

Pg Evroy Fadly Musa Bin Pg Hj Kiply

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 38 of 2020)**

Steven Chong, CJ
7 December 2020

Criminal law – Theft of car – Receiving stolen property – Theft from house – Sentence – ss.379, 380 and 411 of Penal Code

Appellant unrepresented.

DPP Raihan Nabilah Binti Hj Ahmad Ghazali and PO Syafina Bte Abd Hadzid for the Public Prosecutor/Respondent.

Cases cited:

R v Ingham (3 October 1974)(Court of Appeal (Crim Div), UK)

Afindey Bin Haji Mohammad Ali v Public Prosecutor [Criminal Motion No. 57 of 2018]

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

Public Prosecutor v Haji Masirman Bin Mazlan [2016] 2 JCBD 96

Mohd Rodi Al-Iskandar Bin Haji Latif v Public Prosecutor [2014] 1 JCBD 207

Public Prosecutor v Hj Hamdillah Bin Hj Othman and Mohd Izwan Bin Bujang [2008] 1 JCBD 230

Steven Chong, CJ (ex tempore):

On 7 October 2020 in the Magistrate’s Court the appellant was convicted after a trial on three charges under the Penal Code: attempted theft of a car contrary to section 379; dishonestly receiving a stolen car contrary to section 411; and theft from a house contrary to section 380.

Magistrate Hjh Ervy Sufitriana Binti Hj Abdul Rahman sentenced the appellant to 9 months’ imprisonment on the section 379 charge; 18 months’ imprisonment on the section 411 charge; and 24 months’ imprisonment on the section 380 charge.

Having regard to the principle of totality the Magistrate ordered the sentences of imprisonment on the section 379 and section 411 charges to run concurrently and the sentence on the section 380 charge to run consecutively resulting in an aggregate sentence of 3 years and 6 months.

The appellant appeals against that sentence on the ground that it is excessive.

In brief, these offences were committed by the appellant on separate days between May and July 2019. First, in May, the appellant together with two accomplices went to a house in Kampong Jangsak in the early hours of the morning where they stole a safe deposit box. Then, in June, the appellant and an accomplice went to Complex Hj Tahir in Gadong and tried to steal a Proton Saga car but was caught red-handed by the owner. After that, in July, the appellant took possession of a Suzuki Ignis car from someone knowing it was a stolen car.

There are two planks to the appellant's appeal for his sentence to be reduced. Firstly, he says his two young children and his elderly mother are dependent on him and they will suffer hardship without his financial support. Secondly, he seeks compassion because he suffers from cancer.

Neither plank stands on firm foundation.

It is inevitable that the imprisonment of an offender for his crime will cause hardship to his family but it cannot be one of the factors that can affect what would otherwise be the right sentence: see *R v Ingham* (3 October 1974)(Court of Appeal (Crim Div), UK). There is nothing exceptional about the applicant's family circumstances to justify reducing his sentence.

Judicial mercy may be exercised where there is medical evidence that the offender is suffering from a terminal illness: see *Afindey Bin Haji Mohammad Ali v Public Prosecutor* [Criminal Motion No. 57 of 2018]. No such evidence was adduced in the court below or in this court concerning the appellant. The applicant's assertion that he is afflicted with cancer is not quite accurate. He did suffer from lymphoma in 2017 but was given treatment and is presently in remission.

The sentences imposed by the Magistrate are consonant with the guideline sentences for offences of this nature: see *Norfazil Bin Tamit v Public Prosecutor* [2003] 1 JCBD 274; *Public Prosecutor v Haji Masirman Bin Mazlan* [2016] 2 JCBD 96; *Mohd Rodi Al-Iskandar Bin Haji Latif v Public Prosecutor* [2014] 1 JCBD 207; and *Public Prosecutor v Hj Hamdillah Bin Hj Othman and Mohd Izwan Bin Bujang* [2008] 1 JCBD 230.

Clearly, the appellant is a career thief. He has a string of fourteen previous theft and theft related convictions from 2003 to 2018. The present offences were committed not long after his release from a 2 year prison sentence for housebreaking.

A deterrent sentence was obviously warranted in the public interest and the overall sentence imposed is commensurate to the gravity of the offences and the culpability of the appellant.

I see no reason to interfere with the sentence and the appeal is dismissed accordingly.

DATO SERI PADUKA STEVEN CHONG
Chief Justice