Public Prosecutor

AND

Muhammad Firdaus Bin Haji Suhaimi (D1)
Malai Hazmi Bin Malai Hamzah (D2)

(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 56 of 2017)

Muhammed Faisal Bin PDJLD DSP Haji Kefli, Judge
8th August 2017

Criminal Law – S.451 Penal Code – House Tresspass – S.403 Penal Code – Plea of Guilty – Sentencing.

DPP Vuina Song for Public Prosecutor.
Defendants In Person.

SENTENCE

Muhammed Faisal, Judge:

D1 and D2 are jointly charged and faced separate charges. D1 faces one charge under Section 451 Penal Code and 3 charges under Section 403 Penal Code. D2 faces 2 charges under Section 411 Penal Code.

Upon reading of the charges, D1 has pleaded guilty to all charges that he is charged for, whilst D2 has claimed trial. This sentencing is against D1 only. The charges that he faced, to which he has also pleaded guilty to one as follows:-

> *"**1st Charge (against D1 only):***
>
> *That you, sometime in between 7.30 a.m. and 4.30 p.m on 6th day of June 2017, at address, No.30, Simpang 18, Jalan Parak, RPN Panaga 2000, Seria, in Brunei Darussalam, did commit house trespass by entering into the vicinity of the said property, used for the custody of property, with the intention to commit an offence punishable with imprisonment, to wit, the offence of theft, and you have thereby committed an offence punishable under section 451 of the Penal Code, Chapter 22.*
>
> ***Amended 2nd Charge (against D1 only):***
>
> *That you, sometime between 29th May 2017 and 7th June 2017, in the vicinity of Panaga Club, Seria in Brunei Darussalam, did dishonestly misappropriate certain*

property, to wit, One (1) Red Specialized Road Bicycle, in the possession of the Thomas Harbottle, and that you have thereby committed an offence punishable under Section 403 of the Penal Code, Chapter 22.

3rd Charge (against D1 only):

That you, sometime between 6th May 2017 and 7th June 2017, in the vicinity of Jalan Parak, Seria in Brunei Darussalam, did dishonestly misappropriate certain property, to wit, One (1) Black and Green Scott Mountain Bicycle, in the possession of the Andrea Boulanger, and that you have thereby committed an offence punishable under Section 403 of the Penal Code, Chapter 22.

4th Charge (against D2 only):

That you, sometime between 30th May 2017 and 7th June 2017 in the vicinity of Barek 419/A1 Lorong Tiga Selatan Seria in Brunei Darussalam, did dishonestly receive stolen property, One (1) Red Specialized Road Bicycle, in the possession of the Thomas Harbottle, knowing or having reason to believe the same to be stolen property and that you have thereby committed an offence punishable under Section 411 of the Penal Code, Chapter 22.

5th Charge (against D2 only):

That you, sometime between 6th May 2017 and 7th June 2017 in the vicinity of Barek 419/A1 Lorong Tiga Selatan Seria in Brunei Darussalam, did dishonestly receive stolen property, to wit, one (1) Black and Green Scott Mountain Bicycle in the possession of one Andrea Boulanger, knowing or having reason to believe the same to be stolen property and that you have thereby committed an offence punishable under Section 411 of the Penal Code, Chapter 22."

The statement of facts, which relates to the 1st, 2nd and 3rd charges are as follows:-

"D1 is a 27 year old Bruneian Male National who is currently unemployed.

1st Charge:

Sometime between 7.30 a.m. and 4.30 p.m. on 6th day of June 2017, D1 went to a house at address No.30, Simpang 18, Jalan Parak, RPN Panaga 2000, Seria, in Brunei Darussalam with the intention to commit theft.

Once in the compound of the said house he went towards the back where he succeeded in lifting open a sliding window near to the back door of the said house. He placed his hand through the said window and succeeded in unlocking the said locked back door from the inside.

He gained entry into the said house and ransacked the said house. From inside the said house he stole one 40 Inch Phillips Television and cash amounting to RM 2560. He left the house with the said stolen items back towards his own home.

A police report was lodged on 6th June 2017 by the Complainant one Nurul Syafiqah binti Yunnus who lives in the said house when upon her return to the said house at 4.30 p.m on the said day, she discovered that the front door was locked from the inside and that the back door was ajar. She also discovered that her house had been ransacked and that one 40 Inch Phillips Television and cash amounting to RM 2560 was missing from her house.

Police investigations led to the arrest of D1. During police investigation D1 admitted to have trespassed into the said house in order to commit theft. D1 has admitted to exchanging the said monies to Bruneian money and using it for his personal use. Police were only also able to recover the said television from D1.

2nd Charge (against D1):

Sometime between 30th May 2017 and 7th June 2017 D1 was in the vicinity of Panaga Club, Seria Brunei Darussalam. The Defendant saw that there was One Red Specialized Road Bicycle in the said area and took the said bike knowing that the bicycle did not belong to him.

Knowing that the said bike does not belong to him, D1 sold it to another person sometime between 30th May 2017 and 7th June 2017 in the vicinity of Barek 419/A1 Lorong Tiga Selatan Seria in Brunei Darussalam. Police investigation led to the recovery of the bike from the other person.

A police report with regards to the said bicycle was lodged by one Thomas Harbottle, who had used the said bike to Panaga Sports Club at about 17:10 hours on 29th May 2017. He had left the said bicycle locked outside the said club. On his return to the said bike at about 17:15 Hours he discovered that the said bike was missing. The complainant has since identified the recovered bicycle as his.

3rd Charge (against D1 only):

Sometime between 6th May 2017 and 7th June 2017, D1 was in the vicinity of Jalan Parak, Seria in Brunei Darussalam. The Defendant saw that there was One Black and Green Scott Mountain Bicycle in the said area and took the said bike knowing that the bicycle did not belong to him.

Knowing that the said bike does not belong to him, D1 sold it to another person sometime between 6th May 2017 and 7th June 2017 in the vicinity of Barek 419/A1 Lorong Tiga Selatan Seria in Brunei Darussalam.

Police investigation led to the recovery of the bike from the other person. A police report with regards to the said bicycle was lodged by one Andrea Boulanger, who had used the said bicycle to Panaga Sports Club at about 15:00 hours on 6th May 2017. She had left the said bicycle unlocked outside the said club. On her return to the said bike at about 19:30 Hours she discovered that the said bike was missing. The complainant has since identified the recovered bicycle as hers. On record, D1 is a first offender."

In considering the defendant's sentence, I take into consideration, his plea of guilty, and his previous clean record. I also take into consideration, that with respect to the 2nd and 3rd charges, the Bicycle, that we misappropriated were recovered, and also the Television set from the 1st charge. However, monies to the amount of RM 2560 remains missing.

Taking into account the a far mention factors, my starting point for the 1st charge, is 24 months' imprisonment, reduced by 1/3 for the D1 plea of guilty. With respect to the 2nd and 3rd, given the fact that the defendant has no conviction, and the circumstance of how the offences were committed, I believe, that a fine is appropriate in this particular case.

The amount of fine under this section, is unspecified. However, given what I have stated in the previous paragraph, and also the fact that the subject matters for both charges are Bicycles, I believe a fine of $800 in default 2 months' imprisonment is appropriate for each of the charges.

My sentence, against D1, is thus as follows:-

1st charge : 16 months' imprisonment.

2nd charge : $800 in default 2 months' imprisonment.

3rd charge : $800 in default 2 months' imprisonment.

Total sentence are 16 months imprisonment and $1,600 in default 4 months' imprisonment.

The defendant is currently in remand. Imprisonment sentences to run with effect from 3rd August 2017. The defendant has 2 months' grace period to settle fine, from today. Failure to pay fine, in default sentences to run consecutively to imprisonment sentence. Upon application, all recovered items to be returned to owner.

MUHAMMED FAISAL BIN PDJLD DSP HAJI KEFLI
Judge, Intermediate Court