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**PUBLIC PROSECUTOR**

**AND**

**BERNARD CHIN JUN TIN**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 7 of 2015)**

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Before: Mortimer P, Leonard and Burrell JJ A.  
**23<sup>rd</sup> November 2015**

*Headnote: Sentencing guidelines for the importation of Cannabis, a class A drug, contrary to s.5 of the Misuse of Drugs Act CAP 27*

DPP Hjh Farhanah POKPSRDPSS Hj Awg Suhaili and DPP Hjh Atiyyah Azzahra POKLSDSLJ Awg Hj Abas for Appellant  
Mr. Rudi Lee Kim Boon (M/S Rudi Lee, Annie Kon & Associates) for the Respondent

*Cases referred to in the judgment*

*Chiew Kwang Ming vs Public Prosecutor (Criminal Appeal 17 of 2014)*

*Saniman bin Ladi vs Public Prosecutor (Criminal Appeal 10 of 1988)*

*Public Prosecutor vs Balung Bangan (Criminal Appeal 6 of 1989)*

*Mohd Yusof bin Abdul Raub vs Public Prosecutor (Criminal Appeal 2 of 2014)*

**Burrell, JA.:**

On 28<sup>th</sup> March 2015, the respondent pleaded guilty to one offence of importing 204.6 grammes of Cannabis into Brunei contrary to s.5 of the Misuse of Drugs Act. On the same date a second charge under the same section involving a quantity of a Cannabis mixture was withdrawn pursuant to s.172 of the Criminal Procedure Code.

On 21<sup>st</sup> May 2015, the respondent was sentenced by Judge Hanani to 7 years and 6 months imprisonment and 7 strokes. The public prosecutor now appeals to increase the sentence on the ground that it is manifestly inadequate.

***The Facts***

The facts of this case can be simply summarised as follows. The respondent, a Malaysian national, was stopped by Customs Officers when entering Brunei by car at Kuala Belait on 11<sup>th</sup> October 2013. Cannabis, the subject matter of the charge, was found on the back seat of his car. The respondent has no previous convictions in Brunei.



Initially, he entered pleas of not guilty but changed his plea to guilty when the prosecution agreed to withdraw the second charge.

### *The judge's reasons for sentence*

In Brunei Cannabis has been recently recategorised as a Class A controlled drug under the Misuse of Drugs Act. Thus, there were no guideline cases or tariff sentences available to the court. Moreover, the judge was not made aware of any cases on the importation of Cannabis prior to its elevation to a Class A drug either.

The sentencing provisions are set out in the second schedule to CAP 27. For s.5 offences there is a maximum sentence of 30 years and 15 strokes and a minimum of 5 years and 5 strokes where the quantity of Cannabis being imported is less than 330 grammes. The sentencing provisions further provide for a minimum sentence of 20 years and 15 strokes and a maximum of 30 years and 15 strokes when the quantity is between 330 grammes and 500 grammes. Over 500 grammes the penalty is death.

Mr Rudi Lee who represented the respondent helpfully pointed out that the sentencing provisions when Cannabis was a Class B drug were precisely the same. It follows that cases which came before this court for importation of Cannabis before it was elevated to Class A could still be of some assistance. It is surprising that none were brought to the judge's attention.

However, the key question in the present case is the appropriate starting point for the importation of 204 grammes of Cannabis. Being under 330 grammes the range is between 5 years and 30 years. There was much discussion both in the court below and on appeal as to whether there should be guidelines as to the appropriate range of sentence depending on the weight of the drug seized. We have decided that simple guidelines should be issued based on the quantity of drugs. However, we emphasize at the outset that they are no more than a guide and do not set down a rigid tariff. Moreover, we further stress that whilst the weight of the drug is the most important factor in sentencing in such cases it is not the only factor. We have selected a small number of bands of sentencing to allow judges to exercise some flexibility, based on all the facts of the case, to select a sentence within a particular band or even depart from it provided there is good reason for so doing.

In her reasons for sentence Judge Hanani proposed "*the following tariff*" for terms of imprisonment and strokes after trial.

- i. Not exceeding 30 grammes: 5 years and 5 strokes
- ii. 30 – 130 grammes: 5 years and 6 strokes to 10 years and 8 strokes
- iii. 131-230 grammes: 10 years and 9 strokes to 15 years and 11 strokes
- iv. 231-330 grammes: 15 years and 12 strokes to 20 years and 15 strokes.

We make two preliminary observations on these proposals. First, they should be referred to as guidelines not tariffs. Secondly, the highest band (231-330 grammes) provides for an upper limit of 20 years whereas the maximum sentence provided for in the sentencing provisions of CAP 27 is 30 years.



It may be that 20 years was proposed as a ceiling for up to 330 grammes because the schedule in CAP 27 goes on to say that for 330 grammes to 500 grammes the sentence must be between 20 - 30 years.

We regard it as somewhat illogical for the statutory provisions to provide a minimum sentence of 20 years for 331 grammes and a maximum sentence of 30 years for 330 grammes. However, we think that any proposed guidelines for amounts up to 330 grammes should encompass the 30 years, as provided, and not stop at 20 years, as proposed by Judge Hanani.

We agree with Judge Hanani that a small number of bands, namely 4, is appropriate. The Public Prosecutor, in her written submissions for the purposes of this appeal, produced a table of sentences which had 27 bands. This provides virtually no flexibility for the sentencing judge and we reject it.

Returning to Judge Hanani's proposals we adopt them save in two respects. First, as already observed the upper limit for 231-330 grammes should be 30 years and not 20 years. We acknowledge that this results in a very wide sentencing range of 15-30 years for 231-330 grammes. However, bearing in mind that, as already stated, the statutory minimum for 331 grammes is 20 years, we would anticipate that the passing of very high sentences (of 20-30 years) for amounts up to 330 grammes would only be in wholly exceptional cases.

With that caveat we issue the following guideline sentences of imprisonment for the importation of Cannabis contrary to s.5 of the Misuse of Drugs Act after trial.

- |      |                           |              |
|------|---------------------------|--------------|
| i.   | Not exceeding 30 grammes: | 5 years      |
| ii.  | 31-130 grammes:           | 5-10 years   |
| iii. | 131-230 grammes:          | 10-15 years  |
| iv.  | 231-330 grammes:          | 15-30 years. |

Secondly, thus far we have not addressed the question of strokes. Rather than deal with this issue arithmetically we prefer to give the sentencing judge wide flexibility. The number of strokes to be imposed, between 5 and 15, is a matter for the judge to decide on a case by case basis.

We now turn to the present appeal. The judge selected a starting point of 12 years for 204 grammes which she reduced to 8 years on a plea of guilty (subject to the question of delay which we deal with below).

The appellant's table (consisting of 27 bands) would have resulted in a starting point of 15 years. Before this court Ms. Farahana, appearing for the DPP, suggested 13 years. A slide rule approach to the guidelines set out above results in a starting point of 13-14 years.

Thus, 12 years could be said to be on the low side but, bearing in mind that this is a prosecution appeal, we are not inclined to interfere.



### **Delay**

The final matter concerns the fact that the judge made a further reduction of 6 months because of delay. The delay in question was of almost one year between the defendant's first appearance in October 2013 and the case being remitted to the Intermediate Court in September 2014. The reason for the delay was solely because the analyst's report was awaited. The prosecution submit that this was not their fault. This is irrelevant. They also submit the delay was not significant. We do not agree. The judge's decision to discount the sentence by a further 6 months cannot be criticised.

In conclusion, and for the sake of completeness, a number of previous decisions have been brought to our attention in the course of the appeal. Specific and individual reference to such cases has not been necessary. However, we have been assisted by the following authorities.

*Chiew Kwang Ming vs Public Prosecutor (Criminal Appeal 17 of 2014)*

*Saniman bin Ladi vs Public Prosecutor (Criminal Appeal 10 of 1988)*

*Public Prosecutor vs Balung Bangan (Criminal Appeal 6 of 1989)*

*Mohd Yusof bin Abdul Raub vs Public Prosecutor (Criminal Appeal 2 of 2014)*

### **Order**

The Public Prosecutor's appeal is dismissed and the sentence of 7 years and 6 months and 7 strokes is upheld and shall remain. For the avoidance of any further doubt the sentence is with effect from 12 October 2013.

**Leonard, J.A.**

**Mortimer, P.**

**Burrell, J.A.**