

ROSMAN BIN ABDULLAH NYAMBONG

AND

PUBLIC PROSECUTOR

**Court of Appeal of Brunei Darussalam
(Criminal Appeal No. 16 of 2021)**

Before: Burrell P, Seagroatt and Lunn JJ A.

Date of Hearing: 7th November 2022

Date of Judgment: 21st November 2022

Headnote: Sentence – Housebreaking by night (s.457); considerable damage done to property. Bad criminal record. Convicted after trial. Sentence of 6 years and 3 strokes upheld.

Appellant in person

DPP Nor'adliatul Hidayah binti Haji Mohd Zaidi for Respondent

Burrell, P.:

On 17th June 2021 the Appellant was sentenced to 6 years imprisonment and 3 strokes having been convicted in the Intermediate Court by Judge Dk Hjh Norismayanti after trial of an offence of housebreaking by night contrary to s.457 of the Penal Code which he had committed in October 2020. He was the 3rd defendant named on the charge sheet. He had committed the offence with the 1st defendant who had pleaded guilty.

Facts

The premises broken into was a house in Kuala Belait. The 1st defendant gave evidence at the trial of this appellant and the judge accepted and relied on his testimony. In particular that it was this appellant who smashed open the door of the premises and was responsible for considerable damage inside. At trial the appellant had denied any involvement at all in the offence. No stolen property was recovered. The stolen items included cash, a ring and a speaker. A full list of the stolen items is not known.

Sentence

The judge noted and took account of the following factors in this case. First, that the appellant was the defendant who used a machete to break-in. It was he, also, who ransacked the premises. Property was stolen from both the first floor and the ground floor of the house. The stolen items were put into bags before being taken away.

Secondly, the appellant has a bad criminal record. Since 1999 he had appeared before the courts for offences of dishonesty on eight occasions. In November 2012 he was sentenced to 4 years and 8 months imprisonment and 4 strokes. Since being released after that sentence he had been imprisoned twice more, the more recent being a 12 months sentence in May 2019 for theft. His release from that sentence was on 30th January 2020. This offence was committed in October 2020. He is now 49 years old.

The judge rightly regarded him as a professional offender who showed no remorse.

Mitigation

At the time of sentencing the judge correctly found there to be no mitigating factors which could be taken into account when deciding the appropriate length of sentence.

In support of this appeal the appellant has written a letter to the court, dated 31st August 2022. He asks the court to take into account the fact that he has 8 children; his parents are elderly and he has health problems of gout and high blood pressure. He apologises and informs the court that he will not engage in any criminal activity in the future.

The appeal

Bearing in mind the appellant's criminal record, his role in the offence and his plea of not guilty, we are satisfied that the judge was entirely correct in selecting 6 years as the appropriate term of imprisonment in this case.

The roles played by the 1st and 2nd defendants (only the 1st defendant was a co-accused in the housebreaking) on the charge sheet were very different and explain the different sentences passed.

It is well established that a sentence of 5 years with strokes is not excessive for a single offence contrary in s.457 by an offender with a clear record.

For all the reason already stated 6 years and 3 strokes is a proper sentence in this case.

Appeal dismissed.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A