

Ak Abdullah Bin Pg Jafar

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Motion No. 5 of 2023)**

Steven Chong, C.J.
14 February, 2023

Criminal law – Possession of unexcisable goods (alcoholic drinks) – Sentence

Applicant In Person.
DPP Siti Khalilah Bte Hj Hussin for Respondent/Public Prosecutor.

Steven Chong, CJ (ex tempore):

This is an application to appeal out of time against sentence.

On 15 August 2022 in the Magistrate’s Court the applicant and two other defendants (“*the three men*”) were convicted on their own pleas of guilty of the offence of the possession of 189 bottles of alcoholic drinks contrary to section 146(1)(d) of the Excise Order 2006.

Magistrate Nur Eleana Binti Dato Seri Paduka Hj Hairol Arni imposed a fine of \$23,000 or 13 months’ imprisonment in default of payment and gave the applicants 6 months to pay.

Briefly stated the facts were that on the afternoon of 2 November 2020 police officers from Bangar Police Station in Temburong carrying out surveillance at a boat jetty in Kampong Meniup saw the three men loading suspected “*contraband goods*” into a Daihatsu Grand Max car (“*the car*”).

The police officers attempted to stop the car in the vicinity of Kampong Meniup but the driver sped off. Later that night, however, the three men surrendered themselves to the police. One of the men led police officers to a location in Kampong Rataie where the alcoholic drinks which had been transported from the boat jetty in the car were kept.

All three men admitted they were each paid \$50 to deliver the alcoholic drinks smuggled from Limbang to a house in Kampong Salambigar.

The applicant seeks a reduction in the fine and payment to be made by monthly instalments of a maximum of \$200. He is aged 26 and earns about \$300 per month. His elderly parents are dependent on him and would suffer hardship without his support.

On the issue of the delay in filing a notice of appeal, the applicant says that he was advised by a Magistrate's Court official that he was entitled to appeal within 2 weeks of the expiry date for payment of the fine.

It is unnecessary to determine the veracity of the applicant's explanation for the delay in appealing. There is simply no arguable case against the sentence imposed on the merits.

The offence involved the smuggling of a substantial quantity of alcoholic drinks for profit and a deterrent sentence is necessary to discourage this kind of unlawful activity. The fine imposed is close to the minimum mandated by law for the offence having regard to the excise duty evaded. Hence, no reduction in the sentence can be given.

Turning to the applicant's payment proposal, the Magistrate allowed him a generous period of 6 months to pay. He has paid \$1,960 so far. Acceding to his payment proposal would mean giving him over 8 years to pay which would be inimical to the deterrence objective of the sentence.

Nothing the applicant has advanced impinges upon the correctness of the decision of the Magistrate. For these reasons the application is dismissed.

DATO SERI PADUKA STEVEN CHONG
Chief Justice