

**JOCELYN LIM SIOW FAN**

**AND**

**PUBLIC PROSECUTOR**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 16 of 2017)**

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Before: Mortimer P, Leonard and Burrell JJA.  
**23<sup>rd</sup> November 2017**

*Headnote: Sentence – dishonest retention of stolen goods contrary to s411 Penal Code  
CAP 22. Appropriate discount for plea of guilty considered.*

Ms Rozaimarlenny Binti DSLJ Hj Abd Rahman of (Messrs Rozaiman Abdul Rahman,  
Advocates & Solicitors) for Appellant  
DPP Hajah Rozaimah binti Haji Abd Rahman for Public Prosecutor

**Burrell, JA.:**

On 21st October 2017 the appellant appeared before Judicial Commissioner Rostaina and was sentenced to 18 months imprisonment having pleaded guilty on 7th October 2017 to one offence of dishonestly retaining stolen property punishable under s.411 of the Penal Code CAP 22.

The appellant was D3 on a charge sheet naming 3 defendants. The property in question was part of a haul of valuable ornaments and gemstones which had been stolen by D1 from the Istana Darul Hana, a property owned by his Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam on three occasions earlier in 2017. D1 was a serving Police Officer at the time. He has already pleaded guilty to 15 offences arising out of the three thefts from the Istana and has been sentenced by the Court.

D1 sold some of the stolen items to D2. D2 had been D3's boyfriend and co-habitee for about 20 years prior to this incident. D2 kept the stolen items at his house at Jalan Kilanas, where D3 also stayed from time to time. At that address a large collection of jewellery and gold ornaments was kept by them in two locked safe deposit boxes.

On 27th April 2017 D3 learnt, from a fellow house mate named Paulus Djong, that D2 had been arrested by the Police. She became worried and decided to put the contents of the two boxes into four plastic bags and hide them in the ceiling above one of the bedrooms in the house in case the Police came to make a search.

Two days later the Police did come to the house and with the assistance of Paulus Djong, found the stolen property where it had been hidden by the appellant. When questioned about the matter later she admitted that she knew the property was stolen and admitted hiding it. The valuable items that had been stolen from the Istana were part of the recovered property but it is not suggested that D3 knew where it had come from. It was agreed that their value was approximately \$130,000.

### **Sentence**

An offence under s411 carries a term of imprisonment "*which may extend to 3 years, or with fine, or with both*". In her record of sentencing the judge noted all the relevant factors both for and against the appellant.

Not in her favour are the facts that she deliberately tried to hide the property from the Police and that the goods were obviously valuable.

On the other hand a number of mitigating factors were advanced. First she had pleaded guilty. Secondly she was 40 years of age and had a clear record and co-operated with the Police. Thirdly, the house where the items were kept belonged to D2 not to her. Fourthly, she had not been involved in the purchases of the items from D1 and did not know who the true owner of them was. Finally, she had worked as a hairdresser for many years and financially supported her mother.

The judge said "*I impose a starting point of 2 years and for her clear record and guilty plea at the first opportunity, I reduce it to 1 ½ years i.e 18 months*".

### **The Appeal**

Ms Lenny Rahman on the appellant's behalf has submitted a lengthy written submission with 15 authorities attached. Having given careful consideration to the various points made we think it necessary to make the following observations.

First, we are invited to consider the UK Sentencing Advisory Panel's guidelines in respect of the UK 1968 Theft Act. The value of this document is limited to its references to fundamental principles when punishing offenders for dishonestly being in possession of stolen goods. However, it can be of no assistance when deciding the appropriate length of sentence for a particular set of facts arising in Brunei in 2017.

Secondly, it is trite to note that all cases are fact sensitive. This is particularly so in cases of dishonest handling. Further, in the many authorities cited by Ms Rahman three are from Singapore on wholly different facts. These do not assist us.

Thirdly, in a number of respects the submissions made are either misconceived or wrong. For example:-

- i. It is submitted that the judge erred in regarding as an aggravating factor that the appellant's conduct was "*premeditated*" as this was not supported by the agreed statement of facts. This is wrong. The statement of facts clearly described the appellant's conduct in hiding the property in advance of the Police search. The judge properly referred to this. She did not use the word

*“premeditated”* and she did not say that it was an aggravating factor. She was simply describing the appellant’s actions.

- ii. It is nonsense to submit that the prosecution was under a duty to adduce evidence that the owner of the property had *“suffered harm”*.
- iii. It is wrong to submit that the trial judge erred in accepting “public interest” as an aggravating factor. The judge made no reference to public interest when sentencing.
- iv. There is no suggestion that the judge sentenced the appellant on the basis that she knew where the property had come from or that she knew anything about the theft. On contrary, the statement of Agreed facts is entirely silent on these matters.
- v. Complaint is made that the judge referred to the approximate value of the goods when sentencing when this value was not contained in the agreed statement of facts. This submission is also without merit. The record shows that the approximate value of the goods, namely \$130,000, was *“agreed”* by defence counsel. However, the judge does not suggest that the appellant was aware of the value at the material time. That the appellant must have realized that the property was valuable is simply common sense.

### **Decision**

This was a serious offence of dishonest retention of stolen property and the selection by the judge of a 2 year starting point is consistent with other Brunei cases which have been brought to our attention by the Respondent to this appeal. After consideration of the material facts it cannot be said to be manifestly excessive or wrong in principle.

However we think the judge erred when only giving a 25% discount for her guilty plea and positive good character. She pleaded guilty to the s.411 offence as soon as it was offered to her. Moreover the judge referred to her *“guilty plea at the first opportunity ...”*. We see no reason why she should not have benefited from the usual 1/3 discount which is a policy of the court.

Accordingly we will reduce the sentence to 16 months.

Finally we agree that the sentence should commence from the first day of her incarceration, namely 29<sup>th</sup> April 2017.

### **Order**

Sentence reduced to 16 months imprisonment with effect from 29<sup>th</sup> April 2017.

**Mortimer, P.**

**Leonard, J.A.**

**Burrell, J.A**