

HASMYZAN HAMZI HJ HASHIMI

AND

PUBLIC PROSECUTOR

Court of Appeal of Brunei Darussalam
(Criminal Appeal No. 10 of 2021)

Before: Burrell P, Seagroatt and Lunn JJ A.

10 June 2021

Headnote: Sentence – 6 years and 4 strokes upheld following guilty pleas for 2 offences of housebreaking at night and theft of a motor vehicle – partially consecutive orders correct – totality considered – habitual offender.

Appellant in person

DPP Raihan Nabilah binti Hj Ahmad Ghazali of Public Prosecutor for Respondent

Cases cited in the judgment:

Haris bin Akil vs Public Prosecutor (1992) BLR 291;

Public Prosecutor vs Pg Abd Rahman bin Pg Shahbudin (2003) 1 JCBD 139; and

Umjah bin Mohd Salleh vs Public Prosecutor (Cr.App. 23 of 2018)

Burrell, P.:

On 30th May 2020 the appellant pleaded guilty to four offences contrary to the Penal code Chapter 22. Two (charges 1 and 4) were of theft contrary to section 379 on 16th September 2019 and 1st May 2020 and the other two (charges 2 and 3) were of housebreaking at night contrary to section 457 in September 2019 and April 2020 respectively.

He had entered the guilty pleas before Judge Masni in the Intermediate Court. After careful consideration of all the facts and mitigation she passed the following sentences.

On charge 1, 12 months imprisonment. On charge 2, 3 years and 4 months and 2 strokes. On charge 3, 3 years and 4 months and 2 strokes and on charge 4, 8 months imprisonment.

She then considered the principle of totality so that the final sentence would reflect her assessment of the appellant's overall criminality. She then directed that the sentences on charges 1 and 2 be served concurrently. She then ordered that 2 years and 2 strokes from the sentence on

charge 3 be served consecutively to the 3 years and 4 months and 2 strokes on charge 2. Finally, that the 8 months on charge 4 be also consecutive.

This resulted in a final sentence of 6 years and 4 strokes against which the appellant now appeals.

Facts

Charges 1 and 2 related to an incident during the hours of darkness on 16th September 2019. The appellant was one of three men who broke into an unoccupied house in Kuala Belait. From those premises they stole 5 television sets. The car that had been used to drive to the property was not big enough to carry away all five television sets. They therefore stole another car, a Toyota Kijang which was parked nearby, in order to enable them to take away all the stolen property.

The 3rd charge was another housebreaking at night committed by this appellant alone. He broke into unoccupied residential premises in Kuala Belait in late April 2020. He stole many items including an iMac, a Surface Pro tablet, a Dell monitor screen, a headset, a keyboard etc.

He also stole a car key to a Wrangler Jeep which was parked outside. He used the vehicle to drive away the stolen property. He later abandoned the vehicle.

Most of the stolen items were later recovered from the appellant's house.

The 4th charge was committed in early May 2020 when the appellant stole a car battery from a Geely vehicle parked in Jalan Sungai Pandan. He later sold the battery.

The sentences

There is abundant authority in Brunei that a sentence of up to 5 years is appropriate for a single offence contrary to section 457 of the Penal Code after trial. In this appeal there were two such offences both of residential premises albeit unoccupied at the time. The sentencing judge correctly referred to cases in support of her individual sentences of 3 years 4 months and 2 strokes after pleas of guilty.

There can be no criticism either of her starting point of 18 months for the theft of a car in charge 1. Bearing in mind that the reason for the theft was to transport bulky stolen property from a housebreaking it was a serious offence of its type.

Equally, the shorter starting point of 12 months for the less serious theft of the car battery, in the overall context of this appellant's criminality cannot be said to be manifestly excessive.

In her written reasons she referred to a number of authorities in support. Of particular assistance were:-

***Haris bin Akil vs Public Prosecutor (1992) BLR 291;
Public Prosecutor vs Pg Abd Rahman bin Pg Shahbudin (2003) 1 JCBD 139; and
Umjah bin Mohd Salleh vs Public Prosecutor (Cr.App. 23 of 2018)***

Mitigation

The appellant pleaded guilty and was afforded the appropriate discount of one-third in each case. The matters contained in the appellant's written submission to this court were also brought to the judge's attention at the time of sentencing.

He is a 34 years old, Bruneian who was unemployed at the time of these offences. He had recently married. Since his conviction his wife has given birth to their first child. They are suffering the inevitable personal and financial hardship following the appellant's imprisonment.

On the other hand the appellant was not able to plead a clear record in his favour. Between 2010 and 2018 he had been sentenced to terms of imprisonment ranging from 1 month to 2 years on six occasions. Of his 18 previous criminal convictions, nine were for offences of dishonesty and nine for minor drug offences. He was released from prison in early 2019 but re-commenced his criminal activities in September 2019.

Totality

With all the above matters in mind, the judge decided that his overall criminality merited a final sentence of 6 years and 4 strokes which she achieved by ordering partially consecutive sentences as already described.

This translates into a starting point sentence of 9 years and 6 strokes. His previous record supports the conclusion that this appellant is a professional criminal. He has shown no indication of living an honest life and his previous imprisonments have not deterred him from becoming a repeat offender.

Whilst the final starting point sentence could be regarded as being toward the higher end of an acceptable range we do not consider it to be manifestly excessive or wrong in principle for the reasons outlined above.

Order

Appeal dismissed.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A.