

ROSAZLI BIN HAJI METASSAN

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 6 of 2018)**

Before: Mortimer P, Burrell and Seagroatt JJ A.

1st May 2018

Headnote: Offence of house trespass (s.451 Penal Code), three offences of theft of motor cars (s.379), two offences of displaying false registration plates (s.89(c)) and one offence of careless driving (s.29(1) of Road Traffic Act) – application for leave to appeal out of time refused – sentences of 12 months imprisonment for each offence of theft of motor cars to be consecutive to each other, of 24 months imprisonment for house trespass 12 months of which were to be consecutive to the sentences for theft making 4 years in total after discount – fines totaling \$5,000 for other offences with 5 months imprisonment in default to be consecutive – sentences not wrong in principle or excessive

Appellant in person

DPP Sharon Yeo and DPP Pg Hajah Azmeena Binti Pg Haji Mohiddin for Respondent

Seagroatt, JA.:

This is an application for leave to appeal against the total sentence of 4 years imposed by Judge Radin Safiee on the appellant's pleas of guilty to a number of offences including three of thefts of motor vehicles and one of house trespass. Sentencing took place on the 25th October 2017. Originally the applicant had pleaded not guilty on 11th May 2017 but changed his pleas on the 16th October 2017. This application for leave is made over 3 months out of time.

Before granting leave, the court must be satisfied both that there is a satisfactory explanation for the delay and that the appeal has reasonably good prospect of success.

The explanation put forward is that he wished to consider the matter of an appeal with his family who could not see him before 22nd February 2018. Only then did he have the money to pay the fee.

We will consider the merits of the appeal.

The house trespass offence was committed in late April 2017.

The alternative charge which excluded the expression "by night" nonetheless alleged that the offence of house trespass was committed between 9.45 p.m. and 5.30 a.m. The

original charge alleged housebreaking by night between sunset and sunrise, virtually the same timespan. The house was unoccupied.

He gained entry through a window and stole a car key and a drill. Using the car key he stole the house owner's Nissan motor car. Later he changed the number plate. These two offences were thus linked. In the same month he stole a Toyota Corolla from outside a house and using an old key that he possessed, he drove it away, subsequently changing the licence plates. He was later involved in an accident when he failed to stop at a red light. He ran away from the scene but was later arrested and convicted of careless driving.

Shortly after the accident he stole another car, a Honda Prelude parked by a Motor Trading Company. Again he used an old key to open the car and start the engine. He crashed this car and fortunately no other vehicle was involved.

Stealing cars and driving on roads with false number plates so as to conceal their correct identity and ownership, and thus without proper insurance, carry significant threats to the public and justifies a degree of deterrent sentence in the public interest.

The appellant who is 36 years of age has a history of criminal behaviour and had been released from his recent term of imprisonment within a very short time before the commission of the first of these offences.

It was whilst he was on bail for these offences committed in April that he committed an offence of housebreaking in July. He appeared before the Magistrate who sentenced him to a term of 6 months imprisonment. He was serving this sentence when he appeared before Judge Radin in October.

In view of the fact that this was an offence committed whilst on bail, and that it was another housebreaking offence, the case should have been remitted to Judge Radin or preferably, brought before him in the first instance when the appellant first appeared. The judge would then have been able to see the full picture and sentence accordingly.

The judge imposed a sentence of 18 months imprisonment in respect of each of the offences of theft of a motor car reduced in each case to 12 months imprisonment to reflect the pleas of guilty but ordered them to run consecutively to each other thus totaling 36 months (3 years).

For the house trespass offence he ordered a sentence of 36 months which he discounted to 24 months in view of the guilty plea. This penalty was ordered to run concurrently with the sentences on the first two offences of theft but 12 months of it was ordered to run consecutively to the sentence on the third offence of theft, making a total of 4 years. The logic of that is that the vehicle in the third count of theft belonged to the victim of the house trespass offence. This reflects a total period of 6 years after trial. Fines totaling \$5,000 were imposed for the offences linked with the use of stolen motor cars. In default of payment of the fines the judge fixed an additional period of 5 months imprisonment.

Although on the occasion of the sentencing but before sentence, the appellant in his mitigation said "whatever sentence I will accept readily", he now contends that the overall period of imprisonment is excessive.

In essence his Notice of Appeal, which is out of time by just over 3 months calls upon this court to exercise mercy and sympathy in the light of his profuse declarations of remorse, and gratitude for the help given to him by the prison authority in reforming him, and leading him to a realisation of what is the right path and how to be self-reliant.

Having regard to the judge's approach to sentencing we are satisfied that the sentences were not wrong in principle nor manifestly excessive. The appeal could not succeed and therefore the application for leave out of time is refused.

Mortimer, P.

Burrell, J.A.

Seagroatt, J.A