

SAMSON BIN PURAD (D1)
PG MOHD IRWAN BIN PG HJ MAHMUD (D2)
HAMDI BIN ADMIN@JINI (D3)

AND

PUBLIC PROSECUTOR

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 21 of 2014)

Before: Mortimer P, Leonard and Burrell JJ A.
26th November, 2014

Mr Sheikh Noordin bin Sheikh Mohammad for the Applicant
DPP Dk Didi-Nuraza Pg Hj Abd Latiff and DPP Mohd Danial Dato Haji Kifrawi for Respondent

Mortimer. P:

The three appellants appeared before the Intermediate Judge on 17 July 2014 and pleaded guilty to a joint offence of Criminal Breach of Trust involving BN \$100,000. On 23 July they appeared in front of the same judge and each of them was sentenced to 3 years and 2 months imprisonment but additionally each was ordered to pay compensation. The first appellant was ordered to pay \$3554 with one month's imprisonment in default; the second appellant was ordered to pay \$3100 with one month in default and the third appellant was ordered to pay \$6300 compensation with 2 months imprisonment in default. Those sums were to be paid within 16 weeks.

The facts

The three appellants composed a security crew for G4S security. The first appellant was the security crew commander and the other 2 were security crewmen. On 2 July 2014 they were instructed by their supervisor to collect BN\$11,105,000 from AMBD belonging to BIBD to be distributed to several BIBD branches. When they came to the Tanjong Bunut branch the bank discovered that the money bag for that bank had in it an extra \$100,000. Instead of \$705,000 the bag contained \$805,000. The bank refused to accept the extra money and the three defendants were then instructed by the supervisor over the phone to take the extra \$100,000 belonging to BIBD to the main G4 S office. They took the money there which was then in a sealed new bag. At the office they met the supervisor who told them that he would handle the \$100,000. He instructed them to place the money into a bag belonging to the third appellant and put it in the supervisor's car.

One week later the third appellant went to the supervisor's house and he was given \$67,500 to be equally distributed among the 3 appellants. This was done and each appellant received \$22,500.

However, when the matter came to light and the police started to investigate they recovered \$53,100 from the 3 appellants out of the \$67,500. The amounts recovered were, from the first appellant \$17,500: from the second appellant \$19,400: and from the third appellant \$16,200. The second appellant also handed over certain items he had bought using the money and those items were valued at \$1446.

The sentencing

In sentencing the judge took into account the special position of trust that each appellant was in by working for a security company. Also he took into account the large sum of money involved. Having regard to these aggravating factors he took as his starting point for each 60 months imprisonment. This he reduced by 20 months for the early pleas of guilt, the remorse shown and for each appellant being a first offender. He then reduced the 40 months imprisonment by a further 2 months to reflect the large amount of money which had been recovered leaving 38 months or 3 years and 2 months for each.

The Appeal

Those working for security firms are in a particular position of trust. If they take money entrusted to them to deliver to banks and other institutions inevitably a sentence passed upon them is almost certain to involve a loss of liberty.

In this case in assessing the proper sentences the judge rightly took into account the serious nature of the offences as well as mitigating matters which have been outlined earlier in this judgment. However 2 factors in the case were not brought specifically to the judge's attention. The first is the particular temptation to which the appellants were subjected. Once the additional money was found it was put in a bag and handed, on return to the office, to the supervisor as they were instructed. They no doubt assumed that the supervisor would return the money to the owner and that would be an end of the matter. However, a week later the supervisor, their immediate superior in the company employing them, handed them a substantial part of the money for division between them. It is axiomatic that they ought to have refused the money and reported their superior but in these unusual circumstances the temptation to which they were subjected was of a high order. They remain guilty of serious criminality but the high level of temptation is a substantial mitigation to which due effect ought to be given in the sentences.

Further, when passing sentence the judge was unaware that each of the appellants had offered to give evidence against their supervisor. This evidence is likely to be of great importance in the prosecution case against the supervisor. In the circumstances these appellants are entitled to a discount for this as well. The rate of discount for this (inclusive of 30% in the event of a plea) is in the region of 40% depending upon the seriousness of the offence charged, the danger (if any) faced by the witness as a consequence of giving evidence for the prosecution and the like.

Conclusion

As the 2 substantial mitigations to which we have referred were not in the judge's mind and were not taken into account by him in sentencing it falls to this court to consider the weight which ought to be given to them and the effect (if any) they ought to have on the level of sentence if in consequence the level of sentence is manifestly too high.

Taking these mitigations into account the judge's starting point of 5 years was excessive. In all the circumstances we consider a starting point of about 4 years to be correct then taking into account the mitigations considered by the judge as well as the extraordinary temptation and the offers to give evidence this should be reduced to a sentence of 27 months. Having regard to the particular circumstances of the offence, this is an exceptional case unlikely to be a useful precedent in the absence of similar circumstances.

Order

For the reasons we have given we allow each appellant's appeal against his sentence of 38 months and reduce each sentence to one of 27 months.

The orders for compensation stand.

Mortimer, P.

Leonard, J.A.

Burrell, J.A.