

Mohammad Wira Firdauzee bin Hj Md Azahar

and

Public Prosecutor

(High Court of Brunei Darussalam)

(Criminal Motion No. 9 of 2020)

Pg DP Hjh Rostaina Pg Hj Duraman, J.

9th July 2020

Criminal Law --- motor vehicle offences under Road Traffic Act, Cap 68 ---leave to appeal out of time --- asking for more time to make payments

Cases referred to:

Zulkifli bin Puasa and others vs PP (1985) 1 MLJ 461

R v Olliver and Olliver (1989) 11 Criminal Appeal R(s) 10

Ang Suat Goh vs PP (HCCA No.12 of 2011)

Hjh Dara binti Yusuf vs PP (HCCA No. 23 of 2011)

Applicant in person.

PO Sabrina binti Hj Mahmud for Respondent/Public Prosecutor.

JUDGMENT

Pg DP Hjh Rostaina, J

1. This is an application for leave to appeal out of time. The Applicant is asking for more time to pay the total fines imposed. On 26th September 2019 before Magistrate Kamaliah Fadhilah binti Hj Ibrahim, the Applicant pleaded guilty to three counts under the Road Traffic Act, Cap 68. The charges were:-

1st Charge

That you did at about 1300 hours on the 15th day of June 2013, at the vicinity of the connecting road of Jalan Junjungan towards Lumapas, in Brunei Darussalam, did drive a motor vehicle registration number KS 3817 (Hyundai Tucson), on the road when you are not the holder of a valid Driving License Class 3 and that you have thereby committed an offence under section 16 of the Road Traffic Act Cap 68.

Penalty – under section 16 of the Road Traffic Act Cap 68

A fine \$2,000 and in the case of a second or subsequent conviction imprisonment for 6 months and a fine of \$4,000.

2nd Charge

That you did at about 1300 hours on the 15th day of June 2013, at the vicinity of the connecting road of Jalan Junjungan towards Lumapas, in Brunei Darussalam, did drive a

motor vehicle registration number KS 3817 (Hyundai Tucson), whilst the road tax license of the said motor car expired on 31st December 2011 and you have thereby committed an act contrary to section 8(1) of the Road Traffic Act Cap 68 and punishable under section 8(2) of the said Act.

Penalty – under section 8(2) of the Road Traffic Act, Cap 68

Imprisonment for 3 months and fine \$4,000

3rd Charge

That you did at about 1300 hours on the 15th day of June 2013, at the vicinity of the connecting road of Jalan Junjungan towards Lumapas, in Brunei Darussalam, being so disqualified from driving, did drive a motor vehicle registration number KS 3817 (Hyundai Tucson), and that you have thereby committed an offence under section 45(c) of the Road Traffic Act Cap 68 and punishable under the same.

Penalty – under section 45(c) of the Road Traffic Act, Cap 68

A fine of \$4,000 and imprisonment for 6 months

2. Accordingly, for the 1st Charge he was fined B\$600 or 2 weeks' imprisonment in default of payment; for the 2nd Charge a fine of B\$300 or 1 week imprisonment in default of payment; and for the 3rd Charge a fine of B\$400 or 2 weeks' imprisonment in default of payment. Resulting in total fines of B\$1,300 or 5 weeks' imprisonment in default of payment. He was given a period of about 5 months that is until 20th February 2020 to pay the fines in full.
3. The facts revealed that on 15th June 2013, he was driving a Hyundai Tucson KS3817 along Jalan Tutong (Madewa) when he was stopped by the police during a roadblock operation and was found to have driven in violation of several road traffic offences. He failed to pay the compound and this matter was brought to Court.
4. PO Sabrina binti Hj Mahmud conceded there was an undue delay of 6 years from when the offence took place on 15th June 2013 to when he was charged and produced in Court on 26th September 2019. She submitted his Notice of Motion was filed on 20th February 2020. That there was a substantial delay of about 5 months as the time frame for him to lodge an appeal had expired on 10th October 2019. **Section 272(1) of the CPC, Cap 7 states:-** *"The appellant shall within 14 days from the time of such judgment, sentence or order being passed or made, file a petition in the Court of such Magistrate, paying at the same time the prescribed appeal fee"*.
5. Before the court can grant an extension of time to appeal he must have (i) a satisfactory explanation for the delay and (ii) an arguable case. See: ***Zulkifli bin Puasa and Others vs PP (1985)1 MLJ 46***.
6. In this matter, the Applicant's father spoke on his behalf as he suffers from paralysis since 2017 and he is unable to converse. To date, he had paid B\$400 towards the fines and is asking for more time to pay the fines. He is 34 years old, unemployed, and has to attend his medical appointments once every 3 months. Since his illness, he depends on his father not just for financial support but also to take care of him.

7. In **Ang Suat Goh vs PP (HCCA No.12 of 2011)** DP Steven Chong as Ag. CJ then made reference to the case of **R v Olliver and Olliver (1989) 11 Criminal Appeal R(s) 10**, he stated: “ In appropriate cases there is nothing wrong in principle in allowing a long period to pay providing it is not an undue burden and too severe punishment having regard to the nature of the offence and the nature of the offender. One of the objects of a fine is to remind the offender that what he has done is wrong, and the fact that he is being reminded of that over the months is no bad thing at all” .
8. I do not think it would serve the public interest to have him incarcerated without giving him adequate opportunity to pay the fines. In these circumstances and as an act of clemency, I would give him the opportunity to pay the fines until fully settled and not suffer imprisonment as at the same time he would be reminded over the months ahead what he did was wrong and the deterrence objective of the sentence is preserved.
9. I extend the time he has to pay the fine to 29th April 2021. This is to give him the final opportunity to pay and failure to do so he must serve the default prison sentence.

PG DP HJH ROSTAINA BTE PG HAJI DURAMAN
Judge, High Court
9th July 2020