

Mohammad Dazlyn Bin Hj Mohamed Daud

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 9 of 2019)**

Steven Chong, C.J.

11 June 2019

Criminal law – Sentence – Drug consumption – Second Offender – Minimum sentence – Probation Order.

Hj Mohd Rozaiman Bin Dato Hj Abd Rahman (M/S ZICO R.A.R) for the Appellant.
DPP Emily Goh for the Public Prosecutor/Respondent.

Case cited:

Mohd Rosdy Bin Abdullah v Public Prosecutor [2001] 1 JCBD 186.

Steven Chong, C.J.:

Introduction

On 18 April 2019 in the Magistrate’s Court the appellant pleaded guilty to two counts of consumption of methylamphetamine contrary to section 6(b) of the Misuse of Drugs Act.

Acting Senior Magistrate Pg Shahyzul Khairuddien Bin Pg Abdul Rahman sentenced the appellant to a total of 3 years and 6 months’ imprisonment.

This is an appeal against that sentence.

Minimum sentence

The offences were committed in 2015 and 2017. The appellant was previously convicted of drug consumption under section 6(b) of the Misuse of Drugs Act in 2007.

In light of the appellant's prior conviction the Magistrate was required under section 29(3A) of the Misuse of Drugs Act to impose a minimum sentence of 3 years' imprisonment.

Probation Order

Section 5(1) of the Offenders (Probation and Community Service) Order, 2006 provides:

"Where a court before which an offender is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to do so, it may, instead of sentencing him, make a probation order requiring him to be placed under the supervision of a probation officer or a volunteer probation officer for a probation period of not less than 6 months and not more than 3 years."

A long lapse between convictions cannot, of itself, be regarded as a ground for not imposing the mandatory minimum sentence under section 29(3A) of the Misuse of Drugs Act and all the circumstances of the case must be considered in exercising the discretion to make a probation order: see *Mohd Rosdy Bin Abdullah v Public Prosecutor* [2001] 1 JCB 186.

Argument

Counsel for the appellant argues that the Magistrate erred in failing to consider the following factors as justification for making a probation order:

- (a) reformation of the appellant since commission of the offences; and
- (b) impact of the sentence of imprisonment on the appellant's mother

Decision of the Magistrate

Reformation of appellant

In the court below the submission of counsel for the appellant, supported by letters from family members and the community, was that he was a reformed man since the commission of the offences.

The Magistrate acknowledged that the appellant had become *"an active participant in religious activities [and] a loving and responsible son, husband and father who [had] changed for the better"*.

However, the Magistrate was not persuaded that this factor warranted the making of a probation order.

Appellant's mother

Sadly, the appellant's mother suffers from terminal cancer. As the appellant was unemployed he was able to look after her.

Counsel for the appellant submits that with the appellant *"by her side, her willpower to fight her disease was strong"* but his incarceration has *"exacerbated"* her medical condition.

The Magistrate agreed with the contention that the appellant's imprisonment would have *"an adverse effect"* on his mother's care but considered this factor to be *"no different from the hardship a family would suffer from the loss of the primary earner/breadwinner"*.

Discussion

It is to the appellant's credit that he has reformed in the manner described by the Magistrate and that he has turned into a filial son involved in the care of his mother giving her solace in her hour of need.

The appellant's reformation will certainly be beneficial to him, his family and society. But the wider public interest in deterring drug abuse prevails over the appellant's personal circumstances. The deterrent effect of the mandatory minimum sentence of 3 years' imprisonment where a person is a second or subsequent drug offender must be safeguarded.

Of course the court has sympathy for the appellant's mother. But it is not the case that the appellant is her sole or main caregiver. Counsel for the appellant concedes that there are other family members responsible for her care. And there is no evidence the appellant's imprisonment has *"exacerbated"* her illness.

The two factors relied upon by the appellant considered individually and in combination are not so exceptional as to warrant the making of a probation order instead of the imposition of the mandatory minimum sentence.

Conclusion

The Magistrate rightly decided that the circumstances did not justify the making of a probation order and the appeal is dismissed accordingly.

DATO PADUKA STEVEN CHONG
Chief Justice

