

Public Prosecutor

AND

Yusbi Bin Ramlee

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 19 of 2019)**

Steven Chong, C.J.
23 December 2019

Possession of methylamphetamine – Second offender – Minimum sentence – sections 6(a) and 29(3A) of Misuse of Drugs Act.

DPP Muhammad Qamarul Affyian Bin Abdul Rahman for the Public Prosecutor/Appellant.
Respondent unrepresented.

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

This is an appeal against sentence by the Public Prosecutor.

On 16 October 2019 in the Magistrate's Court the respondent pleaded guilty to three counts under the Misuse of Drugs Act: possession of 0.2696 grammes of methylamphetamine contrary to section 6(a)(1st Charge); consumption of methylamphetamine contrary to section 6(b)(2nd Charge); and consumption of cannabis contrary to section 6(b)(3rd Charge).

The Magistrate sentenced the respondent to one year's imprisonment on the 1st Charge consecutive to the concurrent terms of 3 years' imprisonment on the 2nd and 3rd Charges resulting in a total sentence of 4 years' imprisonment.

DPP Affyian submits that the Magistrate erred in passing a sentence of one year's imprisonment on the 1st Charge.

I agree.

The respondent was previously convicted in 2008 of drug possession and consumption charges. These convictions triggered the operation of section 29(3A) of the Misuse of Drug Act which required the Magistrate to impose a minimum sentence of 2 years' imprisonment on the possession charge and 3 years' imprisonment on the consumption charges.

I therefore allow the appeal, quash the sentence of one year's imprisonment on the 1st Charge and substitute it with a sentence of 2 years' imprisonment.

There is one other issue that needs to be addressed. The 3rd Charge is clearly defective. Although the Charge alleges the consumption of cannabis by the respondent the Statement of Facts states his urine sample was found to contain mehtylamphetamine. DPP concedes this is mistake on the part of the prosecution and the Charge should be one of consumption of methylamphetamine. Unfortunately, the error escaped the attention of the Magistrate.

The respondent was wrongly convicted on a defective Charge. I quash the conviction and sentence on the 3rd Charge accordingly.

As no complaint is made by the Public Prosecutor of the overall sentence of 4 years' imprisonment I order one year of the sentence of 2 years' imprisonment on the 1st Charge to run consecutively to the sentence of 3 years' imprisonment on the 2nd Charge resulting in an aggregate sentence of 4 years' imprisonment.

The end result is that the sentence of the respondent remains the same.

DATO SERI PADUKA STEVEN CHONG
Chief Justice