

Ridzwan Bin Haji Mansor

AND

Public Prosecutor

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 8 of 2007)

Power, P; Mortimer and Davies, JJ.A.
12th November, 2007.

Long delay partly due to negotiations which resulted in the Public Prosecutor dropping some charges and preferring a lesser charge to which the Appellant pleaded guilty. Not a late plea in the circumstances. Delay of over 4 years not Appellant's fault. Appellant entitled to usual discount for plea and some reduction for the excessive delay.

Mr. Mohd Shazale Hj Mat Salleh of Messrs. Mohd Shazale Salleh for the Appellant.
DPP Dyg Suhana Binti Hj Sudin for the Public Prosecutor.

Case cited in the Judgment:

Public Prosecutor v Awg Roslan Bin Mohammed Yunos (Cr App 6 of 2005).

Mortimer, J.A.:

1. On 15 May 2007 the Appellant pleaded guilty in front of Mr Commissioner Hairol to one charge of being in possession for trafficking of 20 grams of methyl amphetamine (a Class A drug) and he was sentence to 8 years' imprisonment and 7 strokes. This was an amended charge which originally alleged over 30 grams.

The Facts

2. On 31 December 2002 the Appellant was arrested in his car near the airport cargo terminal. He had B\$2,328 and MR100 on him. The officers took him to his house. There his sister was found to have his B\$73,900 on her, and his wife had 3 large packets of a mixture containing the drugs charged in her pocket. These drugs also belonged to him. Initially both the Appellant and his wife were charged but in due course the main charge against him was amended. At the same time lesser charges against him, and all charges against his wife, were dropped.

The Sentence

3. In passing sentence the Judge cited the guideline case of *Public Prosecutor v Awg Roslan Bin Mohammed Yunos* (Cr App 6 of 2005). For possession for trafficking of 20 grammes of methylamphetamine the guideline sentence after trial is 10 years and 8 strokes. The judge took into account in mitigation the Appellant's age of 36 years, the fact that he was married with 3 children, his plea and his previous good record. He did not say why he gave less than the usual discount for the plea. It may have been on the basis that it was late. He gave no weight to the 4 years delay. On delay he said:

"As regards the issue of delays, on record the case was fixed for Trial before another Judge and then had been various adjournment by both parties due to their non-availability and also to facilitate various representations made earlier by the Defence to the Public Prosecutor until the matter was fixed before me for Trial. The Defendant had been represented by Counsel all along and had as much to do in dictating the price (pace?) issue of this case. I can conclude that the delays had not been deliberate and through no fault of any of the parties."

The Appeal

4. Mr Shazale, who appears for the appellant, submits that the sentence was manifestly severe on 4 grounds. First that not sufficient discount was given for the plea; second, the judge failed to take into account the excessive delay from arrest to trial; and finally, he gave insufficient weight to the appellant's previous character and gave no deduction for the 30 days he was on remand.

Delay

5. There was considerable delay in bringing this case to Trial. The first appearance in the High Court to record the pleas was on 11 March 2004, 14 months after the arrest. On that occasion the Trial was set down for 22 November 2004. In November 2004 the Trial Judge was unable to sit and the Trial was re-fixed for April 2005. Thereafter between 14 April 2005 and 26 April 2007 on 7 occasions for various reasons the Trial was adjourned and re-fixed. Finally on 26 April 2007 the Trial was set down for 8 May 2007 when the Prosecution dropped all charges save the one to which the Appellant pleaded guilty. This led to him being sentenced on 15 May 2007.
6. Mr Shazale contends that if excessive delay is not the appellant's fault it is normally sufficient to merit a reduction in sentence even if no blame rests elsewhere. He cites Roslan's case where there was a 3 years' delay between the beginning and the end of the case. As this Court said:

"We appreciate that the Respondent was on bail but such delays must place an almost intolerable strain on an accused and cannot be countenanced."

7. On this basis he submits that the Judge ought to have given some discount to this Appellant when he finds himself starting a sentence of imprisonment about 4 ½ years after he was arrested. The Judge was in a better position than this Court can be to assess the reasons for delay as he was involved in the case at least from May 2005. His finding that the appellant was not at fault for this is significant.

The Plea

8. The usual discount given by the Court for an early plea is one third of the sentence. Following the guidelines of Roslan's case to which we have referred after plea the full discount would lead to a sentence of 6 years 9 months and 5 strokes. The question is whether apart from other mitigating features the Appellant ought to have had the full discount or one greater than that given.
9. Although he did not say so the Judge must have taken the view that the late plea did not entitle him to the full discount. This is within his discretion but the plea was only made after lengthy negotiations led to the dropping of lesser charges and a reduction in the amount of drugs charged in the main offence. In the circumstances he pleaded to this amended charge at the earliest opportunity. It follows that he is entitled to the usual discount. Further, the excessive delay in bringing the matter to trial was not the appellant's fault.

Conclusion

10. Accordingly the judge ought to have given some weight to the delay and more weight to the plea. There is nothing in the point that he ought to have given more weight to his clean record but it is usual to order that a period in custody on remand should count towards the sentence passed.
11. Taking all these matters into account we conclude that the sentence imposed was manifestly excessive. In these circumstances we allow the appeal, quash the sentence and substitute a sentence of 6 years and 6 months imprisonment, together with 5 strokes. The 30 days on remand will count towards the sentence.

Power, P.

Mortimer, J.A.

Davies, J.A.