

Rosley Bin Dagang

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 13 of 2023)**

Steven Chong, C.J.
25 September 2023

Criminal law – Drug consumption – Second offender – Minimum sentence

Appellant In Person.
DPP Siti Khalillah Hj Hussin for Respondent/Public Prosecutor.

Cases cited:

Mohd Rosdy Bin Abdullah v Public Prosecutor [2001] 1 JCBD 186
R v Ingham (3 October 1974)(Court of Appeal (Crim Div), UK)

Steven Chong, C.J. (ex tempore):

On 5 June 2023 in the Magistrate’s Court the appellant pleaded guilty to the charge of consuming methylamphetamine, a Class A controlled drug, contrary to section 6(b) of the Misuse of Drugs Act.

Senior Magistrate Azrimah Binti Haji Abdul Rahman sentenced the appellant to 3 years’ imprisonment.

The appellant appeals against that sentence.

Briefly stated the facts were that on the morning of 20 July 2022 at a house in RPN Bukit Beruang, Tutong, the appellant and two others were arrested by narcotics officers on suspicion of involvement in drug related activities. The appellant’s urine sample obtained from him after arrest was analysed and found to contain the Class A controlled drug methylamphetamine. He was previously convicted of drug consumption in contravention of Section 6(b) of the Misuse of Drugs Act in 2006 and was fined \$1,500.

The prior conviction of the appellant triggered the operation of section 29(3A) of the Misuse of Drugs Act which prescribes a mandatory minimum sentence of 3 years' imprisonment for a second or subsequent offender.

A long lapse between convictions, by itself, does not justify the non-imposition of the mandatory minimum sentence: see *Mohd Rosdy Bin Abdullah v Public Prosecutor* [2001] 1 JCBD 186. Therefore, the Senior Magistrate cannot be faulted for imposing the sentence of 3 years' imprisonment notwithstanding the lengthy gap between the convictions.

The appellant is aged 54 and his appeal against the sentence imposed is on the ground that it will cause hardship to his wife and children who are dependent on him. This is also not a factor which can affect what would otherwise be the right sentence because it is often the case that the imprisonment of an offender will cause hardship to his family: see *R v Ingham* (3 October 1974)(Court of Appeal (Crim Div), UK).

For these reasons the appeal is dismissed.

DATO SERI PADUKA STEVEN CHONG
Chief Justice