

MOHAMMAD ABDUL AZIM BIN HJ MD AZAHAR

AND

PUBLIC PROSECUTOR

**Court of Appeal of Brunei Darussalam
(Criminal Appeal No. 21 of 2021)**

Before: Burrell P, Seagroatt and Lunn JJ A.

Date of Hearing: 8th November 2022

Date of Delivery of Judgment: 19th November 2022

Headnote: Sentence: total of 4 years imprisonment upheld following guilty pleas to 2 offences contrary to s.457 (Penal Code) and 2 offences contrary to s.454. Strokes reduced from 6 to 2 to reflect the pleas of guilty and question of totality.

Appellant in person

PO Syaffina binti Abd Hadzid for Respondent

Burrell, P.:

On 3rd August 2021 this appellant pleaded guilty before Intermediate Court Judge Harnita Zelda Skinner to four offences. The first and second were offences of housebreaking by night in the Kampong Meragang area of Brunei in May 2021, contrary to s.457 of the Penal Code. The third and fourth charges were housebreaking and attempted housebreaking with intent to steal in the same area in July 2021 contrary to s.454 of the Penal Code.

Facts

The Statement of Facts clearly supports the charges to which he pleaded guilty. In the appellant's written submission to this court, dated 14th August 2022, he expressed, amongst other matters in mitigation, his belief that the offences to which he pleaded guilty were contrary to section 427 and 379 of the Penal Code.

There is no support for this contention. The original charges laid have remained unamended throughout. There is no basis on the record for his expressed belief, formulated for the first time 10 months after his sentencing, that the charges and the guilty pleas were any different from those referred to, in some detail, in the judge's written reasons for sentence.

The facts of each case, as outlined by the judge, were briefly as follows.

In the first charge he broke open the door of an unoccupied house at about midnight and stole 2 watches, a TV, a microwave, some cash and other small items. When arrested the appellant said that he had sold some of the items for about \$250. The value of the stolen property was approximately \$900.

The second charge was a similar housebreaking, a few days later and in the same area. The appellant broke into an unoccupied house, using a screwdriver and a knife and stole a television which he sold for \$40, but it was later recovered.

The 3rd and 4th charges were 2 days apart in July 2021.

The appellant went to a house he thought was unoccupied. He had with him tools to be used for breaking into the property. However soon after he started opening a window at the rear of the premises he realised it was in fact occupied so he ran away leaving his equipment and his bicycle at the scene. He later returned to retrieve his bicycle.

Finally, on 30th July 2021 he again used a screwdriver to break into an unoccupied property in the same area. He stole 2 televisions and some personal items. He later returned to the house to steal more property, namely another television, speakers and a DVD player. After his arrest he said that he said sold 3 of the televisions for \$250.

Sentence

These are all too common offences in Brunei and the judge was able to consider a number of Brunei authorities on sentence. The appellant had a clear record.

It is a little surprising that the judge took the same starting point for sentence in all four charges, namely 3 years imprisonment. The first two charges are clearly more serious, being committed at night, and ideally the sentences should reflect that. However taken individually it cannot be said that the term of 3 years imprisonment is wrong.

The judge did make a distinction when ordering strokes. She ordered two strokes for charges 1 and 2 and one stroke on charges 3 and 4.

Mitigation

In addition to the matters raised by the appellant in his earlier letters to the court concerning his remorse and family hardship, he produced a written submission, in English, to the court which referred us to a number of previous cases in Brunei, many involving housebreaking offences. It is trite to observe that no two cases are identical. Nonetheless we read and considered the letter carefully.

Ultimately, however, it is this court's task to determine whether the sentencing judge fully considered both the mitigating and aggravating factors in this case before deciding on the appropriate sentence. It is clear that she did so. We therefore now consider the sentences passed.

Bearing in mind his pleas of guilty and taking into account personal circumstances she then correctly reduced each term of 3 years to 2 years. However she made no reduction in the number of strokes.

Totality

She correctly noted that if all four sentences of 2 years were to be served consecutively it would be excessive. She addressed this by ordering charges 1, 2 and 3 to be served concurrently but consecutively to charge 4, making a total of 4 years imprisonment. This was a proper and correct approach.

She had throughout her sentencing consideration ordered that all strokes, namely a total of six, be cumulative. However, the reduction in sentence for his guilty pleas and her consideration of the questions of totality should apply to the number of strokes also.

The total number of strokes should, first of all, have been reduced from 6 to 4 for his pleas of guilty. To put this into effect we will reduce the strokes on charges 1 and 2 to 1 stroke each.

When considering totality she effectively halved the total number of years from 8 to 4. The same should apply to the number of strokes to result in a total of 2.

Decision

We allow the appeal in relation to strokes only. Each offence shall carry one stroke. The strokes on charges 1, 2 and 3 shall be non-cumulative but cumulative to the one stroke on charge 4, making a total of 2 strokes.

So ordered.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A