

PG MAZLAN BIN PG HJ MD YASSIN

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 1 of 2018)**

AWANG DULAMIT BIN AWANG TAIM

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 23 of 2017)**

Before: Mortimer P, Burrell and Seagroatt JJA.

1st May 2018

Headnote: Sentence – s.3(A) and s.6(b) of the Misuse of Drugs Act CAP 27. Discount for delay in bringing the proceedings to a conclusion. Guideline case of Roslan considered and applied.

Appellants/Applicants in person

DPP Hjh Farhanah Binti POKPSRDPSS Hj Awg Suhaili and DPP Hjh Attiyah Azzahra Binti POKLSDSLJ Haji Abas for Public Prosecutor/Respondent

Case cited in the Judgment:

Awang Roslan Bin Mohd Yunos [CA 6/2005]

Burrell, JA.:

I shall refer to the appellants as D1 and D2. D1 and D2 first stood trial on charges which are now the subject of this appeal in April 2013, 5 years ago. Between April 2013 and October 2016 the trial was heard on nine separate days. By October 2016 the prosecution had nearly concluded its case. Unfortunately, due to reasons entirely

unconnected with the case, it became necessary for the trial to re-start before a new judge which it did in January 2017 before Judge Faisal in the Intermediate Court.

D1 had been charged with a single offence contrary to s.3A of the Misuse of Drugs Act of possession of 25.8085 grammes of Methylamphetamine for the purpose of trafficking. D2 was similarly charged and in addition faced a second charge of consuming a Class A drug contrary to s.6(b) of the same Act.

The trial concluded on 5th December 2017 when both were convicted of the charges they faced and on 9th December D1 was sentenced to 10 years imprisonment with 8 strokes for being in possession for the purpose of trafficking. For the same offence D2 received a 14 years sentence together with a 4 year sentence to be served concurrently for the offence contrary to s.6(b) of consuming a Class A drug. There was no order of whipping because D2 was over 50 years of age.

We will deal with the appellants separately.

D1. Pg Mazlan bin Pg Hj Md Yassin

Where the amount of Methylamphetamine is under 40 grammes the sentence for a s.3A offence shall be a minimum of 5 years imprisonment with 5 strokes and a maximum of 20 years with 15 strokes. Further guidelines for sentencing were set out by this court in *Awang Roslan Bin Mohd Yunos [CA 6/2005]*. In that case it was stated that where the amount was between 20 – 30 grammes, as in this case, the sentence should be between 10 and 15 years with between 8 to 10 strokes. D1 was sentenced at the lowest end of this range.

We have given careful consideration to the matters advanced by him both in court and in writing which primarily related to his family circumstances. In D1's case there are two particular matters which should be taken into account. The first is the question of delay which was duly noted by the judge when sentencing. Through no fault of the appellant the time from commission of offence to sentencing was almost 5 years. This is plainly unacceptable and merits a reduction in sentence in this particular case. The second is that in 2013 D1 was sentenced to fines of \$4,000 or 6 months imprisonment in default for an offence of consumption of drugs contrary to s.6(b) of CAP 27. The 6 months in default was served. The offence arose from the same consignment of drugs to which the present appeal relates. The starting point for the present appeal is in the order of 12 ½ years imprisonment based on the fact that the weight of the drugs is mid-way between 20 and 30 grammes. A discount of 2 ½ years from this figure is appropriate to take into account these two mitigating factors. We thus regard the sentence passed, of 10 years and 8 strokes, to be a proper sentence.

D2. Awang Dulamit Bin Awang Taim

The judge dealt with D2 more severely. His 14 year sentence is toward the top end of the appropriate band laid down in the *Roslan* case, even though the quantity of drugs involved was the same and is in the middle of the relevant band of 20 – 30 grammes.

D2 had 3 previous drug related offences and had already served a 5 year sentence, from 2002, for a similar offence. The other two previous convictions were earlier and were for consumption of drugs contrary to s.6(b).

For the consumption offence in the present appeal D2 was sentenced to 4 years imprisonment. By virtue of s.29 (3A) of the Misuse of Drugs Act the judge was required to pass a sentence of at least 3 years for this offence. The judge did not refer to this provision in his written reasons for sentence but nonetheless passed a 4 year sentence to be served concurrently with the 14 years.

Great care should be taken when sentencing 2 defendants in largely similar circumstances to avoid any sense of grievance by one against the other. In the current case D2's final sentence was 40% longer than D1's. Whilst there are proper reasons for D2's sentence to be longer than D1's in view of his drug related criminal record we think that little or no discount has been given to D2 to reflect the inordinate delay which has occurred in this case. He should receive the same reduction as D1 for the delay. We shall accordingly reduce his sentence to 12 years imprisonment.

Order

D1's appeal is dismissed. D2's appeal is allowed to the extent that the 14 years term for the s.3A offence is reduced to 12 years. In all other respects the judge's order shall stand.

Mortimer, P.

Burrell, J.A.

Seagroatt, J.A