

**MOHAMED ABDUL MALIK FAZIL BIN MOHAMMED**

**AND**

**PUBLIC PROSECUTOR**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 5 of 2017)**

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Before: Mortimer P, Leonard and Burrell JJA.  
**22<sup>nd</sup> November 2017**

*Headnote: Criminal law, sentence, housebreaking, theft, mischief (fire) and mischief (damage)  
overall sentence reduced from 5 years 5 months and 8 strokes to 4 years 8 months and 6  
strokes*

Appellant in person  
DPP Muhammad Aiman Adri Bin Ahmad Zakaria for Public Prosecutor

***Case cited in the Judgment:***

*Mohammad Yusrin bin Hj Mohammad v Public Prosecutor, Criminal Appeal  
No. 8 of 2013*

*Wahid bin Mazid v Public Prosecutor, Criminal Appeal No. 9 of 2014*

**Leonard, JA.:**

On 20 May, 2017 the appellant appeared before Judge Masni in the Intermediate Court and pleaded guilty to five charges, all the offences charged being contrary to the Penal Code, as follows. One charge of housebreaking contrary to s.454; one of housebreaking by night, contrary to s.457 read with s.34; one of mischief by fire contrary to s.435; one of theft, contrary to s.379 and one of mischief contrary to s.426.

According to an agreed statement of facts the appellant (D1), a Brunei national aged 19 committed the first charged offence in company with two other persons, one of whom, Mohammad Norisman bin Rozaiman (D2) his unemployed brother in law aged 17, was jointly charged with him. D1 and the third man broke into a house in Kg. Pulaie, Berakas at some time between 5pm on 19<sup>th</sup> January and 8am on 21<sup>st</sup> January 2017, D1 having used a screwdriver to force open a window. D2 joined them as arranged with D1 beforehand. D1 and the third man, aided by D2, stole several items of property from the house and took them to D1's house, also in Kg. Pulaie, where they stored them. The householder arrived home at 8am on 21<sup>st</sup> January, found the house ransacked and the rear window opened, with damaged curtains. He immediately lodged a police report. All the stolen items were subsequently recovered.

Charge 2 was also laid against D1 and D2. It relates to the same three culprits who, using their own bicycles rode from D1's house to Delima where D1 cut off a padlock

securing the front door of a ground floor bicycle shop. D1 had brought the bolt cutter with him. D1 and D2 opened the door and entered the shop while the third person kept watch. D1 and D2 stole 5 bicycles from the shop and the three culprits took them back between them to D1's house. D1 and D2 returned to the shop at about 3.30am and D1 stole some bicycle parts and other items while D2 stole another bicycle. All items from the shop were recovered save for 1 bicycle.

Charge 3. As they were leaving the bicycle shop, D1 set fire to a bicycle tyre and the fire spread in the premises. D2 closed the door as instructed by D1 and the pair rode the stolen bicycle to D1's house carrying the other stolen goods. The shop owner, being informed of the fire, called the fire service. The police were informed and they investigated.

Charges 4 and 5 were against D1 only. On the afternoon 2<sup>nd</sup> April 2017 D1 went to RIPAS Hospital. When his business there was completed he walked down to the hospital jetty parking lot, broke into a Subaru motor car by smashing a window with a pair of scissors and from it stole a wallet containing a modest amount of cash, together with a mobile telephone charger. The theft was the subject of charge 4 and damaging the car window was the subject of charge 5. The stolen property was later recovered.

When arrested both culprits admitted the offences and assisted in the recovery of most of the stolen property.

When he started the course of conduct leading to the charges under consideration, D1 was a young man who already had a criminal record, having been convicted of theft on 1<sup>st</sup> November 2016 when he was ordered to pay a fine. The judge noted when selecting a starting point that the appellant did not fall to be treated as a man with a hitherto good character. According to the court record he has shown no sign of remorse for his actions.

For the offences now under consideration he was sentenced as follows:-

Charge 1: (The maximum sentence is 10 years imprisonment and whipping).

2 years imprisonment reduced from a starting point of 3 years, plus 2 strokes.

Charge 2: (The maximum sentence is 15 years imprisonment and whipping).

2 years and 8 months imprisonment and 3 strokes, reduced from a starting point of 4 years and 3 strokes.

Charge 3: (The possible sentence is up to 15 years imprisonment and not less than 6 strokes).

2 years 8 months imprisonment and 6 strokes, reduced from a starting point of 4 years and 6 strokes.

Charge 4: (The maximum sentence is 3 years imprisonment and a fine).  
9 months imprisonment reduced from a starting point of 12 months imprisonment.

Charge 5: (The maximum sentence is 2 years imprisonment or a fine or both).

6 months imprisonment reduced from a starting point of 9 months.

Looking at the criminality as a whole, the judge ordered that the sentences on charges 2 and 3 be concurrent. The sentences on charges 4 and 5 were also to be concurrent but consecutive to the concurrent sentences on charges 2 and 3. The resulting combined effective sentences were made consecutive to that on charge 1, so that the total effective sentence was 5 years and 5 months imprisonment and 8 strokes. It is evident from the record that the judge fully appreciated that the defendant had admitted the offences when questioned and had assisted in the recovery of most of the stolen property. She noted, however, that he was the leader in the enterprise and had led his 17 year old brother into it. The offences were planned and he already had a previous conviction for theft, contrary to s379 of the Penal Code, an offence which can carry a sentence of up to 3 years' imprisonment, for which he was fined. The judge rightly said that the offences of housebreaking and setting fire to premises merited a deterrent sentence.

Citing for comparison *Mohammad Yusrin bin Hj Mohammad v Public Prosecutor, Criminal Appeal No. 8 of 2013* and *Wahid bin Mazid v Public Prosecutor, Criminal Appeal No. 9 of 2014* the DPP submits that the sentences cannot be described as being wrong in principle or manifestly excessive.

The Notice of Motion, which was apparently filed by a family member states no ground of appeal but says that the appellant, aged 19, is remorseful. A letter signed by the appellant's mother states that he is 19 years old and has been awarded a skills proficiency certificate in fabrication, welding and pipe work. A copy of the certificate shows that he completed the course in July and June 2016 with credit. It is a sad fact that by committing the offence in November 2016 and those which are under consideration here he may well have thrown away the career prospects that might have resulted from the skills he had learned. The letter also says that he received a City and Guilds certificate in April 2017, the month when he committed the offences to which charges 4 and 5 relate.

A letter from the appellant's sister, which the appellant asked us to take into account, states that he was unable to maintain his unemployed siblings who relied on his support with the earning he had from various casual jobs. His 17 year old brother was unemployed and had a wife and child. She said that the offences had been committed by the appellant to help his family.

DPP Mohd Aiman Adri who appeared for the respondent submitted that the sentence was on the high side, the strokes should have been non-cumulative and the imprisonment should have been in the region of 4 to 5 years instead of 5 years and 5

months. We agree. Looking at the whole criminality we consider that a starting point of slightly over 8 years after trial, which is implied in the overall sentence after a plea of guilty, is too high. A starting point of 7 years after trial would have been appropriate. We will therefore allow the appeal to the extent that the strokes will be non-cumulative and the overall effective sentence will be 4 years and 8 months imprisonment and 6 strokes.

### **Order**

The appeal is allowed and the sentences will be varied as follows.

1. The sentences of imprisonment of 2 years on charge 1 and 2 years 8 months on charge 2 are to be served consecutively.
2. The sentences of imprisonment of 2 years 8 months on charge 3, 9 months on charge 4 and 9 months on charge 5 shall be served concurrently with each other and with the sentences of imprisonment on charges 1 and 2.
3. The strokes imposed on charge 1, 2 and 3 shall be non-cumulative.

The total effective sentence will thus be 4 years and 8 months imprisonment and 6 strokes.

**Mortimer, P.**

**Leonard, J.A.**

**Burrell, J.A**