

Rosli Bin Tuah

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 4 of 2008)**

Power, P.; Mortimer and Davies, JJ.A.
24th November, 2008.

Mr Sheikh Noordin Bin Seikh Mohammad of Messrs. Sheikh Noordin Mohammad for the Appellant.

DPP Hjh Anifa Rafiza Bte Hj Abdul Ghani standing in for DPP Hjh Suriana Radin for the Public Prosecutor/Respondent.

Cases cited in the Judgment:

Public Prosecutor v Roslan (Criminal Appeal 6 of 2005).

R v Roslan.

Power, P.:

The appellant pleaded guilty to possession of 35.759 grams of Methylamphetamine for the purpose of trafficking. He was arrested on 13th April 2007 near the car park at Sungai Kebun. He was found to be in possession of a Perillys Menthol cigarette box which contained the dangerous drugs the subject of the charge and MR306 and B\$40.21 at his house nearby the arresting officers found B\$1,400.

After plea in the Intermediate Court Judge Lim sentenced him to imprisonment for 12 years and 9 strokes. When so doing she took into account the tariff set out by this Court in *Public Prosecutor v Roslan* (Criminal Appeal 6 of 2005). She was satisfied that the tariff produced a 18 year sentence after trial for 35.759 grammes of Methylamphetamine and she considered that the usual reduction of one third should be applied thereto. Although she had noted that the appellant had no previous convictions she did not make any reference to that matter when sentencing.

He appellant now appeals against that sentence on the ground that it is wrong in principle, manifestly excessive and inappropriate. Mr Sheikh Noordin Mohammed who appears for him suggests that *R v Roslan* deals only with the proper sentence after trial and that it is open to the Court when a defendant pleads guilty to impose whatever sentence seems to it to be appropriate. He submits that in this case the minimum of 5 years and 5 strokes would be appropriate. We do not agree. Such a submission is wholly contrary to proper

sentencing policy which dictates that the appropriate sentence after early plea is calculated by making a one third reduction to the sentence that would have been imposed after trial.

The approach of the judge was a proper one. However she did fail in one regard as she did not give any discount for the fact that the appellant was a man with no previous convictions. We are satisfied that a discount in that regard should have been allowed from the starting point of 18 years. Taking that into account a proper starting point would have been 16 years. A one third discount there from produces a figure of 10 years and 6 months.

We allow the appeal and vary the sentence to one of 10 years and 6 months and the sentence of 9 strokes to one of 6 strokes.

Power, P.

Mortimer, J.A.

Davies, J.A.