

Public Prosecutor

AND

Mahmud Sulaiman Bin Hj Husin

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 10 of 2020)**

Steven Chong, C.J.
2 May 2020

Criminal law – Voyeurism – Guilty Plea – Young adult offender – Appropriate sentence.

PO HJh Atiyyah Azzahra Binti POKLSDSLJ Awang Haji Abas and DPP Nurul Fitri Binti Kiprawi for the Public Prosecutor/Appellant.
Respondent unrepresented.

Steven Chong, C.J.:

This is an appeal against sentence by the Public Prosecutor.

On 28 March 2020 in the Magistrate’s Court the Respondent pleaded guilty to the offence of voyeurism contrary to section 377 H (1) of the Penal Code and was sentenced to 2 months’ imprisonment.

DPP Hjh Atiyyah Binti Hj Abas submits that the sentence is manifestly inadequate.

I agree.

Briefly stated the facts were that on the afternoon of 26 March 2020 the complainant went to the female toilet at the Bumiputera Pekan Bangar Complex in Temburong (“the Complex”) to urinate. While she was using one of the toilets she “felt someone observing her” and looking up was shocked to see the Respondent looking down at her from the next toilet. She screamed and the Respondent ran away.

The complainant told her friends who had been waiting for her in the Complex about the incident and one of them apprehended the Respondent at the back of the building.

After arrest the Respondent admitted to the police that he had gone to the female toilet in the Complex, entered the toilet next to the one which the complainant was using and lifted himself up with his hands to peep at her for his sexual gratification.

The Respondent is aged 20 and works as a cleaner.

In determining sentence the Magistrate attached great weight on the Respondent being a “young offender” and said:

“I would have imposed a starting point of 6 months’ imprisonment if the offender is not a young offender. Taking into account the defendant’s age I am of the view that the starting point of 3 months is appropriate. I further reduce the sentence to 2 months for his guilty plea and clear record.”

The point to be made is that the Respondent is not a “youthful offender” who is defined as someone below 18 years old pursuant to section 2 of the Criminal Procedure Code. Generally, where youthful offenders are concerned the primary sentencing consideration should be rehabilitation. The Respondent is a young adult offender of sufficient maturity to appreciate the criminality of his act.

In my judgment the dominant sentencing consideration for this kind of offence which involves a serious violation of a woman’s privacy for the purpose of satisfying a sexual perversion must be deterrence. Public toilets must be safe for women to use.

The maximum sentence for this offence is 3 years’ imprisonment. A starting point sentence of 9 months is appropriate in the circumstances of the present case. Guilty pleas are to be encouraged, saving time and expense, and the usual one third discount to the starting point sentence for the early plea of guilt is warranted.

For the foregoing reasons I allow the appeal, quash the sentence of 2 months and substitute it with a sentence of 6 months.

DATO SERI PADUKA STEVEN CHONG
Chief Justice