

Mohd Zurimi Bin Haji Junaidi

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 36 of 2018)**

Steven Chong, C.J.

27 February 2019

Theft of vehicles – Appropriate sentence – Custodial sentence causing hardship to offender's family not normally considered a mitigating factor.

Appellant unrepresented.

DPP Raihan Nabilah Binti Hj Ahmad Ghazali for the Public Prosecutor/Respondent.

Cases cited:

Mohammad Ezam Bin Tuah v Public Prosecutor [2015] 2 JCBD 185

Norfazil Bin Tamit v Public Prosecutor [2003] 1 JCBD 274.

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

On 16 November 2018 in the Magistrate's Court before Magistrate Hjh Noor Amalina Binti Dato Paduka Hj Alaihuddin the appellant was convicted after a trial of two counts of theft contrary to section 379 of the Penal Code.

The Magistrate sentenced the appellant to 18 months' imprisonment on each count to run consecutively resulting in a sentence of 3 years' imprisonment.

This is an appeal against sentence.

In summary the facts found by the Magistrate were that on the evening of 6 November 2017 the appellant and an accomplice first went to Kg Jerudong where they stole a Honda Civic car from GSP Auto Company. Later, on the same evening, the appellant and two accomplices went to Kg Bukit Panggal where they stole a Toyota Kijang vehicle belonging to Hairini Binti Haji Tasim.

The appellant is aged 29 and he has a wife and two children. He was unemployed when he committed the offences. He appeals for the sentence to be reduced on the ground that his family is suffering hardship without his support. Hardship to an offender's family because of a

custodial sentence is not normally considered a mitigating factor since it is a consequence of his criminal act: *Mohammad Ezam Bin Tuah v Public Prosecutor* [2015] 2 JCBD 185.

This is not the first time the appellant has committed theft. In 2014 the appellant was convicted of four counts of theft and was sentenced to a total of 2 years' imprisonment. Thus, the appellant does not have the benefit of a clear record to be taken into account in sentence.

Vehicle thefts are prevalent and deterrent sentences are necessary in the public interest. A starting point sentence of 12 months' imprisonment is proper where the offender has a clear record with an appropriate deduction for pleading guilty: *Norfazil Bin Tamit v Public Prosecutor* [2003] 1 JCBD 274.

The overall sentence of 3 years' imprisonment imposed by the Magistrate in respect of these car thefts committed on separate occasions with sufficient time for reflection between each offence, upon conviction after a trial, on the appellant, who has prior theft convictions, is neither excessive nor wrong in principle.

Accordingly, the appeal is dismissed.

DATO PADUKA STEVEN CHONG
Chief Justice