

SOFIAN BIN HJ MOHAMMAD SUOT

AND

PUBLIC PROSECUTOR

**Court of Appeal of Brunei Darussalam
(Criminal Appeal No. 14 of 2020)**

Before: Burrell P, Seagroatt and Lunn JJ A.

8 June 2021

Headnote: Sentence – Starting point of 11 years for s.3(A) Misuse of Drugs Act offence of 23.48 grams of Methylamphetamine approved – Discount for inordinate and inexcusable delay increased from 2 years to 3 years – Final sentence 8 years imprisonment.

Appellant in person

DPP Hjh Suriana binti Hj Radin of Public Prosecutor for Respondent

Cases cited in the judgment:

Ridzwan bin Haji Mansor vs Public Prosecutor (Cr.Appeal 8/2007);

Noorul Syakirin bin Norhaslan Zacky vs Public Prosecutor (Cr.Appeal 20/2014);

Pg Mazlan vs Public Prosecutor (Cr.Appeal 20/2014);

Mohd Zuraimas bin Haji Jaman vs Public Prosecutor (Cr.Appeal 20/2018)

Burrell, P.:

On 27th August 2020 this appellant was sentenced to 9 years imprisonment after a trial on four drug related charges. The first, and most serious, was a charge of possession of 23.48 grams of Methylamphetamine, a Class A controlled drug, contrary to section 3A Misuse of Drugs Act Chapter 27. The 2nd and 3rd charges were for simple possession contrary to section 6(a) of Cannabis (0.74 grams) and Nimetazepam (1.63 grams). The 4th charge was for consuming Methylamphetamine contrary to section 6(b). The date of the offences in all four charges was 26th November 2012, the day of his arrest. He had pleaded guilty to the 4th charge.

Sentence

In a carefully considered written reasons for sentence the trial judge, Judge Norismayanti in the Intermediate Court, passed sentences of 9 years imprisonment on the 1st charge, 2 years on the 2nd charge, 2 years on the 3rd charge and 3 years on the 4th charge which was the statutory

minimum for that offence. She correctly ordered that the sentences be served concurrently with effect from 21st July 2020.

Facts

At the time of the offences the appellant was a 41 year old Malay male. On 26th November 2012 he was one of three occupants of residential premises in Gadong. In the early hours of the morning Narcotics Control Bureau (NCR) carried out a drugs raid and many items were seized from the premises. The drugs referred to in the charges laid against the appellant were part of the items seized. The nature of the various drugs was later identified by an analyst's certificate dated 19th February 2013.

The appellant was convicted after a trial which was heard over 20 days between 3rd July 2018 and 27th August 2020. Since the date of arrest it has therefore taken 8 years to dispose of this case.

Delay

In the first 4 years up to September 2016, there were various adjournments. A trial did commence in October 2013 but, wholly unacceptably, there was a 3 years gap between the evidence of PW1 and PW2. Thereafter the trial had to start afresh because the first judge was transferred to a different government department. The second trial, before Judge Norismayanti, started in July 2018. Adjournments in the second trial were for reasons such as, lack of time, counsel unwell, judge unavailable and a change of prosecuting counsel.

It is correct to state that the appellant's plea of not guilty contributed to the length of time taken in this case. It is however, more important to note that none of the adjournments and delays within the 8 years time span could be said to have been the appellant's fault.

The appeal

(i) Mitigation:

In both his written statements and orally to this court the appellant has stressed his remorse and states that he has not been in any trouble with the authorities since 2012. He thinks it unfair that the other two occupants of the house at the time of the raid have not been brought to justice. He pleads for leniency because of the hardship being experienced by his wife and three children.

(ii) Individual sentence:

There are clear sentencing guidelines for the offence of possession of Class A drugs for the purpose of trafficking. A judge should not depart from these guidelines unless there are exceptional circumstances to do so.

In *Public Prosecutor vs Awg Roslan bin Mohd Yunos (Cr.Appeal 6/2005)* the guideline, where the quantity of drugs involved is 20 to 30 grams, is 10-15 years imprisonment. As the appellant is over 50 years of age no strokes may be imposed.

The judge in the current case took 11 years as a starting point on the 1st charge. This was plainly the correct starting point. Her sentences of 2 years, 2 years and 3 years on charges 2, 3 and 4 respectively are also correct and as they are being served concurrently no further comment is necessary.

More difficult is the question of the appropriate discount for delay to which we now turn.

(iii) Delay:

The public prosecutor in this appeal acknowledges that there should be a discount for delay in this case. The question is, how much. The judge selected a period of 2 years thereby reducing the sentence from 11 years to 9 years.

A number of earlier decisions have been brought to our attention. The following are all drug related cases.

In ***Ridzwan bin Haji Mansor vs Public Prosecutor (Cr.Appeal 8/2007)***, a sentence of 8 years was reduced by 1½ years due to a 4 years delay.

In ***Noorul Syakirin bin Norhaslan Zacky vs Public Prosecutor (Cr.Appeal 20/2014)*** a sentence of 15 years was reduced by 1 year due to a 3½ year delay.

In ***Pg Mazlan vs Public Prosecutor (Cr.Appeal 20/2014)***, this court decided that a 2½ year reduction was appropriate after a 5 years delay.

In ***Mohd Zuraimas bin Haji Jaman vs Public Prosecutor (Cr.Appeal 20/2018)*** a sentence of 4 years was reduced by one year after a 6 year delay.

In the current case, although 8 years passed between arrest and sentence it cannot be said to be 8 years of “delay”. A reasonable expectation is that a case such as this should be easily disposed of within 2 years of first appearance in court. We therefore treat this as a 6 years delay.

Once it is decided that the delay is inordinate and unacceptable there are two matters to consider; the length of the delay and the length of the sentence. The reduction should be proportionate.

Decision

In all the circumstances we regard the discount of 2 years in this case to be too short. We will discount the 11 year starting point by 3 years. We regard the “*delay*” as inordinate and the explanation unsatisfactory. We restate the observation, made on a number of previous occasions, that once a trial commences it should, if at all possible, continue on a day to day basis until it is concluded. The difficult question of delay continues to be a feature in too many appeals which come to this court. Unacceptable delays will always result in a reduction of sentence as a matter of simple fairness to a defendant or appellant.

Order

Appeal allowed in part. The 9 years sentence on the 1st charge shall be reduced to 8 years with effect from 21st July 2020.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A