

**ABDUL GHANI BIN MOHAMAD**

**AND**

**PUBLIC PROSECUTOR**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 29 of 2014)**

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Before: Mortimer P, Leonard and Burrell JJ A.  
**24<sup>th</sup> of November 2014**

*Sentence – Class A Drugs – Simple possession of large quantity – Consecutive or concurrent sentences*

Mr Hj Mohamad Daud bin Hj Ismail for the Appellant  
DPP Hjh Suriana Hj Radin for Respondent

**Burrell, JA.:**

This is an appeal against a sentence of 6 years imprisonment imposed by Steven Chong J on 10<sup>th</sup> November 2014, the appellant having pleaded guilty to two offences contrary to s.6(a) of the Misuse of Drugs Act CAP 27 on 29<sup>th</sup> October 2014.

The appellant had originally been charged with two offences of trafficking in dangerous drugs contrary to s.3A but on the first day of trial the prosecution accepted pleas of guilty to the lesser alternative charge of simple possession contrary to s.6(a).

5 years imprisonment was passed on the 1<sup>st</sup> charge which alleged possession of 39.811 grams of Methylamphetamine and 1 year consecutive was passed for the 2<sup>nd</sup> charge which alleged 92.1064 grams of Nimetazepam.

***Facts***

The appellant admitted the statement of facts which, in outline, was as follows.

On 12<sup>th</sup> September 2012, the appellant was driving his car from Miri into Brunei. Another man, who escaped and has not been subsequently apprehended, was his passenger. Officers from the Narcotics Control Bureau searched the appellant's car and found a white plastic bag at the foot of the passenger seat.

The contents of the bag were later analysed and found to contain the drugs which are the subject of the two charges to which the appellant has pleaded guilty.

The appellant is now 40 years old. He is married with two daughters of school age. Both he and his wife were in full time employment. He co-operated with the Police after his arrest and had been in custody since.

### *Sentence*

The Judge took note of all mitigating factors and noted that although the quantity of the drugs involved was relatively substantial the appellant was to be sentenced for simple possession and not for trafficking. The quantity of drugs nonetheless remained an important consideration when sentencing even for the lesser offence.

He noted that the maximum sentence for simple possession was 10 years imprisonment or \$20,000 fine or both. He considered that for the overall criminality a sentence of 9 years would have been appropriate after trial. He then discounted this starting point by one third. The resulting sentence of 6 years was made up, as already stated, by 5 years and 1 year consecutive on the 2 charges.

### *Appeal*

The appellant has been represented by Mr Daud in this appeal.

He submits (a) that the starting point is too high and (b) that the sentences should have been concurrent and not consecutive.

With regard to the appropriate starting point Mr Daud has referred to two cases. Firstly, PP v Mohammad Ameer bin Salleh and 2 others (Criminal Trial No 1 of 2011). This case involved over a kilo of Cannabis. Secondly Teo Boo Min v PP (CA no 23 of 2014) which involved 0.77 grams of "Ice".

We glean only marginal assistance from cases where either the drugs involved were wholly different or where the weight involved was wholly different. By the same token, Ms Nina Jasmine on behalf the Respondent has referred us to the case of Sofian bin Haj Suot v PP (Criminal Appeal 19 of 2012) in which the appellant pleaded guilty to a total of 13 drug related offences. Factually it was a very different case. However, it is worthy of note that in that case one of the 13 charges concerned simple possession of almost 48 grams of Methylamphetamine for which a sentence of 2 years imprisonment was passed. Of course, the principle of totality was an important consideration in that case also.

In the present appeal, we agree that the starting point selected for a case of simple possession was too high. It was almost the maximum permitted. This suggests that the Judge considered the quantity involved to be almost the maximum envisaged for a s.6(a) offence.

There are no guidelines for sentences based on increasing quantities of drugs for self consumption and we do not think it would be helpful to suggest any. The difference in quantities in trafficking reflects the amount of money to be made by the seller or distributor whereas, the different quantities for self consumption (and pleas of guilty to

simple possession can be for nothing else) merely reflect the amount of time it would take to consume them.

After careful consideration of these matters we think that, in this case, 5 years after trial would have been appropriate to reflect the appellant's criminality. After a discount for pleas of guilty, 3 years and 4 months.

We now turn to the question of concurrent or consecutive sentences. In this case the Judge would not have been criticized if he had made the sentences concurrent. The "one transaction" rule was met in many respects. The drugs were found in one packet during a single search of a car. The only difference was that there were two different drugs. This is a difference which in certain circumstances may merit an order for consecutive sentences but not, in our view, in the present case.

In this particular case we agree with Mr Daud that, in principle, concurrent sentences would have been appropriate. After discounting the sentence by one third we make the order below.

Finally, we accept that there was an unsatisfactory period of delay in this case. We feel it is sufficient, however, simply to acknowledge the fact and take it into account, which we do, without making a separate reduction to the final sentence.

***Order***

The appeal is allowed to the extent that the sentence on 1<sup>st</sup> alternative charge is reduced to 3 years 4 months. The sentence of 1 year on the 2<sup>nd</sup> alternative charge shall be served concurrently.

**Mortimer, P.**

**Leonard, J.A.**

**Burrell, J.A.**