

Muhammad Syakirin Bin Haji Hamdani

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 7 of 2023)**

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

Date of Hearing: 6th June, 2024.

Date of Judgment: 18th June, 2024.

Criminal law – House-breaking - Sentence

Applicant In Person.

PO Syazwani Hj Jumat for Public Prosecutor.

Cases cited:

Public Prosecutor v Mohammad Aimaduddin Bin Zafry [2016] 2 JCBD 210

Muhammad Shahrin Bin Muhammad Noradam v Public Prosecutor [Criminal Appeal No.7 of 2020).

Steven Chong, C.J.:

Introduction

On 24 May 2022 in the Intermediate Court the applicant pleaded guilty to three charges under the Penal Code: two charges of house-breaking to commit theft contrary to section 454 (1st and 2nd Charges); and one charge of house-breaking by night to commit theft contrary to section 457 (3rd Charge).

Judge Pg Masni Pg Hj Bahar sentenced the applicant to an aggregate sentence of 7 years' imprisonment and 4 strokes.

The applicant applies for leave to appeal out of time against that sentence.

The facts

Shortly stated and in chronological order the facts are these.

2nd Charge

Sometime between the evening of 31 March 2020 and the morning of 1 April 2020 the applicant drove to the Airport Mall and after parking his car, gained entry into a store selling drones by cutting the padlock of the entrance door. Inside the store, he took numerous items valued at over \$9,000 and loaded them into his car to bring home.

A police report was lodged by the owner but no arrest was made.

3rd Charge

Nearly three months after the drone store break in, on the night of 25 June 2020, the applicant drove to Batu Bersurat and this time his target was a store selling remote control cars. He cut the padlock of the safety grill and having entered the store, stole a large quantity of items.

1st Charge

This is the most recent offence. On the morning of 3 April 2022, the applicant returned to the drone store he had stolen from in 2020, broke in again by cutting the metal door latch with a plier and stole various items worth over \$9,000 and cash of \$189.00.

CCTV footage capturing the applicant's image stealing from the store led to his arrest by the police.

Previous convictions

The applicant has three previous convictions. Two were for outraging modesty in 2012 and one for theft in 2016.

The sentence

In relation to the two section 454 Penal Code offences the Judge took a starting point sentence of 4 years 6 months' imprisonment and 2 strokes and reduced this to 3 years' imprisonment and 2 strokes for the guilty plea, the imprisonment to be concurrent and strokes to be non-cumulative.

Turning to the section 457 Penal Code offence the Judge decided on a starting point sentence of 6 years' imprisonment and 2 strokes and reduced this to 4 years' imprisonment and 2 strokes for the guilty plea, the imprisonment to be consecutive and strokes to be cumulative.

In the result the aggregate sentence imposed was 7 years' imprisonment and 4 strokes.

The appeal

The applicant appeals for a reduction in sentence on the ground that his children will suffer hardship without his support.

Decision

Unfortunately, the imprisonment of an offender will often cause hardship to his family but it is rare for this to affect what would otherwise be the right sentence.

An aggravating factor present in this case is the applicant's previous conviction for theft. The sentences imposed are within the range for house-breaking offences: see for example *Public Prosecutor v Mohammad Aimaduddin Bin Zafry* [2016] 2 JCB 210; and *Muhammad Shahrin Bin Muhammad Noradam v Public Prosecutor* [Criminal Appeal No.7 of 2020].

Considering the multiplicity of offences and the applicant's prior theft conviction the sentence in totality of 7 years' imprisonment and 4 strokes is neither wrong in principle nor manifestly excessive.

There is no arguable basis for reducing the sentence and the application is dismissed.

STEVEN CHONG, C.J.

SEAGROATT, J.A.

WOOLLEY, J.A.