

Muhammad Khairi bin Haji Md Daud

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 3 of 2021)**

Hj Abdullah Soefri bin POKSM DSP Hj Abidin, JC

14th July 2021

Criminal Law --- whether drug rehabilitation order properly made --- section 29(4) of the Misuse of Drugs Act.

Appellant In Person.

DPP Muhammad Qamarul Affyian bin Abdul Rahman for Respondent/Public Prosecutor.

Case referred to:

Abidin bin Haji Mamum and PP (Criminal Appeal No.13 of 2017)

JUDGMENT

Hj Abdullah Soefri, JC:

1. This is an appeal against the Magistrate decision for rehabilitation at Rumah Al-Islah.
2. The appellant is appealing for the said order to be changed and for him to be placed under supervision so that he can continue to work.
3. The appellant on 11th November 2020 pleaded guilty to a single charge under section 6(b) of the Misuse of Drugs Act, Chapter 27.
4. The Magistrate below imposed a sentence of a fine of \$1,500 in default of 3 months and was given a grace period until 13th February 2021 to pay the fine and was also ordered to undergo a re-urine.
5. The appellant's urine sample was collected on 11th November 2020 after he was examined by a medical officer at RIPAS Hospital.
6. Subsequently, on analysis the appellant's urine sample was found to contain methylamphetamine and the medical officer gave his opinion that treatment and rehabilitation at an approved institution would be appropriate.

7. The appellant is 33 years old and single. He informed this court that he is employed and thus, this is the ground of his appeal to change the order of rehabilitation to a supervision order so that he could continue with his employment for his future.

8. Section 29(4) of the Misuse of Drugs, Chapter 27 provides:-

“(4) where any person is convicted of any offence under Part II, the court shall consider a report of a Government medical officer and if the court is satisfied that it is necessary for such person to undergo treatment or rehabilitation or both at an approved institution, the court shall in addition to any punishment it may lawfully impose make an order requiring that person to be admitted as a resident to an approved institution for the purpose of such treatment or rehabilitation or both”.

9. On 15th April 2021, the appellant was ordered to undergo rehabilitation at Al-Islah.

10. The Magistrate was correct after having had taken into account the medical report and in the circumstances necessary for the appellant to undergo rehabilitation pursuant to section 29(4) of the Misuse of Drugs and this is to remain as the reason to change to supervision cannot be considered to be a good reason.

11. As stated by Dato Seri Paduka Steven Chong, in ***Abidin bin Haji Mamun and Public Prosecutor in High Court Criminal Appeal No.13 of 2007***:-

“Rehabilitation should not be considered as punishment but rather as an opportunity for a drug offender to turn away from drugs which would be of benefit to him, his family and the community”.

12. Before I take my leave, I would like to touch on the issue of the appellant’s previous convictions. Appellant was convicted in March 2007 for a similar offence and also a charge under section 6(a) of the Misuse Drugs Act to which he was released on a bond of good behaviour. The Magistrate below did not consider it to be a previous conviction.

I would like to highlight that if a person is imposed and released on bond for good behaviour after a conviction, as in this case, the case that he committed in 2017 and convicted for offence under section 6(b) Misuse of Drugs Act should be a second conviction.

13. The appeal is dismissed.

HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN
Judicial Commissioner