

PUBLIC PROSECUTOR

AND

**MARDHI BIN LIT (D1)
HIRMAN BIN LIT (D2)**

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 11 of 2018)**

Before: Burrell P, Seagroatt and Lunn JJ A.
19th November 2018

DPP Sharon Yeo Mian Yie for Appellant
Respondents in person

Seagroatt, JA.:

This is an appeal by the Public Prosecutor against the sentence imposed by Judge Mohammed Faisal on the two defendants/respondents on 14th July 2018, of 8 months imprisonment for a single offence of house-trespass in May/June 2018, to which they pleaded guilty [s.451].

The offence involved breaking into their brother-in-law's house in the evening at a time when the house was being renovated whilst unoccupied.

Entry was effected by using a broomstick to unlock a rear sliding window through which the first defendant crawled. His co-defendant then entered the house through the back door which his co-accused opened for him.

They then took 16 boxes of LED lights. In due course they sold some 8 boxes of the lights, 7 of which were recovered. On 23rd June 2018 the brother-in-law visited the house and became aware of the loss.

The first defendant is 33 years old and his co-defendant 36 years. Both are Bruneians, hitherto of good character, and unemployed.

The judge took into account their mitigation which he clearly stated in his judgment. He expressly noted their remorse, promises not to re-offend, previous clear record, the fact that most of the items had been recovered and their relative low value. He regarded as an aggravating factor the victim's relationship to the defendants.

He took 12 months imprisonment for each as his starting point and reduced it to 8 months by reason of the plea of guilty.

The prosecutor appeals against this sentence on the basis that it is manifestly too lenient. Reliance is placed in the first instance upon the statutory provision that where house-trespass is committed in order to steal, the maximum sentence is 10 years imprisonment. The only precise point made however is that the judge was in error in stating that the LED lights not recovered were of relatively low cost. But the Deputy Public Prosecutor, in averring that the true value of the items was higher without putting forward any support for this, contended that the judge erred on this point. She did not even mention this in her Statement of Agreed Facts. This then is not a point of which we can take any material notice, even though the prosecutor now produces a document stating the total value to be BN\$400.

She proceeds to draw our attention to a number of cases – five in total – concerned with offences of house-trespass and housebreaking. All of them indicated that immediate imprisonment was appropriate but they were illustrations of an approach to sentencing being determined by the facts of each case. None of them bears comparison with this appeal before us.

The sentences imposed by the judge in this appeal are too lenient although his approach was an entirely correct one.

However we have made it clear that the guideline sentence for an offence of house trespass is in the region of 2 to 3 years imprisonment depending on all the circumstances. The starting point for this particular offence is therefore a minimum of 2 years. Discounting that term by one-third results in a sentence of 16 months. Accordingly a sentence of 8 months is too low even taking into account all the circumstances of these appellants. Since this is a prosecutor's appeal it would not be fair to be substitute a sentence of 16 months which would effectively double the sentence being served at present. Accordingly we increase it by 4 months only resulting in a sentence of 12 months running from the same date as the first remand in custody.

This appeal by the Public Prosecutor is allowed to the extent set out in respect of the sentences for both defendants/respondents.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A