

Mohamad Azren Bin Zaini

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 49 of 2014)**

Dato Seri Paduka Hj Kifrawi, C.J.
23rd July, 2015.

Criminal law – sentence – consumption of Class A controlled drug – section 6(b) of the Misuse of Drugs Act – second or subsequent offender – minimum sentence section 29(3A) of the Misuse of Drugs Act.

Rozaiman Abdul Rahman (M/S Hj Mohamad Rozaiman Bin Dato Haji Abdul Rahman) for Appellant.

DPP Hjh Attiyah Azzahra Binti PD Haji Abas for Public Prosecutor.

J U D G M E N T

Dato Seri Paduka Hj Kifrawi, C.J.:

The Appellant Mohamad Azren Bin Zaini was charged on 6.1.2014 with the following charges:

1st Charge

That you, on or about 28th day of May 2009, in Brunei Darussalam, not being a person authorized by the Misuse of Drugs Act, Chapter 27, or the Regulations made thereunder, did consume a class A controlled drug, to wit, METHYLAMPHETAMINE, in contravention of section 6(b) of the Misuse of Drugs Act, Chapter 27 and you have thereby committed an offence punishable under section 29 read with the Second Schedule of the said Act.

2nd Charge

That you, on the 31st day of July 2010 at about 0545 hours, at no.1, Spg. 286-30-35-10 RPN Lumut in Brunei Darussalam not being a person authorized by the Misuse of Drugs Act, Chapter 27, or the regulations made thereunder, did have in your possession, a Class A controlled drug, to wit a total of 2.9127 grams of Methylamphetamine contained in a total of 3.8526 grams crystalline substances, in contravention of section 6(a) of the Misuse of Drugs Act, Chapter 27

and you have thereby committed an offence punishable under section 29 read with the Second Schedule of the said Act.

3rd Charge

That you, on or before the 31st of July 2010, in Brunei Darussalam, not being a person authorized by the Misuse of Drugs Act, Chapter 27, or the Regulations made thereunder, did consume a Class A controlled drug, to wit, Methylamphetamine, in contravention of section 6(b) of the Misuse of Drugs Act, Chapter 29 and you have thereby committed an offence punishable under section 29 read with the Second Schedule of the said Act.

4th Charge

That you, on the 31st of July 2010 at about 0545 hours, at no.1, Spg 286-30-35-10 RPN Lumut in Brunei Darussalam not being a person authorized by the Misuse of Drugs Act, Chapter 27, or the regulations made thereunder, did possess a utensil, to wit,

- 1) One clear bent glass tubing with one end tapped with yellowish adhesive clear tape (length: 81 x diameter: 7 – 11) mm
- 2) One clear bent glass tubing with one end tapped with yellowish adhesive clear tape (length: 107 x diameter: 7 – 11) mm

intended for the consumption of a controlled drug, to wit, Methylamphetamine, a Class A controlled drug, in contravention of section 7 of the Misuse of Drugs act, Chapter 27 and you have committed an offence punishable under section 29 read with the Second Schedule of the said Act.

PENALTY

S6(a) of MDA, CAP 27

Imprisonment and Fine

Imprisonment = Maximum 10 years

Fine = \$20,000

Others = For second or subsequent offence, minimum 2 years

S6(b) of MDA, CAP 27

Imprisonment and Fine

Imprisonment = Maximum 10 years

Fine = \$20,000

Others = For second or subsequent offence, minimum 3 years

Section 7 of MDA, CAP 27

Imprisonment and Fine

Imprisonment = Maximum 3 years

Fine = Maximum \$10,000

He pleaded guilty to the 1st Charge, 2nd Charge and 3rd Charge. He did not plead guilty to the 4th Charge. (The DPP later withdrew the 4th Charge).

The Appellant admitted to the following Statement of Facts:

'Statement of Facts

First Charge:

- 1) On 28th May 2009 at about 1105 hours, a raid was conducted by Narcotics Control Bureau Officers at Spg 115, No 27, H18 BSP Company house Seria on suspicion of drug related activities.
- 2) During the raid, five arrestees were detained and one of the arrestees was Mohamad Azren Bin Zaini. [hereby known as 'the defendant']
- 3) At the scene, a body search was conducted on the defendant and nothing drug related was found. Subsequently the arrestee was brought to Narcotics Control Bureau Office Kuala Belait for further investigation.
- 4) On the same day, at about 1500 hours, the defendant gave his urine sample in a bottle inside the Narcotics Control Bureau toilet. The defendant capped the bottle and sealed it with security seal.
- 5) The security seal contains the particulars of the defendant such as name, identification card number, the date and time urine sample was taken. The defendant then signs the security seal.
- 6) The defendant then puts the sealed urine bottle in a urine box labelled BKN/D12 (C) – 21/05 in compartment "A". He then locked compartment "A" and the urine box was locked by another arrestee.
- 7) On 30th May 2009, the locked box containing the defendant's urine sample was sent by ANO Pg Mohd Nuh Bin Pg Mohamad to the Department of Scientific Services (DSS) for analysis.
- 8) The Analyst Certificate Number NAR/NCB/ENF/KB/IF174 dated 15 June 2009 confirms that the defendant's urine sample was POSITIVE for class A controlled drug, Methylamphetamine.

Second and Third Charge:

- 9) On 31st July 2010 at about 0545 hours, a raid was conducted by Narcotic Control Bureau officers at house address No: 1, Spg. 286-30-35-10 RPN LUMUT on suspicion of drug related activities.
- 10) During the raid, there were two arrestees and one of them was Mohamad Azren Bin Zaini. [hereby known as 'the defendant']
- 11) At the scene, a body search was conducted on the defendant and nothing drug related was found.
- 12) An inspection was carried out on the house where several drug related items were found and seized. Among these items were:
 - E2(a), (i) – one clear zip lock plastic packet approximately measured (48 x 76) mm, inside containing clear crystalline substances.
 - E2(a), (iii) – one clear zip lock plastic packet approximately measured (48 x 78) mm, contain clear crystalline substances and one red paper packet with Chinese characters approximately measured (69 x 97) mm.
- 13) The arrestee together with the seized items were then brought to the Narcotics Control Bureau for further investigation.
- 14) On the same day at about 1500 hours, the defendant gave his urine sample in a bottle inside the Narcotics Control Bureau toilet. The defendant capped the bottle and sealed it with a security seal.
- 15) The security seal contains the particulars of the defendant such as name, identification card number, the date and time of the urine sample was taken. The defendant then signed the security seal.
- 16) Then the defendant put the sealed urine bottle, labelled BKN/D129(c) – 21/05 in compartment "A", he then locks compartment "A" and the urine box was locked by another arrestee.

- 17) On 2nd August 2010, the locked box containing the defendant's urine sample was sent by ANO Izuwan Khalid Bin Kipli to the Department of Scientific Services (DSS) for analysis.
- 18) The Analyst Certificate's reference number NAR/NCB/ENF/KB/10002734 dated 11th August 2010, the Department of Scientific Services (DSS) confirms that the defendant's urine sample was POSITIVE for a class A controlled drug, **Methylamphetamine**.
- 19) The seized items analyst certificate reference KMN/155/10, dated 2nd April 2011 the analysis result were as follows:
- E2(a)(i) – The crystalline substances were found to have a total weight of **0.4034 grams**. They were analysed and found to contain **0.2955 grams** of "**Methylamphetamine**".
- E2(a)(iii) – The crystalline substances were found to have a total weight of **3.4492 grams**. They were analysed and found to contain **2.6172 grams** of "**Methylamphetamine**".
- 20) On record the defendant is a third offender for under Section 6(b) and first offender for under Section 6(a) Misuse of Drugs Act Chapter 27."

The Magistrate convicted the Appellant and sentenced him on 15/12/2014 as follows:

- 1st Charge: 3 years
- 2nd Charge: \$1,200 in default 2 months
- 3rd Charge: 3 years

The sentence for the 1st and 3rd Charge to run concurrently with effect from 15/12/2014.

The Appellant appealed against the sentence.

Mr Rozaiman, on behalf of the Appellant, submitted that the Court should invoke section 263 of the Criminal Procedure Code.

Section 263 of the Criminal Procedure Code provides:-

"When any person, not being a youthful offender is convicted before any criminal court of an offence punishable by fine, imprisonment or both, and whether or not the law under which that conviction was made provides that fine, imprisonment or both shall be imposed upon the person so convicted, the court may, instead of sentencing him to a fine or imposing any term of imprisonment in default of payment of fine or to a sentence of imprisonment of any kind,

deal with him as provided by the Offenders (Probation and/or Community Service) Act Cap 220".

The Appellant has two previous convictions for section 6(b) of the Misuse of Drugs Act offence (unlawful consumption of drugs), the first time in 2003, the second was in 2005. D/C submitted there was a huge gap between the present offences and the two previous convictions.

For the 1st Charge, the offence was committed on 28/5/2009 and the last previous conviction was on 3/8/2005 (gap of 3 years and 9 months).

For the 3rd Charge, the offence was committed on 31/7/2010 and the last previous conviction was on 3/8/2005 (gap of about 5 years). I do not think this was a serious gap.

Mr Rozaiman submitted that there was an inordinate delay in the prosecution of the case. The alleged consumption was in 2009 and in 2010. The Appellant was first charged in January 2014. I do not find this was a serious delay.

For the above reasons, I do not find any extenuating circumstances that would justify the court to exercise a discretion to order non-custodial orders such as probation or community service order.

I therefore dismiss the appeal and uphold the sentence imposed by the Magistrate.

DATO SERI PADUKA HJ KIFRAWI BIN DATO PADUKAHJ KIFLI
Chief Justice