

Awangku Khairul Hanif Bin Pg Rosli

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 9 of 2023)**

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

Date of Hearing: 11th June, 2024.

Date of Judgment: 18th June, 2024.

Criminal law – House-breaking – Sentence

Applicant In Person.

PO Hjh Siti Mu'izzah Hj Sabli for Public Prosecutor.

Cases cited:

Mohammad Joll Bin Tumih (D1) and Mohammad Sharifuddin Bin Abdullah (D2) v Public Prosecutor [2007] 2 JCBD 86,

Amiruddin Bin Haji Junaidi v Public Prosecutor [Criminal Motion No. 2 of 2017]

R v Basil Mortimer Bernard [1997] 1 Criminal Appeal R(S) 135

Steven Chong, C.J.:

Introduction

On 30th January 2023 in the Intermediate Court the applicant pleaded guilty to the charge of house-breaking by night to commit theft contrary to section 457 of the Penal Code.

Judge Radin Safiee Bin Radin Mas Basiuni sentenced the applicant to 4 years' imprisonment and 2 strokes.

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

The facts

On the night of 25 January 2023 the applicant and an accomplice broke into a grocery store in Kampong Lumapas after cutting the padlock of the entrance door. Once inside the duo ransacked the store and took cash and mobile phone recharge cards.

The applicant's share of the stolen cash was \$1,000.

CCTV footage from the store capturing the incident led to the applicant's arrest and he admitted to the offence when interviewed by the police.

Previous conviction

The applicant was previously convicted of house-breaking by night in 2015 for which he was sentenced to 2 years' imprisonment and 3 strokes.

The sentence

The Judge in passing sentence relied on the decision of this court in *Mohammad Joll Bin Tumih (D1) and Mohammad Sharifuddin Bin Abdullah (D2) v Public Prosecutor* [2007] 2 JCBD 86, where it was observed that an appropriate starting point sentence for house-breaking by night to commit theft under section 457 of the Penal Code would be 5 years' imprisonment reduced to 3 years with 2 strokes on a guilty plea.

In view of the applicant's prior conviction for house-breaking the Judge decided on a higher starting point sentence of 6 years' imprisonment and reduced this to 4 years' imprisonment with 2 strokes on account of the guilty plea.

The appeal

The applicant is aged 36 and his appeal for a reduction in sentence is grounded on his medical condition. A medical report dated 17 March 2023 relied upon by the applicant states that he was treated for seizures caused by viral meningoencephalitis infection in June 2022.

In the penultimate paragraph of the medical report it is stated:

"Progress at last review

Came with mother

Recurrence of seizures

2 weeks ago

Some intermittent confusion from time to time

EEG – 6/1/2023

Intermittent epileptogenic zones in the frontal and parietal regions

Rpt MRI post contrast (7/1/2023)

No abnormality

Previously seen features of meningoencephalitis have resolved and no new lesions seen”

The medical report ends with the following statement from Dr Anas Naomi DP Hj Harun:

“The above patient is under my care for the above conditions and needs to continue with the abovenamed medication.”

Decision

Ill-health is not a mitigating factor except in the most exceptional cases when judicial mercy may be exercised: see the decision of this court in *Amiruddin Bin Haji Junaidi v Public Prosecutor* [Criminal Motion No. 2 of 2017], where the applicant’s appeal against sentence was allowed as he was suffering from oesophago-gastric cancer and underwent surgery, chemotherapy and chemoradiotherapy while in prison and the outlook was uncertain.

A serious medical condition even when it was difficult to treat in prison would not automatically entitle an offender to a lesser sentence than would otherwise be appropriate: see the decision of the English Court of Appeal in *R v Basil Mortimer Bernard* [1997] 1 Criminal Appeal R(S) 135, cited with approval by this court in *Amiruddin Bin Haji Junaidi v Public Prosecutor*.

It is noteworthy that the applicant’s medical condition was no hindrance to his commission of the offence. The medical report does not suggest he cannot be treated in prison

Considering the applicant’s prior house-breaking conviction the Judge was entitled to uplift the starting point sentence to 6 years’ imprisonment. The sentence of 4 years’ imprisonment and 2 strokes after reduction for the guilty plea is not manifestly excessive.

In the circumstances there being no arguable basis for contending for a reduction in the sentence the application is dismissed.

STEVEN CHONG, C.J.

SEAGROATT, J.A.

WOOLLEY, J.A.

