

Uzaini Bin Morni

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 7 of 2025)**

Haji Abdullah Soefri bin POKPSM DSP Haji Abidin, J.C.
2nd August 2025

Headnote: Criminal Law – Appeal against sentence imposed under section 146(1)(d) of the Excise Order 2006 – Extension of grace period – second offender – Appeal dismissed.

Appellant/Defendant In Person.
DPP Jordan Tiah Teck Chiun for the Public Prosecutor.

Cases cited:

Norkaidah bte Abu Bakar v Public Prosecutor [High Court of Brunei Darussalam Criminal Motion No. 10 of 2014]

Rosani binti Rabaha (A1) v Public Prosecutor, Rosni Binti Rabaha (A2) v Public Prosecutor [High Court of Brunei Darussalam] (Criminal Appeal No. 14 of 2013) and (Criminal Appeal No. 15 of 2013)

Chia Kah Boon vs P.P (1999) 4 SCR 72.

RULING

Haji Abdullah Soefri, J.C.:

This is an appeal by the Appellant, hereafter known as the Defendant against the sentence imposed on him by the Magistrate's Court on 10th February 2025 following a conviction upon his own guilty pleas to the following charge:

Charge

That you, on the 06th day of June 2024, at about 1045hrs, found underneath front's passenger seat of the vehicle registration No. BAJ3607 model Toyota Vios at the vicinity of Maritime and Port Authority Kuala Belait in Brunei Darussalam, did knowingly have in your possession unexcisable goods, to wit:

1. 01 packet x 15 sticks of Era Black Menthol cigarettes

and you have thereby committed an offence under section 146(1)(d) Excise Order 2006 and punishable under section 146(1)(i)(a) of the same.

Grounds of Appeal

The Defendant filed a notice of appeal on 13/2/2025 and highlighted his grounds of appeal as follows:

1. To extend his grace period to 20 months.
2. Reason for extension is that he has financial difficulties as he has high family commitments.
3. His salary is only enough to pay for the rent, children school expenses, household expenses.
4. He is doing side job to pay the fine.
5. He wish for the grace period to be extended to 20 months as in his previous case.
6. He was remorseful.

In court during the appeal on 14/7/2025, the Defendant informed to this Court that he has a side job and wished to start paying in August 2025 and proposed to pay \$500 monthly for 20 months.

Prosecution Submission

The Prosecution submitted the sentence imposed by the Magistrate of \$10,000 in default of 10 months imprisonment is proper as that is the minimum sentence which the Court could impose for any person with second or subsequent convictions.

The Prosecution further submitted that the 10 months in-default imprisonment sentence is proper and is within the range of which the Court could impose under section 132 of the Excise Order 2006.

As to the grace period, the Prosecution submitted and highlighted various cases that granting an extension to settle the outstanding balance will not only impose financial burden on the appellant but also add administrative burden to the court as the court need to monitor compliance with the payment order. (*Norkaidah bte Abu Bakar v Public Prosecutor*) (High Court of Brunei Darussalam) (Criminal Motion No. 10 of 2014).

The Prosecution also submitted that high fine is a deterrence to the appellant and other importers *Rosani binti Rabaha (A1) v Public Prosecutor, Rosni Binti Rabaha (A2) v Public Prosecutor* [High Court of Brunei Darussalam] (Criminal Appeal No. 14 of 2013) and (Criminal Appeal No. 15 of 2013) and *Chia Kah Boon vs P.P* (1999) 4 SCR 72.

The Prosecution further submitted that family hardship is not an exceptional circumstances warranting a departure from the appropriate sentence.

Magistrate's Sentence

In sentencing, the Magistrate has taken into account as follows:

1. The Defendant had a previous conviction under the same section in 2020.

2. The fact that the Defendant reoffends again shortly after that shows that he is not deterred nor that he is remorseful and this further aggravate the case.
3. Defendant pleaded guilty at the earliest opportunity which in turn saved the court's and prosecution's time and expense. Other than that, there are no mitigating factor to be considered.
4. Defendant's request for a grace period as in his previous case which he informed to the court was 10 months was rejected by the Magistrate who stated as follows:

“Defendant you have to understand you were a first offender back then, you had a clean record thus the Court showed leniency to you. But you stand before the court today as second offender, I will not be able to show you the same leniency as afforded to you before. As such I will only grant a 6 months grace period from today...”

Court Analysis and Conclusion

The Defendant is appealing before this Court that the grace period to pay the fine that was imposed by the Magistrate below to be extended from 6 months to 20 months and he proposed to pay \$ 500 per month starting from August 2025.

I have analyzed the Magistrate sentence on how the total fine has been reached and I do not find fault in the total fine that he had imposed. The Magistrate has correctly taken all the aggravating and mitigating factors into account and had imposed the minimum sentence that is provided by the law which is a \$10,000 fine, which is the higher portion of the fine which is stipulated by the law for a second offender as in this case.

I also do not find any reason to interfere with the Magistrate's in default imprisonment sentence of 10 months as it is within the range of which the Court could impose under section 132 of the Excise Order 2006. The 10 months in-default sentence is proper.

As to grace period, we must look at the objective of sentencing.

Amongst the main objective of sentencing is deterrence. The sentence imposed must have an effect of deterrance so that the Defendant will be deterred to commit the offence or any other offence again. The effect on the society is that it will deter any would be offender to commit this offence or any other offence. In this matter, the main objective of sentencing is deterrent. In this case, fine of \$10,000 in default of 10 months for a pack of cigarette with 15 sticks is an indication that the offence is serious and this serves as a warning to others especially to a repeat offender that the Court will take this type of offences seriously.

The next part of the sentence is the grace period. Will the deterrent effect will be diluted if the grace period of paying fine is too long?

Not only that long grace period will dilute the deterrance effect, it will also give a wrong signal to the public about the seriousness of the offence.

As to this case, it is obvious that the Defendant is not deterred from committing such offence again as the earlier grace period given to him was too long to have any deterrent impact.

The Magistrate was correct when he commented that he could not show any leniency as the Defendant stood before him as a 2nd offender.

In other cases of the same nature, the Magistrate below from my observation impose a grace period between 6 to 8 months to a first offender. The 6 months' grace period given by the Magistrate would be the same as what is normally given to a first offender. I would like to suggest that for a second or subsequent offender a shorter grace period would be justifiable as correctly said by the Magistrate that second or subsequent offender should not be shown any leniency.

As to the family hardship or financial hardship, it is not an exceptional circumstances and should not to be taken as a factor in determining an appeal as in this case.

Conclusion

Having had said all the above, I do not find any reason why I should interfere with the Magistrate's decision and I therefore dismiss the appeal.

The Magistrate sentence and order stands and the Defendant is to pay all the fines by 11/8/2025 before 11a.m. Failure to fully settle the fine, the Defendant is to serve the default imprisonment sentence.

Appeal is dismissed.



HAJI ABDULLAH SOEFRI BIN POKSM DATO SERI PADUKA HAJI ABIDIN
Judicial Commissioner