

Public Prosecutor

AND

Hasmyzan Hamzi bin Haji Hashimi

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 46 of 2025)**

Harnita Zelda Skinner, Judge.

Date of Sentence: 10th November 2025

Criminal law – sentence- theft of property- section 454 of the Penal Code- commit house-breaking- section- section 379 of the Penal Code- did commit theft- section 447 of the Penal Code- commit trespass- deterrent sentence.

DPP Pg Azmeena for the Public Prosecutor.

Messrs Daud Ismail & Company for the Defendant.

Cases cited:

Public Prosecutor v Ak Harni bin Pengiran Afendy (Intermediate Court, Criminal Trial No. 30 of 2016)

Public Prosecutor v Mohammad Erwandy bin Emran (Intermediate Court) (Criminal Trial No. 60 of 2018)

Mohammad Yusrin bin Hj Mohammad v Public Prosecutor (CA No. 8 of 2013)

Ak Hj Radiman bin Pg Rahman v Public Prosecutor (Criminal Motion No.1 of 2015)

Mohammad Azri bin Ismail v Public Prosecutor (Criminal Trial No. 36 of 2009)

S E N T E N C I N G

Harnita Zelda Skinner, Judge:

Introduction:

1. The defendant, Hasmyzan Hamzi bin Haji Hashimi, a 39-year-old unemployed Bruneian male, pleaded guilty on 25th October 2025 to three charges under the Penal Code (Chapter 22), section 454, section 379 and section 447 of the Penal Code, Chapter 22. The Court has convicted him on his own plea.

Charges:

2. The charges preferred against the defendant are read as follows:

2.1. 1st charge:

“That you and another person, on the 4th day of September 2025, at about 0400 hours, at Jalan Utara Spg 405, F6/18A, Panaga, Kuala Belait, in Brunei Darussalam, in furtherance of your common intention, did commit house-breaking, by entering into the said building, in possession of one Victoriano Mario Miller, a building used as human dwelling, in order to commit an offence punishable with imprisonment, to wit, theft, and both of you have thereby committed an offence punishable under section 454 of the Penal Code, chapter 22 read with section 34 of the same”.

The offence carries an imprisonment for a term which may extend to 5 years and with whipping, and if the offence intended to be committed is theft, the term of imprisonment may extend to 10 years

2.2. Additional 2nd charge:

“That you and another person, on the 4th day of September 2025 at about 0400 hours, at Jalan Utara Spg 405, F6/18A, Panaga, Kuala Belait, in Brunei Darussalam, in furtherance of your common intention, did commit theft of properties, to wit,

- a) One bicycle (Rocky Mountain Altitude); and*
- b) One bicycle GT*

in possession of one Victoriano Mario Miller, and both of you have thereby committed an offence punishable under section 379 of the Penal Code, Chapter 22 read with section 34 of the same”

The offence carries an imprisonment for a term which may extend to 3 years and with fine.

2.3. Additional 3rd charge:

“That you, on the 9th day of September 2025 at about 0500 hours, at address No. 32, Spg 70, G9, Jalan Tengah, Seria, in Brunei Darussalam, a property in possession of one Haji Hassanol Fikri bin Haji Sudin, did commit criminal trespass by entering into the said property, with intent to commit an offence, to wit, theft, and you have thereby committed an offence punishable under section 447 of the Penal Code, Chapter 22”.

The offence carries an imprisonment for a term not exceeding 1 year and fine.

Brief facts:

3. The defendant admitted to the facts.

4. He was involved in two incidents of housebreaking and theft in September 2025. In the first incident, he and another individual entered a residence in Kuala Belait during the early hours of the morning, stealing bicycles, cash, personal identification documents, a MacBook laptop, a Sony headset and other belongings after gaining entry through a sliding window of the laundry room. CCTV footage captured their movements and investigations revealed that some of the stolen items were later sold, while the cash was spent on personal expenses. Most of the stolen items were eventually recovered and identified by the complainant. In a separate incident five days later, the defendant was caught on CCTV entering another residential compound in Seria and attempting to gain access through the back door with the intention of committing theft, but he left after noticing the presence of CCTV cameras. Police investigations subsequently led to his arrest.

Mitigation:

5. In plea in mitigation, the defence counsel urged the Court to consider a one third discount as the Defendant has pleaded guilty on all the charges saved the saved Court's time and lengthy trial. He admitted to the statement of facts.
6. The Defendant is 39-year-old married with two young children. He was once employed before as a waiter at Brunei Shell Petroleum Club, Seria in 2003 and Sheraton Hotel in 2007. From 2008 to 2009, he was employed as a worksite supervisor at Champion Technologies, Seria.
7. The Defence counsel told the Court the Defendant does not bear full responsibility and that he has played a secondary role which was influenced by another person at large. During the investigation, the Defendant has been cooperative in the investigation.

Previous convictions:

8. The defendant is not a first offender. His previous convictions dated back to the year 2010 for several theft related offences, other Penal Code offences and drug related offences.

Sentencing consideration:

9. In determining an appropriate aggregate sentence, reference is made to several comparable authorities involving offences under Section 454 of the Penal Code.
10. In *Public Prosecutor v Ak Harni bin Pengiran Afendy* (Intermediate Court, Criminal Trial No. 30 of 2016), the court adopted a starting point of 4 years and 6 months' imprisonment and 2 strokes for offences under Section 454, reducing the sentence to 3 years after a one-third discount for an early guilty plea. The defendant in that case had prior convictions for property-related offences.
11. In *Public Prosecutor v Mohammad Erwandy bin Emran* (Intermediate Court) (Criminal Trial No. 60 of 2018), the Defendant who has previous convictions for theft related offences took a

starting point of 5 years and 3 months for offences under Sections 454, which was reduced by one-third following guilty plea.

12. These cases demonstrate that housebreaking to commit theft is a serious and prevalent offence, which calls for a deterrent sentence in the public interest. Such offences cause significant hardship and financial loss to victims and are often committed during daylight hours when homes are unoccupied. As observed in *Mohammad Yusrin bin Hj Mohammad v Public Prosecutor* (CA No. 8 of 2013), the Court of Appeal emphasised that “trespass and theft from dwellings are serious offences” and cause “immense distress to homeowners whose privacy and property have been violated.”
13. In this case, several aggravating factors are evident. The Defendant is a repeat offender with prior convictions for similar property-related offences dating back to 2013, demonstrating a sustained pattern of habitual offending. He has also failed to exhibit any genuine remorse. The offence was committed while the occupants were at home, heightening the vulnerability of the premises and indicating an element of premeditation. The unlawful entry involved a private residential home, thereby intruding upon the security and privacy of the homeowners. In addition, for the 1st and amended 2nd charge, multiple valuable items were stolen, resulting in significant inconvenience and financial loss to the complainant. These factors collectively elevate the gravity of the offence and justify the imposition of a deterrent custodial sentence.
14. For the offence under section 379 of the Penal Code, I consider the case of *Ak Hj Radiman bin Pg Rahman v Public Prosecutor* (Criminal Motion No.1 of 2015), that Intermediate Court handed down a sentence of 18 months imprisonment for house trespass to commit theft offences.
15. For the offence under section 447 of the Penal Code, I have considered the case of *Mohammad Azri bin Ismail v Public Prosecutor* (Criminal Trial No. 36 of 2009), where the defendant was sentenced to 3 months’ imprisonment for criminal trespass. The High Court held that the sentence imposed by the Magistrate, when considered individually, could not be said to be excessive.

Sentence:

16. Having considered the penalty and aggravating factors, the court sentence as follows:

17.

17.1. **1st charge:**

A starting point of 6 years and 3 strokes, reduced by 1/3 for his guilty plea. A sentence of 4 years and 3 strokes.

17.2. **Amended 2nd charge:**

A starting point of 24 months reduced by 1/3 of for his guilty plea. A sentence of 16 months imprisonment.

17.3. **Amended 3rd charge:**

A starting point of 6 months, reduced by 1/3 of for his guilty plea. A sentence of 4 months imprisonment.

Totality principle:

18. Taking into account of the totality principle and to ensure that the sentence imposed are not manifestly excessive, the court hereby order 1st charge and amended 2nd charge to run consecutively to the amended 3rd charge. A total sentence of 4 years and 4 months and 3 strokes.
19. The sentence will run from date of his remand, 12th September 2025.
20. For all recovered items to be returned to the rightful owner.



HARNITA ZELDA SKINNER
Judge, Intermediate Court