

Mohammad Zaiden Bin Karim

AND

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No. 6 of 2022)

Criminal law – Consumption of methylamphetamine – Prior convictions for drug consumption – Sentence

Steven Chong, C.J.
25 July 2022

Appellant In Person.

PO Syafina Abd Hadzid and assisted by DPP Pg Hj Nor'Azmeena Pg Hj Mohiddin for the Public Prosecutor.

Cases cited:

Mohd Rosdy Bin Abdullah v Public Prosecutor [2001] 1 JCBD 186
R v Ingham (3 October 1974)(Court of Appeal (Crim Div), U.K.)

Steven Chong, C.J.:

Introduction

On 16 May 2022 in the Magistrate's Court the appellant, who at first contested the charge when he was brought before the court, pleaded guilty to consuming methylamphetamine contrary to section 6(b) of the Misuse of Drugs Act.

Magistrate Norlelawati Binti Haji Abdul Hamid sentenced the appellant to 4 years 3 months' imprisonment.

This is the appellant's appeal against that sentence.

The facts

Briefly, on the afternoon of 4 August 2021 narcotics officers arrested the appellant and six other men in a house at RPN Pandan C, Kuala Belait, after receiving information of “*drug activities*”. The appellant’s urine sample was collected after his arrest and upon analysis was found to contain methylamphetamine.

Prior convictions

The appellant has 11 previous convictions for drug consumption beginning in 1994. The most recent conviction was in 2003 when he was sentenced to 4 years’ imprisonment.

Apart from the history of drug abuse the appellant was also previously convicted of two theft offences and one offence of unlawful possession of property.

Sentencing remarks

The Magistrate in her sentencing remarks was of the view that the gap between the convictions of the appellant for drug consumption did not “*exonerate him of his current offence*” and a probation order was inappropriate.

Although the appellant’s guilty plea “*was not made instantly it was made before a trial proper had commenced*” and this was a mitigating factor and in the circumstances a starting point sentence of 4 years 6 months reduced to 4 years 3 months was proper.

The appeal

The grounds of appeal are twofold. Firstly, the appellant contends the Magistrate failed to place adequate weight to the fact that the present offence was committed 17 years after his last conviction for drug consumption.

Secondly, the appellant argues that the sentence would cause hardship to his wife and four children who are dependent on him.

Decision

On the first issue raised by the appellant the point to be made at the outset is that in light of the appellant’s previous convictions for drug consumption the court below was required to pass a minimum sentence of 3 years’ imprisonment pursuant to section 29(3A) of the Misuse of Drugs Act.

The lapse between the present conviction and the previous convictions is undoubtedly long but, in itself, is not a sufficient reason to justify the exercise of the discretion to order probation

instead of imposing the mandatory minimum sentence: see the decision of the Court of Appeal in *Mohd Rosdy Bin Abdullah v Public Prosecutor* [2001] 1 JCB 186.

In the instant case the Magistrate imposed a sentence above the minimum sentence prescribed for a second or subsequent offender. I think the Magistrate was entitled to do so considering the appellant did not plead guilty at the first opportunity but changed his plea before commencement of the trial; his multiple prior convictions; and he had been sentenced to 4 years' imprisonment in relation to his last conviction. The sentence of 4 years 3 months' imprisonment cannot be said to be excessive in the circumstances.

Turning to the second issue of the detrimental impact of the sentence to the interest of the appellant's family, while the court has sympathy for them, it is settled law that this cannot be a factor which can affect what would otherwise be the proper sentence: see *R v Ingham* (3 October 1974)(Court of Appeal (Crim Div), U.K.).

Conclusion

This appeal is devoid of merit and is dismissed accordingly.

DATO SERI PADUKA STEVEN CHONG
Chief Justice