



Morni Bin Haji ismail

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 2 of 2016)**

**Steven Chong, J.
17 March 2016**

Criminal law – Drug consumption – Subsequent offender – Whether sentence excessive.

Appellant unrepresented.

DPP Ms Emily Goh for the Public Prosecutor/Respondent.

Cases cited:

Aminulamri Bin Haji Abdullah v Public Prosecutor [2011] BLR 17.

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

Public Prosecutor v Hj Jumat Bin Hj Jaya & ORS [Criminal Trial No. 1 of 2014].

Public Prosecutor v Hj Karim Bin Hj Yasin and Public Prosecutor v Zufli Bin Mohamad Salleh [1997] 1JCBD 42.

Public Prosecutor v Mohd Rosdy Bin Abdullah [2002] 2 JCBD 331.

Steven Chong, J.:

On 11 January 2016 in the Magistrate's Court the appellant pleaded guilty to four counts under the Misuse of Drugs Act: two counts of consumption of methylamphetamine contrary to section 6(b); one count of possession of 4.3280gs of methylamphetamine contrary to section 6(a); and one count of possession of utensils intended for the consumption of methylamphetamine contrary to section 7.

Senior Magistrate Haji Nabil Bin PUKDPSSU Haji Awang Badaruddin sentenced the appellant to 4 years' imprisonment on the sections 6(1) and 6(b) offences and 2 months' imprisonment on the section 7 offence. An order was made for 2 years out of the sentence of 4 years on one of the section 6(b) offences to run consecutively to the 4 years on the section 6(a) offence resulting in a total of 6 years.



By this appeal the appellant asks this court to reconsider the sentence. He is a single man aged 44 and before his arrest was helping out in his father's fruit and vegetable stall at the Gadong night market. He acknowledges his previous drug convictions but points out that the last conviction was in 2008. He says he has given full co-operation to the Narcotics Control Bureau; he deeply regrets the commission of the offences; and he promises not to repeat the offences.

The appellant cites three cases to assist the court: *Public Prosecutor v Hj Karim Bin Hj Yasin and Public Prosecutor v Zufli Bin Mohamad Salleh* [1997] 1JCBD 42; *Aminulamri Bin Haji Abdullah v Public Prosecutor* [2011] BLR 17; and *Public Prosecutor v Hj Jumat Bin Hj Jaya & ORS* [Criminal Trial No. 1 of 2014]. I will consider the cases in turn.

Hj Karim Bin Yasin pleaded guilty to two counts of drug consumption (codeine and diazepam) contrary to section 6(b) of the misuse of Drugs Act and one count of possession of poisons (promethazine and codeine) contrary to section 9(1)(b) of the Poisons Act. He had a prior conviction under section 6(b). The Magistrate regarded the gap of 5½ years between the convictions as a sufficient justification for the use of section 263 of the Criminal Procedure Code notwithstanding the requirement under section 29(3A) of the Misuse of Drugs Act for the imposition of a minimum sentence of 3 years for a second or subsequent offence against section 6(b).

On appeal by the Public Prosecutor, Roberts, C.J. upheld the decision of the Magistrate to use section 263 and said at p.49:

"I cannot say that a Magistrate is incorrect to make use of section 263 C.P.C., if he is satisfied that the circumstances justify him in doing so. I suggest that, in future, a Magistrate should not consider the use of section 263 C.P.C., where a previous conviction against section 6(b) of Cap. 27 has been recorded, unless there is a gap of at least 5 years between the present conviction and that which last preceded it."

Subsequently, in *Public Prosecutor v Mohd Rosdy Bin Abdullah* [2002] 2 JCBD 331, I had occasion to consider the decision in the case of *Hj Karim Bin Hj Yasin* and said at p.332:

'It must be emphasized that the Chief Justice did not go so far as to suggest that a gap of 5 years or more between convictions by itself would justify the application of section 263. All the circumstances of the case must be considered; including whether there was evidence of the offender's recent consumption of controlled drugs when he appeared before the court.'

The Court of Appeal agreed: see *Mohd Rosdy Bin Abdullah v Public Prosecutor* [2001] 1 JCBD 186.



So, in the present case, even though there is a gap of 8 years between the appellant's present conviction and the last one in 2008, by itself, it does not justify the use of section 263.

Turning to the case of *Aminulamri Bin Haji Abdullah*, he was convicted of four counts under the Misuse of Drugs Act, two of the offences involved the consumption of methylamphetamine contrary to section 6(b) of the Misuse of Drugs Act. He had one prior conviction under section 6(b).

The Magistrate imposed a fine of \$1,500 on the section 6(b) offence committed before the prior conviction. A sentence of 6 years' imprisonment was passed on the section 6(b) offence committed after the prior conviction. No reason was given as to why a sentence which was twice the minimum of 3 years stipulated under section 29 (3A) was imposed.

On appeal the Public Prosecutor conceded that the sentence of 6 years was unsustainable since the norm was a sentence of 3 years for an offender with one prior conviction. I therefore quashed the sentence of 6 years and substituted it with a sentence of 3 years.

Contrast *Aminulamri* with the appellant who unfortunately has a long history of drug abuse which spans from 1999 to 2008 and includes three prior convictions under section 6(b). Moreover, the present offences were committed by the appellant about 10 months after he was released from prison upon completion of his sentence relating to the 2008 conviction.

In these circumstances the Senior Magistrate was justified to impose a sentence exceeding the minimum sentence prescribed.

Hj Jumat's case is irrelevant as it concerns the offence of housebreaking.

The sentence of 6 years is undoubtedly severe. But on the facts I do not find it excessive. The appeal is dismissed accordingly.

DATO PADUKA STEVEN CHONG
Judge, High Court