

Duraman Bin Haji Japar

AND

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No. 17 of 2024)

Muhammed Faisal Bin PDJLD Kol (B) DSP Haji Kifli, J.C.

Date of Ruling: 1st March 2025

Headnote: Criminal Appeal – Appeal against Magistrate’s sentence – manifestly excessive and Magistrate failed to consider – all mitigating factors – Magistrate’s sentence appropriate – Appeal dismissed.

Mr Haji Daud Bin Haji Ismail of Messrs Daud Ismail for the Appellant.
DPP Shamshuddin Bin Hj Kamaluddin for the Public Prosecutor.

Cases cited:

Raja Izzuddin Shah v. Public Prosecutor (1979) 1 MLJ 270

Hj Assim Bin Ali v. Public Prosecutor (Criminal Appeal No. 9 of 1990)

Public Prosecutor v. Abdul Jaman Bin Yusof (Criminal Appeal No. 36 of 2010)

Zulkifi bin Haji Talip (Criminal Appeal No. 19 of 2022)

Mohd Shah Nurul Ridzuan bin Haji Maiddin (Criminal Appeal No. 18 of 2022)

Statutes:

Section 6(a) of the Prevention of Corruption Act, Chapter 131

Section 172 of the Criminal Procedure Code

RULING

Muhammed Faisal, J.C.:

Background

1. The Appellant was charged with two counts under Section 6(a) of the Prevention of Corruption Act, Chapter 131. He initially pleaded not guilty on 11 January 2021 and claimed trial.

2. On 25 June 2024, during the course of the trial, the Appellant pleaded guilty to one charge. The second charge was subsequently withdrawn under Section 172 of the Criminal Procedure Code.
3. On 19 August 2024, the Magistrate sentenced the Appellant to 12 months' imprisonment. The sentence was derived as follows:
 - A starting point of 18 months.
 - Reduction to 16 months for the guilty plea at mid-trial.
 - Further reduction to 12 months due to delay in the prosecution.
4. The Appellant has now appealed against the sentence, arguing that it is manifestly excessive and that the Magistrate failed to consider certain mitigating factors.

Appellant's Grounds of Appeal

5. The Appellant filed two principal grounds of appeal:
 - That the 12-months' sentence was excessive considering his mitigating circumstances.
 - That the Magistrate failed to adequately consider several mitigating factors, which should have resulted in a lower sentence.
6. The Appellant highlighted the following mitigating factors, which he contended were not properly considered:
 - His guilty plea.
 - His status as a first-time offender.
 - His personal and family circumstances.
 - His excellent employment record.
 - The circumstances leading to the offence.
 - His full cooperation with authorities, including admitting his involvement and assisting in the prosecution of his superior.
 - The delay in prosecution, which prolonged the trial for several years.

7. The Appellant relied on *Raja Izzuddin Shah v. Public Prosecutor (1979) 1 MLJ 270*, where the court held that mitigation pleas should not be disregarded lightly and must be given due consideration. The Appellant argued that the Magistrate failed to fully assess his personal circumstances and cooperation with authorities, which warranted a lower sentence.
8. He further cited *Hj Assim Bin Ali v. Public Prosecutor (Criminal Appeal No. 9 of 1990)*, where the court found that defendants who assist authorities in investigating and prosecuting other offenders should be given substantial sentence reductions. The Appellant contended that his identification of voices in audio recordings and willingness to testify against his superior were significant factors that should have led to a greater reduction in sentence.
9. Additionally, he cited *Public Prosecutor v. Abdul Jaman Bin Yusof (Criminal Appeal No. 36 of 2010)*, where the court reduced a sentence due to long delays in prosecution. The Appellant argued that the four-years' delay in his case should have resulted in a more substantial reduction than what was granted by the Magistrate.

Prosecution/Respondent's Position

10. The Respondent opposed the appeal, arguing that the 12-months' sentence was appropriate given the nature of the offence and the sentencing principles applied.
11. The Respondent emphasised that:
 - The Magistrate correctly started at 18 months, in line with *Zulkifi bin Haji Talip (Criminal Appeal No. 19 of 2022)*, where the court held that corruption undermines the rule of law and that custodial sentences should be imposed to deter corruption. The Respondent argued that reducing the sentence further would send the wrong message about the seriousness of corruption offences.
 - The one-tenth reduction for a guilty plea at **mid-trial** was properly applied, following *Mohd Shah Nurul Ridzuan bin Haji Maiddin (Criminal Appeal No. 18 of 2022)*, where the court found that guilty pleas entered mid-trial should receive only a minimal reduction compared to early guilty pleas.
 - A four-months' reduction was granted due to delay in prosecution, which the Respondent contends was generous. The Respondent pointed out that while delays occurred, they were not solely attributable to the prosecution.

12. The Respondent argued that corruption cases require strong deterrence, and lowering the sentence further would undermine public trust in the justice system.

Court's Findings and Decision

13. Having considered both submissions, I am of the view that the 12-months' sentence imposed by the Magistrate was fair and appropriate, and I find no basis for appellate intervention.

14. Starting Point of 18 Months: I agree with the Magistrate's approach in selecting 18 months as the starting point, considering the serious nature of the offence.

15. Guilty Plea Reduction: The one-tenth discount for a mid-trial guilty plea is well-founded under *Mohd Shah Nurul Ridzuan bin Haji Maiddin* and was correctly applied.

16. Reduction for Delay: While I acknowledge the need for sentencing courts to consider prolonged trial delays, I find that a three-months' reduction rather than four months would have been more appropriate. However, this does not significantly affect the overall fairness of the sentence imposed.

17. Consideration of Mitigating Factors: While not all mitigating factors were explicitly mentioned in the sentencing decision, I am satisfied that the final sentence reflected a balanced assessment of all relevant circumstances. The Appellant's first-time offender status and good employment record were inherently considered within the reductions granted.

18. Public Interest and Deterrence: The offence under Section 6(a) of the Prevention of Corruption Act is serious, and any further reduction in the sentence would fail to reflect the gravity of the charge. A sentence lower than 12 months would dilute the deterrent effect and set an undesirable precedent.

Conclusion

19. It is my conclusion that the Magistrate correctly applied the law and principles of sentencing and that the 12-months' sentence is not manifestly excessive. The appeal lacks merit and is accordingly dismissed.

20. The sentence of 12 months' imprisonment is upheld and the appeal dismissed.

MUHAMMED FAISAL BIN PDJLD KOL (B) DSP HAJI KEFLI
Judicial Commissioner