

**MOHAMMAD ZUL ASNAWI BIN HJ ASMAD**

**AND**

**PUBLIC PROSECUTOR**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 5 of 2015)**

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Before: Mortimer P, Leonard and Burrell JJ A.  
**25<sup>th</sup> May 2015**

Appellant in person  
DPP Hjh Farhanah POKPSRDPSS Hj Awg Suhaili and DPP Hjh Atiyyah Azzahra  
POKLSDSLJ Awg Hj Abas for Respondent

**Leonard, JA.:**

This is an appeal against sentence.

On the 25<sup>th</sup> January 2015 the appellant, having pleaded guilty to six charges spread over three cases which had been consolidated was sentenced to a total of 46 months imprisonment and 2 strokes. He has appealed against sentence, seeking a reduction of the prison term and removal of the sentence of two strokes. Since a sentence of two strokes is the statutory minimum for the offence concerned, we have no power to alter it.

This is a case where the appellant first appeared with five others in the Intermediate Court on the 25<sup>th</sup> October 2012. There were a number of charges. The appellant pleaded not guilty to the four charges against him, relating to offences in July 2012 and he was remanded on bail. The trial began on the 19<sup>th</sup> January 2015. We have looked into the reasons for the long delay between first appearance and trial and we are satisfied there was good reason for it. Only when his wife pleaded guilty during their joint trial did he eventually plead guilty to the following three offences, one charge being dropped:

2<sup>nd</sup> Charge. Theft, with 3 others, between 1 July and 16 July 2012 between 1am and 3am, in a dwelling, of a television, an astro receiver, a video player, a scanner and a car baby chair, punishable under section 380 with section 34 of the Penal Code, Cap 22.

Alternative 3<sup>rd</sup> Charge. Theft, with 3 others, on 31 July 2012 between 8am and 9am, in a dwelling, of a television and three pairs of shoes, punishable under section 380 with section 34 of the Penal Code, Cap 22.

4<sup>th</sup> Charge. With another, committing mischief on 31 July 2012 by forcing open a door, causing a loss estimated at \$242.00, punishable under section 427 of the Penal Code, Cap. 22.

The offences to which the latter two charges relate were committed on the same occasion at the same address.

During the period when he was on bail awaiting trial on the above charges, the appellant committed a further offence. As a result, on the 13<sup>th</sup> December 2014 he, together with another, was charged before a Magistrate with stealing seven gas cylinders on the 30<sup>th</sup> October, 2014 in a building used for the custody of property.

According to the admitted facts the appellant, who was with another, used a metal cutter to cut the lock of a storage compartment outside a shop in order to steal the goods. He sold three cylinders for \$150.00. Of the 7 stolen cylinders only 5 were recovered by the police. He pleaded not guilty, a trial date was fixed and he was remanded on bail.

The appellant committed further offences whilst on bail and again appeared in the Magistrates' Court to face two charges as follows:

1<sup>st</sup> Charge. Stealing cable belonging to DST on 7 January, 2015 at about 10pm in the vicinity of the DST Tower, Spg 250-24, Jalan Pasir Berakas, punishable under section 379 of the Penal Code, Cap 22.

2<sup>nd</sup> Charge. Attempting, with two others, at about 9am on 8 January 2015 in the vicinity of the DST tower, to steal cable belonging to DST, contrary to section 379 of the Penal Code, cap 22 read with sections 51 and 34 of the same Code.

On the 19<sup>th</sup> January the appellant maintained his plea of not guilty to the first set of charges and his trial began in the Intermediate Court. In the afternoon of that day one of the appellant's co-defendants, his wife, pleaded guilty as mentioned above. The trial was adjourned to the following day and the appellant applied for bail, which was rightly refused. On the following day the appellant pleaded guilty. He asked for all the cases he faced to be combined. When the cases were consolidated and the appellant came before the Intermediate Court judge for sentence, he was dealt with for all the offences listed above, to which he pleaded guilty.

In mitigation the appellant, who had no previous convictions asked for a lenient sentence. Though he had not pleaded guilty at the first opportunity and had committed a series of offences, the judge treated him as a first offender and indicated that she would give a discount for the plea. Noting that committing offences whilst on bail was an aggravating factor, she sentenced the appellant as follows:

For the Intermediate Court charges:

2<sup>nd</sup> Charge. 12 months imprisonment, reduced from a starting point of 18 months.

Alternative 3<sup>rd</sup> Charge. 12 months imprisonment reduced from a starting point of 18 months.

4<sup>th</sup> Charge. 2 months imprisonment reduced from a starting point of 4 months, plus the mandatory minimum of 2 strokes.

For the charge remitted from the Magistrates' Court:

3<sup>rd</sup> Charge. Theft of gas cylinders; 14 months imprisonment reduced from 20 months.

For the subsequent charges remitted from the Magistrates' Court:

1<sup>st</sup> Charge. Theft of cable; 8 Months reduced from a starting point of 12 months.

2<sup>nd</sup> Charge. Attempted theft of cable; 5 months, reduced from a starting point of 8 months.

All sentences were to be consecutive, save those in relation to the 4<sup>th</sup> charge in the Intermediate Court (mischief) and the 2<sup>nd</sup> charge in the Magistrates' Court (attempted theft of cable), which were to be concurrent with the others. The total effective sentence was 46 months plus 2 strokes.

Before this court the appellant said that he is 26 years old and had been a student at a technical college when arrested. His wife was in prison and he did not know how to take care of his child. He understood that the sentence of 2 strokes was the statutory minimum number but asked for a reduction in the term of imprisonment.

The Public Prosecutor has rightly submitted that the effective term of imprisonment imposed was not manifestly excessive. It is evident that the judge properly considered the relevant factors and we find that the sentences cannot be criticised.

The appeal against sentence is dismissed.

**Mortimer, P.**

**Leonard, J.A.**

**Burrell, J.A.**