NORADELINA BINTI MOHAMMAD

AND

PUBLIC PROSECUTOR

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 15 of 2014)

Before: Mortimer P, Leonard and Burrell JJ A.
26th November 2014

Sentence – Breach of trust

Mr Hj Mohamad Rozaiman bin Dato Haji Abdul Rahman for the Applicant
DPP Yvonne Lim Swee Twan for Respondent

Cases referred:

Mohd Noor bin Litoh v Public Prosecutor [2005] 2 JCBD 158
Public Prosecutor v Dk Taisah@Minah binti Hj Hashim [2009] 1 JCBD 272
Public Prosecutor v Su Ling King [2010] 1 JCBD 319
Public Prosecutor v Omar bin Awang Arsad (HCCT 20/2013)
Samsudin bin Haji Saman v Public Prosecutor, Criminal Appeal 51/2012

Burrell, JA.:

On 17th June 2014, the appellant was sentenced by Judge Abdullah Soefri in the Intermediate Court to a total of 50 months imprisonment having pleaded guilty to one charge of use of a counterfeiting device or mark contrary to s.475 of the Penal Code and 23 charges of theft by a clerk or servant of the master's property, contrary to s.381 of the Code. She had admitted her guilt at the earliest opportunity.

Facts

The defendant had been employed by OMWP International as a secretary since January 2011. On 5th January 2012, as part of her duties, she collected from the Baiduri Bank, 3 company cheque books. She forwarded 2 of the cheque books in accordance with the proper company procedure but decided to retain the 3rd cheque book for herself.

When she pleaded guilty (and was unrepresented) she accepted, by agreeing the statement of facts, that she had had a stamp made of her boss's signature from a copy signature which she had acquired. We have been informed during the hearing of the

appeal, by her counsel Mr Rozaiman, that she had merely arranged for a copy stamp to be made from an existing stamp of the boss's signature. Ms Lim for the Prosecution accepted that the stamp used by the appellant was a copy of another such stamp. We note however that the gravity of the criminal conduct is much the same on either version of the facts. In any event, she used this stamp on 23 occasions to place her boss's signature on cheques for various sums of money made out to herself.

This criminal conduct spanned from 5th January 2012 to 6th March 2012 during which time she withdrew for herself a total of B$110,000

Mitigation

Upon her arrest on 15 March 2014 she gave her full co-operation to the police and explained that the money had been spent on debts, wedding expenses and a car loan.

She was unrepresented when she pleaded guilty in the Intermediate Court. She had no previous convictions. She apologized to the court and to her former employer. She expressed remorse. Since her arrest she had secured new employment and had adopted a baby. None of the money had been repaid.

Sentence

The Judge, in his written reasons, correctly noted that this was a serious breach of trust which had been carefully planned and executed. The amount of money stolen was significant and none had been repaid. He rightly concluded that an immediate sentence of imprisonment was inevitable in all the circumstances.

He decided that 4 years imprisonment was the appropriate starting point for the counterfeiting charge. For the s.381 offences he decided 3 years to be proper for each of the 23 withdrawals, to be concurrent with each other but consecutive to the 4 years making a total starting point of 7 years imprisonment.

He then gave due credit for the relevant mitigation advanced, particularly her pleas of guilty and co-operation, and reduced each term by one-third resulting in a discounted sentence of 4 years and 8 months. He further noted that through no fault of the defendant over 2 years had elapsed since her arrest. For this delay he made a further 6 month reduction so that the final sentence was 4 years and 2 months imprisonment.

Discussion

The key aggravating feature of this case is that it was a carefully planned breach of trust by an employee against her employer. As the Judge rightly observed she used her knowledge of the company's accounting procedures to facilitate her dishonesty.

In a case of this type, even where the defendant is a mature woman of previous good character, a sentence of imprisonment is inevitable. The fundamental principle enunciated by the Lord Chief Justice in R v Barrick (1985) 81 Criminal Appeal R.78 provides the proper approach in such cases:

> *"In general a term of immediate imprisonment is inevitable, save in very exceptional circumstances or where the amount of money obtained is small. Despite the great punishment that offenders of this sort bring upon themselves, the Court should nevertheless pass a sufficiently substantial term of imprisonment to mark publicly the gravity of the offence. The sum involved is obviously not the only factor to be considered, but it may in many cases provide a useful guide."*

More recently, in Brunei, the courts have been faced with a number of similar cases. In particular, we have noted, for comparison purposes, the facts and sentences passed in:

Mohd Noor bin Litoh v Public Prosecutor [2005] 2 JCBD 158
Public Prosecutor v Dk Taisah@Minah binti Hj Hashim [2009] 1 JCBD 272
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All these cases involved breach of Trust by an employee for financial gain. Needless to say, each case depended on its own facts and there were material differences in the circumstances of each defendant. However, it is useful to note the following. The amount of money stolen or embezzled ranged from B$34,427 to B$327,094. All defendants were of mature age, had pleaded guilty and had had clear records. The ultimate sentences ranged from 18 months to 4 years imprisonment

It is plain that the Judge gave careful consideration to all the relevant matters when sentencing. However, we have come to the conclusion that the overall criminality combined with the defendant's circumstances does not merit a starting point of 7 years which we regard an manifestly excessive. We consider a starting point of about 5 years to be appropriate.

We do not make any alterations to the individual sentences. Thus, after the usual discount the sentence on the 1st charge remains at 32 months and the sentence on charges 2 – 24 remains at 24 months.

However, in order to take account of the delay factor and in applying the totality principle we order that the sentences shall run concurrently with each other save that 6 months on charge 2 shall run consecutively to the 32 months on charge 1. The final sentence is 3 years and 2 months, a reduction of 1 year from the original sentence.

Order

The appeal is allowed to the extent that the sentence is reduced from 4 years and 2 months to 3 years and 2 months.

Mortimer, P.

Leonard, J.A. **Burrell, J.A.**