

PUBLIC PROSECUTOR

AND

MOHAMAD YUSMIN HATTA BIN MD YUSOP

---

(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 23 of 2016)

---

Before: Mortimer P, Leonard and Burrell JJ A.  
21<sup>st</sup> November 2016

*Headnote: Prosecutor's appeal against sentence of 12 months imprisonment after trial. Respondent had been convicted under s.408 of Penal Code of criminal breach of trust when employed by the Baiduri Bank. Sentence increased to 20 months. Discount for delay.*

DPP Hjh Farhanah POKPSRDPSS Hj Awg Suhaili for Applicant  
Respondent in person

*Cases cited in the judgment*

*Public Prosecutor vs Su Ling King (ICCT 4/2010)*

*Public Prosecutor vs Hjh Kasmah binti Hj Hashim (ICCT 1/2009)*

*Public Prosecutor vs Sarah binti Hj Ahmad (HCCT 13/2008)*

*Public Prosecutor vs Rodeo Zambrano (HCCT 14/2001)*

*Awg Ismail bin Sahari vs Public Prosecutor (CA 12/2006)*

**Burrell, JA.:**

On 13<sup>th</sup> September 2016 the respondent was convicted after trial of a single offence contrary to s.408 of the Penal Code, CAP 22 of criminal breach of trust when entrusted with \$54,901.75 the property of the Baiduri Bank, when employed as a Bank teller between March and July 2010.

When sentencing HHJ Abdullah Soefri selected a starting point of 18 months imprisonment which he reduced to 12 months because of his clear record and an "inordinate and unjustifiable delay" in bringing the case to court.

The Public Prosecutor now appeals against that sentence on the ground that it is manifestly inadequate.

*Discussion*

As part of the respondent's job he received cash payments from customers over the counter which were repayments under Hire Purchase agreements for motorcars. He gave the customer a receipt for such payments but on the bank's copy of the receipt he wrote false

information such as “wrongly deposited” and, at the same time, entered a credit into the bank’s computer in the customer’s account.

He was then able to carry out an “Error Correction” transaction based on the false “error” which, until the matter was properly checked, enabled him to take out the money for himself whilst the bank records, temporarily, balanced. He perpetrated this deception on 15 occasions resulting in a loss to the bank of \$54,901.75. It was a serious breach of trust which the respondent was able to dishonestly execute because of his knowledge of the bank’s accounting and recording systems.

The respondent’s method and level of deceit is of course relevant however, it is the final sentence in this case with which we are concerned.

The relevant matters, both for and against the respondent, in this appeal are these:-

- i. The respondent was 28 at the time of the offence and he had no previous convictions.
- ii. He was responsible for caring for his disabled brother. He is now married but has no children.
- iii. There was considerable delay in bringing this matter to a conclusion. The offence was committed in 2010. The prosecution first received the file in 2012. The trial commenced in 2015 and was concluded 15 months later in September 2016.
- iv. The respondent abused the trust placed in him by his employer. Banks, in particular, depend on the honesty of their staff in order to function properly.
- v. There has been no restitution.
- vi. Although the respondent was not able to benefit from a discount of one third off his sentence had he pleaded guilty we note to his credit that he states in his written submission to this court that “I am now very remorseful with the offence that I had committed...”

### *Sentence*

The public prosecutor has brought to our attention a number of previous decisions under s.408 of the Penal Code. Inevitably there are factual differences but for comparative purposes we note the following cases.

Name	Amount	Plea	Sentence
Public Prosecutor vs Su Ling King (ICCT 4/2010)	\$81,419	Guilty	2 years
Public Prosecutor vs Hjh Kasmah binti Hj Hashim (ICCT 1/2009)	\$75,000	Guilty (4 charges)	3 years
Public Prosecutor vs Sharah binti Hj Ahmad(HCCT 13/2008)	\$50,406	Guilty	2 years
Public Prosecutor vs Rodeo Zambrano (HCCT 14/2001)	\$16,395	Guilty	2 years
Awg Ismail bin Sahari vs Public Prosecutor (CA 12/2006)	\$326,890	Guilty (3 charges)	2 years 6 months (2 years discount for delay)

In some of these cases the issue of delay, as in the present case, was a factor but in none was the sentence less than 2 years after pleas of guilty.

We observe also that the maximum sentence for this offence was, in 1997, increased from 7 years to 10 years. Thus cases pre-dating 1997 are of little value.

We finally turn to the issue of delay.

### *Delay*

The sentencing judge discounted his starting point of 18 months by 6 months because of the delay in this case. We do not criticise this part of his decision. The delay was too long and merited a discount. The court must look at the whole of the delay when deciding if a discount is appropriate. It could be due to the police, it could be due to the Prosecutions department, it could be the courts, it could be the defendant, it could be a combination of all four.

The appellant's written submission acknowledging a delay of 1 year and 2 months being the time between his first appearance in court and his conviction after trial is only part of the whole picture. The total delay in this case is in the order of 5 years.

### *Conclusion*

We agree that a sentence of 12 months after trial, which presumably would have been 8 months on a plea of guilty is manifestly inadequate. The proper starting point in this case is 3 years imprisonment. As this is an appeal by the prosecution we will take as our starting point a sentence at the lowest end of an acceptable range, namely 30 months. From that a significant discount should be given for the inordinate delay of 5 years or more. We give a one third discount resulting in a final sentence of 20 months. To this extent we allow this appeal.

### *Order*

The sentence of 12 months imprisonment shall be increased to 20 months imprisonment.

Mortimer, P.

Leonard, J.A.

Burrell, J.A