

MOHD ALI YUSRI BIN MD YUSSOF

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 12 of 2014)**

Before: Mortimer P, Leonard and Burrell JJ A.
1st December, 2014

Sentence – Multiple housebreaking – 19 years old appellant

Appellant in person
DPP Karen Tan Chai Mei for Respondent

Burrell, JA.:

On 5th May 2014, the appellant was sentenced to 3 years and 9 months imprisonment and 3 strokes by Judge Hanani in the Intermediate Court having pleaded guilty, on 1st April 2014, to five charges of housebreaking at night contrary to s.457 of the Penal code. On each occasion the offence had been committed with one or more other offenders, who had also been arrested and have pleaded guilty to their respective roles.

Facts

The five offences had been committed between 20th February and 20th March 2014. On each occasion the property entered was a private house which was occupied at the time. Entry was gained through a window, sometime with the use of a screwdriver. The items of property which were stolen, and shared amongst the defendants, included mobile phones, laptop computers, a 42” television, bicycles and cash.

The appellant was 19 years old at the time and had a clear record.

Sentence

The Judge correctly noted and took account of all relevant mitigating factors. She, also rightly, informed the appellant that in all the circumstances due to the seriousness of the offences an immediate prison sentence was unavoidable even though he was only 19 years old. It has been said many times in these courts that invading people’s homes at

night whilst the occupants are asleep is serious criminal conduct which invariably merits deterrent sentences.

For each offence the Judge selected a starting point of 3 years imprisonment and 3 strokes. In each case she reduced it to 2 years and 2 strokes for his pleas of guilty. She then said as follows:

“Totality:

9 months each to be consecutive and balance concurrent, with strokes non-cumulative, except one stroke of charge 2 to be consecutive.

Therefore, the defendant is to be sentenced to 45 months (3 years and 7 months) and 3 strokes, with effect from 2nd April 2014”

Appeal

We make two preliminary observations. Firstly, there is an unfortunate mistake in the arithmetic. Five consecutive sentences of 9 months each totals 3 years and 9 months, not 3 years and 7 months. It is plain however that the intended sentence was 3 years and 9 months.

Secondly, we feel it necessary to comment on the method whereby the final sentence of 45 months was achieved. 9 months of all five 2 year sentences were ordered to be “consecutive” but we ask the question: consecutive to what? In order to pass partially consecutive sentences the first term should remain intact, then subsequent terms (either in full or in part) made consecutive to it

For example, adopting her method, the correct way of reaching a final sentence of 44 months (we select 44 rather than 45 simply for ease of arithmetic) would be to pass a sentence of 2 years on charge 2 then make 5 months out of each of the subsequent 2 years sentences on charge 5, 6, 7 and 8 consecutive making a total (24+5+5+5+5) of 44 months. With her method (9+9+9+9+9) all the 2 year sentences have disappeared.

Her selection of 3 years as a starting point, albeit at the lower end of an acceptable range, reduced to 2 years on a plea is a proper sentence. She then, again correctly, considered the question of totality, to which we also now turn.

A sentence of 45 months is equivalent to a sentence of almost 5 years and 8 months after trial.

Even with a 19 year old with a clear record, we are satisfied, as was the sentencing Judge that a total of 5 years and 8 months after trial was not excessive for 5 housebreakings at night, where the houses were occupied at the time. The criminal enterprise was carried out by a gang of men over a period of 4 weeks. It was a pre-meditated spree of well planned criminality. Her decision to order a total of 3 strokes was also entirely justified.

Order

We therefore make no reduction to the length of imprisonment but allow the appeal in order to substitute the following sentences.

24 months and 2 strokes on all charges to be served concurrently save that 21 months on charge 5 shall be consecutive and one stroke cumulative making a total of 45 months and 3 strokes.

Mortimer, P.

Leonard, J.A.

Burrell, J.A.