

PUBLIC PROSECUTOR

AND

NORHANISAH BINTI HJ MD NOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 6 of 2018)**

Before: Mortimer P, Burrell and Seagroatt JJA.

25th April 2018

Headnote: Public Prosecutor's appeal against a 2 years sentence after a plea of guilty to one s.408 CAP 22 offence. Not manifestly inadequate – appeal dismissed.

DPP Emily Goh for Appellant
Respondent in person

Cases cited in the Judgment:

PP v Pg Hidayatullah bin Hj Kula (Criminal Appeal 12 of 2017)

PP v Purwanti Jong (Criminal Appeal 22 of 2016)

PP v Mohamad Yusmin Hatta bin Yusop (Criminal Appeal 23 of 2016)

Mohd Noor bin Lito v PP (Criminal Appeal 3 of 2005)

Burrell, JA.:

On 21st March 2018 the respondent to this appeal by the Public Prosecutor was sentenced after pleading guilty to a single offence contrary to s.408 of the Penal Code CAP 22 to 2 years imprisonment. The particulars of the offence were that the respondent had committed criminal breach of trust by dishonestly appropriating \$154,700 from the Jigsaw Primary School in the course of her employment as acting Chief Cashier at the TAIB Bank on 14th May 2011.

The facts were agreed. She had transferred funds from the school's term deposit account into its saving account on a day when she had been given the responsibility of acting as a Chief Cashier. This enabled her to make unauthorized withdrawals to herself, which she did in the total sum of \$154,700 on various occasions over the next 12 months. Surprisingly the matter did not come to light until March 2016 and was reported to the police in April 2016. After the completion of the investigation the matter finally came to court 2 years later in March 2018.

The respondent is married with 4 children. Her explanation for committing the offence was that in 2009 she and her husband had miscalculated the amount of money they would be able to borrow to fund the building of a new property for their family. The

building work had begun and she had come under increasing pressure to provide the necessary funds to keep the building work going.

Judge Zubaidah, when sentencing, noted all the relevant factors in the case both for and against the Respondent. These included the breach of trust as a Bank employee, the fact that there had been no restitution, that the sum involved was substantial, her plea of guilty and clear record. She decided that a proper starting point in this case was 3 years imprisonment which she discounted by 1 year because of the plea of guilty and clear record. From her helpful written reasons there are two matters which merit further observation. First, she said “in this case there has been no delay.” We regard the 2 years which passed between the first report to the police in April 2016 and the date of sentence in March 2018 as a surprisingly long time for a straightforward, single offence to which the respondent never indicated that her plea would be anything other than guilty. This delay, albeit not as bad as in some cases that have come before this court, would have entitled a sentencing judge to extend some leniency towards a defendant. We have been informed, and accept, that most of the delay was due to a slow police investigation mainly caused by the Bank’s slow response to enquires. This may be the reason but it does not amount to a satisfactory explanation and more significantly, whatever the explanation it provides no comfort to the respondent who, in respect of the delay, was blameless.

Secondly, the judge seems to have attached little weight to the respondent’s family circumstances on the basis that “it is settled law that any hardship caused to the offender’s family...has little mitigating value.” Whilst it is true that family hardship is a sad and almost inevitable consequence of an offender’s imprisonment it should not be routinely overlooked. In some cases it merits greater consideration than in others. It is for the court to decide the weight it deserves in each case.

The appeal

The Public Prosecutor has brought to our attention a number of previous Brunei cases concerning s.408 and s.409 offences:

PP v Pg Hidayatullah bin Hj Kula (Criminal Appeal 12 of 2017)

PP v Purwanti Jong (Criminal Appeal 22 of 2016)

PP v Mohamad Yusmin Hatta bin Yusop (Criminal Appeal 23 of 2016)

Mohd Noor bin Lito v PP (Criminal Appeal 3 of 2005)

It is submitted that, based on these cases, the proper starting point for sentence would have been 4 years imprisonment reduced to 2 years and 8 months after the plea of guilty. It follows that the Public Prosecutor submits that the 2 years actually passed is manifestly inadequate or wrong in principle.

We have considered the cases referred to with some care but find it unnecessary to analyse each one for purely comparative purposes in this decision. Suffice it to say that each case depends on its own facts, there is considerable variation in the amounts of money involved and no single case may be described as a guideline case to be followed for s.408 offences.

We accept that had a sentence of 2 years and 8 months been passed from a starting point of 4 years, the respondent might have found it difficult to persuade this court to reduce it. But that is not the test. The sentence actually passed could be regarded as a lenient one but not a manifestly inadequate one. Giving some weight to the period of time it took to bring the case to court, when added to the other mitigating factors, we conclude that this sentence was within an acceptable range of sentencing, albeit at the lower end.

Respondent's appeal

The respondent has not filed a notice of appeal but asks in her written statement from prison to reduce her sentence. We do not ignore this plea. We are willing to treat her statement as an application for leave to appeal out of time and consider the merits of a possible appeal. However, in view of our decision on the Public Prosecutor's appeal there can be no grounds upon which this sentence could be reduced and we must therefore refuse leave to appeal.

Order

The appeal by the Public Prosecutor is dismissed.

Mortimer, P.

Burrell, J.A.

Seagroatt, J.A