

PUBLIC PROSECUTOR

AND

YAHYA/YAHAYA BIN HAJI BUDIN

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 15 of 2017)**

Before: Mortimer P, Leonard and Burrell JJA.

21st November 2017

Headnote: Criminal law, sentence, appeal by prosecutor, misappropriation of \$4,802.00, whether sentence of 12 months imprisonment, manifestly inadequate. Appeal dismissed.

DPP Yvonne Lim for Public Prosecutor
Respondent in person

Case cited in the Judgment:

Public Prosecutor v Sung Vui Jung [2000] JCBD 47

Public Prosecutor v Rodeo Zambrano [HCCT No 14 of 2003]

Public Prosecutor v Jublee bin Hj Gapor/Ghafar [2004] JCBD 215

Public Prosecutor v Sharah binti Ahmad [HCCT No. 13 of 2008]

John Barrick, Criminal Appeal R (S) (1985)

PP v Rokiah bte Suhaili (Rose Ting) [1990] JCBD 200

Leonard, JA.:

This is an appeal by the Public Prosecutor against a sentence on the ground that it was manifestly inadequate.

On 27 September 2017 the Respondent pleaded guilty before Judge Faisal in the Intermediate Court to a charge that he sometime between September 2013 and 5 March 2014 being a public servant in the employ of Serasa Terminal, Muara Port, Ministry of Communications and entrusted with a total sum of \$14,802.00, the revenue of Muara Port, committed criminal breach of trust in respect of it, thereby committing an offence under section 409 of the Penal Code, Cap 22. For that offence the penalty may be up to 10 years imprisonment and a fine.

It emerged at the hearing of the appeal that the figure of \$14,802 represented numerous misappropriations over a period of 6 months. The respondent, who was in a position of trust, had been taking money to pay debtors and covered up what he was doing, at least for

a while, by paying in money collected later. This was clearly not a case where he had suddenly yielded to temptation and taken out just one sum.

It would appear from a number of cases decided below that for misappropriations of similar sums the going rate where there is a plea of guilty is 2 years imprisonment but there is no hard and fast rule. The cases brought to our attention at the appeal hearing are as follows, the sums involved being shown.

Public Prosecutor v Sung Vui Jung [2000] JCBD 47 (\$22,199.42 and \$21,040.70), *Public Prosecutor v Rodeo Zambrano* [HCCT No 14 of 2003] (\$16,395) *Public Prosecutor v Jublee bin Hj Gapor/Ghafar* [2004] JCBD 215 (\$14,090.50), *Public Prosecutor v Sharah binti Ahmad* [HCCT No. 13 of 2008] (\$50,406.25)

The case of *John Barrick, Criminal Appeal R (S) (1985)* in the English Court of Appeal has been referred to here and in other cases by the Public Prosecutor. It affords useful guidance in the approach to be taken in sentencing for this type of offence.

The judge knew that the respondent was a married man with 6 children, 2 being at school, 1 working and 3 unemployed. He bore that in mind when considering sentence and he noted that he was a first offender who had used the money to pay off loans and for personal expenses. There had been no restitution. The judge also noted that there had been an unexplained delay of three years. The First Information Report had been lodged on 20 May 2014. The appellant has conceded that the respondent could have been charged in June 2014 when the full sum misappropriated was known to the police yet the file was only referred to the Public Prosecutor in 2017 (in the month of June according to the DPP at the hearing of the appeal). The respondent was dealt with by the Intermediate Court in September 2017.

The judge noted that the defendant had been in a position of trust and that his offending had gone on over about 6 months as stated in the charge, the money being used to pay debts and expenses. Odd amounts were taken at random intervals over the six months.

Bearing all those matters in mind and taking guidance from a sentence of 18 months imposed by Roberts CJ in *PP v Rokiah bte Suhaili (Rose Ting)* [1990] JCBD 200 the judge imposed a sentence of 12 months imprisonment, to run from the day of sentence. The prosecution was represented when it came before Judge Faisal but it would appear that the DPP may not have mentioned the case of *Barrick* or the group of Brunei cases cited by the appellant to illustrate the current level of sentencing. The Brunei cases suggest that sentences of 2 years imprisonment after a plea of guilty have been imposed where the sums involved have ranged between \$14,090.50 and \$50,406.25. That implies a starting point after trial of 3 years. On that basis, the appellant says that 2 years should be the minimum and that such a sentence should have been imposed in the present case.

Though it is helpful to a court dealing with a case such as this to be aware of *Barrick*, which gives useful guidance on principle, that case is not an authority on what length of sentence should be imposed in this jurisdiction where conditions are different from those in the United Kingdom. As for cases showing sentences imposed in the lower Brunei courts they

can in no sense be regarded here as authorities. Each case is different and a judge when selecting a sentence must consider the facts and circumstances of the offence and the circumstances of the offender in the case before him or her. Had the judge been made aware of the cases now referred to by the appellant, he might have considered 3 years as a starting point after trial. But then he should have decided that in the light of an unexplained delay of 3 years he should reduce the starting point to reflect the anxiety and stress that the respondent would have suffered during that period. A reduction of 9 months to 2 years 3 months would be reasonable. Allowing the standard discount for a plea of guilty he would then arrive at a sentence of 18 months before considering any other matters of mitigation. We think that 18 months would have been the right sentence. However, this is an appeal by the Public Prosecutor and it is the practice of this court when considering a sentence on appeal by the prosecutor to make an allowance to reflect that fact. In the circumstances we do not propose in this case to interfere.

The appeal is dismissed.

Mortimer, P.

Leonard, J.A.

Burrell, J.A