

PG HIDAYATULLAH BIN PG HJ KULA

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 12 of 2017)**

Before: Mortimer P, Leonard and Burrell JJA.
13th November 2017

Headnote: Criminal Law, sentence- 2 offences of dishonestly appropriating property – s409 Penal Code – total sum \$6,058.21 with partial restitution – concurrent sentences of 6 months increased to 12 months concurrent.

Appellant in person
DPP Hajah Atiyyah Binti Haji Abas and DPP Farhana binti POKPSRDPSS Haji Awang Suhaili
for Public Prosecutor

Leonard, JA.:

This is an appeal by the DPP who seeks an increase in sentence on the ground that the sentence imposed by the trial judge was manifestly inadequate.

On the 24th of August 2017 the Respondent pleaded guilty before Judge Nabil in the Intermediate Court to two charges of dishonestly appropriating property, an offence punishable under section 409 of the Penal Code, Cap 22. The amount of money misappropriated amounted to \$3,158.13, the property of the Sergeants' Mess of the Royal Brunei Armed forces (charge 1) and \$2,900.08, the property of the Officers' Mess of the Royal Brunei Armed Forces (charge 2), making a total of \$6,058.21. The first offence occurred between September 2014 and February 2015 when he was working as a Level 3 Mess manager. Later during the same period, when standing in for an absent colleague and acting as a level 1 Mess Manager, his earlier offence not having been discovered, he committed the second offence. When the person for whom the Respondent had been standing in returned to work he discovered the discrepancy. The Respondent admitted that he had failed to bank the \$2,900.08 and confessed to the earlier misappropriation of the \$3,158.13 which he had also failed to bank. The matter was reported to the police in March 2015 and the Respondent, a family man, was suspended on half pay. The matter was not brought to court until August, 2017.

The Judge took note of the fact that the Respondent had pleaded guilty, expressed remorse and repaid \$2,678.72, promising to repay the outstanding sum of \$3,379.49 by 1 September 2017. In approaching the question of sentence she bore in mind the guidance in the well-known case of *John Barrick Criminal Appeal R (S) (1985) 142* where The Lord Chief Justice gave the following guidance (at P146-147 of the report) and as a result rightly took the view that a sentence of imprisonment was necessary:

“The following are some of the matters to which the court will no doubt wish to pay regard in determining what the proper level of sentence should be: (i) the quality and degree of trust reposed in the offender including his rank; (ii) the period over which the fraud or the thefts have been perpetrated; (iii) the use to which the money or property dishonestly taken was put; (iv) the effect upon the victim; (v) the impact of the offences on the public and public confidence; (vi) the effect on fellow-employees or partners; (vii) the effect on the offender himself; (viii) his own history; (ix) those matters of mitigation special to himself such as illness; being placed under great strain by excessive responsibility or the like; where, as sometimes happens, there has been a long delay, say over two years, between his being confronted with his dishonesty by his professional body or the police and the start of his trial; finally, any help given by him to the police”

Taking account of the respondent’s plea of guilty, his expression of remorse, the part restitution and the amount involved he took a starting point of 9 months on each charge, reduced to 6 months in consideration of the plea and the mitigation. The Judge ordered that the sentences be served concurrently and added an order for compensation of \$3,379.49 to be paid within a week, with 1 month imprisonment in default of payment. We are told that the money was not paid, so that the respondent’s effective total sentence is 7 months imprisonment.

The DPP helpfully drew our attention to four cases at first instance involving offences of this kind where in each one a sentence of 2 years after a guilty plea was imposed, the amounts involved varying between \$16,395.00 and \$8,600.00. She submits that in this case too the sentences should have been 2 years after the guilty plea. The guideline of 2 years need not be followed blindly. Every case must be considered in the light of all the circumstances and a Judge has discretion. In our view terms of imprisonment somewhat shorter than 2 years would have been appropriate but that in all the circumstances, the terms selected were manifestly inadequate. The appropriate sentence after the guilty plea should have been eighteen months. However, as is customary in cases where the sentence is enhanced on the application of the DPP, we will set aside the present terms of 6 months and substitute sentences of 12 months on each charge, to be served concurrently. We will make no order regarding the restitution order or the sentence of one month in default of payment so that the total effective sentence will be thirteen months.

There will accordingly be an order:

1. That the sentence of 6 months imprisonment on Charge 1 be set aside and a sentence of 12 months imprisonment be substituted.

2. That the sentence of 6 months imprisonment on Charge 2 be set aside and a sentence of 12 months imprisonment be substituted, to be served concurrently with that on Charge 1.

There will be no order on the restitution order or sentence of 1 month imprisonment in default of payment. The order and that sentence will therefore stand and in default of payment would have been served consecutively to the term of 12 months imprisonment.

We are informed that the restitution order has been complied with, in which case the sentence in default, though correct, will not take effect.

Mortimer, P.

Leonard, J.A.

Burrell, J.A