

Rosmali Bin Haji Omar

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 28 of 2022)**

Steven Chong, C.J.
30 January 2023

Criminal law – Theft of mobile phones – Multiple offences – Sentence

Appellant In Person.
PO Syazwani Binti Jumat for Public Prosecutor.

Case cited:

R v Ingham (3 October 1974) (Court of Appeal (Crim Div), UK

Steven Chong, C.J.:

On 16 November 2022 in the Magistrate’s Court before Senior Magistrate Azrimah Binti Haji Abdul Rahman the appellant was convicted of four theft charges under the Penal Code: two charges contrary to section 379 (1st and 4th Charges) and two charges contrary to section 380 (2nd and 3rd Charges).

The total sentence imposed was one year and 10 months’ imprisonment made up of 10 months on each of the section 379 charges and one year on each of the section 380 charges, the sentences on the 1st and 2nd Charges concurrent but consecutive to the concurrent sentences on the 3rd and 4th Charges.

In summary the essential facts were that on four separate occasions in February and August 2021 the appellant either with his girlfriend or a friend went to two foodstalls and two shops at Rimba, Kumbang Pasang and Kiulap where he stole a total of four mobile phones which been left unattended on tables by their owners.

The appellant has three prior convictions for theft in 2006, 2009 and 2010 and he was sentenced to imprisonment for 3 months, 4 months and 2 months respectively.

In assessing sentence the Senior Magistrate considered: (1) the appellant had been convicted after a trial and was therefore not entitled to a discount in sentence afforded for a guilty plea; (2) the importance of imposing a deterrent sentence to protect the public; and (3) the custodial sentences imposed in cases of this nature ranging from 6 months to 2 years.

The appellant is aged 54, unemployed and appears to be estranged from his wife. He appeals for his sentence to be reduced primarily on the ground that his elderly mother of 80 and his three children who are still in school will suffer hardship without his support. Another ground of appeal advanced by the appellant is that his prison sentence will disrupt his plan to marry his girlfriend this year.

There is no merit in the appeal.

It is often the case that the imprisonment of an offender will cause hardship to his family but it cannot be one of the factors which can affect what would otherwise be the right sentence: *R v Ingham* (3 October 1974) (Court of Appeal (Crim Div), UK).

The disruption to the appellant's marriage plan occasioned by his custodial sentence is also no basis to interfere with the sentence.

Having regard the appellant was convicted after a trial, his commission of four thefts within a span of seven months and his previous convictions for similar offences, the sentence of imprisonment in totality of one year and 10 months is neither excessive nor wrong in principle.

The appeal is dismissed accordingly.

DATO SERI PADUKA STEVEN CHONG

Chief Justice