

MOHAMMAD BIN YUSOF

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 14 of 2018)**

Before: Burrell P, Seagroatt and Lunn JJ A.

8th November 2018

Headnote: Sentence – 3 years proper starting point for s.451 housebreaking with intent to commit theft. No discount following conviction after trial.

Appellant in person

DPP Nor'Adliatul Hidayah binti Haji Mohd Zaidi for Respondent

Cases cited in the Judgment:

Rosazli bin Hj Metassan v PP (Criminal Motion 6 of 2018)

Ahmadi bin Hj Nawawi v PP (Criminal Motion 1 of 2015)

Abdul Wakil bin Samsun Yusra v PP (Criminal Motion 35 of 2014)

Mohd Zahiruddin bin Hj Junaidi v PP (Criminal Motion 38 of 2013)

Mohd Saifullah bin Hj Ahmad v PP (Criminal Appeal 16 of 2010)

Burrell, P.:

On 8th September 2018 the appellant was convicted after trial by Judge Faisal in the Intermediate Court of a single offence of house trespass with the intention to commit theft contrary to s.451 of the Penal Code.

He was originally charged together with another man. At the first appearance in court the appellant's co-accused entered a plea of guilty and on 2nd November 2017 was sentenced to 2 years imprisonment. The appellant's case was adjourned for trial which commenced on 25th June 2018.

The appellant's co-accused gave evidence for the prosecution at the trial which resulted in the Judge finding that on 29th August 2017 they had acted together in a planned theft of laboratory equipment from the Biology Department of the University of Brunei. The judge also found that the appellant was involved in the attempt to sell the equipment soon after it had been stolen.

Sentence

On 8th September 2018 the Judge sentenced the appellant to 3 years imprisonment. He stated that this was the proper starting point for an offence of this nature and that the appellant's failure to plead guilty meant that he could not make the usual discount of one third. He also noted that the appellant was a first offender. He was married with no children and was a self employed mechanic. The judge also remarked at the time of sentencing that the appellant's decision to plead not guilty and elect trial was an aggravating feature. The judge was in error. Being convicted after trial does not aggravate the offence it merely extinguishes the one third discount usually afforded to a defendant who pleads guilty at an early opportunity.

Discussion

In her written submission the Deputy Public Prosecutor has referred us to five previous Brunei Court of Appeal decisions in which the court upheld sentences of 24 months after pleas of guilty to s.451 offences. They were:-

Rosazli bin Hj Metassan v PP (Criminal Motion 6 of 2018)

Ahmadi bin Hj Nawawi v PP (Criminal Motion 1 of 2015)

Abdul Wakil bin Samsun Yusra v PP (Criminal Motion 35 of 2014)

Mohd Zahiruddin bin Hj Junaidi v PP (Criminal Motion 38 of 2013)

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It is immediately apparent that the sentence passed in the present case is consistent with similar cases recently heard in this court. Moreover, it cannot be said that there are any unusual features in this appeal which might persuade the court to depart from the normal sentence.

Decision

In all the circumstances we find that the sentence passed was not manifestly excessive. It was also consistent with the sentence of 2 years imprisonment passed on his co-accused who had pleaded guilty at the earliest opportunity.

The appeal is dismissed.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A