

**MUHAMMAD AMIR BIN HAJI JOHARA**

**AND**

**PUBLIC PROSECUTOR**

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**Court of Appeal of Brunei Darussalam  
(Criminal Appeal No. 4 of 2021)**

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Before: Burrell P, Seagroatt and Lunn JJ A.

**Hearing date: 2<sup>nd</sup> November 2022**

**Date of Judgment: 24<sup>th</sup> November 2022**

*Headnote: Causing damage by fire (s.435(1)(c)): need for social and psychiatric assessment; antecedent history to be filed at court; plea of guilty; starting point too high; discount to be one-third; sentence reduced to 6 years 8 months and 6 strokes: no power to reduce strokes to bring it in line with reduced period of imprisonment.*

Appellant in person

DPP Hajah Rozaimah binti Haji Abdul Rahman for Respondent

**Seagroatt, JA.:**

This 32 year old Bruneian male appeared before Judicial Commissioner Abdullah Soefri on the 31<sup>st</sup> December 2020 for sentence having pleaded guilty to an offence of committing mischief by fire in causing damage by fire in the storeroom of his parents house, contrary to section 435(1)(c) of the Penal Code Cap 22. The offence was committed on the 5<sup>th</sup> December 2020. He had only recently been released from prison (in September 2020) having served a sentence of 12 months for offences of mischief (damage) and criminal trespass.

For the offence under Section 435(1)(c) he was sentenced to a term of 9 years imprisonment and 6 strokes. The maximum term is 15 years with a minimum of 6 strokes.

His Notice of Appeal was entered on 21<sup>st</sup> January 2021 and therefore is in time

Facts of the Offence

The appellant was at his parents' house when he phoned his father asking for \$10. When his father refused, he lost his temper, threw a bottle at a glass of a cabinet, which shattered and, having lit a newspaper, threw it into the storeroom. He drove away in his

car leaving a fire, the spreading smoke from which alerted a neighbour. The fire brigade was called. The cost of the damage caused was estimated at \$20,000

### The Judge's calculation of the sentence

The Judge took a period of 12 years as his starting point and discounting it by 3 years to reflect his plea of guilty, reached his 9 years and 6 strokes. Although this appellant has previous convictions it would not be right in our view to depart from the standard discount for the plea of guilty of one-third. It would also not be right to use his past record as justification for making only a 25 percent discount

### The appellant's submission

He rightly points out that he pleaded guilty at the outset. The charge to which he had pleaded guilty is the proper charge in the circumstances of this case. The other aspects of his submission do not constitute mitigation.

### The absence of any medical report

We are surprised that the court did not call for a medical assessment even though there is no indication that he has received any psychiatric or psychological assessment. He has a record of drug abuse and convictions for possession but we had no details of these offences until late in the day. He does not appear to have offended until over 30 years of age. It is our experience of arson, with or without a background of drug abuse, that a court should always consider the matter of social and medical backgrounds.

We required the Public Prosecutor to obtain a psychiatric assessment in order to be assured that there was no underlying problem which could shed light on his behaviour. He has a history of vindictive behaviour towards his father. There appears not to be any more complex diagnosis. His father has forgiven him and seeks some reduction in his sentence. The psychiatric report obtained as a result of our request does not suggest that there is any underlying mental disorder.

### Conclusion

We think a starting point of 12 years, too high in this case without more knowledge of the appellant's background. In any case the proper discount if applied to that starting point should result in a sentence of 8 years. We also consider the statutory minimum number of strokes to be illogical. It means for example that if a sentence of 5 or 6 years was deemed appropriate no amount of mitigation could reduce the number of strokes to make that aspect of sentencing commensurate with the length of the prison sentence.

The starting point for this offence should be 10 years. Allowing a discount of one-third for his plea of guilty reduces the sentence to 6 years 8 months. As the number of strokes is fixed as minimum of 6, we have no power to reduce that number in order to bring it into line with the reduced sentence.

The appeal is allowed to that extent.

Since the hearing of the Appeal the court has received a letter from the Appellant's father requesting the court to cancel the order relating to the 6 strokes. The Law of Brunei requires this number of strokes to be imposed as the minimum requirement. The court has no power to alter that.

His medical condition following surgery to both his legs will be notified to the prison authorities and we order that a full medical report be obtained from the RIPAS Hospital on his medical treatment and condition, together with a prognosis on his future, by the prison authorities with a copy to be filed at court.

No strokes are to be carried out until there has been a full and proper investigation of the appellant's medical condition.

**Seagroatt, J.A.**

**Burrell, P.**

**Lunn, J.A**