

Public Prosecutor

AND

**Mohd Hamni Bin Mohd Edham (R1)
Mohd Noh Bin Mohd Edham (R2)**

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 10 of 2007)**

**Before: Power, P; Mortimer and Davies, JJ.A.
29th November, 2007.**

Respondent aged 23 pleaded to 33 offences of dishonesty on 4 separate occasions in front of different tribunals. 9 years and 11 months to be served reduced to 8 years and 2 months to reflect total criminality. This is a heavy deterrent sentence for a young man of 23 without previous offending. Undesirable to sentence on 4 different occasions for parts of the same series of offences.

DPP Pg Nina Jasmine Bte Pg Hj Bahrin for the Public Prosecutor/Appellant.
1st and 2nd Defendants/Respondents in person.

Case(s) cited in the Judgment:

Crim Apps 11 of 2005 and 1 of 2006

Mortimer, J.A.:

1. At the outset, DPP Pg Nina Jasmine, who appears for the Public Prosecutor, applied to withdraw her appeal against the First Respondent's sentence. For his part, the First Respondent applied to withdraw his appeal. We granted both applications and dismissed those appeals.
2. We turn to deal with the Appeals in the Second Respondent's (the Respondent's) case. The DPP contends that the total sentence in his case was manifestly too lenient whereas he appeals on the grounds that it was manifestly too severe.

The sentence passed

3. On 12 June 2007 the Respondent pleaded guilty to 7 offences of theft in a dwelling house contrary to Section 380 of the Penal Code before HHJ Lim in the Intermediate Court. These offences took place between 7 December 2006 and 13 March 2007. He admitted a further 12 similar offences which he asked to be taken into account. The Judge passed consecutive sentences of 14 months' imprisonment (reduced from 2 years) on each offence charged. A total of 8 years and 2 months.

Other offences

4. However, these offences were only part of the catalogue of crime which he had committed before his appearance on 12 June. At that time, he was already serving a sentence of 5 years and 6 months imposed on 5 May 2007 for 6 charges of theft in motor vehicles contrary to Section 379 of the Code. These he had committed between 7 March 2006 and 14 June 2006. He was on bail for these earlier offences when he committed the offences concerned in this Appeal.
5. No doubt because of this further offending, his bail was revoked on 21 March 2007. By then he had committed a further 6 offences contrary to Section 379 of the Code to which he pleaded guilty in the Magistrates' Court on 4 September 2007. For these he was sentenced to 21 months' imprisonment to start at the expiry of the 8 years and 2 months imposed on 12 June.
6. Finally, on 1 November 2007, he pleaded guilty to 2 offences, one of housebreaking under Section 457 and to an associated offence of mischief under Section 427 of the Code. For these offences, imprisonment of 2 years and 2 strokes and 6 months and 2 strokes concurrent were imposed to be served concurrently and with the sentences already passed.

Summary of offences

7. In summary, the Respondent admitted 12 offences of Section 379 theft, 20 offences of theft in a dwelling house contrary to Section 380, one offence of housebreaking contrary to Section 457 and an associated Section 427 offence of mischief.
8. For all these offences he was sentenced to serve a total to 9 years 11 months' imprisonment with 2 strokes.
9. A serious feature of the offences in the Appeal is that they were committed when the Respondent was on bail for other offences of dishonesty. This shows a complete contempt for the Court.

The Public Prosecutor's Appeal

10. The Public Prosecutor's Appeal was filed after the sentence in this appeal was passed on 5 June 2007 but before the sentence of 21 months consecutive on 4 September 2007. The consequence was that the DPP found it difficult to press the Appeal in the light of the total of 9 years 11 months to be served.

The Respondent's Appeal

The Respondent submits that in spite of the considerable criminality involved, he is only 23 years of age, he has recently married with one child, he pleaded guilty on every occasion and was further prepared to admit offences with which he was not charged so that they could be taken into account. In these

circumstances he submits that the total sentence of nearly 10 years is manifestly excessive.

Conclusion

11. On the other hand, these offences amount to a substantial catalogue of serious, persistent, planned and professional crime. Professional criminals, even if young, play for high stakes. If they are caught, they must expect heavy sentences.
12. By reason of the Respondent's multiple appearances in separate proceedings for this persistent criminality, no single Judge was able properly to take into account the whole criminality involved to assess an appropriate total sentence.
13. It is inevitable that even in the case of this young man, a heavy deterrent sentence will be passed. See *Crim Apps 11 of 2005 and 1 of 2006* in which we said:

"We have been reminded of sentences passed in other cases. These show that offences of housebreaking are prevalent. They are often committed during the day when householders are out at work so that their houses are an easy target. Such offences cause immense distress, heavy deterrent sentences are called for."
14. Nevertheless, a sentence after plea of 9 years 11 months involves a starting point of between 14 and 15 years. Even for a catalogue of offences like this, this is too heavy for a man of his age. On the other hand, a starting point in the region of 12 years would be justified. We have said previously that problems may arise with sentencing if offences faced by an accused person are brought before the Court piecemeal on different occasions before different Courts or Judges. (Also, see *Crim Apps 11 of 2005 and 1 of 2006*). This case is no exception. For the catalogue of offences he had committed before his bail was revoked in March 2007 he has been sentenced on 4 separate occasions.
15. Taking into account all the circumstances including the Respondent's age and his pleas together with the overall criminality of his behaviour which we have described, we consider the appropriate sentence to be the one passed on 12 June of 8 years and 2 months.
16. In consequence is necessary for this Court to consider the whole sentence of 9 years and 11 months which he is serving and yet the only sentence which is before us is 8 years and 2 months of it.
17. In order to achieve the overall totality of 8 years and 2 months, we allow the Appeal against this part of the sentence he is serving and order that the sentences on the first 5 counts he faces to be consecutive, 7 months of the sentence passed on the sixth count will be consecutive and 7 months concurrent. The remaining sentence on the 7th count he faced will be concurrent, making 6 years and 5 months in all.

18. We cannot interfere with the 21 months' sentence passed on 4 September 2007 which will still be consecutive. He will serve, therefore, a total of 8 years and 2 months. This remains a heavy deterrent sentence for a man of his age.

Power, P.

Mortimer, J.A.

Davies, J.A.