

Public Prosecutor

AND

Salman Bin Arshad

**(High Court of Brunei Darussalam)
(Criminal Appeal No.24 of 2020)**

Steven Chong, CJ.

17 August 2020

Criminal law – Drug consumption – Second offender – Mandatory minimum sentence – S.29(3A) of the Misuse of Drugs Act.

DPP Pg Hajah Nor’Azmeena Binti Pg Haji Mohiddin for the Public Prosecutor/Appellant.
Respondent unrepresented.

Case cited:

Mohd Rosdy Bin Abdullah v Public Prosecutor [2001] 1 JCBD 186

Warsono Bin Sukaimi v Public Prosecutor [2005] 2 JCBD 68

Steven Chong, CJ:

On 22 July 2020 in the Magistrate’s Court the respondent pleaded guilty to two counts of consuming methylamphetamine contrary to Section 6(b) of the Misuse of Drugs Act (“MDA”).

The Magistrate sentenced the respondent to 2 years’ imprisonment on each count to run concurrently.

This is an appeal by the Public Prosecutor against that sentence on the ground that it is wrong in law.

The two offences of drug consumption were committed by the respondent in March and September 2017. The respondent had previously been convicted of consuming drugs in 1996.

Given the respondent’s prior drug consumption conviction the Magistrate was required to pass a minimum sentence of 3 years’ imprisonment pursuant to Section 29(3A) of the MDA.

Clearly, the Magistrate erred in law in passing a sentence of 2 years’ imprisonment giving the reason that there was a substantial gap between the convictions.

The court has no power to pass a sentence of imprisonment less than the minimum of 3 years mandated under Section 29(3A) of the MDA.

In exceptional circumstances the court may exercise its discretion not to pass the minimum sentence prescribed under Section 29(3A) of the MDA and instead make a probation order as provided under Section 263 of Criminal Procedure Code read with Section 5 of the Offenders (Probation and Community Service) Order, 2006: see *Mohd Rosdy Bin Abdullah v Public Prosecutor* [2001] 1 JCBD 186.

A lapse between convictions no matter how long cannot, by itself, be regarded as a ground for not imposing the mandatory minimum sentence prescribed under Section 29(3A) of the MDA: see *Warsono Bin Sukaimi v Public Prosecutor* [2005] 2 JCBD 68.

There are no exceptional circumstances in the respondent's favour to justify not imposing the mandatory minimum sentence of 3 years' imprisonment. Indeed, considering he committed two offences of drug consumption within six months but giving credit to him for pleading guilty, that is the appropriate sentence.

I therefore allow the appeal, quash the sentence of imprisonment of 2 years and substitute it with a sentence of 3 years on each charge to be served concurrently.

DATO SERI PADUKA STEVEN CHONG
Chief Justice