

MARKUS BIN MOHAMAD YUNOS

AND

PUBLIC PROSECUTOR

**Court of Appeal of Brunei Darussalam
(Criminal Appeal No. 13 of 2021)**

Before: Burrell P, Seagroatt and Lunn JJ A.

Date of hearing: 3rd November 2022

Date of Judgement: 19th November 2022

Appellant in person

DPP Muhammad Qamarul Affyian bin Abdul Rahman for Public Prosecutor

Seagroatt, JA.:

This 42 year old Malaysian male, resident in Brunei, appeared before Judge Faisal in the Intermediate Court on the 29th September 2020 having pleaded guilty to two offences under The Misuse of Drugs Act (Cap 27). The first concerns the consumption of a Class A controlled drug – Methylamphetamine (often referred to as “Ice” or “Syabu”) and the second relates to his false information to a Narcotics Bureau Officer in which he claimed the identity of his brother by producing his brother’s Malaysian passport.

His Notice of Appeal is dated 2nd May 2021. In respect of his substantial sentence of 20 years and 15 strokes imposed on 15th April 2021, this notice is in time so we do not need to consider this in relation to the short sentences imposed on the 29th September 2020.

These offences were the consequence of a raid by Narcotics Bureau Officers. An analysis of the appellant’s urine produced a positive result for the named banned drug.

He pleaded not guilty to a much more serious offence of possession of 40.13 grams of Methylamphetamine with intent to supply.

On the occasion of the same raid (on the 23rd April 2019) of his living quarters the following items were found:

- a) A clear zip lock plastic packet containing the residue of a quantity of Methylamphetamine.
- b) A digital weighing scale; and
- c) Two other zip lock plastic packages containing varying residual quantities of the same drug.

On 29th September 2020, the judge proceeded to sentence him for the two offences he admitted, giving him due credit for his pleas. As he had a previous conviction under section 6 of the Act the minimum sentence was one of 3 years imprisonment. Accordingly the judge used that as his starting point and imposed sentences of 3 years and 2 months, as concurrent sentences, taking effect from 23rd April 2019 the date he was first taken into custody.

I now turn to the more serious offence of trafficking in Methylamphetamine. On the 15th April 2021, the appellant changed his plea to one of guilty and then appeared before Judge Faisal on the same date. In that intervening period he had been serving the imprisonment for the lesser offences.

The judge made it clear that the jurisdiction of the Intermediate Court may not impose a sentence longer than 20 years. (Intermediate Courts Cap 162 Criminal Jurisdiction)

Section 13(3) reads:

“Intermediate Courts shall not have jurisdiction to impose a period of imprisonment longer than 20 years in respect of any offence.”

In fact the 20 year term is the statutory minimum sentence, as illustrated by a number of cases including the Public Prosecutor v Ajiman bin Haji Kalong (Criminal Appeal No 6 of 2007) when the Court of Appeal substituted a sentence of 20 years and 15 strokes for a sentence of 18 years and 15 strokes (being below the mandatory term of imprisonment). In that case the amount of Methylamphetamine, was almost identical to that found in this appellant’s possession.

He then proceeded to impose a sentence of 20 years and 15 strokes with effect from 23rd April 2019. He also made it clear that had he thought a higher sentence was warranted, he would have remitted the case to the High Court.

The appellant is in any event entitled to a discount of 1/3rd.

There is no doubt that the offence of trafficking is a serious one calling for a severe sentence. In October 2009, he had been sentenced to a term of 5 years and 9 months (and 5 strokes) for an offence under s.3A of the Misuse of Drugs Act (trafficking in Methylamphetamine). He had then graduated from simple possession of syabu to becoming a dealer in such a destructive drug.

There is also the matter of the sentences passed in respect of the lesser offences back in September 2020. Those arose out of the same set of circumstances and should not be seen in isolation. The proper course is to make them concurrent with the principal sentence, therefore still a total sentence of 20 years. The sentence is also to run from the date of remand in custody being the 23rd April 2019 which has the same effect.

Unfortunately the warrant of commitment, although originally stating that the initial sentences (of 29th September 2020) were to run from the 25th April 2019, the date has been altered to 4th May 2019. This is wrong. The court record makes it clear that they

were to run from the date of first remand being 23rd April 2019. This is also confirmed in the Public Prosecutor's submission. There is an identical court record on the 15th April 2021 which says the 20 year sentence was to be backdated to the date of remand i.e. 23rd April 2019.

Accordingly this appeal is dismissed subject to the correction we make to the warrant so that the prison authorities know the proper date from which his concurrent sentences run.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A