

Erlina binti Yaakub

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 10 of 2022)**

Haji Abdullah Soefri bin POKSM DSP Haji Abidin, J.C.
22nd November 2022

Criminal law – Section 420 of the Penal Code – appeal against sentence – deceiving Pharmacy department – supply of Pethidine – nurse – for personal use – government monetary loss \$831.60 – imprisonment sentence reduced – appeal allowed

Cases referred to:

Ibrahim v The Queen (2016) NSWCCA 6

R v Wright (1997) 93 A Crim R 48

Benitez v R (2006) 160 Crim R 166

Vivi Yanti binti Hj Mohd Ali vs Public Prosecutor (HCCA No. 14 of 2016)

Haji Mohd Rozaiman bin Dato Haji Abd Rahman for the Appellant.
DPP Syafina binti Abdul Hadzid for the Public Prosecutor.

JUDGMENT

Haji Abdullah Soefri, JC:

This is an appeal by the Defendant against the sentence imposed by the Court below.

The Defendant was convicted by the Court below on her own plea for 6 charges under Section 420 of the Penal Code. The charges are as follows:

1st Charge

That you, on 6th May 2021, at Raja Isteri Pengiran Anak Saleha Hospital, in Brunei Darussalam, did cheat **Norhasidah Binti Abd Rahman**, a pharmacist at the Pharmacy Department by deceiving the said pharmacist into believing that the Radiology Department needed supply of **60 ampoules of 50mg Pethidine** for patients, a fact which you knew to be false, as the request for the said supply was never intended for patients but for your own personal use, and by such manner of deception, you have dishonestly induced the said pharmacist to deliver 60 ampoules of 50mg Pethidine to you which the

said pharmacist would not have done so had the said pharmacist not been deceived and you have thereby committed an offense punishable under section 420 of the Penal Code, Chapter 22.

2nd Charge

That you, on 11th May 2021, at Raja Isteri Pengiran Anak Saleha Hospital, in Brunei Darussalam, did cheat **Norhasidah Binti Abd Rahman**, a pharmacist at the Pharmacy Department by deceiving the said pharmacist into believing that the Radiology Department needed supply of **80 ampoules of 50mg Pethidine** for patients, a fact which you knew to be false, as the request for the said supply was never intended for patients but for your own personal use, and by such manner of deception, you have dishonestly induced the said pharmacist to deliver 80 ampoules of 50mg Pethidine to you which the said pharmacist would not have done so had the said pharmacist not been deceived and you have thereby committed an offense punishable under section 420 of the Penal Code, Chapter 22.

3rd Charge

That you, on 20th May 2021, at Raja Isteri Pengiran Anak Saleha Hospital, in Brunei Darussalam, did cheat **Norhasidah Binti Abd Rahman**, a pharmacist at the Pharmacy Department by deceiving the said pharmacist into believing that the Radiology Department needed supply of **80 ampoules of 50mg Pethidine** for patients, a fact which you knew to be false, as the request for the said supply was never intended for patients but for your own personal use, and by such manner of deception, you have dishonestly induced the said pharmacist to deliver 80 ampoules of 50mg Pethidine to you which the said pharmacist would not have done so had the said pharmacist not been deceived and you have thereby committed an offense punishable under section 420 of the Penal Code, Chapter 22.

4th Charge

That you, on 27th May 2021, at Raja Isteri Pengiran Anak Saleha Hospital, in Brunei Darussalam, did cheat **Norhasidah Binti Abd Rahman**, a pharmacist at the Pharmacy Department by deceiving the said pharmacist into believing that the Radiology Department needed supply of **80 ampoules of 50mg Pethidine** for patients, a fact which you knew to be false, as the request for the said supply was never intended for patients but for your own personal use, and by such manner of deception, you have dishonestly induced the said pharmacist to deliver 80 ampoules of 50mg Pethidine to you which the said pharmacist would not have done so had the said pharmacist not been deceived and you have thereby committed an offense punishable under section 420 of the Penal Code, Chapter 22.

5th Charge

That you, on 8th June 2021, at Raja Isteri Pengiran Anak Saleha Hospital, in Brunei Darussalam, did cheat **Lee Ying Yueh**, a pharmacist at the Pharmacy Department by deceiving the said pharmacist into believing that the Radiology Department needed supply of **60 ampoules of 50mg Pethidine** for patients, a fact which you knew to be false, as the request for the said supply was never intended for patients but for your own personal use, and by such manner of deception, you have dishonestly induced the said pharmacist to deliver 60 ampoules of 50mg Pethidine to you which the said pharmacist would not have done so had the said pharmacist not been deceived and you have thereby committed an offense punishable under section 420 of the Penal Code, Chapter 22.

6th Charge

That you, on 15th June 2021, at Raja Isteri Pengiran Anak Saleha Hospital, in Brunei Darussalam, did cheat **Norhasidah Binti Abd Rahman**, a pharmacist at the Pharmacy Department by deceiving the said pharmacist into believing that the Radiology Department needed supply of **60 ampoules of 50mg Pethidine** for patients, a fact which you knew to be false, as the request for the said supply was never intended for patients but for your own personal use, and by such manner of deception, you have dishonestly induced the said pharmacist to deliver 60 ampoules of 50mg Pethidine to you which the said pharmacist would not have done so had the said pharmacist not been deceived and you have thereby committed an offense punishable under section 420 of the Penal Code, Chapter 22.

The Defendant admitted and agreed to the Statement of Facts that were read to her which are as follows:

1. The Defendant is a 42-year-old, Bruneian, female. At the time of offence, the Defendant was working as a nurse at the Radiology Department at Raja Isteri Pengiran Anak Seleha (RIPAS) Hospital, in Brunei Darussalam. The Defendant had been working there for about 13 years.

2. As a nurse, part of her duties was:

a. To administer drugs to patients as prescribed by a Physician at the Radiology Department;

b. After administering drugs to patients, to fill in information including date, patient's name, BRUHIMS number, dosage of drug given, name of nurse giving the drug and Physician who prescribed the drug inside the Radiology Department Dangerous Drug Act (DDA) register book;

c. To check the balance of drugs left inside the Radiology Department locked cabinet labelled "DDA";

d. If balance of drugs is low, to request for more supply of drugs from the Pharmacy Department as instructed by a Physician at the Radiology Department; and

e. Prior to submitting a request to the Pharmacy Department, to make a request first through BRUHIMS and then write the request on the DDA register book. Thereafter, to bring the DDA register book to the Pharmacy Department for the pharmacist to check the said book before approving request made.

The Plan

3. Sometime in May 2021, the Defendant suffered from severe migraine and difficulty to sleep. To ease her pain, the Defendant had been using Pethidine drugs which she had obtained without consent from the Radiology Department DDA cabinet. Since the drugs were only authorised for patients, and to prevent anyone from noticing that the stock for Pethidine drugs at the cabinet were low, the Defendant came up with a plan to obtain the Pethidine drugs from the Pharmacy Department under the pretext that the Radiology Department needed more supply of Pethidine drugs.

4. The Defendant did so by creating fictitious requests to the Pharmacy Department. She would fill in the Radiology Department DDA register book with false information as those stated in paragraph 2(b) so as to make it look as if the drugs were needed for the use of patients at the Radiology Department. This way, when the Defendant wants to request for more supply of the said drug at the Pharmacy Department, the pharmacists who check the DDA register book would believe that the Radiology Department needed more supply of the said drugs. The Defendant's plan was also to do this every time she needed supply of the said drugs for her personal use and without anyone's knowledge.

For the 1st Charge

5. On 6th May 2021, the Defendant made a request for the Pharmacy Department to supply the Radiology Department with **60 ampoules of 50mg Pethidine**, with intent to use the drugs on herself. As planned, the Defendant had, prior to making the said request, filled in the Radiology Department DDA register book with false information to cheat the pharmacist into believing that the Radiology Department needed more supply of Pethidine drugs

6. The Defendant proceeded to make the request first through BRUHIMS and then wrote the said request on the DDA register book. The Defendant then brought the said register book to the Pharmacy Department where a pharmacist named **Norhasidah Binti Abd Rahman** then cross-checked the request made via BRUHIMS with the information available in the said register book

7. Once checked, and believing that the request made was for patients at the Radiology Department, the said pharmacist prepared the requested drugs for the Defendant to collect. Once prepared, the Defendant put her name and signature on the Pharmacy Department Collection Book before the said Pharmacist handed over the said drugs to the Defendant.

8. Thereafter, the Defendant brought the said drugs to the Radiology Department and then placed them inside the DDA cabinet, to which the Defendant had access whenever she needed to take the drugs for her own personal use.

9. None of the 60 ampoules of 50mg Pethidine given to her was for patients at the Radiology Department.

For the 2nd Charge

10. On 11th May 2021, the Defendant made another request for the Pharmacy Department to supply the Radiology Department with **80 ampoules of 50mg Pethidine**, with intent to use the drugs on herself.

11. Similarly, the Defendant had, prior to making the said request, filled in the DDA register book with false information to cheat the pharmacist into believing that the Radiology Department needed more supply of Pethidine drugs. The Defendant proceeded to make the said request using the same method as stated in paragraph 6.

12. Upon being checked by a pharmacist named **Norhasidah Binti Abd Rahman**, who believed that the request made was for patients at the Radiology Department, the requested quantity of Pethidine was handed over to the Defendant.

13. None of the 80 ampoules of 50mg Pethidine given to her was for patients at the Radiology Department.

For the 3rd Charge

14. On **20th May 2021**, the Defendant made another request for the Pharmacy Department to supply the Radiology Department with **80 ampoules of 50mg Pethidine** with intent to use the drugs on herself.

15. Similarly, the Defendant had, prior to making the said request, filled in the DDA register book with false information to cheat the pharmacist into believing that the Radiology Department needed more supply of Pethidine drugs. The Defendant proceeded to make the said request using the same method as stated in paragraph 6.

16. Upon being checked by a pharmacist named **Norhasidah Binti Abd Rahman**, who believed that the request made was for patients at the Radiology Department, the requested quantity of Pethidine was handed over to the Defendant.

17. None of the **80 ampoules of 50mg Pethidine** given to her was for patients at the Radiology Department.

For the 4th Charge

18. On **27th May 2021**, the Defendant made another request for the Pharmacy Department to supply the Radiology Department with **80 ampoules of 50mg Pethidine** with intent to use the drugs on herself.

19. Similarly, the Defendant had, prior to making the said request, filled in the DDA register book with false information to cheat the pharmacist into believing that the Radiology Department needed more supply of Pethidine drugs. The Defendant proceeded to make the said request using the same method as stated in paragraph 6.

20. Upon being checked by a pharmacist named **Norhasidah Binti Abd Rahman**, who believed that the request made was for patients at the Radiology Department, the requested quantity of Pethidine was handed over to the Defendant.

21. None of the 80 ampoules of 50mg Pethidine given to her was for patients at the Radiology Department.

For the 5th Charge

22. On **8th June 2021**, the Defendant made another request for the Pharmacy Department to supply the Radiology Department with **60 ampoules of 50mg Pethidine** with intent to use the drugs on herself.

23. Similarly, the Defendant had, prior to making the said request, filled in the DDA register book with false information to cheat the pharmacist into believing that the Radiology Department needed more supply of Pethidine drugs. The Defendant proceeded to make the said request using the same method as stated in paragraph 6.

24. Upon being checked by a pharmacist named **Lee Ying Yueh**, who believed that the request made was for patients at the Radiology Department, the requested quantity of Pethidine was handed over to the Defendant.

25. None of the 60 ampoules of 50mg Pethidine given to her was for patients at the Radiology Department.

For the 6th Charge

26. On **15th June 2021**, the Defendant made another request for the Pharmacy Department to supply the Radiology Department with **60 ampoules of 50mg Pethidine** with intent to use the drugs on herself.

27. Similarly, the Defendant had, prior to making the said request, filled in the DDA register

book with false information to cheat the pharmacist into believing that the Radiology Department needed more supply of Pethidine drugs. The Defendant proceeded to make the said request using the same method as stated in paragraph 6.

28. Upon being checked by a pharmacist named **Norhasidah Binti Abd Rahman**, who believed that the request made was for patients at the Radiology Department, the requested quantity of Pethidine was handed over to the Defendant.

29. None of the 60 ampoules of 50mg Pethidine given to her was for patients at the Radiology Department.

For all Charges

30. On 5th August 2021, a staff technician at the Radiology Department in RIPAS Hospital discovered some blood, used ampoule of 100mg Pethidine, glove, tissue, syringe, needle and Butterfly Infusion set next to the sink at the male on-call toilet. Later on, the said technician also discovered that the water in the sink was slow to drain away because the drain pipe for the sink was blocked with tissue and empty ampoules of Pethidine drugs. Upon discovering these, he reported the matter to the Radiology Department Head of Department.

31. Subsequent internal investigation discovered that the Defendant had admitted to the Head of Nurse at Radiology Department, to being the person who used the male on-call toilet to administer the drug on herself. The Defendant also admitted to keeping some unused ampoules of 50mg Pethidine inside her work locker, which she intended for personal use. Upon discovering this, the said Head of Nurse lodged a police report.

32. Police investigation revealed the involvement of the Defendant which subsequently led to her arrest.

33. During police investigation, the Defendant admitted to:

- a. Using Pethidine drugs from the Radiology Department DDA cabinet on herself without consent; and
- b. To writing false information inside the DDA register book with intent to prevent any person from knowing her actions and to cheat the pharmacists at the Pharmacy Department into believing that the Radiology Department needed more supply of Pethidine drugs.

34. Further police investigation revealed that the Defendant had been throwing used ampoules of Pethidine drugs that she had used on herself in different places at the Radiology Department, including the trash bins, sink and toilet bowls.

35. Police investigation also revealed that the cost for 50mg Pethidine is \$1 .98 per ampoule.

36. On record the Defendant has no previous conviction.

The Magistrate took a starting point of 2 years' imprisonment for each of the charges. The Magistrate then reduced the sentence to 16 months after she had taken into account of her guilty plea. The Magistrate then ordered for the sentences of imprisonment in respect of the 1st, 2nd, 3rd and 4th charges to be served concurrently with each other, and to be served consecutively to the sentences of imprisonment imposed in respect of the 5th and 6th charges and resulted to a total imprisonment of 4 years' imprisonment.

Defendant's Submission

The Defendant appeals for non-custodial sentence on the following grounds:

1. The taking of pethidine is for her self-consumption.
2. No harm to others.
3. Government monetary loss is \$831.60.
4. Report of Dr Julian supports for non-custodial sentence and support for community order.
5. Appellant is looking after her mother.

Respondent's Submission

The Respondent in their submission submitted to the Court that the Magistrate below had rightly and properly considered the Appellant's relevant mitigating evidence, particularly with respect to the Appellant's lack of antecedents and good character.

The Respondent submitted that the Magistrate had rightly considered all the aggravating factors.

The Respondent submitted that the Magistrate did not fail to grant the Appellant discount which the Appellant was entitled to receive for pleading guilty.

Discussion

Now the question before this Court is whether the Magistrate below was correct to impose a custodial sentence.

The Magistrate below before deciding to impose custodial sentence or otherwise had taken into account all the relevant factors of this case.

The Court must first consider if there is a link between the mental health condition and the offence. For example, the condition may have impaired the offender's ability to think clearly about the offending behaviour.

In ***Ibrahim v The Queen* (2016) NSWCCA 6**, Bellow (MacFarlan J.A and Rothman J held that:

“The psychologist did not suggest that the applicant’s mental state was casually connected to her offending. Accordingly, the applicant’s mental state did not provide any basis a lessening of her moral culpability.”

Reference is made to the following passage in ***R v Wright* (1997) A Crim R 48** where the Court held that it is acceptable that general deterrence should be given very little weight for offender suffering from a mental disorder or abnormality. However, it further held that in situations where the offender acts with knowledge of what he is doing and the gravity of those actions, the moderation of sentence need not be great.

In ***Benitez v R* (2006) 160 Crim R 166** the Court cited ***R v Wright***. In this case, the offender who suffered from depression had pleaded guilty to the charges. It was said:

“But the influence of the depression must remain in perspective. Here, it must be accepted that the applicant, although acting out of depression, also acted with knowledge of what he was doing and of the gravity of his actions. That gives some guide to the extent to which his depression ought to have been taken into account in mitigation of sentence. In the circumstances of this terrible crime, it cannot be weighed too heavily.”

I bear in mind that the nature of the mental illness may be such as to reduce an offender's ability to control his or her actions, which indirectly contributes to the commission of the offence.

However, I am not able to ignore the aggravating features present in this case. She was a nurse at RIPAS Hospital and has been with the government for 20 years. One of her duties was to request for the supply of drugs at the Pharmacy department when it runs low.

I accept that the Defendant is suffering from depression and had long drug addiction as supported by Dr Julian's report, but I do not find that it was associated with the commission of the offences where she lost the ability to control her actions. As reflected in the statement of facts, her offences were premeditated which involves careful planning to obtain the Pethidine drugs. She even went to the extent of falsifying entries in the department's DAA book. The number of times the offences were perpetrated shows that she acted with full knowledge of what she was doing and with knowledge to the gravity of the repeated actions. She knew that she had authorization to request drugs through Bru-HIMS and to obtain it from the Pharmacy Department. In fact she managed to

get the Pharmacy Department to supply it numerous times without much complication and suspicion. With the drugs, she made sure that it was placed inside a locked DDA cabinet at Radiology Department to avoid her usage being detected.

The defence submits that the Defendant suffers from prolonged depression and drug addiction but seeing that she had a long working experience as a nurse, she should have dealt with her 'stress-related drug addiction' by seeking immediate medical help. Nevertheless, she opted to take matters into her own hands by 'self-medicating' herself with the hope that she would be able to manage her severe migraine and sleepless nights on her own. In turn, the addiction became uncontrollable resulting in her taking Pethidine drugs on a daily basis which she had full access of.

Notwithstanding her guilty pleas, clean track record, reputable professional standing and genuinely remorseful, I find that there is no justification to consider a probation or even a fine.

Having had heard and read all the submissions, I am satisfied that the Magistrate below could not be faulted in her sentence to impose custodial sentence.

As to the length of the sentences, I would like to highlight the cases that were referred by the Respondents:

1. ***Vivi Yanti binti Hj Mohd Ali v Public Prosecutor*** where the amount involved is \$10,900 and imprisonment sentence of 2 years each after a trial was upheld.

And also to the Respondent's submission where it was submitted in paragraph 27;

"Depending on the facts and circumstances of each case, the range of individual custodial sentence which has been passed for offence under Section 420 of the Penal Code is between 12 to 36 months imprisonment."

In the case before me, the learned Magistrate took a starting point of 2 years and deducted 8 months (1/3) from the starting point which gives an imprisonment sentence of 16 months and the end result if the sentence is 48 months.

This is not consistent with the case that the Respondent has cited and in that case the value is much higher than the present case.

Having had said the above, taking into account that the Defendant has pleaded guilty and also had a clean record and the value is not as high as in the *Vivi Yanti* case, this Court will not disturb the starting point but instead increase the discount to 50%.

Thus, the imprisonment sentence for each charge is now 12 months. This Court will not disturb the consecutive and concurrent sentences and order as follows:

1st, 2nd, 3rd and 4th charges to be served concurrently with each other and gives a sentence of 12 months.

5th and 6th charges are to run consecutively and give a total of 24 months imprisonment and this is to run consecutively with the 12 months from the 1st, 2nd, 3rd and 4th charges.

Thus, the total sentence is 36 months.

The appeal is allowed whereby the sentence of 48 months imposed by the Court below is reduced to 36 months. Appeal is allowed as above.

Imprisonment sentence is to take effect from today and bail is revoked.

Haji Abdullah Soefri bin POKSM DSP Haji Abidin
Judicial Commissioner