

PUBLIC PROSECUTOR

AND

MOHAMMAD AIMADUDDIN BIN ZEFRY

---

(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 19 of 2016)

---

Before: Mortimer P, Leonard and Burrell JJ A.  
15<sup>th</sup> November 2016

*Headnote: Sentence – concurrent sentences of 12 months imprisonment for 2 offences of housebreaking contrary to s.454 Penal Code and a concurrent sentence of 2 months imprisonment for one offence of theft contrary to s.379 manifestly inadequate.*

DPP Hjh Samiyyah Emeraldalda POKLSDSLJ Awg Hj Abas for Applicant  
Respondent in person

*Cases cited in the judgment*

*Mohammad Joll bin Tumih and another vs Public Prosecutor, Cof A 5/2005*

*Mat Azmi bin Jumat vs Public Prosecutor, Cof A 1/2012*

*Mohd Saufi bin Md Ariff vs Public Prosecutor, Cof A 5/ 2000*

**Burrell, JA.:**

On 4<sup>th</sup> August 2016 the respondent, Mohammad Aimaduddin bin Zefry appeared (as D2) in the Intermediate Court together with his co-accused (D1). The respondent pleaded guilty to 3 offences laid against him in a charge sheet containing 4 charges in all.

The three charges to which he pleaded guilty were as follows. First, a charge of theft (contrary to s.379 of the Penal Code) of an air compressor on 25<sup>th</sup> July 2016. Secondly, an offence of housebreaking (contrary to s.454 of the Penal Code) on 3<sup>rd</sup> January 2016 when he broke into a house in Kuala Belait in order to steal and thirdly, on 25<sup>th</sup> June 2016, a similar offence of housebreaking intending to steal, also in Kuala Belait. He committed the two housebreakings alone. From the first house he stole a television, a home theatre, computer equipment, 10 watches and a small amount of cash, most of which he sold. In order to commit the second housebreaking offence he prised open a window at the rear of the property with a screwdriver. Once inside he ransacked one room and stole computer equipment which was later recovered.

The respondent had one previous conviction for theft contrary to s.380 Penal Code in 2013 for which he received an 8 month prison sentence. The judge noted this conviction when sentencing.

### *Sentences*

For the three offences concurrent sentences of 2 months, 12 months and 12 months respectively were passed together with one stroke for each of the housebreakings, 2 strokes in all.

### *The Appeal*

By a notice pursuant to s.438 O of the Criminal Procedure Code, CAP 7, the Public Prosecutor now appeals against these sentences on the sole ground that they are manifestly inadequate.

By a letter dated 5<sup>th</sup> October 2016 the respondent asks the court to reduce his sentences. There is no accompanying Notice of Appeal. We have carefully read the respondent's letter. However, given the length of the sentences passed the only serious issue to be considered is whether or not they are long enough for the criminality to which the respondent pleaded guilty. We therefore focus our consideration solely on the issue of whether the sentences should be increased. Needless to say, the mitigating factors contained in his letter of 5<sup>th</sup> October remain relevant.

We shall deal with the two housebreaking offences, committed in January and June 2016 first. We have come to the conclusion that, after due consideration of the respondent's age, circumstances, previous conviction and all the facts of the offences, a final sentence of 12 months imprisonment is inadequate and manifestly so.

Our attention has been drawn to a number of cases dealing with like offences in the Brunei courts, including:

*Mohammad Joll bin Tumih and another vs Public Prosecutor, Cof A 5/2005*

*Mat Azmi bin Jumat vs Public Prosecutor, Cof A 1/2012*

*Mohd Saufi bin Md Ariff vs Public Prosecutor, Cof A 5/2000*

Two important principles emerge these cases. First, a sentence of 3 years after trial would be at the lower end of the range of sentencing for offences contrary to s.454. Secondly, where two or more offences are committed on separate occasions at different properties it would normally be appropriate to order that at least some of the second sentence be served consecutively to the first, subject, of course, to the principle of totality.

In the present case we find no reason to pass unusually lenient sentences. After a plea of guilty the shortest sentence which should have been passed was 2 years imprisonment and one stroke for each offence. The property stolen was valuable and easily disposable.

We turn now to the offence of theft contrary to s.379. Sentences for thefts inevitably vary enormously depending on the circumstances and the nature and value of the property stolen. By way of example only, we have been referred to the case of Abdul Aziz bin Haji Ali vs Public Prosecutor Cof A. 27/2014 in which it was stated that even for a minor theft a sentence of 6 months after a plea of guilty would be appropriate.

We agree, it is clear that a sentence of no less than 6 months imprisonment should have been passed in this case.

*Decision*

Had the sentencing judge passed sentences of 6 months for the theft and 2 years and one stroke for each housebreaking and after considering the principle of totality passed a final sentence of 2 ½ - 3 years it could not have been criticised.

However, on a successful appeal by the Public Prosecutor where a respondent is brought back to court and learns that he must spend longer in prison it is open to this court to keep the increase to a minimum. For this reason and this reason only, we increase the sentences for the two offences contrary to s.454 to 2 years imprisonment and the sentence for the theft contrary to s.379 to 6 months but order that all sentences be served concurrently.

The respondent will therefore serve 2 years imprisonment instead of 1 year and receive 2 strokes.

To this extent we allow this appeal.

Mortimer, P.

Leonard, J.A.

Burrell, J.A