

Muhammad Ibrahim Bin Abdullah

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 11 of 2023)**

Andika Febrian

AND

Public Prosecutor

(Criminal Motion No. 8 of 2024)

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

Date of Hearing: 10th June, 2024.

Date of Judgment: 20th June, 2024.

Criminal law – House-breaking – Theft – Sentence

Defendants In Person.

PO Syazwani Jumat for Public Prosecutor.

Cases cited:

Public Prosecutor v Mohammad Joll Bin Tumih and Mohammad Sharifuddin Bin Abdullah v

Public Prosecutor [Criminal Appeal No. 5 of 2005]

Public Prosecutor v Mohammad Aimaduddin Bin Zefry [Criminal Appeal No. 19 of 2016]

Steven Chong, C.J.:

Introduction

On 23 August 2023 in the Intermediate Court Andika Febrian (“D1”) and Muhammad Ibrahim Bin Abdullah (“D2”) were jointly charged with house-breaking contrary to section 457 of the Penal Code (1st Charge).

Additionally, D1 and another man named Kevin (“D3”) were jointly charged with theft contrary to section 379 of the Penal code (2nd Charge).

The three defendants pleaded guilty to the charges.

Judge Dk Hjh Norismayanti Binti Pg Hj Ismail sentenced D1 and D2 to 3 years 4 months’ imprisonment and 2 strokes.

D1 and D2 are appealing against that sentence.

The appeal of D1 is out of time and he seeks leave to do so.

We are not concerned with the sentence of D3 as he has not appealed.

The facts

Shortly summarized and in chronological order the facts were as follows.

D1 and D2 were former employees of Petlink Enterprise Sdn Bhd (“*Petlink*”) which is a pet care resources retailer. D3 was employed in *Petlink* as a labourer responsible for the housekeeping operations of the warehouse where goods were delivered and stored before they were sold.

On 2 August 2023 D3 informed D1 on Whatsapp that there would be a delivery of “*Royal Canine*” stocks to the warehouse later in the day. D3 suggested and D1 agreed to steal some of the stocks.

The next day D1 drove D3 to the warehouse at about midnight. Upon arrival D3 remained in the car and acted as a lookout while D1 exited and walked to a storage container containing some of the stocks. D1 entered the storage container which was not locked and carried 10 boxes of the stocks back to the car.

They sold the stocks on facebook and shared the proceeds.

Emboldened by the success of that theft D1 enlisted D2 to go with him to the warehouse to steal more stocks. In the early hours of 6 August 2023 they went to the warehouse in D2’s car.

On arrival D2 distracted the watchman by starting a conversation with him. D1 who had been provided with information by D3 gained entry into the warehouse through a toilet window. Once D1 was inside he opened the automated shutter door and proceeded to load 7 sacks and 24 boxes of the stocks into the car.

D2 sold the stocks on Whatsapp and Facebook for \$650 and he gave \$200 to D1.

The offences came to light when *Petlink* found a shortfall in the stocks and suspecting theft had occurred a supervisor inspected the CCTV footage and saw D1 inside the warehouse stealing the stocks on the morning of 6 August 2023. A police report was made and the three men were arrested.

The sentence

On the house-breaking charge the Judge imposed a starting point sentence of 5 years' imprisonment and 2 strokes and reduced this to 3 years 4 months' imprisonment and 2 strokes to reflect the guilty plea.

As to the theft charge the Judge imposed a starting point sentence of 18 months' imprisonment and reduced this to 12 months' imprisonment to reflect the guilty plea.

Concurrent sentences were ordered in relation to D1.

In the result the sentence in relation to both D1 and D2 was 3 years 4 months' imprisonment and 2 strokes.

The appeal

D1, aged 31, is a national of Indonesia and he has a wife and three children. He contends that the sentence is too high considering his guilty plea.

Similarly, D2, aged 25, contends that his guilty plea, clear record and cooperation with the police during investigations justifies a reduction in the sentence.

Decision

The sentences imposed are within the guideline sentences laid down by this court which the Judge referred to in determining sentence: *Public Prosecutor v Mohammad Joll Bin Tumih and Mohammad Sharifuddin Bin Abdullah v Public Prosecutor* [Criminal Appeal No. 5 of 2005] and *Public Prosecutor v Mohammad Aimaduddin Bin Zefry* [Criminal Appeal No. 19 of 2016].

We can detect no error of principle or approach in the sentence imposed and there is no arguable basis for contending that it was manifestly excessive.

For these reasons D1's application for leave to extend time to appeal and D2's appeal are dismissed.

STEVEN CHONG, C.J.

SEAGROATT, J.A.

WOOLLEY, J.A.