

Mohamad Bilal Hossain Sheikh Mongal

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Motion No. 55 of 2018)**

Hon. Gareth John Lugar-Mawson, J.C.

18th February, 2019.

Sheikh Noordin Bin Sheikh Mohammad (M/S Sheikh Noordin Mohammad & Associates) for Applicant.

PO Eleana Bte Dato Paduka Hj Hairol Arni and DPP Raihan Nabilah Bte Hj Ahmad Ghazali for Respondent.

Cases cited in the Judgment:

Zulkifli bin Puasa & Ors v Public Prosecutor [185] 1 MLJ 461

Public Prosecutor v Supt Hj Mohd Mahathir bin Abdullah [2002] 2 JCBD 326

J U D G M E N T

Mawson, J.C.:

1. The Appellant, a Bangladeshi national living and working in Brunei, seeks leave to appeal against his conviction in the Magistrate's Court on 30 August 2018 of an offence of Buying a Lottery Ticket, contrary to Section 9(1) of the Common Gaming Houses Act (Cap 28).
2. The prosecution case was that he was found, with 2 others, in premises at 1st floor, Unit 11, Block B, Lot 33463 (Home Centre), Kg Tanjong Bunut, Jalan Tutong, Mukim Kilanas with 10 lottery tickets in his wallet. The Statement of Facts state that at the same time paraphernalia referable to the holding of an illegal lottery were found in the premises.
3. He was unrepresented at trial. He pleaded guilty to the charge. His plea was unequivocal. He also admitted to the prosecution's statement of facts. He was sentenced to pay a fine of \$500 (with one month in default) and given until the end of the day to settle it, which he was able to do.
4. After conviction and sentence, the Appellant engaged counsel to appeal against his conviction. His notice of appeal was filed in the High Court on 21 November 2018. This is well beyond the 14-day period given in Section 272 of the Criminal Procedure

Code (Cap. 7). The latest date the Appellant should have filed his appeal was 13 September 2018. However, section 278 of the Code gives the High Court power to permit an appeal in order that substantial justice may be done in the matter.

5. In his affidavit, the Appellant states that, as this was the first time of he had been involved in a court case, he was unaware of the procedures involved in filing an appeal. He goes on to say that he was informed that his solicitor had attempted to file notice of appeal on 13 September 2018, but that date had lapsed.
6. The substantive grounds of his appeal are a claim that his guilty plea was made under duress. He claims that the two police officers who arrested him punched him on his chest and back a few times, and told him to admit that he was involved in gambling activities. And that, although he was present at the address stated in the charge on 29 August 2018, he had not involved himself in any gambling activities taking place there, but had only gone there to use the toilet. He says that the pieces of paper containing lottery numbers found in his wallet were there because he had unwittingly picked them up when another Bangladeshi man dropped them on the floor on his way out of the premises. He pleaded guilty to the charge when brought before the court as he feared that he would be beaten up again if he did not do so.
7. It is not without significance that the Appellant only raised these allegations after the Immigration Department had told him that he was now on List A, which requires him to leave the country and bans him from re-entering it. This is an administrative action by the Immigration Department as part of their policy relating to foreigners convicted of criminal offences in Brunei.
8. In **Zulkifli bin Puasa & Ors v Public Prosecutor [185] 1 MLJ 461** it was held that two factors must be considered in applications for an extension of time to appeal. The court must; firstly, be satisfied that the delay in filing the appeal is justified; and secondly, consider whether the appeal is likely to succeed.
9. As to the delay; the delay of 12 weeks in filing the appeal is substantial. It took the Appellant's solicitor a further 2 months after 13 September to file the Notice of Appeal. Within that time, the evidence and exhibits from the investigation has been either been returned or disposed of and destroyed in accordance with the trial court's orders. This delay has caused inconvenience which could have been avoided. Unless I am satisfied that the appeal is likely to succeed, there is neither a good reason, nor a justification, for the delay in filing the Notice of Appeal.
10. As to the chances of success; **Public Prosecutor v Supt Hj Mohd Mahathir bin Abdullah [2002] 2 JCBD 326**, made it clear that a defendant should be allowed to change his plea only "*...upon valid and sufficient grounds which satisfy the court that it is proper and in the interests of justice to permit him to do so*".
11. I agree with the Respondent's counsel that the Appellant's claim that he pleaded guilty under duress and in fear of being beaten by the police is preposterous. These allegations were made for the first time in his Affidavit in Support. At no time in the

proceedings before the Magistrate's Court did he complain that the police had forced or pressured into pleading guilty. In fact, it would appear that in mitigation, he apologised for his offence and he had no problem in paying the fine imposed. The allegations against the police were only raised after he had been informed that he was required to leave Brunei and not return. I have no doubt that when he pleaded guilty he may not have expected this outcome and thought he would only get away with a fine. I agree with the Respondent's counsel that this application is no more than a desperate attempt by the Appellant to remain in Brunei and that there are no valid or sufficient grounds on which I could allow the Appellant to retract his plea and set the conviction aside..

12. The Application is dismissed. I make no order for costs.

HON. GARETH JOHN LUGAR-MAWSON
Judicial Commissioner