

**Kasmee Bin Karim**

AND

**Public Prosecutor**

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**(High Court of Brunei Darussalam)  
(Criminal Motion No. 1 of 2025)**

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

**Date of Ruling: 8<sup>th</sup> April 2025**

*Headnote – Criminal law – appeal against Magistrate’s sentence- S.6(b) Misuse of Drugs Act  
CAP 27 – 2<sup>nd</sup> offender – considerable length of time between convictions – Magistrate  
imposed the minimum sentence of 3 years after guilty plea*

Appellant In Person.

DPP Pg Hjh Azmeena and PO Jordan Tiah Teck Chiun for Public Prosecutor.

**Cases cited:**

*Mohd Rosdy bin Abdullah v Public Prosecutor* [2001] JCBD 167

*Matusin bin Haji Abdul Rahman v Public Prosecutor* [Crim Appeal No.51 of 2010, High  
Court]

*Rosli bin Hj Minggas v PP* [2006] JCBD 51

**Statutes:**

Section 6(b) of the Misuse of Drugs Act, Chapter 27

Section 29 of the Misuse of Drugs Act

Section 29(3A)(a) of the Misuse of Drugs Act

Section 263 of the Criminal Procedure Code

**RULING**

**Muhammed Faisal, J.C.:**

**Introduction**

This is an appeal by the Appellant, Kasmee bin Karim, against the sentence imposed by the Magistrate's Court on 24 December 2024. The Appellant pleaded guilty to one charge under section 6(b) of the Misuse of Drugs Act, Chapter 27, for consuming a controlled drug, namely

Methylamphetamine. He was sentenced to three years' imprisonment, which is the prescribed minimum term for a second or subsequent offender. The Appellant now appeals the sentence, arguing that it is excessive in light of the circumstances of the case.

### **Background and History of the Case**

The facts are largely undisputed. On 7 June 2023, the Appellant was detained by officers of the Narcotics Control Bureau (NCB) while seated in a vehicle at Jalan Kelugus. Though a body search yielded no drugs, the Appellant was escorted to the NCB office for urine testing. The urine sample, properly sealed and submitted to the Department of Scientific Services, tested positive for Methylamphetamine. He was not authorised to consume such substances under the law. This resulted in a charge under section 6(b) of the Misuse of Drugs Act.

The Appellant has a prior conviction under the same section, recorded on 14 February 2005. The pre-sentence report indicated persistent drug use, continued association with drug users, and a lack of insight into his offending. The Magistrate, having considered these factors along with the statutory requirements, imposed the minimum sentence of three years' imprisonment pursuant to section 29 MDA.

### **Submissions by the Appellant**

The Appellant appeared in person and made an oral plea for leniency. He expressed deep remorse for his actions, stating that his time in prison had led to reflection and regret. He was particularly emotional when describing the hardship faced by his wife and seven children, including a two-year-old child currently under the sole care of his wife. His eldest child, aged 19, is pursuing culinary studies at IBTE Serusop, while the others are in secondary and primary school.

The Appellant, a Malaysian from Miri, Sarawak, is married to a Bruneian citizen. He has been residing in Brunei and was self-employed in car repair work prior to his arrest. He pleaded for compassion from the Court, stating that he wished to return to support his family and engage in charitable work at the mosque. He also gave a solemn promise not to reoffend in Brunei Darussalam.

He further highlighted the long lapse of time—nearly two decades—between his previous conviction and the present offence, suggesting that this gap showed that he was not a habitual offender and should be given a second chance.

### **Submissions in Reply by the Respondent**

The Respondent opposed the appeal, submitting that the sentence imposed was not only lawful but appropriate in light of the statutory framework and the Appellant's conduct. It was emphasised that under section 29 of the Misuse of Drugs Act, a second or subsequent offender is liable to a minimum sentence of three years' imprisonment and that the Magistrate had no discretion to impose a lesser sentence unless special reasons were shown under section 263 of the Criminal Procedure Code.

Citing *Mohd Rosdy bin Abdullah v Public Prosecutor* [2001] JCBD 167 and *Matusin bin Haji Abdul Rahman v Public Prosecutor* [Crim Appeal No.51 of 2010, High Court], the Respondent argued that a long interval between convictions does not, on its own, justify leniency. The Court in those cases held that the statutory minimum must still apply unless the offender could point to truly extenuating circumstances. No such circumstances were found in this case.

In *Mohd Rosdy* the Court of Appeal stated:

*“Chong, J. (as he was then), came to the conclusion that a mere gap of 5 years between the two convictions was not of itself sufficiently to justify the exercise of the discretion not to impose the minimum sentence, but whet on to consider whether or not all the circumstances of this case justified the use of section 263. He thought they did not and that the prescribed minimum sentence should be imposed.*

*We entirely agree that he took the correct course we are satisfied that there was no ground for the exercise of the discretion in the appellant favour. Therefore, we cannot interfere with the sentence impose and the appeal must be dismissed.”*

In *Matusin*, Hairol Arni Majid J. (as he was then) stated:

*“As far as the sentences are concerned, I note there is a gap of some 23 years between his first conviction and the present one. In *Rosli bin Hj Minggas v PP* [2006] JCBD 51 and *Mohd Rosdy bin Abdullah v PP* [2001] 1 JCBD 186, a lapse of over nine years and five years respectively between the appellant’s conviction is not a basis to set aside the conviction or to impose the provision of section 263 of the criminal procedure code chapter seven. I believe the appellate is a drug user in that even at the sentencing hearing he was caught positive with missile amphetamine in his urine.*

*Senior Magistrate Faisal sees no extenuating circumstances to exercise his discretion for a bond over the appellant I entirely agree that he took the correct course and the offences warrant a minimum custodial sentence. Therefore, the appellant appeal against conviction and sentence is dismissed.”*

Further, the Respondent pointed to the findings of the pre-sentence report, which noted the Appellant’s recent drug use in October 2024 and his continued justification of such use. This, according to the Respondent, demonstrated a lack of genuine remorse or rehabilitation and justified the Magistrate’s refusal to consider probation.

## **Decision**

The Court does not take lightly the difficult personal circumstances facing the Appellant. His heartfelt plea, his remorse, and the burden borne by his wife and seven children—particularly the youngest, still a toddler—are deeply noted. The Court is sympathetic to his desire to reform and resume his role as a husband, father, and contributing member of the community.

However, the sentencing framework for drug offences is deliberately strict. It is clear, through section 29(3A)(a) of the Misuse of Drugs Act, that repeat offenders must face a minimum sentence of three years' imprisonment. Courts have limited discretion to depart from this mandate unless truly special reasons are shown. Unfortunately, personal hardship—however compelling—is not sufficient to displace the statutory minimum, especially in the context of repeated drug offending.

While the Court wishes the Appellant the strength to rebuild his life after serving his sentence, the society requires that individuals also accept the consequences of their choices. The Magistrate's decision to impose the minimum sentence was both correct and appropriate, and this Court finds no reason to interfere.

**Order**

The appeal is accordingly dismissed. The sentence of three (3) years' imprisonment imposed by the Magistrate is hereby affirmed.

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