

PUBLIC PROSECUTOR

AND

MOHAMMAD SUHAIMI BIN MOHD SUFRI

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 13 of 2016)**

Before: Mortimer P, Burrell and Seagroatt JJ A.
23rd May 2016

Headnote: Prosecutor's appeal against sentence of 8 months imprisonment for an offence of housebreaking with intent to commit theft contrary to section 457 of the Penal Code. In the particular unusual circumstances involving totality of sentence appeal dismissed. Circumstances exceptional. Normally sentence would be manifestly too lenient.

DPP DK Didi-Nuraza Pg Hj Abd Latiff and DPP Mohd Danial Dato Haji Kifrawi for appellant
Respondent in person

Cases cited:

Wahid bin Mazid v Public Prosecutor (Criminal Appeal No.9 of 2014)

Mohammed Zul-Eqram bin Hj Asmad v Public Prosecutor (Criminal Appeal No. 25 of 2015)

Mortimer P.

On 13 May 2015 the respondent appeared before Intermediate Judge Abdullah and pleaded guilty to 2 offences. The first committed on the 19 April 2015 was housebreaking by night to commit theft contrary to section 457 of the Penal Code. The 2nd, committed on the 29 April 2015 was simple theft contrary to section 379 of the Code. He was sentenced to 2 years imprisonment and 3 strokes on the first charge and 8 months imprisonment on the 2nd charge to run consecutively making 2 years and 8 months imprisonment and 3 strokes in all.

These offences were committed with another defendant who also appeared.

The respondent and the same defendant had committed an earlier offence of housebreaking with intent to commit theft contrary to section 454 of the Penal Code on the 24 January 2015. The other defendant pleaded guilty to this earlier offence on the 7 November 2015 and was sentenced to 2 years imprisonment and 2 strokes. He is an older man with previous convictions.

The respondent elected for trial which was fixed before Intermediate Judge Muhammad Faisal on the 18 April 2016. At that time the respondent was serving his sentence of 2

years and 8 months. When he appeared the respondent changed his plea to one of guilty. On the following day the Judge sentenced him to 8 months imprisonment reduced from 12 months for the plea and one stroke. The sentence was ordered to run from the 18 April 2016.

Against this sentence of 8 months and one stroke the Public Prosecutor appeals contending that the sentence of imprisonment is manifestly too lenient.

The Facts

On the 24 January 2015 the respondent and the co-accused broke into a house near Kuala Belait occupied by the Commanding Officer of a Gurkha battalion, his wife and 2 children. They went into the officer's bedroom and he awoke. The officer shouted at them to get out and they fled taking with them an iPad, a mini iPad and a Nikon digital camera but leaving behind their footwear.

The stolen property was recovered.

The respondent was arrested for this offence but maintained a plea of not guilty to it when he was sentenced for the 2 later offences to which he pleaded guilty before Judge Abdullah on 13 May 2015. He was on bail for this offence and it appears that this bail was never revoked even though he was in prison for the other offences.

The appeal

DPP DK Didi appears with DPP Mohd Danial Dato Haji Kifrawi for the appellant. She submits that the sentence passed was manifestly inadequate as it did not reflect the seriousness of the offence which carries a maximum sentence of 10 years and whipping. She further points out that he broke into an occupied house in the middle of the night when the occupants including children were asleep, this reflects the fear and distress caused. Finally he notes that valuable easily disposable items were stolen.

In support she cites *Wahid bin Mazid v Public Prosecutor (Criminal Appeal No.9 of 2014)* in which this court approved a sentence of 2 years imprisonment reduced from 3 years for an individual offence committed by a man of previously clear record. He also cites *Mohammed Zul-Eqram bin Hj Asmad v Public Prosecutor (Criminal Appeal No. 25 of 2015)* a decision to the same effect.

The DPP also points out that there is serious disparity between the sentence passed upon the respondent's co-accused and the sentence passed upon him. For this offence the co-accused received a sentence of 2 years and 2 strokes reduced from 3 years and 3 strokes for his plea. The co-accused is 47 years of age and has previous convictions compared with the respondent who was without convictions at the time of the instant offence and is only 21 years of age. Even bearing in mind this difference the DPP submits that each is similarly culpable and the difference of 16 months imprisonment is unjustified.

Discussion

In isolation these submissions of the DPP are correct. For a single offence of housebreaking the broad tariff is a starting point of 3 years imprisonment reduced to 2 years after plea and then adjusted for any proper mitigation.

However this is not an isolated offence. It is one of a series of 3 offences committed by the respondent, this being the first. When a series of offences are dealt with individually on different occasions sentencing on later occasions often causes problems. The judge sentencing on the later occasion has to consider what the proper sentence would have been had all the offences been dealt with at the same time taking into account the total criminality involved together with any aggravating or mitigating circumstances. It follows that there are occasions when in order to do justice and achieve the proper totality of sentence it may not be possible to impose the appropriate sentence for an individual offence. Whereas the appropriate sentence ought to be passed for each individual offence in present circumstances it is not always possible.

We turn to the present sentence. For the last 2 offences in this short series the respondent was given the total sentence of 2 years and 8 months after plea. This involves a starting point after trial of 4 years imprisonment.

The judge sentencing for the instant offence had to notionally stand back and decide what the overall total sentence ought to have been if all 3 offences been dealt with on the first occasion. In making this assessment both the serious nature of the first 2 offences must be taken into account as well as the mitigation that the respondent is only 21 years of age and had a previous good record.

Had all 3 offences been dealt with together the DPP is inclined to agree that a five-year starting point after trial would have been too high. She contended that a starting point of about 4 years would have been appropriate for the series. The sentence of 2 years and 8 months imprisonment passed for the 2 later offences of the series involves a starting point of 4 years.

We are of the view that 4 years imprisonment would have been an appropriate starting point for the 3 offences had they been dealt with at the same time.

This must have been Judge Muhammad Faisal's view. In order to do justice he had to pass such sentence which would not increase the overall sentence of imprisonment which the respondent was already serving. Had the judge imposed the usual and proper sentence of 2 years after plea for this offence it would have involved a substantial increase in the sentence already being served unless the respondent had been on remand for a substantial period and the sentence could have been made to begin on the date of the respondent's remand. In this case that was not possible. The respondent's bail for this offence was never formally revoked and he was not on remand.

No doubt this was why the judge passed the sentence of 8 months imprisonment concurrent with the sentence already being served. This ensured that the overall sentence being served was not increased. It is possible that the judge could have achieved the same purpose by passing a somewhat longer sentence but that is not a matter that we need investigate.

In other circumstances the 8 months sentence would be obviously and manifestly too lenient.

Conclusion

For these reasons we dismiss the Public Prosecutor's appeal. Save in exceptional circumstances such as in the present appeal this court must not be taken to have approved of a sentence of 8 months imprisonment for housebreaking and theft in the night.

Order

The Public Prosecutor's appeal against sentence is dismissed.

Mortimer, P.

Burrell, J.A.

Seagroatt, J.A