

**MUHAMMAD AIMAN BIN MORNI**

**AND**

**PUBLIC PROSECUTOR**

---

**Court of Appeal of Brunei Darussalam  
(Criminal Appeal No. 12 of 2021)**

---

Before: Burrell P, Seagroatt and Lunn JJ A.

**Date of Hearing: 3<sup>rd</sup> November 2022**

**Date of Delivery of Judgment: 19<sup>th</sup> November 2022**

*Headnote: Sentence: 5 offences of dishonesty including one of housebreaking by night (s.457 CAP 22). Overall term of imprisonment of 3 years and 4 months upheld. Number of strokes reduced from 3 to 2 because no discount had be given in the number strokes from the judge's starting point.*

Appellant in person

DPP Ahmad Firdaus bin Hj Mohammad for Public Prosecutor

**Cases cited in the judgment**

*Rosazli bin Haji Metassan (Court of Appeal Brunei Darussalam) (Criminal Motion 6 of 2018);*

*Public Prosecutor and Mohammad Nur Syazwandy@Amirnurizal bin Saroz (D1) Mohammad Zeem Wand Adika bin Jeluddin(D2) (Intermediate Court of Bandar Seri Begawan) (Criminal Trial No 22 of 2020);*

*Mohammad Yusrin bin Hj Mohammad and Public Prosecutor (Court of Appeal of Brunei Darussalam) (Criminal Appeal No. 8 of 2013);*

*Public Prosecutor and Ibrahim bin Hj Rabu (D1) Abdul Muhimin bin Puspawari (D2) Mohammad Mohin bin Puspawari (D3) Raubanizam bin Hj Raub (D4) Amir bin Hj Abd Razak (D5) David bin Suis (D6) (Intermediate Court of Brunei Darussalam) (Criminal Trial No 7 of 2017);*

*PP v Hamyzan Hamzi bin Hashimi and Anor (Criminal Trial 1/2013)*

**Burrell, P.:**

On 18<sup>th</sup> March 2021 the appellant pleaded guilty to 5 charges of theft, handling stolen goods and housebreaking; one contrary to s.411, two contrary to s.379, one contrary to s.380 and one contrary to s.457 of the Penal Code, CAP 22.

Intermediate Court Judge Honourable Judge Hazarena passed the following sentences. 12 months imprisonment for the s.411 offence, concurrently with 12 months for the

s.379 offences and 16 months for the s.380 offence. For the housebreaking by night, s.457, the sentence passed was 2 years and 3 strokes to be served consecutively making a total of 3 years and 4 months with 3 strokes. All sentences of imprisonment were calculated after discounting them by 1/3 from her original starting point to reflect his pleas of guilty.

### Mitigation

Before sentence the judge noted and gave due weight to the appellant's circumstances namely that he has a wife and six children and also looks after his mother. He pleaded guilty at the earliest opportunity. She noted also that the appellant had two previous convictions; the earlier one, in 2016, being for theft offences for which he received a sentence of 15 months imprisonment.

### Facts

When the appellant was arrested on 14<sup>th</sup> March 2021 he was in possession of a watch valued at \$25 which had been stolen in the course of a housebreaking 10 days earlier. The appellant admitted that he knew it was stolen.

On 9<sup>th</sup> March the appellant and his co-accused stole 2 bicycles, together valued at \$850, from outside a dwelling in Seria at 2.00a.m. The appellant sold the one he stole to a friend for \$30. Both bicycles were later recovered.

The next day the appellant stole another bicycle and a trailer from a nearby property. He separated the bike from the trailer and sold it to a friend for \$20. The owner valued the property, which was later recovered, at \$2,300.

The next day, 11<sup>th</sup> March, the same two men stole various items of property from a dwelling in the same area. The property included a bicycle, a camera, a laptop and an Apple TV box. When the appellant was arrested a few days later the stolen items were recovered from his house.

The final charge relates to an incident on 13<sup>th</sup> March 2021 when the appellant and his co-accused broke into a house during the night, by climbing through a bedroom window. They stole a laptop, an ID card and 2 dozen cans of beer. The appellant had sold the laptop prior to his arrest.

### The Appeal

The judge in her written reasons for sentence carefully considered all the facts of the cases, the mitigation, and previous authorities for guidance on sentence.

In particular she referred to:-

- *Rosazli bin Haji Metassan (Court of Appeal Brunei Darussalam) (Criminal Motion 6 of 2018)*;

- *Public Prosecutor and Mohammad Nur Syazwandy@Amirnurizal bin Saroz (D1) Mohammad Zeem Wand Adika bin Jeluddin(D2) (Intermediate Court of Bandar Seri Begawan) (Criminal Trial No 22 of 2020);*
- *Mohammad Yusrin bin Hj Mohammad and Public Prosecutor (Court of Appeal of Brunei Darussalam) (Criminal Appeal No. 8 of 2013);*
- *Public Prosecutor and Ibrahim bin Hj Rabu (D1) Abdul Muhimin bin Puspawari (D2) Mohammad Mohin bin Puspawari (D3) Raubanizam bin Hj Raub (D4) Amir bin Hj Abd Razak (D5) David bin Suis (D6) (Intermediate Court of Brunei Darussalam) (Criminal Trial No 7 of 2017);*
- *PP v Hamyazan Hamzi bin Hashimi and Anor (Criminal Trial 1/2013)*

It is unnecessary to herein, repeat the facts of these cases and her reliance on them for guidance, when deciding the appropriate starting point for sentence.

She was right to note the prevalence of these sorts of cases in Brunei and right to note the effect on the victims of these random and thoughtless acts of criminal dishonesty. Our natural sympathy for his large family left without him whilst he serves his prison sentence cannot be a reason for reducing the overall sentence.

The individual sentences for charges 1 to 5, all to be served concurrently, are entirely proper and appropriate.

There can be no criticism either of the starting point of 3 years on charge 6. Indeed, it could have been higher. The term of imprisonment was correctly discounted to 2 years but no reduction in the number of strokes was made.

#### Totality

The judge was correct to order that the sentence on the most serious charge contrary to s.457 be served consecutively which resulted in a final sentence of 3 years and 4 months. However, we will reduce the number of strokes from 3 to 2 to reflect the fact that when making a discount for a plea of guilty both the term of imprisonment and the number of strokes should be reduced.

#### Decision

Appeal dismissed save that 3 strokes substituted with 2 strokes. We also direct that the sentence shall run from 14<sup>th</sup> March 2021 and not 18<sup>th</sup> March 2021 as stated in the remand warrant.

**Burrell, P.**

**Seagroatt, J.A.**

**Lunn, J.A**