

MATNOR BIN HAJI PAWEH

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 13 of 2017)**

Before: Mortimer P, Leonard and Burrell JJA.
22nd November 2017

Headnote: Criminal law – Sentence – s.409 CAP 22 breach of trust. Sentence reduced because of 3 years delay in prosecution. 18 months imprisonment upheld.

Appellant in person
DPP Yvonne Lim for Public Prosecutor

Case cited in the Judgment:

PP vs Sung Vin Jung [2000] JCBD 47

PP vs Rodeo Zambrano [HCCT 14/2003]

PP vs Sharah binti Hj Ahmad [HCCT 13/2008]

Burrell, JA.:

On 16th September 2017 the appellant pleaded guilty to one offence of criminal breach of trust by a Public Servant contrary to s409 of the Criminal Code CAP 22 before Judge Zubaidah. On 28th September 2017 the judge sentenced the appellant to 18 months imprisonment.

Facts

The offence was committed over an 8 month period in 2011/12. The appellant was employed as a clerk in the finance division of the Public Water Works Department. In the course of his duties he issued and received receipts in the total sum of \$46,396 but failed to deposit this amount into the Government bank account. The matter came to light as a result of an internal investigation. The appellant admitted his dishonesty and was suspended from work. He has made restitution in the sum of \$3,371. The amount still unpaid is \$43,025.

Delay

There has clearly been a significant delay in this case. The judge made enquiries about it. She was informed that appellant's medical condition explained a delay up to the end

of 2013 but she received no satisfactory explanation as to why the file was not sent to the Attorney General's Chambers until June 2017, over 3 years later.

Sentence

The judge said as follows:-

"... Taking into account that the Defendant made restitution of part of the monies misappropriated, he had a clear record, his guilty pleas his mitigation and giving discount for the delay in prosecution. I take a starting point of 24 months imprisonment and reduce it to 18 months imprisonment to be served with effect from today's date".

This suggests a possible misunderstanding of the words "starting point". The starting point is the appropriate sentence for the particular offence after trial. Factors relating to the offence, such as the amount of money involved, the partial restitution, the delay and so on are matters which affect the proper starting point. However, the judge seems to have taken into account matters which are not relevant to the proper starting point, such as "his guilty pleas, his mitigation..." These should be taken into account when deciding the appropriate discount from the starting point.

We acknowledge that the judge may have meant that she was taking all the matters referred to when reducing the sentence to 18 months. The fact remains that when sentencing some factors are relevant to the calculation of the theoretical starting point after trial and others relevant to the discount from that starting point. The plea of guilty is always relevant to the latter.

The respondent submits that a proper starting point for a single s.409 offence involving a sum of the amount in this case should be 3 years imprisonment reduced to 2 years on a plea of guilty. A number of authorities have been cited which are consistent with this submission. In particular, *PP vs Sung Vin Jung [2000] JCBD 47*, *PP vs Rodeo Zambrano [HCCT 14/2003]*, *PP vs Sarah binti Hj Ahmad [HCCT 13/2008]*.

Appeal

Of course, ultimately, this court's primary concern is the correctness or otherwise of the sentence actually passed in all the surrounding circumstances. The 3 year delay in this case in prosecuting the appellant certainly merits a reduction from the usual 3 year starting point. We think 2 to 2 ½ years would have been proper. This also takes into account his partial restitution of \$3,371 made in 2013. The appellant informed this court that he thought that deductions had been made from his salary whilst he had been suspended so that he had repaid the sum misappropriated. However, recent enquiries made by the respondent have clarified that no such repayment had been made. Further deductions had been made from his salary but these were not for the restitution of the money he had taken.

Decision

As already stated we think that the usual starting point of 3 years should be reduced in this case to 2-2 ½ years mainly because of the delay. From that a full discount for his

plea of guilty results in a sentence of 18 months. We have concluded that the judge came to a result which was entirely proper in all the circumstances of this case. We decline to intervene. The sentence will be upheld.

Order

Appeal dismissed.

Mortimer, P.

Leonard, J.A.

Burrell, J.A