

**MOHD ZAHIRUDDIN BIN HJ JUNAIDI**

**AND**

**PUBLIC PROSECUTOR**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 2 of 2019)**

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Before: Burrell P, Seagroatt and Lunn JJ A.

**29<sup>th</sup> April 2019**

*Headnote: Sentence – Housebreaking and theft offences committed with juveniles –  
Appropriate sentences of imprisonment passed – Principle of totality applied.*

Appellant in person

DPP Hjh 'Adzimah Mukarramah binti Haji Salleh for Respondent

**Burrell, P.:**

On 9<sup>th</sup> February 2019 the appellant was sentenced in the Intermediate Court by Judge Faisal having pleaded guilty to 5 offences, two of housebreaking in order to commit theft, contrary to s.454 of the Penal Code and three of theft contrary to s.379 of the Penal Code. Two of the thefts were of motor vehicles, the third of property from outside a dwelling house. All five offences were committed between 12<sup>th</sup> and 23<sup>rd</sup> May 2018. The appellant was one of six defendants (four of whom were juveniles) appearing on a charge sheet containing eleven similar offences. On the charges to which he pleaded guilty he was in the company of two or more co-defendants, including juveniles.

#### Facts

At night on 23<sup>rd</sup> May 2018 the appellant, together with another adult and two juveniles drove to an empty dwelling house in Perpindahan Lambak Kanan intending to break in and steal property. The car was driven by one of the juveniles. Three of them broke into the house and located two safe boxes and other property. However their criminal enterprise was interrupted by the return of the householders. The householders were shocked and frightened by the intruders' presence however, their return to the house caused the appellant and his co-defendants to flee the scene. The police were immediately alerted and the offenders were later arrested. The appellant admitted his role and stealing some jewellery of which he had disposed.

The same group had committed a similar housebreaking on 13<sup>th</sup> May 2018 in Sungai Tilong. The appellant was again one of the defendants who broke into the private dwelling house. From this house the appellant had stolen a television set and a vacuum cleaner which he had since sold.

The two offences of theft of motor vehicles were committed on 12<sup>th</sup> and 19<sup>th</sup> May 2018. On each occasion the appellant was with another adult and one juvenile. Whilst driving around at night they noticed the two cars parked on the road side. On each occasion they managed to start the car and then drive it away. The cars were later abandoned after the appellant and the other two had partially dismantled one of the vehicles and taken away the spare parts to sell later and also after having stolen property from inside the second vehicle.

The fifth offence to which this appellant pleaded guilty (the amended 10<sup>th</sup> charge on the charge sheet) was committed on 16<sup>th</sup> May 2018, again with the same adult and juvenile as before. During the evening of 16<sup>th</sup> May 2018 they stole three gas cylinders from the rear of premises in Jalan Sungai Hanching. To avoid detection they were wearing masks at the time.

### Sentence

Following his pleas of guilty to these 5 offences the judge passed the following sentences:-

s.454 (alternative amended 5<sup>th</sup> charge), 2 years imprisonment and one stroke.

s.454 (amended 8<sup>th</sup> charge), 2 years imprisonment and one stroke.

s.379 theft of car, 1 year imprisonment.

s.379 theft of car, 1 year imprisonment.

s.379 theft of gas cylinders, 4 months imprisonment.

He ordered the 2 year sentences and a 1 year sentence to be concurrent but ordered the other car theft (1 year) and the theft of gas cylinders (4 months) to be consecutive and the strokes cumulative thus making a final sentence of 3 years 4 months and 2 strokes.

The judge noted that the appellant had recently commenced serving an 18 month sentence of imprisonment from 18<sup>th</sup> June 2018. He did not mention any further details about that sentence or the offence involved. This Court is now aware that it was a theft of a motor vehicle.

He ordered the 3 years and 4 months for the current offences to run from “the institution of proceedings of this case.” According to the warrant of commitment this was 9<sup>th</sup> August 2018. In his reasons for sentence the judge did not refer to a starting point nor to the principle of totality.

### Discussion

Assuming the usual discount of 1/3 has been applied to each individual sentence to reflect the pleas of guilty at an early stage in the proceedings, starting points of 3 years for the s.454 offences, 18 months for the s.379 car thefts and 6 months for the s.379 gas cylinder offence cannot be criticized. There is an abundance of authority in support and there are no grounds to depart from such sentences which we regard as proper and appropriate.

As for the principle of totality, the final sentence of 3 years and 4 months and 2 strokes reflects a sentence of 5 years imprisonment and 2 strokes after trial.

Bearing in mind the following factors:-

- that the appellant was a party to 5 offences covering a period of 2 weeks.
- that he recruited 4 juveniles aged between 14 and 16 to help him carry them out.
- that three of the offences involved thefts from dwelling houses which, although empty at the time, were people's homes and
- that the appellant had previous convictions. (The judge referred to this fact but not the details. The appellant had been sentenced to 2 years and 4 months in 2013 for housebreaking offences and in June 2018 as noted earlier. These matters are factors to be taken into account when selecting the proper starting point)
- that this sentence will be served concurrently with the earlier sentence of 18 months imprisonment,

the appellant's submission that the final sentence could be regarded as manifestly excessive is untenable, save that as the two s.454 offences were ordered to be served concurrently we think the individual strokes should be non-cumulative.

#### Decision

Accordingly the appeal against the sentences of imprisonment is dismissed but one stroke will be substituted instead of two strokes.

**Burrell, P.**

**Seagroatt, J.A.**

**Lunn, J.A**