

Johari Bin Hj Jaya

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 3 of 2008)**

Power, P.; Mortimer and Chong, JJ.A.

10th May, 2008.

Appellant in person.

DPP Pg Nina Jasmine Bte Pg Hj. Bahrin for the Public Prosecutor.

Cases cited in the Judgment:

Cr. App. 10 of 2007, Cr. Appeals 11 of 2005 and 1 of 2006

Mortimer, J. A.:

1. The Appellant is 19 years of age. On 3 April 2008 he pleaded guilty before Her Honour Judge Lim in the Intermediate Court to 8 offences of theft in dwelling houses contrary to Section 380 of the Penal Code. He asked for 9 other similar offences to be taken into account. He was then already serving a total sentence of 3 years imprisonment imposed in the Magistrates' Court on 24 March 2008.
2. Judge Lim passed a total sentence of 7 years imprisonment for the 8 offences. This consisted of 14 months imprisonment consecutive on each of the first 6 charges and similar but concurrent sentences on the remaining 2.
3. He now appeals against the total sentence of 7 years on the grounds that it was manifestly excessive.
4. The effect of the combined sentences imposed by both Courts is that the Appellant is now serving a total sentence of about 7 years and 1 month. The reason is that the 7 year sentence was ordered to commence on 3 April 2008 whereas the Magistrates' Court ordered the sentence of 3 years to run from 8 March 2008. After the 3 April therefore the Magistrates' Court sentence is being served concurrently.
5. The 8 offences of theft in dwelling houses with which we are particularly concerned took place between 7 December 2006 and 13 March 2007. Each offence was committed with others. Typically the appellant and his co-accused were driven to the targeted house where the appellant, usually accompanied, broke in. The driver would keep look out outside. Most of these offences took place late in the evening or in the night. In each any valuable property easy to dispose of was taken. This property included televisions; radios; electrical goods and computers; money and jewellery. Much of the property was sold and the proceeds shared.

6. The 9 similar offences taken into account were committed between 18 January 2007 and 13 March 2007.
7. For the 8 offences which are the subject of the appeal the Appellant was originally charged on 22 March 2007 in the Magistrates' Court and remanded in custody. However, the case was later remitted to the Intermediate Court and on 16 April 2007 he pleaded not guilty and was released on bail.
8. The 9 offences for which the Defendant was sentenced in the Magistrates' Court took place between 8 December 2007 and 28 February 2008. They were all committed while he was on bail. They comprised 6 thefts in dwelling houses and 3 associated offences of causing damage contrary to Section 427 and Section 34 of the Penal Code.
9. DPP Nina Jasmine has helpfully prepared a list of the offences. With the 9 offences taken into account he committed 23 offences of thefts in dwelling houses and 3 associated offences of causing damage between 7 December 2006 and 28 February 2008.
10. The Appellant submits that we should reduce the sentence of 7 years on the basis that it is a manifestly excessive sentence having regard to his youth. He is only 19 years of age.
11. In considering his submissions we turn to Cr. App. 10 of 2007 which we heard last November. This concerned the appellant's co-accused Mohammed Noh. Noh had been sentenced on 4 separate occasions in front of 4 separate Courts for his part in this series of offences. He had committed a total of 33 many of which were on bail. He was 23 years old and we allowed Noh's appeal reducing the total sentence for his criminality to 8 years and 2 months.
12. In that appeal we referred to the sentencing difficulties faced by Judges when a long series of offences is not dealt with in front of the same judge. However, in the instant appeal where the Appellant was already serving 3 years imprisonment for part of the series Judge Lim was mindful of our earlier decision and she adjusted the total sentence to reflect the overall criminality by ordering the sentence to commence immediately.
13. The total of 7 years and 1 month after guilty pleas involves a starting point of about 10½ years. This is a very heavy sentence for a 19 years old youth even though he has already amassed a catalogue of crime. We must ask ourselves whether this very heavy sentence is in all the circumstances manifestly excessive.
14. Although the offences committed on bail are not directly concerned in this appeal the Judge had to consider the overall criminality to assess the totality which the appellant ought to serve. Without overlooking the remorse indicated by his pleas the commission of offences on bail demonstrates contempt for the Court and indicates the appellant's determination to profit by more crime whilst free to do so. Furthermore, they were all serious, planned, persistent, professional and no doubt profitable. Offences of this kind are prevalent in Brunei and cause great distress to the victims. As we said in *Noh's case* (Cr. App. 10 of 2007) at paragraph 13:

“It is inevitable that even in the case of this young man a heavy deterrent sentence will be passed.”

See also Cr. Appeals 11 of 2005 and 1 of 2006 where the court observed:

“We have been reminded of sentences passed in other cases. These show that offences of house breaking are prevalent. There are often committed during the day when householders are out at work so their houses are an easy target. Such offences cause immense distress, heavy deterrent sentences are called for.”

15. In the present appeal the circumstances show that a heavy deterrent sentence is called for even in the case of a person as young as the Appellant. He is already an experienced criminal in this type of crime.
16. For these reasons we consider that HHJ Lim was justified in passing this heavy sentence. The appeal is dismissed.