

**SUDIMAN BIN MAT YASSIN**

**AND**

**PUBLIC PROSECUTOR**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 17 of 2018)**

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Before: Burrell P, Seagroatt and Lunn JJ A.  
**22<sup>nd</sup> April 2019**

Appellant in person  
DPP Hajah Farhanah binti POKPSRDPSS Haji Awang Suhaili for Respondent

**Seagroatt, JA.:**

The Appellant appeals against a sentence of 6 years imprisonment imposed upon him by Intermediate Court Judge Masni on the 31<sup>st</sup> October 2018 for offences of making, possessing and using counterfeit notes of Bruneian and Malaysian currency as genuine, contrary to sections 489A, B and C of the Penal Code.

He is 37 years of age and at the time of his offences, to which he pleaded guilty, he was employed as a Technician at the Network Operation Centre. He had been employed there since 2011.

The counterfeiting came to light on the 25<sup>th</sup> August 2018 when a petrol pump attendant at Tanjong Nangka Petrol Station received a BND500 note from a female customer in payment of BND10 for the petrol put in her car. The attendant immediately noticed something odd about the note, checked it against a UV light detector, was alerted to its probable counterfeit state and reported it to the police. The customer was interviewed by the police and revealed that she had received the BND500 note from the appellant whom she had met through an Asian Free Chat Online.

The police contacted the appellant and he came to Police Force Headquarters in Gadong where he was interviewed and arrested. His car, in which he had travelled to Gadong, was searched and other Brunei currency notes of various denominations were discovered, as well as some Malaysian Ringgit notes.

His work office was searched and printing equipment was seized. All the seized notes were confirmed by the Monetary Authority as counterfeit.

In his police statement he disclosed that he had begun his counterfeiting activity by experimenting on photocopies of a genuine BND500 note and once he was satisfied that his fake note looked real, he extended his activities into making notes of lower denominations in both Bruneian and Malaysian currency. He explained in detail his

technique. The reason for his venture into this criminal activity was to relieve his financial difficulties.

He had earlier that year, in March, used another BND500 note to purchase two toy guns for BND280 from an online seller whom he met by arrangement in a car park, receiving BND220 in genuine money as change for the purchase with the counterfeit note. The online seller also thought that the note was not genuine and reported the matter to the police.

Three charges in their final form thus emerged from his admitted actions. The first concerned the actual counterfeiting of a quantity of Bruneian and Malaysian notes. The second reflected the first use and passing of a BND500 note for the purchase of the toy guns, the third was the possession of a quantity of counterfeit currency created by him, found in his car.

He appeared before Judge Masni on the 19<sup>th</sup> September 2018 and pleaded guilty to all three offences and was remanded in custody. He admitted the Statement of Facts and acknowledged that the offences carried terms of imprisonment. This is confirmed by the court record signed by the judge.

In sentencing the judge took into account the fact that the appellant had pleaded guilty and had no previous convictions, and other matters put before her by way of mitigation. He was unrepresented.

The judge enumerated the serious implications of counterfeiting, the maximum sentence for which is 15 years (and a fine where appropriate). For the offence of using counterfeit money the maximum sentence is 10 years (and a fine where appropriate).

On the first offence – the real gravamen of his criminal activity – she took 6 years as her starting point, reducing it to 4 years by reason of his plea of guilty and previous good character. She imposed the same sentence on the second offence in adopting the same approach. For the third offence, again taking the same approach, she imposed a sentence of 4 years reducing it to 2 years.

She then ordered that the sentences for the first two offences run concurrently with each other thus totaling 4 years but then ordered that that term should run consecutively to the 2 years term for the third offence. The sentence reached was thus one of six years imprisonment.

The appellant asks that his sentence be reduced for reasons of economic hardship, the dependency of the family upon him and as an act of compassion or sympathy, reflecting his pleas of guilty from the outset.

These were nonetheless extremely serious offences, carefully planned and designed to defraud the state and the public, though not sophisticated examples of counterfeiting. They have always attracted severe sentences world-wide. They strike at the integrity of the financial system.

A starting point of six years discounted to four years was by no means too severe for the principal offence. The maximum starting point is 15 years for the manufacture of counterfeit notes.

The third charge concerned the possession of the notes he had counterfeited which were recovered from his vehicle when he was arrested. This added nothing to the principal charge and the sentence imposed, one of 4 years discounted to 2 years, is somewhat inconsistent, both as to the length of the sentence and the discount applied. It is difficult to see how a discount of 50% could be justified. There is no explanation for this from the judge. It should have been 2 years and 8 months applying a 1/3rd discount

However the second charge involved the actual passing of counterfeit money to an unsuspecting member of the public and obtaining a profit from the transaction. That offence was part and parcel of the criminal activity and but one step in the overall criminal scheme. In our judgment there is no need or justification for a consecutive sentence in the light of the sentence for the principal offence under section 489A.

Our attention has been drawn to a number of decisions of the Bruneian and Singaporean Courts which of course vary according to the circumstances of the offences and of the defendant concerned. It is of some relevance that from these a general picture emerges of sentences of imprisonment ranging from 3 to 5 years with most sentences running concurrently for offences under section 489 A, B and C or their equivalent in the Singaporean jurisdiction. The conclusion having regard to all the circumstances is that a total sentence of 4 years is appropriate thus making all the sentences concurrent with each other.

We reiterate the obligation upon the Public Prosecutor to produce to the court the evidence of counterfeiting in such a case as this so that the court is able to see the level of sophistication demonstrated by the counterfeiter. This is in the interest of the defendant and the prosecution. Failure to meet this obligation leaves the court without any clear picture of an essential element in the offence to which he has pleaded guilty.

#### Order

Appeal allowed. A sentence of 2 years and 8 months shall be imposed for the 3<sup>rd</sup> charge. The sentences of 4 years imprisonment on the 1<sup>st</sup> and 2<sup>nd</sup> charges shall stand. All sentences shall be served concurrently making a final sentence of 4 years imprisonment.

**Burrell, P.**

**Seagroatt, J.A.**

**Lunn, J.A**