

**MOHAMMAD ZURAIMAN BIN HAJI JAMAN**

**AND**

**PUBLIC PROSECUTOR**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 20 of 2018)**

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

*Headnote – Sentence – Possession of Methylamphetamine not exceeding 55 grams – Starting point 6 years imprisonment. Further discount for delay – Appellant arrested in January 2013, sentenced in November 2018.*

Mr Sheikh Noordin bin Sheikh Mohammad (Messrs. Sheikh Noordin Mohammad & Associates) for Appellant  
DPP Hjh Farhanah binti POKPSRDPSS Hj Awg Suhaili for Respondent

**Case cited in the judgment**

*Abd Rahman bin Abd Latif v Public Prosecutor [2015] JCBD 128*

**Burrell, P.:**

On 9<sup>th</sup> October 2018 the appellant appeared before Chief Justice Steven Chong and pleaded guilty to a charge of possession of Methylamphetamine, not exceeding 55 grams, contrary to s.6(a) of the Misuse of Drugs Act Chapter 27. He was later sentenced, on 29<sup>th</sup> November 2018, to 4 years imprisonment and now appeals against that sentence.

The offence had been committed on 25<sup>th</sup> January 2013. The appellant, an unemployed 29 year old at the time and a married man with 3 children, tried to run away from his house upon the arrival of police officers. He, however, was soon caught and found to be in possession of a black pouch which contained the Methylamphetamine. He had admitted being in possession of the drugs from the outset. He was originally charged with trafficking the drug contrary to s.3A of CAP 27. However his plea to the lesser offence of simple possession was entered and accepted 5 years and 9 months after his arrest.

**Sentence**

When sentencing the Chief Justice, not surprisingly, rejected a submission made by defence counsel that a Probation Order be considered in this case.

The Chief Justice's decision to impose a sentence of 4 years imprisonment was reached after stating as follows:

*"There are no guidelines for sentences on cases of simple possession of Methylamphetamine. The Court of Appeal thought that there should be a "degree of flexibility" in sentencing for cases of this nature: Abd Rahman bin Abd Latif v Public Prosecutor [2015] JCBD 128.*

*Abd Rahman pleaded guilty to the possession of 44.315gs of Methylamphetamine and was sentenced to 4 years' imprisonment. On appeal the Court of Appeal quashed that sentence and substituted it with a sentence of 3 years and 4 months' imprisonment.*

*The quantity of the drug found in the possession of the offender is obviously relevant to the sentence to be imposed. I think an appropriate starting point sentence having regard to the quantity of the drug in the possession of the defendant, who has a clear record, is 7 years' imprisonment.*

*That sentence is reduced to 6 years on account of the delay in the case.*

*Giving credit to the defendant for pleading guilty to the charge at the first opportunity the sentence is further reduced to 4 years' imprisonment."*

### Delay

We feel bound to express our surprise that neither before the sentencing judge nor in subsequent written submissions have either the public prosecutor or defence counsel made any reference to, analysis of or explanation for the inordinate delay in this case. Given the simple fact of a nearly 6 years passage of time from the commission of offence to the date of sentence the Chief Justice correctly made a reduction in sentence for delay.

We regard it as most unfortunate that neither side to the case has sought to provide the court with more information about such a long delay.

A brief analysis of the Notes of Proceedings reveal the following:-

- i. There is no explanation why the appellant's first appearance in court, in June 2013 was 5 months after his arrest.
- ii. Between June 2013 and November 2018 there were 31 appearances in court, almost all of which, according to the notes, seem to have taken but a few minutes each time.
- iii. In November 2013 the matter was adjourned for trial to September 2014, however the next appearance was a year later in November 2014 when an adjournment was granted "to sort out other matters."
- iv. In the 4 years that followed there were adjournments and mentions for a variety of reasons including the non-availability of forensic evidence, the incapacity of an expert witness, requests for time to consider forensic evidence, adjournments to consider alternative charges and pleas, changes of defence counsel (Mr. Sheik Noordin is the appellant's third lawyer) and on one occasion a delay of 8 months because "calibration data is pending".
- v. Different trial dates were set on three separate occasions, in 2014, 2015 and 2017. Given that the facts of the case appear to be uncomplicated, namely that

the appellant ran away from the police but was caught and had the drugs in his possession, it is difficult to understand why three weeks (14 working days) were set aside to hear the trial, in 2017.

At the hearing of this appeal we found both counsel's responses when asked for explanations for these matters to be unsatisfactory.

We outline these matters for three reasons. First, because neither party has addressed them hitherto; secondly, because Mr Sheikh Noordin (who was first engaged in this matter after the appellant had been sentenced) in his written submission which was filed late after a request for an adjournment makes no mention of them at all and thirdly to confirm that this is clearly a case of inordinate delay which merits a discount on sentence.

### Starting point

The Chief Justice who was first seized of this case recently, in 2018, selected a starting point of 7 years. He noted that the quantity of the same drug in the case of *Abd Rahman bin Abd Latif v PP [2015] JCBD 128* was 44.3 grams. The quantity of which this appellant pleaded guilty was "not exceeding 55 grams." The Court of Appeal in the cited case determined that, on a plea of guilty, a sentence of 3 years 4 months was appropriate after a starting point of 5 years. We have come to the conclusion that the Chief Justice's starting point in the present case, namely 2 years higher, is disproportionate. In all the circumstances we regard 6 years as the right starting point. A starting point higher than the 5 years in the Latif case in this case is merited firstly to reflect that the quantity of drugs was 11 grams higher and secondly as a deterrence. The possession and use of the drug in question is prevalent, increasing, addictive and dangerous.

The appellant pleaded guilty as soon as the lesser charge was offered and is entitled to a 1/3 discount for his plea. This results in a sentence of 4 years.

We agree with the Chief Justice's decision to reduce the sentence by one year because of the inordinate delay. However, such discount should be applied to the sentence after it has been reduced by 1/3 to reflect the appellant's guilty plea. Thus, in this case, the sentence of 4 years shall be further reduced to 3 years to reflect inordinate delay in bringing a fairly uncomplicated matter to a conclusion.

We will therefore substitute a final sentence of 3 years imprisonment

### Decision

The appeal is allowed accordingly.

**Burrell, P.**

**Seagroatt, J.A.**

**Lunn, J.A**