

Norazmi Bin Osman

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 12 of 2018)**

Dato Paduka Steven Chong, C.J.
27 November 2018

*Unlawful possession of cigarettes and alcoholic drinks – Section 146(1)(d) of Excise Order 2006 –
Default sentence manifestly excessive.*

Appellant unrepresented.

DPP Muhammad Qamarul Affyian Bin Abdul Rahman for the Public Prosecutor.

Case cited:

Khairul Bin Hj Awg Sabtu v Public Prosecutor [Criminal Motion No. 13 of 2016]

Steven Chong, C.J. (ex tempore):

On 5 May 2018 in the Magistrate's Court the appellant pleaded guilty to four counts of unlawful possession of cigarettes and alcoholic drinks contrary to section 146(1)(d) of the Excise Order 2006.

The Magistrate imposed a total fine of \$51,200 or 36 months' imprisonment in default of payment. There was a miscalculation of the total term of imprisonment in default of payment: it should be 33 months instead of 36 months. According to the Magistrate's order, payment was to be made by 28 November 2018.

This is an appeal by the appellant for more time to pay the fine.

The appellant earns \$500 monthly by washing cars and his wife and parents are dependent on him. He says his siblings will try to raise a loan to pay the fine in full.

Considering it is a substantial fine I think it is fair to give the appellant, who has a low income, an additional period of about one month to pay and the Deputy Public Prosecutor does not object to this.

I now turn to consider the default sentence of 33 months ordered by the court below. This term of imprisonment is manifestly excessive for two reasons.

Firstly, for such an offence, even for a second or subsequent offender, if the court is minded to impose a sentence of imprisonment and not a fine, section 146(1)(i) of the Excise Order provides for “imprisonment for a term **not exceeding** (emphasis added) 2 years”. A default sentence of 33 months for a first offender is patently excessive.

Secondly, having regard to the amount of the fine, the default sentence of 33 months is far beyond the usual default sentence of imprisonment imposed in cases of this nature. In *Khairul Bin Hj Awg Sabtu v Public Prosecutor* [Criminal Motion No. 13 of 2016], in which the defendant was convicted of a similar offence, the Magistrate imposed a fine of \$56,000 or 2 years’ imprisonment in default of payment. On appeal, Hairol Arni Majid, J., in reducing the default sentence to 12 months, said:

“I find the default imprisonment of 2 years sentence imposed for a fine of \$56,000 to be manifestly excessive given the usual tariff of 12 to 16 months for such amount of fine.”

The proposition that the default sentence of 33 months in the present case is excessive is even stronger as the fine of \$51,200 is lower than the fine of \$56,000 in *Khairul’s* case.

For the foregoing reasons the appeal is allowed to the extent that the appellant is given until the end of the year to pay the fine and the default sentence in the event he fails to make payment is 12 months instead of 33 months.

DATO PADUKA STEVEN CHONG

Chief Justice