

MUHAMMAD RABILLAH SUHARDEY BIN MUKSIN

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 21 of 2017)**

Before: Mortimer P, Burrell and Seagroatt JJ A.

16th April 2018

Headnote: *5 similar offences of trespass and theft. Substantial quantity of aluminium stolen and sold for about \$720. Early pleas. 30 years old man with clear record who became unemployed through illness 4 years earlier. Starting point of 6 years manifestly high. No more than 5 years appropriate. Total sentence reduced from 4 years to 3 years imprisonment.*

Applicant in person

DPP Raihan Nabilah binti Haji Ahmad Ghazali for Respondent

Cases cited in the Judgment:

Mohd Zahiruddin bin Haji Junaidi v PP, Criminal Motion Number 38 of 2013

Doni Hardi bin Haji Maidin v PP, Criminal Appeal Number 16 of 2012

Abdul Wakil bin Samsun Yusra v PP, Criminal Motion Number 35 of 2014

Mortimer P:

The appellant appeals against a sentence of four years imprisonment imposed upon him by His Honour Judge Radin in the Intermediate Court on 26th October 2017.

This was the total sentence for five separate offences of entering Ministry of Education flats and the theft of aluminium window and door frames contrary to section 451 of the Penal Code. All offences were committed between 9th September and 30th September 2017.

The final offence was committed on 30th September. He drove his car to Times Square shopping centre and parked. He went through a gap in a fence into the Ministry of education flats and using screwdrivers dismantled door and window frames to produce 13 pieces of aluminium which he put in a sack and took away. He left the building only to be

confronted by the police. He unsuccessfully tried to run away and after arrest admitted the five offences the second and third of which he committed with others.

In addition to the 13 pieces of aluminium on the last offence he stole a total of 561 kg of aluminium which was sold to a metal dealer for over \$721. Some of this money was shared with other offenders.

For each offence the judge passed a sentence of 24 months imprisonment reduced from 36 months to take account of the plea of guilty. He made these sentences consecutive on charges one and two making a total of 48 months and on charges 3, 4 and 5 he made the sentences concurrent with each other and concurrent with the sentences on charges one and two making the total of four years.

The Appeal

The appellant contends that the total sentence is manifestly excessive particularly having regard to his pleas of guilty at the earliest opportunity; his full co-operation with the police investigation; his remorse; his repentance; and his determination not to offend again in the future. He is a 30 years old man with a clear record. He is divorced with one child who is looked after by his parents. He supports his divorced wife who is ill and may remarry her when released.

We have said on previous occasions that when dealing with multiple offences it is useful for a judge to state the starting point after trial for the total criminality involved before making a deduction for the early pleas.

The judge did not do so in this case. His total sentence of four years involved a national starting point of six years imprisonment after trial.

The issue for our consideration therefore is whether taking into account all the mitigating and aggravating circumstances, six years after trial is manifestly excessive.

Conclusion

Save for guideline cases individual decisions can only be general indications of the appropriate sentence as each case depends upon its own individual facts. Nevertheless none of the three cases cited by the DPP provides support for the total sentence passed. In *Mohd Zahiruddin bin Haji Junaidi v PP (Criminal Motion Number 38 of 2013)*, for three offences, two of which were house trespass and theft contrary to section 451, a total sentence of two years and four months was passed. In *Doni Hardi bin Haji Maidin v PP (Criminal Appeal Number 16 of 2012)*, for three offences of housebreaking and theft and five serious offences of theft this court passed a total sentence of four years imprisonment. In

Abdul Wakil bin Samsun Yusra v PP (Criminal Motion Number 35 of 2014), for 3 offences of housebreaking and theft a total sentence of two years imprisonment was imposed.

Appropriate weight must be given to both the considerable amount of property stolen and the real, if limited, mitigating circumstances. These concern in particular appellant's previous clear record up to the age of 30, his health leading to his loss of employment and his remorse demonstrated by his plea.

Taking all these matters into account the starting point of 6 years is manifestly too high. We consider the appropriate starting point for the total sentence after trial is not more than five years imprisonment to be reduced for the pleas of guilt and other mitigation to 3 years.

We order therefore;

1. The appeal is allowed against the total sentence for four years imprisonment.
2. The sentences of two years imprisonment on each charge 1 to 5 will stand.
3. The sentence of two years on charge 1 and one year and four months imprisonment on charge 2 shall be consecutive making a total of three years and four months.
4. The sentences of two years imprisonment on each charge 3, 4 and 5 shall be concurrent with one another and concurrent with the total sentence of three years on charges 1 and 2.
5. The total sentence imposed shall be three years imprisonment.

Mortimer, P.

Burrell, J.A.

Seagroatt, J.A