

Shahrul Nizam Bin Hj Mohiddin

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 17 of 2022)**

Criminal law – Possession for trafficking of methylamphetamine – Consumption of methylamphetamine – Second or subsequent offender – Minimum sentence – Ill-health not a mitigating factor except in the most exceptional cases – ss.3A, 6(b) and 7 of the Misuse of Drugs Act.

Steven Chong, C.J.

24 August 2022

Appellant In Person.

PO Hjh Atiyyah Azzahra POKLSDSLJ Awg Hj Abas for Public Prosecutor.

Cases cited:

Leaw Siat Chang v Public Prosecutor [2001] 3 SLR(R) 646

Lim Teck Chye v Public Prosecutor [2004] 2 SLR(R) 525

Amiruddin Bin Haji Junaidi v Public Prosecutor [Criminal Motion No. 2 of 2017]

Steven Chong, C.J.:

Introduction

On 4 December 2021 in the Magistrate’s Court the appellant pleaded guilty to three charges under the Misuse of Drugs Act: possession for trafficking of methylamphetamine contrary to section 3A (1st Charge); consumption of methylamphetamine contrary to section 6(b)(2nd Charge); and possession of utensil for drug consumption contrary to section 7 (3rd Charge).

The Magistrate sentenced the appellant to 5 years’ imprisonment and 5 strokes on the 1st Charge; 3 years’ imprisonment on the 2nd Charge; and a fine of \$1,000 or 2 months’ imprisonment in default.

In relation to the sentence of whipping of 5 strokes the Magistrate ordered that the appellant be exempted from whipping because he was 51 years old.

Although the end result is the same, in light of the appellant's age, I think the Magistrate should not have imposed whipping in the first place since section 258 of the Criminal Procedure Codes provides that no males above 50 years of age shall be punishable with whipping.

The Magistrate ordered the sentences of imprisonment imposed on the 1st and 2nd Charges to run concurrently. The appellant failed to pay the fine imposed on the 3rd Charge. In the result the aggregate sentence was 5 years 2 months' imprisonment.

This is the appellant's appeal against sentence.

The facts

On the night of 22 July 2016 narcotics officers went to a house in Kampong Meragang where they arrested the appellant in his bedroom. During the search of the house the appellant surrendered a bag to the narcotics officers containing a metal container and a pouch.

The metal container contained 36 plastic straws filled with crystalline substances which upon analysis was found to be 1.4489 grams of methylamphetamine (1st Charge).

After the appellant's arrest he was asked to provide his urine sample which upon analysis was found to be positive for methylamphetamine (2nd Charge).

The pouch contained a glass tube with traces of yellow patches which upon analysis showed the presence of methylamphetamine (3rd Charge).

In the course of an interview by the narcotics officers the appellant admitted he intended to sell the drugs found in his possession; he had consumed methylamphetamine before his arrest; and he used the glass tube to consume methylamphetamine.

Prior convictions

The appellant was previously convicted of three offences of drug possession and seven offences of drug consumption from 1992 to 2011.

In respect of the drug possession and consumption offences recorded in 2011 the appellant was sentenced to a total of 3 years' imprisonment.

The appeal

The appellant seeks a reduction in sentence on the sole ground that he underwent stomach cancer surgery in 2010 and suffers poor health.

Decision

The sentence of 5 years' imprisonment passed on the 1st Charge is the mandatory minimum sentence for the possession for trafficking of a class A controlled drug which methylamphetamine is.

Turning to the sentence of 3 years' imprisonment passed on the 2nd Charge this, too, is the mandatory minimum sentence for a subsequent drug consumption offender which the appellant is. Indeed, looking at the appellant's history of drug consumption and possession, he is clearly a habitual drug user.

The rationale for the imposition of severe sentences for offences of this nature is deterrence. These offences often lead to the commission of other criminal offences such as theft. Noteworthy is the appellant's record of previous convictions showing that during the period of his drug related convictions he was also convicted of ten theft related offences.

Ill-health is not a mitigating factor except in the most exceptional cases when judicial mercy may be exercised: *Leaw Siat Chang v Public Prosecutor* [2001] 3 SLR(R) 646 at [13].

Judicial mercy may be exercised when the offender is afflicted with a terminal illness: *Lim Teck Chye v Public Prosecutor* [2004] 2 SLR(R) 525 at [82]; and *Amiruddin Bin Haji Junaidi v Public Prosecutor* [Criminal Motion No. 2 of 2017].

There is no medical evidence concerning the appellant's present medical status. The appellant does not suggest he now suffers from a terminal illness.

As to the sentence of a fine of \$1,000 imposed on the 3rd Charge this is within the norm for possession of a drug consumption utensil.

In the circumstances the appeal is devoid of merit.

Conclusion

For the foregoing reasons the appeal is dismissed.

DATO SERI PADUKA STEVEN CHONG
Chief Justice