

Muhd Mustaqim Bin Haji Abdul Wahab

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 1 of 2021)**

Steven Chong, CJ

24 February 2021

Criminal law and procedure – Whether date of commencement of second term of imprisonment to begin immediately or at the expiration of the first term of imprisonment – s.261(1) of Criminal Procedure Code.

Appellant unrepresented.

PO Hajah Siti Mu'izzah Binti Haji Sabli and Mohammad Kamal Ariffin Bin Ismail for the Public Prosecutor/Respondent.

Cases cited:

Julaihi Bin Hj Mohd Yussof v Public Prosecutor [2005] 2 JCBD 69

Public Prosecutor v Hang Tuah bin Jumaat [2016] 2 SLR 527

Steven Chong, CJ:

On 12 December 2020 in the Magistrate's Court the appellant was convicted after trial of two related offences, one of theft and the other of mischief.

Senior Magistrate Azrimah Binti Haji Abdul Rahman sentenced the appellant to 18 months' imprisonment on the theft charge and 6 months' imprisonment on the mischief charge with the sentences to run concurrently.

At the time of sentencing the appellant was already serving a sentence of 18 months' imprisonment having pleaded guilty to two theft charges before another Magistrate earlier on.

The Senior Magistrate ordered the sentence of 18 months' imprisonment passed by her to commence at the expiration of the appellant's existing sentence also of 18 months' imprisonment resulting in an aggregate sentence of 3 years' imprisonment.

In this appeal the appellant is seeking for the sentences to run “concurrently”.

Section 261(1) of the Criminal Procedure Code (“CPC”) provides:

“When a person who is an escaped convict or is undergoing a sentence of imprisonment, is sentenced to imprisonment, such imprisonment shall commence either immediately or at the expiration of the imprisonment to which he has been previously sentenced, as the Court awarding the sentence may direct.”

If the appellant is asking the court to consider ordering his second term of imprisonment to start on the commencement date of his first term of imprisonment, this is untenable because section 261(1) of the CPC does not confer the court with such power. The discretion of the court is confined to ordering a subsequent sentence of imprisonment to commence “either immediately or at the expiration” of the earlier sentence of imprisonment.

In *Julaihi Bin Hj Mohd Yussof v Public Prosecutor* [2005] 2 JCBD 69, this court upheld the decision of the Magistrate in ordering the sentence of imprisonment imposed by her on the appellant to commence at the expiration of his existing sentence of imprisonment considering (a) the offences before the Magistrate were of a “completely different nature and totally unrelated” to the earlier offences; and (b) the principle of totality.

The approach in *Julaihi’s* case is no different from that of the Singapore High Court in *Public Prosecutor v Hang Tuah bin Jumaat* [2016] 2 SLR 527, where Choa Hick Tin, JA had occasion to consider the same issue and said at [542]:

“ . . . the fact that the subsequent offence(s) arose in different transactions is a weighty consideration that warrants the imposition of the subsequent term of imprisonment to start at the expiration of the earlier term of imprisonment.

Having said that, I had still to ensure that the overall sentence meted out should be proportionate and not crushing.”

Returning to the appellant’s case, the earlier theft offences involved the stealing by the appellant of a Harley Davidson Sportster motorcycle on 15 April 2019 and a Mercedes Benz GLE 250d on 19 June 2019.

As to the subsequent theft and mischief offences, these concerned the appellant stealing electrical cables by cutting them out of a switchboard using a wire cutter at the Hua Ho Tanjong Bunut Department Store in February 2020.

Clearly, the two sets of offences are wholly unrelated events and the imposition by the Senior Magistrate of the second term of imprisonment to start at the expiration of the first term of

imprisonment is justified and the resulting overall sentence of 3 years' imprisonment is consonant with the principle of totality.

The appeal is dismissed accordingly.

DATO SERI PADUKA STEVEN CHONG
Chief Justice