

**CHRISMAN BIN YAYAH**

**AND**

**PUBLIC PROSECUTOR**

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**(Court of Appeal of Brunei Darussalam)**  
**(Criminal Appeal No. 30 of 2014)**

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Before: Mortimer P, Leonard and Burrell JJ A.

**7<sup>th</sup> May 2015**

*Headnote: Sentence – Possession of Class A drugs for purpose of trafficking – S.3A  
CAP27 – Sentence of 10 years and 8 strokes upheld for 30.2188 grams of  
Methylamphetamine*

Mr. Hj Mohamad Daud bin Hj Ismail (M/S Daud Ismail and Co.) for the Appellant  
DPP Haji Mohd Abd Raafe' Hj Ibrahim for the Respondent

**Cases referred:**

*Public Prosecutor v Awg Roslan bin Mohd Yunus [2005] 2 JCBD 175*

**Burrell, JA.:**

On 11<sup>th</sup> November 2014 the appellant was sentenced to 10 years imprisonment and 8 strokes having pleaded guilty before Hairol Arni Majid J to a single offence of possession for the purpose of trafficking of 30.2188 grams of Methylamphetamine contrary to s.3A of the Misuse of Drugs Act CAP 27. The offence had been committed on 16<sup>th</sup> February 2013 and the appellant had remained in custody since that date.

The appellant has been represented both at first instance and on appeal by Mr. Hj Mohamad Daud bin Hj Ismail.

The Notice of Appeal, dated 24<sup>th</sup> November 2014, appears to have been drafted by the appellant in person. It complains that insufficient weight was given to the mitigating factors resulting in a sentence which was excessive, unjust, unsafe and unsatisfactory. This court's task is to determine in all the circumstances whether or not the sentence passed was either manifestly excessive or wrong in principle.

### ***The Facts***

The appellant was stopped and searched in Kuala Belait by NCB officers on 16<sup>th</sup> February 2013. In his wallet was found a small quantity of suspected drugs. His car, which he had just driven into Brunei from Malaysia, was then searched and 2 packets, also believed to contain drugs, were found in the glove compartment. Later analysis revealed that the 3 packets contained respectively 0.2606 grams, 14.3634 grams and 15.5948 grams of Methylamphetamine totalling 30.2188 grams.

The appellant admitted that he had been in possession of the drugs and explained that he had agreed to bring them into Brunei to deliver them to an unknown man in Kuala Belait for a fee of B\$500.

The appellant is a 39 year old married man with two children and had no previous convictions. He had been employed as Fire Extinguisher Technician and had a good work record. These factors were noted by the judge when passing sentence.

At first the appellant had denied the offence and the matter was listed for trial. A trial date was eventually scheduled in October 2014. The appellant changed his plea to guilty shortly before the trial was due to commence. The judge noted, and we agree, that there had been no undue delay in bringing this matter to a conclusion and that such adjournments that there had been were explained and justified.

### ***Sentence***

By reference to the case of *Public Prosecutor v Awg Roslan bin Mohd Yunus [2005] 2 JCBD 175* the judge noted that the guideline sentence for 30-40 grams of Methylamphetamine, a class A drug was 15-20 years after trial.

Given the quantity involved he correctly selected a starting point of 15 years which he reduced to 10 years and 8 strokes because of the mitigation.

### ***The Appeal***

There is no doubt that this sentence has had and will continue to have a devastating effect on the appellant and his family. However, given the guidelines for serious drug offences such as this there was no basis upon which the judge could have selected a starting point lower than 15 years which was, in any event, the shortest possible sentence within the range of 15-20 years.

As for the discount given, namely 1/3, we note first of all that the appellant's plea of guilty was not an early plea. On the contrary it was an "11<sup>th</sup> hour" change of plea shortly before the commencement of the trial.

With this in mind we are satisfied that all the mitigating factors concerning both his plea and his good character, helpfully advanced by Mr. Daud before the sentencing judge and

this court, have been taken into account when giving the discount of 1/3 which we regard as appropriate in the circumstances of this case.

*Order*

For these reasons we dismiss the appeal.

**Mortimer, P.**

**Leonard, J.A.**

**Burrell, J.A.**