

AZAMI BIN ASMAT

AND

PUBLIC PROSECUTOR

**Court of Appeal of Brunei Darussalam
(Criminal Appeal No. 8 of 2021)**

Before: Burrell P, Seagroatt and Lunn JJ A.

10th June 2021

Appellant in person

DPP Aminuddin Zaki bin Dato Hj Abdul Rahman of Public Prosecutor for Respondent

Seagroatt, JA.:

This appellant pleaded guilty to three offences of housebreaking, the premises in each case being commercial property, on three separate occasions in January 2021 before Judge Radin Safiee in the Intermediate Court. The pleas were entered on the 22nd February 2021 and he was sentenced to a total of 2 years and 3 months imprisonment.

The facts of the offences

The premises concerned belong to his former employers for whom he worked as a driver until the 12th January when he resigned from the employment. The first offence was committed a few days before he gave up his job. He broke into the premises at night and from the office stole B\$300.

Ten days later, also at night, he returned to the premises entered it in the same manner and from the office found and stole B\$55.

On the third occasion, 8 days later, he returned to the premises, entering by the same method and eventually gained access to another office. He was unable to find anything to steal and came away empty-handed.

On each occasion a CCTV camera recorded details of the intruding appellant. After his arrest he was shown the camera recordings and he admitted that he was the person concerned.

The sentence

In mitigation he stressed his family dependents, the fact that he stole to pay for food for his family, his remorse and that he had a new job. These are repeated in his submission.

The judge took into account his pleas of guilty, and his clear record hitherto, in arriving at a starting point of the sentence as 3 years after trial, and then applied a discount of one-third to reach a sentence of 2 years. He made each of the three counts subject to that term of imprisonment to be concurrent with each other but with three months of the term on the second count to be consecutive to that on the first count, totalling 27 months.

However, in approaching the matter of the consecutive term he expressed his reasoning as follows:-

“..... the argument is not to let another sentences run concurrently as this will make the sentences for two of the offences redundant, as each sentence is of the same term of 24 months”.

We consider that this is the wrong approach. Having concluded that overall the starting point is 3 years for each offence and that is a correct approach, he applied a discount of one-third, thereby reducing the sentence to 24 months.

However, the judge did not have regard to the principal of totality so as to reflect overall criminality. There were three offences, identical in nature, albeit of an unoccupied storehouse or office. By adding 3 months of one of the sentences to a discounted sentence of 24 months, he intended to impose a sentence which was in excess of 24 months i.e. 27 months to reflect the degree of criminality indicated by three offences.

The totality that he must have had in mind, but did not express, was a sentence of 40 months (3 years 4 months) in order to reach a discounted sentence of 27 months.

In the circumstance we do not consider that sentence excessive, let alone manifestly excessive, and this appeal is dismissed.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A