



Moh Nawawi Bin Juandi

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 14 of 2015)**

Steven Chong, J.

4 August 2015

Criminal law – Obstruction of police officers in the discharge of their duties –
Unlawful possession of cigarettes – Appropriate sentence.

Appellant unrepresented.

PO Muhammad Aiman bin Ahmad Zakaria for the Public Prosecutor/Respondent.

Steven Chong, J.:

This is an appeal against sentence.

On 15 April 2015 in the Magistrate's Court the appellant pleaded guilty to: the obstruction of two police officers in the discharge of their duties contrary to section 186 of the Penal Code (1st charge); and the unlawful possession of cigarettes contrary to section 146(1) (d) of the Excise Order 2006 (2nd Charge).

The Magistrate imposed a sentence of 3 months imprisonment on the 1st Charge and a fine of \$44,448 or 14 months imprisonment in default of payment.

As the fine was not paid the appellant is serving a sentence of 17 months imprisonment. He complains that this sentence is excessive.

Shortly stated the admitted facts were that on the night of 6 April 2015 the appellant was driving a Nissan Sunny car on the Tungku Highway when he was stopped by two police officers on patrol. The appellant was told to drive to Gadong Police Headquarters after he refused to open the boot of his car for inspection.



At the vicinity of Liang Toon roundabout the appellant decided to flee. He sped towards Gate 25 runway of the Brunei International Airport, crashed through a locked gate, lost control, his car ended up in a drain, and he was arrested.

The appellant is Indonesian and worked as a labourer to support his wife and young child. He is 27 years old. He says the long prison sentence will cause hardship to his family. I have no doubt this is true but it cannot mitigate his crime.

I think the Magistrate was right to take a serious of the offences. In respect of the 1st Charge, the appellant's attempt to escape from the police with the cigarettes in the boot of his car by crashing through a gate was a reckless act deserving condign punishment.

However, the Magistrate was wrong to use a starting point of 6 months imprisonment because the maximum penalty for the offence is 3 months imprisonment. PO Aiman on behalf of the Public Prosecutor concedes this is so.

In my opinion the seriousness of the offence justifies a starting point of 3 months imprisonment. Giving credit to the appellant for pleading guilty to the charge at the first opportunity, the sentence is reduced to 2 months imprisonment.

Turning to the 2nd Charge, I agree with PO Aiman that the fine imposed and the default sentence of imprisonment on failure to pay is appropriate having regard to the quantity of cigarettes involved. There were 129 cartons of cigarettes and the duty evaded amounted to over \$5,500.

For the foregoing reasons I allow the appeal to the extent that the sentence of 3 months imprisonment on the 1st Charge is quashed and substituted with a sentence of 2 months imprisonment.

In the result the overall sentence of 17 months imprisonment is reduced to 16 months imprisonment.

DATO PADUKA STEVEN CHONG
Judge, High Court