

MUHAMMAD DENNIE ESWANDI BIN SABAN

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 7 of 2017)**

Before: Mortimer P, Leonard and Burrell JJA.
6th November 2017

Headnote: Sentence – Housebreaking into Royal property and theft of valuable items by a serving Police officer whilst on guard duty at the Royal property, 15 charges in all. 12 years imprisonment and 2 strokes upheld after a plea of guilty.

Appellant in person
DPP Hajah Rozaimah binti Haji Abd Rahman for Public Prosecutor

Case cited in the Judgment:

Mohd Hajidin bin Mahmud v Public Prosecutor (CA 36/14)

Burrell, JA.:

On 3rd August 2017 the appellant pleaded guilty before Steven Chong J to 15 charges; one of house breaking by night to commit theft (Penal Code s.457), two of house trespass to commit theft (Penal Code s.451), three of criminal trespass on royal property to commit theft (CAP 23 section 3), three offences contrary to s.6A(b) CAP 147 of acting in a manner likely to prejudice the safety of any person therein, three of neglect of duty contrary to s.25(2)(h) of the Royal Brunei Police Force Act CAP 50 and three contrary to s.25(2)e of the same act of disobedience of the order of a superior officer.

The facts

These 15 offences arise out of three separate thefts committed by the appellant. Whilst serving as a police officer between November 2016 and April 2017 his duties included acting on guard duty at a control post outside the Istana Darul Hana. Having worked as such for the previous 5 years he was well acquainted with the layout of the Istana, its contents and the daily routines of the various staff. On three occasions instead of keeping guard outside, he entered the Istana and stole precious gold ornaments and gemstones which have been valued at over \$300,000. The appellant subsequently sold the items for \$37,000. The offences contrary to CAPs 23 and 147 arise because the Istana is a property owned by and used as a dwelling by His Majesty The Sultan and Yang Di-Pertuan of Brunei Darussalam. The seriousness of such criminal conduct is

further reflected by the fact that the offence of trespass on Royal Property carries a minimum sentence of 2 years imprisonment and 2 strokes.

Mitigation

The appellant had been a police officer for 17 years with an unblemished record of service. He is now 36. His wife is a school teacher and they have four children. He has expressed great remorse for his actions which is clearly genuine. He admitted his guilt from the outset and explained that it was financial difficulties which drove him to commit these very serious offences.

Sentence

The judge had a difficult task. The defendant was a family man from a good background, full of remorse, having admitted very serious offences.

The judge referred to the case of *Mohd Hajidin bin Mahmud v Public Prosecutor (CA 36/14)* in which the Court of Appeal upheld a sentence of 10 years and 8 strokes where a former employee of a Royal household had pleaded guilty to six offences contrary to s.457 of CAP 22. The property broken into in that case was the Istana Edinburgh. In that case the defendant was a former palace house-boy. After losing his job and moving to Kota Kinabalu he re-entered Brunei and broke into the Royal property to steal on six occasions.

With his usual care the judge balanced all the relevant factors. On the one hand was the defendant's positive good character, his family background, his early admission of guilt and his genuine remorse for his fall from grace. On the other hand the offences amounted to a gross breach of trust which brought shame on to the Brunei Police Force.

The judge took the view that the seriousness of the present case was even greater than the Hajidin case. We are driven to the conclusion that he was correct to do so. These were planned thefts on three separate occasions over a 5 month period, one of which was at night time. On each occasion the appellant was on duty and in uniform at the time. The value of the stolen items was substantial. He soon sold them for his personal financial gain for a price barely more than one tenth of their true value.

The Judge allowed a discount of one third for all the mitigating factors and then passed the following sentences:-

Charge 1 (s.457)	=	6 years and 2 strokes
Charges 2 & 3 (s.451)	=	4 years on each charge
Charges 4, 5 & 6 (s.3 CAP 23)	=	4 years and 2 strokes on each charge
Charges 7, 8 and 9 (s.6a(b) CAP 147)	=	4 years on each charge
Charges 10 to 15 (ss 25 (2)(h) and (e))	=	2 months on each charge

When ordering that some of sentences be served concurrently he stated that he had "regard to the totality of the criminal behavior in respect of all the offences." He then ordered the 6 years on charge 1, the 4 years on charge 2 and two of the 4 years on charge 3 to run consecutively, with the remaining sentences to be concurrent and the strokes non cumulative. This resulted in a final sentence of 12 years and 2 strokes. The

judge noted that this would have been a sentence of 18 years after trial which he acknowledged was a heavy sentence.

This is undoubtedly a bad case of breach of trust, abuse of position and dereliction of duty. Whilst undoubtedly a high, and a devastating sentence for the appellant and his family, we are not persuaded that in all the circumstances it is manifestly excessive.

Order

The appeal is dismissed

Mortimer, P.

Leonard, J.A.

Burrell, J.A