This is the applicant's application for leave to appeal out of time against his sentence of 4 years 8 months' imprisonment and 4 strokes imposed in the Intermediate Court by Judge Muhammed Faisal bin PDJLD DSP Hj Kefli.

The applicant pleaded guilty to 25 charges of housebreaking and housebreaking related charges contrary to sections 426, 451, 454 and 457 of the Penal Code.

The facts

Briefly stated between December 2018 and February 2019 the applicant either by himself or together with an accomplice broke into or attempted to break into 16 houses in the Bukit Beruang Housing Estate in Tutong to steal.

Instruments such as a screwdriver were used to force open doors and windows to gain entry causing damages in the process.

The stolen items included cash, gold jewellery, computers, mobile phones, electrical cables and household appliances.

### Antecedent

The applicant was 29 years old and he was unemployed at the time of the commission of the offences.

Police Criminal Records show the applicant has 11 previous convictions for theft between 2012 and 2016. In respect of his last conviction he was sentenced to 14 months' imprisonment.

### The Judge's approach to sentencing

The Judge passed the following starting point sentences with a reduction of one third for the applicant's guilty plea:

1. Section 426 charges (6 charges) – one year reduced to 8 months;
2. section 451 charges (13 charges) – 4 years reduced to 2 years 8 months;
3. section 454 charge (one charge) – 4 years and 3 strokes reduced to 2 years 8 months and 2 strokes; and
4. section 457 charges (5 charges) – 6 years and 6 strokes reduced to 4 years and 4 strokes.

Bearing in mind the principle of totality the Judge ordered some of the sentences to run consecutively and the others to run concurrently resulting in an aggregate sentence of 4 years 8 months and 4 strokes.

### Grounds of appeal

On the delay of 5 months in the appeal the applicant says this was because he could not afford to pay for the appeal filing fees.

The applicant seeks leniency primarily on the ground that his wife and two young children who are dependent on him will suffer hardship without his support.

Additionally, the applicant says he cannot withstand a long prison sentence because he is afflicted with a "*chronic skin disease*" caused by an accident when he was cutting grass and he suffered burn injuries.

Further, the applicant urges the court to order his sentence of imprisonment to commence from the date when he was first remanded in custody after arrest, i.e. on 26 February 2019, and not “with effect from the date of institution of proceedings”, i.e. on 19 March 2019, as was ordered by the Judge.

### Our decision

The crime of housebreaking is always treated seriously by the court because of its prevalence and the distress it causes to homeowners.

Authorities are in abundance on the appropriate sentence to be imposed for housebreaking. Typically, a sentence of up to 5 years’ imprisonment can be expected: *Shamsuddin Bin Mohammad v Public Prosecutor* [2014] 1 JCBD 241, where this court upheld a total sentence of 6 years one month and 5 strokes imposed on the appellant who pleaded guilty to 7 charges of theft, 2 charges of housebreaking, 2 charges of mischief and one charge of drug consumption.

Considering the applicant committed 25 housebreaking and housebreaking related offences within a short span of 3 months and his bad record of 11 prior theft convictions, indicating a propensity for stealing, it is manifest a deterrent sentence is required.

In our view the sentence of the court below, far being excessive, erred on the side of leniency. However, as there is no appeal from the Public Prosecutor we will not intervene.

Any prison sentence on the breadwinner of the family inevitably causes hardship to the family. We have sympathy for the applicant’s family. But this is the price to pay when committing a crime and cannot be one of the factors which can affect what would otherwise be the right sentence: *R v Ingham* (3 October 1974) (Court of Appeal (Crim.Div), UK).

We do not know the severity of the applicant’s skin disorder as no medical evidence was provided. A prison environment may not be ideal to treat the applicant’s skin problem. But a serious medical condition, even when it is difficult to treat in prison, would not automatically entitle an offender to a lesser sentence than would otherwise be appropriate. An offender’s serious medical condition might enable a court, as an act of mercy in the exceptional circumstances of a particular case, rather than by virtue of any general principles, to impose a lesser sentence than would otherwise be appropriate: *R v Basil Bernard* [1997] 1 Crim Appeal R (S) 135, cited by this court in *Amiruddin Bin Haji Junaidi v Public Prosecutor* [2017] 1 JCBD 172.

### Conclusion

Even accepting the applicant has given a satisfactory reason for the delay in the appeal we are of the view that he has no arguable case against the sentence imposed for the reasons set out above and the application is dismissed accordingly.

In fairness to the applicant and in accordance with the usual practice of the court we quash the order of the Judge that the sentence of imprisonment commence from the “date of institution of

*proceedings*” and substitute it with an order that the sentence of imprisonment commence from 26 February 2019, being the date when he was first remanded in custody.

**Steven Chong, C.J.**

**Burrell, P.**

**Seagroatt, J.A.**