

Hasmyzan Hamzi bin Haji Hashim

AND

Public Prosecutor



(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 9 of 2025)

Before: Steven Chong, C.J., Lunn, and Woolley, JJA.

Date of Hearing: 9th June 2026

Date of Judgment: 20th June 2026

Headnote: Criminal law – Housebreaking – Theft – Criminal trespass – Extensive antecedents comprising 18 previous convictions, including 11 theft-related offences – Individual sentences within established sentencing range – Offences committed against two separate victims on different occasions – Consecutive sentence appropriate – Neither individual sentences nor aggregate sentence excessive – Guilty plea taken into account by reduction of custodial sentence on 1st Charge- Corresponding reduction in sentence of whipping should also have been made – Appeal allowed to limited extent – Sentence of 3 strokes reduced to 2 strokes – Aggregate sentence varied to 4 years and 4 months’ imprisonment and 2 strokes.

Appellant in Person.

DPP Pengiran Hajah Nor 'Azmeena binti Pengiran Haji Mohiddin and DPP Radin Wafri bin Radin Sufri for Respondent.

Cases cited:

Mohammad Yusrin bin Haji Mohammad V Public Prosecutor [[2013] IJCBD 229

Mohd Zulaini bin Haji Saini v Public Prosecutor [Criminal Motion No. 27 of 2022]

Steven Chong, C.J.:

Introduction

1. On 10th November 2025, in the Intermediate Court, the appellant pleaded guilty to three charges under the Penal Code, namely: housebreaking, contrary to section 454 (1st Charge); theft contrary to section 379 (2nd Charge); and criminal trespass, contrary to section 447 (3rd Charge).
2. Upon the appellant's pleas of guilt, the Judge imposed an aggregate sentence of 4 years and 4 months' imprisonment, together with 3 strokes.
3. The present appeal is directed against the sentence so imposed.

Facts relating to the 1st and 2nd Charges

4. On 4th September 2025 at about 0500 hours, the complainant Victoriano Mario Miller, was asleep at his residence at Panaga, Kuala Belait, when he was awakened by his domestic helper, who informed him that items were missing from the garage. Inspection of the house revealed that a sliding window to the laundry room had been damaged and a number of items were missing. These included a purse containing a green identity card, a Visa card, and a driving licence all bearing the name Maria Antonella Sanguinetti, a KIA car key; and cash in the sum of \$43.00. Also missing were a school bag, a Macbook laptop, and a Sony headset.
5. The complainant further discovered that two bicycles, namely a GT bicycle and a Rocky Mountain Altitude bicycle, which had been kept in the garage were missing. He subsequently reviewed the CCTV footage, which showed an unidentified male person within the compound of the house carrying items. A police report was thereafter lodged.
6. Police investigations revealed that the appellant was involved in the offences. Investigations further established that, at about 0400 hours on 4th September 2025, the appellant and another person had gone to the complainant's residence in a Toyota Corolla. Upon arrival, they removed the GT bicycle from the garage and placed it in the vehicle before leaving the premises. They proceeded to a friend's house where they left the bicycle.
7. The appellant and his accomplice subsequently returned to the complainant's residence. On this occasion, the appellant gained entry into the house through the sliding window with the assistance of the other person. Once inside, the appellant removed the items earlier described. In addition, the appellant and his accomplice took the Rocky Mountain Altitude bicycle from the garage.
8. Thereafter, the appellant and his accomplice sold both bicycles and the Sony headset for a total sum of \$120.00. The appellant also gave the Macbook laptop to his brother. The stolen cash of \$43.00 was divided between the appellant and his accomplice and spent on personal expenses.
9. Subsequently, the following items were recovered: the green identity card, Visa card, and driving licence bearing the name Maria Antonella Sanguinetti, the KIA car key, the Macbook laptop, the Sony headset, and both bicycles. The remaining items were not recovered.

Facts relating to the 3rd Charge

10. On 9th September 2025 at about 0500 hours, the complainant, Haji Hassanol Fikri bin Haji Sudin, received a motion detection alert from the CCTV system monitoring his residence at Jalan Tengah, Seria. The complainant subsequently reviewed the CCTV recordings, which showed an individual within the compound of the house attempting to open the back door. A police report was thereafter lodged.

11. Police investigations led to the arrest of the appellant and established that, at the material time, the appellant had gone to the vicinity of the complainant's residence in a Toyota Corolla, which he parked at an unoccupied house adjacent to the complainant's property. The appellant then entered the compound and approached the back door with the intention of committing theft. He attempted to open the door but was unsuccessful. Upon noticing, through a window, that a CCTV camera was installed, the appellant immediately left the premises.

Previous convictions

12. The appellant has an extensive antecedent record. Between 2010 and 2020, he was convicted of 18 offences, of which 11 were theft-related. The remaining convictions comprise offences of drug consumption and possession, causing hurt, and obstruction of a public servant in the execution of his duties.

The Sentence

13. In determining the appropriate sentence, the Judge referred to several precedents of the Intermediate Court, as well as the observation of this Court in *Mohammad Yusrin bin Haji Mohammad V Public Prosecutor* [[2013] IJCBD 229, where it was stated at [232] that offences of trespass and theft from dwellings are serious in nature as they cause "*immense distress to homeowners, who feel that both their privacy and property have been violated.*"

14. The Judge adopted a starting point of 6 years' imprisonment and 3 strokes for the 1st Charge. In recognition of the appellant's plea of guilty, a full one-third reduction was applied to the custodial component of the sentence, resulting in a term of 4 years' imprisonment. However, no corresponding reduction was made to the sentence of whipping, which remained at 3 strokes. Consequently, the sentence imposed for the 1st Charge was 4 years' imprisonment and 3 strokes. We shall return to this apparent irregularity later in this judgment. For the 2nd Charge, the starting point of 2 years' imprisonment was similarly reduced by one-third to 1 year and 4 months' imprisonment. In respect of the 3rd Charge, the sentence of 6 months' imprisonment was reduced to 4 months' imprisonment on account of the plea of guilt.

15. Having considered the principle of totality, the Judge directed that the sentences imposed for the 1st and 2nd Charges were to run concurrently while the sentence imposed for the 3rd Charge was to run consecutively. The aggregate sentence was therefore 4 years and 4 months' imprisonment with 3 strokes.

The Appeal

16. The appellant appeals for a reduction in sentence principally on the basis of his personal and family circumstances. He submits that his wife and their two young children are financially dependent on him. His elder child, aged 5 years, has only recently commenced

schooling. He further states that his wife is unemployed and without any independent source of income, thereby placing the family in a difficult position during his incarceration.

17. The appellant also relies on what he contends are comparable cases in which sentences of 2 years' imprisonment with 2 strokes, and 3 years' imprisonment with 2 strokes, respectively, were imposed. He argues that there is a disparity between the sentences imposed in those cases and the sentence imposed in the present case.
18. Finally, the appellant expresses deep remorse for his offending conduct and assures the court that he will refrain from committing any further offences.
19. The Deputy Public Prosecutor ("DPP") relies on a number of decisions of this Court, including *Mohd Zulaini bin Haji Saini v Public Prosecutor* [Criminal Motion No. 27 of 2022], in which a starting point of 6 ½ years' imprisonment and 4 strokes for an offence of housebreaking contrary to section 454 of the Penal Code was reduced to 4 years and 4 months' imprisonment and 3 strokes on account of the offender's plea of guilty. The sentence in that case was upheld. The offender in *Mohd Zulaini* had previous convictions for four offences of theft and one offence of housebreaking.
20. The DPP submits, first, that the individual sentences imposed in the present case are appropriate having regard to the appellant's antecedents for theft-related offences dating back to 2010. Secondly, the DPP contends that the aggregate sentence is proper, bearing in mind that the offence forming the subject matter of the 3rd Charge was committed a mere five days after the commission of the offences relating to the 1st and 2nd Charges.

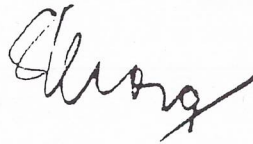
Decision

21. We acknowledge the appellant's difficult family circumstances, a situation regrettably not uncommon where an offender is sentenced to a lengthy term of imprisonment, with the inevitable consequence that his wife and children suffer hardship. However, these circumstances are not so exceptional as to warrant any reduction in sentence.
22. Having regard to the fact that the offences involved a degree of planning and deliberation; that the appellant returned twice within the same period to the first complainant's house to steal; that less than a week later he attempted to break into the second complainant's house to commit theft; and further, his lamentable antecedents for theft-related offences, we are of the view that neither the individual sentences imposed nor the aggregate term of imprisonment can be said to be excessive.
23. We are satisfied that the individual sentences imposed on each charge were well within the established sentencing range for offences of this nature. We are further satisfied that the aggregate sentence properly reflected the totality of the appellant's offending conduct. The offences were committed against two separate victims on different occasions. In those circumstances, the Judge was plainly correct in ordering that the sentence imposed on the 3rd Charge, which concerned the second victim, run consecutively to the concurrent sentences imposed on the 1st and 2nd Charges involving the first victim.

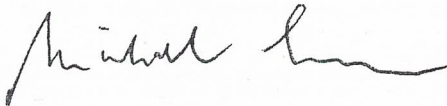
24. We commend the DPP for candidly acknowledging in her submissions that, although the Judge granted the appellant a one-third reduction in the custodial sentence in recognition of his plea of guilty, no corresponding reduction was made to the sentence of whipping. In our judgment, once the Judge had reduced the term of imprisonment on the 1st Charge by one-third to reflect the appellant's guilty plea, it followed, as a matter of principle, that a similar reduction ought also to have been applied to the sentence of whipping.

Conclusion

25. Accordingly, in relation to the 1st Charge, whilst we affirm the sentence of 4 years' imprisonment, we allow the appeal to the limited extent that the sentence of 3 strokes is reduced to 2 strokes. The aggregate sentence, taking into account the overall sentencing structure, is therefore varied to one of 4 years and 4 months' imprisonment together with 2 strokes.



DATO SERI PADUKA STEVEN CHONG, C.J.



LUNN, J.A.



WOOLLEY, J.A.

