

Mohd Junaidi Bin Moxsin

AND

Public Prosecutor

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 8 of 2008)

Power, P.; Mortimer and Davies, JJ.A.
8th November, 2008.

Offences of possession of military arms without a license and one offence of theft. Sentenced to 6 years imprisonment and 4 strokes on each possession charge and 2 years for theft. All sentences to run concurrently. Minimum sentence of 5 years and 3 strokes under Rule 2 17(1) of the Arms and Explosives Rules. Appellant assisted police to recover all the weapons and property and had no intention of using the weapons but others were involved. These offences involve public security and the total sentences upheld by the Court of Appeal agreeing with the reasons given for sentence by the judges.

Appellant in person.
DPP Joe Chan for the Public Prosecutor/Respondent.

Mortimer J.A.:

On 8 March, 2007, in front of the Chief Justice and Steven Chong J, the appellant pleaded guilty to two offences of possession of firearms without a license contrary to rule 2 of the Arms and Explosives Rules and a further offence of theft of military equipment. These were pleas of guilty to lesser charges accepted by the public prosecutor during the appellant's trial for capital offences concerning unlawful possession of the same firearms.

Under Rule 2 17 (1) of the Arms and Explosives Rules the maximum sentence for possession of firearms without a license is fifteen years imprisonment but it also provides a minimum sentence of five years and three strokes. The court sentenced the appellant to six years imprisonment with four strokes on each of the possession charges and two years imprisonment for the theft. All those sentences were to run concurrently making six years and four strokes in all.

He appeals to this court contending that the total sentence is manifestly excessive or wrong in principle.

The Facts

The brief facts are that on 2 November 2004 the appellant and a friend were near a quarry at night in a car driven by the appellant when they saw a light. When they put the car's headlights in its direction they saw a group of Singaporean army personnel asleep. Their weapons were nearby under canvas. On investigation the two of them found an M16 assault rifle fitted with a grenade launcher, an Ultimax machine gun and a green canvas bag inside which was a radio, various communications equipment and personal military items.

These were all taken by them to the appellant's house in the car. All the stolen items were then hidden in the jungle. Two days later, with the appellant's agreement, some friends took them away and buried them elsewhere in the jungle.

Investigations led the police to the appellant and they arrested him in Temburong on 29 November 2004. He cooperated with the police and showed them where some of the property was hidden. In due course the police recovered all the stolen items.

The Sentence

The appellant was 34 years old when he was sentenced and he had been on remand in prison for these offences for about two years. He had two previous convictions for dishonesty in 1990 but in March 2008 he was already serving a fourteen months sentence which took effect on the 23 November 2006 for an offence under section 380 of the Penal Code.

The judges accepted the submissions of counsel that they should give the appellant credit for not having resisted arrest, for his cooperation with the police in helping them recover all of the stolen items and because he never used the firearms nor had any intention of doing so. But, they took the view that these were very serious offences involving public security.

Bearing in mind the penalties provided in Rule 17 (1), in particular the minimum sentence of five years, they took twelve years imprisonment as the starting point. This they reduced by four years for the guilty plea and for the other mitigating factors to which we have referred. They also took into account the two years he had spent in prison on remand. Consequently they reduced the overall sentences to six years and four strokes in total.

Counsel for the appellant at trial urged the judge's to direct that the sentence should commence immediately. They declined on the basis that the sentence he was serving was for an offence wholly unrelated. They ordered that the sentence should commence at the conclusion of the sentence of 14 months he was then serving.

The Appellant

The information provided to this court by the appellant concerning his family is different from that provided to the judges below. They were told that he was a single father with two children, here he says that he has two wives and eight children but

that since being in prison he has lost contact with them all. What ever the true situation these are peripheral matters when considering sentence in a serious case such as this.

His main point before this court is that the judges ought to have ordered the sentence to commence immediately and not at the conclusion of his sentence then being served. He says that the six year sentence with the additional sentence then being served is manifestly excessive for all the criminality involved. He pointed out that at the time of the instant trial he was already serving a sentence of seventeen months and not the fourteen months referred to by the judges in their reasons.

We have now seen the court records and he is correct. The reason is that in addition to his fourteen month sentence at the same time he was ordered to serve three months consecutive in default for not paying a fine, making seventeen months in all. The total length of his incarceration therefore is the equivalent of seven years and five months.

He was also under the impression that these sentences commenced on 27 November 2006. In this he was mistaken. The records show the commencing date is 23 November 2006.

The Public Prosecutor

DPP Mr Chan submits that the judges took into account all the mitigating circumstances, that their reasoning is sound and that the sentences passed are completely appropriate for the offences committed and the criminality involved.

He readily concedes that when sentencing in the present case the judges did so on the basis that he was serving fourteen months and not seventeen months. On this the judge's reasons for sentence are clear.

Conclusion

We agree with Mr Chan. As the judges said these are very serious offences. They involve public security. No doubt having regard to the seriousness of taking military weapons that he tried to make amends by cooperating with the police so that the arms and other property were all recovered. He was, after all, facing capital charges for taking them into his possession.

The appellant had no intention whatsoever of using the arms himself. However, it is clear from the agreed facts that others became involved. The seriousness of these crimes is not only the action or intention of those who are guilty of simple possession but more particularly the danger of those firearms falling into the hands of others who are intent on violence. These are not weapons which anyone would want for hunting or other sport.

Having regard to all the circumstances including the mitigation described in their carefully reasoned decision, we consider the sentences passed by the judges to be completely justified for those reasons.

There remains, however, the ambiguity about when the six year sentence began. The judges only had the fourteen month sentence in mind and that was the basis upon which they sentenced, we make it clear that the fourteen month sentence commenced on 23 November 2006 and that the sentences appealed against began at the end of that fourteen month sentence.

The Order

We order therefore:

1. That this appeal be dismissed.
2. That for the sake of clarity the sentences being served by the appellant commenced on 23 November 2006.
3. That he began to serve the present total sentence of six years at the end of the fourteen months sentence imposed on 23 November 2006 not at the end of the total sentence of 17 months which he was actually serving.

Power, P.

Mortimer, J.A.

Davies, J.A.