

PUBLIC PROSECUTOR

AND

NORWIDYAWATI BINTI HAJI MOKTI

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 13 of 2019)**

Before: Burrell P, Seagroatt and Lunn JJ A.

21st November 2019

Headnote: Breach of trust; imprisonment generally inevitable; very exceptional circumstances vary with each case; relevance of restitution; sentence of 8 months imprisonment upheld.

DPP Dk Didi Nuraza binti Pg Hj Latiff for Appellant

Respondent in person

Cases cited in the judgment

Public Prosecutor v Andrew Siew Sii Pian 2005 Vol 2 JCBD 194

R v Barrick 1985 81 Criminal Appeal R.78

Hj Ali bin Hj Ajis v Public Prosecutor 2005 Vol. 1 p.52

Public Prosecutor v Hj Md Yusof bin Hj Jalil 2006 Vol 1 JCBD p.187

Public Prosecutor vs Pg Hidayatullah (Court of Appeal 12 of 2017)

Seagroatt, JA.:

This is an appeal by the Public Prosecutor against the sentence of 8 months imprisonment imposed upon the respondent on 17th August 2019 by Judge Mohammed Faisal in respect of an offence of criminal breach of trust to which the respondent pleaded guilty on the 7th August 2019.

The respondent is a 44 years old Bruneian female civilian clerk attached to the Police Royal Guard. By virtue of her position she was entrusted with the monthly collections from officers and personnel of the Police Royal Guard of contributions to be paid into the Police Force's Welfare and Sports Fund. She was assigned to this position in late September 2016.

In March 2017 it came to the attention of the Treasurer of the Fund that, on the face of it, a number of officers and personnel had not made their full contributions. An investigation into this situation revealed that in fact the persons concerned had made their contributions which had been passed onto the Respondent who had failed to pass them on to the Fund Collection Service.

In due course it emerged that the sum of B\$17,775 had been appropriated by her. She admitted that she had taken the money and used it for her own purposes save that she had lent the sum of B\$1,300 to one member of the Police Force. She was arrested on a date which the prosecution has been unable to identify.

The respondent made full restitution on the 25th July 2019, two weeks before she pleaded guilty to the offence.

The period covered by the misappropriation is November 2016 to April 2017.

It appears that the internal investigation commenced in March 2017. We have not been informed whether she was interviewed during that. The matter was handed over to the police in or about May 2018, over a year later. During the course of that investigation it is stated in the agreed facts that the defendant admitted that she had taken the monies and made use of them. The Deputy Public Prosecutor stated that admissions were made by her on the 29th and 30th May and 4th June 2018 in statements but we have not been provided with these. Ultimately she first appeared in court on the 26th June 2019. Another year had elapsed.

We have had regard also to the fact that 2 ½ years passed between the offence first coming to light in March 2017 and sentence being passed in August 2019.

No satisfactory explanation for these omissions and delay has been put forward by the prosecution. Furthermore this is yet another case and there are many, in which the prosecution has failed to provide copies of defendant statements in good time, or at all.

It is beyond argument that offences of breach of trust are to be regarded as serious and, in general, calling for custodial sentences. The judge in imposing a sentence of 8 months imprisonment, having given a discount of one third for her plea of guilty, had regard to a number of cases of breach of trust and their consequent sentences. There were authorities submitted to him by the Public Prosecutor at the hearing.

The first – *Public Prosecutor v Andrew Siew Sii Pian 2005 Vol 2 JCBD 194* – was a case involving the taking of over B\$47,321.75, almost three times the amount taken by this respondent. Full restitution had been made. The judge had at first instance imposed a fine of B\$5,000. It was assumed that the fine had been paid. The Public Prosecutor argued on its appeal that the disposal of sentence other than by way of a term of imprisonment was manifestly inadequate. The Court of Appeal did not interfere with the sentence for reasons other than on the merits of the case but relying on the principle enunciated in *R v Barrick 1985 81 Criminal Appeal R.78*, restated the basic principle that “*in general, a term of imprisonment is inevitable, save in very exceptional circumstances or where the amount obtained is small.*” The court went on to say that although the mitigation was strong, in particular the speedy and full restitution, it did not bring the circumstances up to the level of “very exceptional”. However in that restatement, as in every case, what are exceptional circumstances may vary with each individual case. In that appeal the court made it clear that there ought to have been a sentence of imprisonment.

In *Hj Ali bin Hj Ajis v Public Prosecutor 2005 Vol. 1 p.52*, the Chief Justice had regard to the decision in *R v Barrick* and the principle of “a sufficiently substantial term of imprisonment save in very exceptional circumstances.” He reduced a sentence of 8 months to 4 months for “the considerable mitigation factors” including a delay of one year between the admission of the offence - the sum involved was B\$13,440 and the delay in prosecution. The delay became two years by the time that the appeal was heard. He regarded the delay as unreasonable.

In *Public Prosecutor v Hj Md Yusof bin Hj Jalil 2006 Vol 1 JCBD p.187*, restitution was delayed, and a trial featured. Reliance was again placed upon *R v Barrick* and the judge felt that the only discretion vested in him in such cases was in relation to the length of sentence. It concerned the sum of B\$2,550. There had been some attempt to conceal his criminality but apart from that there were mitigating factors, despite the plea of not guilty resulting in a trial. A starting point sentence of 9 months was reduced to 3 months.

The prosecutor submitted further decisions before this court but those in which no restitution was made do not assist and the other three cases involved only partial restitution, two of them concerning sums of money far greater than the sum taken by this respondent, and both had resulted in a trial. These were thus also of no assistance to us. The remaining one, an unreported case of *Public Prosecutor vs Pg Hidayatullah (Court of Appeal 12 of 2017)* featured two counts of breach of trust. The Court of Appeal increased concurrent sentences of 6 months to 12 months concurrent indicating that the proper sentence should have been 18 months concurrent in the first instance.

The only conclusion to be drawn from the overall view of these widely varying sentences is that “every case must be considered in the light of all the circumstances and a judge has discretion.”

We have sought to reconcile the varying sentences in their particular circumstances and although we have some reservations about the lenient approach adopted by the sentencing judge in this case we have concluded that we should not interfere with the sentence. A judge’s discretion properly exercised must make provision for a merciful approach, as is apparent in this case.

A sentence of imprisonment was inevitable but in the circumstances of this case we are not persuaded that the sentence was manifestly inadequate and we dismiss the Public Prosecutor’s appeal.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A