

AK HJ RADIMAN BIN PG RAHMAN

AND

PUBLIC PROSECUTOR

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 14 of 2016)

Before: Mortimer P, Leonard and Burrell JJ A.
16th November 2016

Headnote: *Total sentence of 74 months imprisonment and 2 strokes for a series of car thefts, one house trespass and one house breaking reduced on appeal to 5 years and 2 months imprisonment and 2 strokes.*

Applicant in person
DPP Hjh Samiyyah Emeraldalda POKLSDSLJ Awg Hj Abas For Respondent

Cases cited in the judgment:

*Abdul Faiz bin Zaidin v Public Prosecutor (Criminal Appeal no. 17 of 2015);
Mohammed Joll bin Tumih and another v Public Prosecutor (Criminal Appeal no. 5 of 2005);
Shamsuddin bin Mohammed v Public Prosecutor (Criminal Motion no. 4 of 2004).*

Mortimer P:

This is an appeal against sentence. The appellant was sentenced to a total of 74 months imprisonment and 2 strokes by HHJ Hanani on 7 May 2016. He had pleaded guilty to 2 offences of theft of motor cars contrary to section 379 of the Penal Code and one offence of house trespass to commit theft contrary to section 451 of the Penal Code (the ICCT 6 of 2016 offences). At the same time he was sentenced for one offence of housebreaking to commit theft contrary to section 457 of the Penal Code and 5 offences of theft of motor cars contrary to section 379 of the Penal Code in respect of which he had pleaded guilty in the Magistrates Court and had been sent to the Intermediate Court for sentence (the ICCT 7 of 2016 offences).

All these offences were part of the same series and had been committed between 17 January 2016 and 11 February 2016. He had been granted bail on 4 February 2016 in respect of the earlier offences. Consequently the offence of house trespass and 3 thefts of cars were committed when he was on bail.

The Individual Sentences

Each individual sentence was reduced by 1/3 to take account of the appellant's pleas of guilt.

For the 3 offences to which he pleaded guilty in the Intermediate Court he was sentenced to 18 months imprisonment for house trespass and 12 months imprisonment on each of the thefts.

The sentence for house trespass of 18 months and one of the thefts were ordered to be served consecutively otherwise concurrently making a total of 30 months for these offences.

Turning to the offences to which he had pleaded guilty in the Magistrates Court. For the offence of housebreaking he received 32 months imprisonment and 2 strokes. For the remaining 5 offences of theft of motor cars he received 9 months imprisonment on 3 of them with 12 months and 10 months imprisonment respectively on the remaining two.

For these offences the judge ordered the sentence of 32 months and 12 months to be served consecutively otherwise the sentences were to be concurrent making a total of 44 months and 2 strokes in all.

Totality

Having considered totality the judge ordered the two total sentences of 30 months and 44 months to be served consecutively making 74 months imprisonment and 2 strokes in total.

In assessing this total sentence the judge did not specify a starting point after trial but arithmetically this is over 9 years imprisonment.

The Appeal

The appellant contends that in spite of his previous bad record for dishonesty the sentence of 74 months is manifestly too high in all the circumstances.

There is little he can advance in mitigation. He is 28 years of age with a poor record for dishonesty. Since December 2008 he has received 3 prison sentences for theft the last being in February 2013 when he received a six-month sentence for theft and 2 years for an associated offence of causing damage. Although the record shows that these sentences were to be concurrent the total sentence passed is recorded as 2 years and 6 months. The judge below was unaware of his appearance in February 2013 and the sentence which followed.

Both in writing and his oral submissions the appellant is concerned to persuade the court that in spite of his past he has had a change of heart. He apologises for the problems he has caused. He is remorseful and now determined not to reoffend when released. Before his last prison sentence he obtained employment which came to an end when a fellow employee informed the employer of his past. Whereas we accept that these submissions are genuine and trust they may be realised, having regard to his past they can only be given limited weight.

In meticulous submissions carefully supported by authority DPP Hjh Emeralda submits that the individual sentences passed by the judge were well within the range of sentences for similar offences approved by this court. We agree.

With equal care she considered the total sentence of 74 months and 2 strokes citing 3 previous decisions of this court; *Abdul Faiz bin Zaidin v Public Prosecutor (Criminal Appeal no. 17 of 2015)*; *Mohammed Joll bin Tumih and another v Public Prosecutor (Criminal Appeal no. 5 of 2005)*; and *Shamsuddin bin Mohammed v Public Prosecutor (Criminal Motion no. 4 of 2004)*.

In Criminal Appeal No 17 of 2015 the appellant pleaded guilty to 10 offences and asked for a further 2 to be taken into account. Of those offences 4 were housebreaking by night, 2 were housebreaking and theft, one was house trespass and another theft in a building. The appellant was a 1st offender and this court reduced a sentence of 8 years imprisonment and 4 strokes to one of 7 years imprisonment and 3 strokes. These were professional offences and much more serious than those in the instant case. Similarly in Criminal Appeal No 5 of 2005 the 1st appellant pleaded guilty to 10 offences and the 2nd appellant to 9 offences. These included housebreaking by night, housebreaking, theft in a building and theft. They were highly professional offences. The first appellant was a young man and a first offender. This court did not interfere with the sentence of 4 years and 10 months passed by the judge but reduced the strokes from 8 to 6. The 2nd appellant was much older and with a bad record. Having made a minor technical adjustment to the sentence passed by the judge, 7 years and 4 months imprisonment with 7 strokes was approved.

Criminal Motion no 4 of 2004 was an application for leave to appeal against sentence out of time. The judge below passed a total sentence of 6 years and one month imprisonment with 5 strokes after the applicant had pleaded guilty to 7 offences of theft with 5 others taken into consideration, 2 offences of housebreaking by night, 2 offences of mischief causing damage and one related drugs offence. The thefts were from motor vehicles and described as a particularly serious form of stealing because they invariably involved damage to the vehicles leading to expensive repair bills. The property stolen was valuable and important to the owners. The applicant was treated as a 1st offender. This court refused leave in respect of a total sentence of 6 years and one month's imprisonment 4 months of which related to the drugs offence.

Discussion

Each of the cases cited involve more serious offending than the present appeal. Here, serious though they are, these offences of theft of motor cars were barely professional in character and even the offences relating to dwellings were not of the most serious kind. For these reasons the DPP concludes her submissions by submitting that, "it can be seen from the above cases that the total sentence imposed on the appellant is slightly on the high side."

Having considered these previous decisions we agree. However this court does not interfere with a sentence that is only "slightly on the high side" we must be satisfied that the sentence is manifestly excessive in all the circumstances.

Taking all the circumstances into account, including the absence of significant mitigation, and the overall criminality of the offences, we consider that the starting point of over 9 years imprisonment after trial is manifestly too high for this particular series of offences and an 8 years starting point is appropriate.

For these reasons we allow the appeal against sentence and reduce the sentence from 74 months imprisonment and 2 strokes to 5 years and 2 months imprisonment with 2 strokes. We achieve this by ordering that the sentences imposed on the 3 offences to which the appellant pleaded guilty in the Intermediate Court (the ICCT 6 of 2016 offences) should all be concurrent making 18 months imprisonment in all.

We therefore order:

1. The appeal against the sentence of 74 months and 2 strokes is allowed.
2. That for the ICCT 6 of 2016 offences the total sentence passed by the judge of 44 months imprisonment and 2 strokes with effect from the 22 February 2016 shall stand.
3. That for the ICCT 7 of 2016 offences the sentences of 12 months imprisonment on the 1st charge, 18 months imprisonment on the 4th charge and 12 months imprisonment on the 6th charge shall be concurrent.
4. The sentences of 44 months imprisonment and 2 strokes for the ICCT 6 of 2016 offences and the 18 months imprisonment for the ICCT 7 of 2016 offences shall be consecutive making a total of 5 years and 2 months imprisonment with 2 strokes.

Mortimer, P.

Leonard, J.A.

Burrell, J.A