

**IN THE COURT OF APPEAL
OF THE REPUBLIC OF VANUATU**
(Criminal Appellate Jurisdiction)

Criminal Appeal
Case No. 23/1077 COA/CRMA

BETWEEN: MIKE RARUA
Appellant

AND: PUBLIC PROSECUTOR
Respondent

Date of Hearing: 7 August 2023

Coram: *Hon Chief Justice V Lunabek
Hon Justice JW von Doussa
Hon Justice R Asher
Hon Justice OA Saksak
Hon Justice VM Trief
Hon Justice EP Goldsbrough*

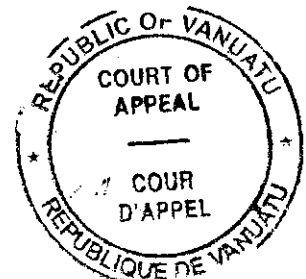
Counsel: *B Livo for the Appellant
J Tete for the Respondent*

Date of Judgment: 18 August 2023

JUDGMENT OF THE COURT

Introduction

1. This is a short appeal against the sentence dated 12 June 2023 whereby Mr. Rarua was sentenced to 12 months imprisonment for a charge of unlawful entry of a dwelling house, and 5 months imprisonment for theft. The sentences were made to be served concurrently.
2. Another defendant Mr. Tommy Moruk who was jointly charged with Mr. Rarua received the same concurrent sentences of 12 months imprisonment and 5 months imprisonment but he was sentenced earlier on 18 January 2023. Having served half of his sentence, Mr. Moruk was released on parole on 18 July 2023.
3. Another offender Mr. William Kai was also jointly charged with Mr. Rarua and Mr. Moruk for the same two offences of unlawful entry and theft. He was sentenced earlier on 21 December 2022 to 12 months' imprisonment for unlawful entry and 5 months imprisonment for theft as a concurrent sentence. This sentence was however suspended.



The Appeal

4. The ground of appeal is that the sentence is manifestly excessive and should be suspended.
5. At the hearing of the appeal Mr. Livo withdrew an appeal by Tommy Moruk on the basis of his automatic release on parole.
6. Furthermore, Mr. Livo did not pursue the first limb of the appeal that the sentence is manifestly excessive.
7. The only remaining limb of the ground of appeal pursued was that the concurrent sentence of the 12 months should be suspended.

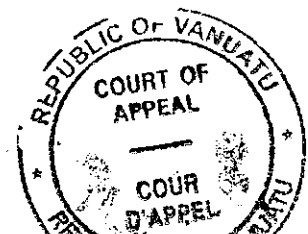
The Sentence

8. The sentencing Judge sentenced Mr. Rarua separately on 12 June 2023. The Judge recorded in paragraph 2 of the sentence the reason for the late sentence being that the appellant had absconded.
9. The Judge did not suspend the sentence. He said in [8]:-

"You breached your bail conditions by absconding and warrant was issued for your arrest. Your sentence will not be suspended. A custodial sentence is warranted to serve as a deterrent to your full time offending. You must present yourself to the Centre Manager of the Correctional Centre in Vila by no later than 26 June 2023 unless you elect to begin serving your sentence immediately".

Submissions

10. Mr. Livo submitted the concurrent sentence of 12 months imprisonment should be suspended.
11. Counsel argued first that the Judge should have had regard to section 37 of the Penal Code [CAP 135] to impose a community based sentence instead of a sentence of imprisonment. Mr. Livo relied on case authorities of **Public Prosecutor v. Andy [2011] VUCA 14 and Heromanley v. Public Prosecutor [2010] VUCA 25**.
12. Secondly, counsel argued there was no consistency in the sentences imposed on the three defendants. Thirdly, counsel argued that there was no parity of sentence, relying on the case authority of **Lowe v. The Queen (1984) 154 CLR 606 and Green v. The Queen (2011) 244 CLR 462**.
13. Finally, Mr. Livo submitted the primary Judge should have suspended the appellant's sentence of imprisonment pursuant to sections 57 and 58 of the Penal Code. Counsel argued that the character of the appellant warranted a suspended sentence. Further Mr. Livo argued that the appellant's breach of bail conditions should have been dealt with as a separate charge instead of being used as the reason for not suspending the sentence.



Discussion

14. The Court did not require oral submissions from the respondent.
15. The distinction between the appellant's case and all the cases counsel placed reliance on was the fact that he breached his bail conditions.
16. It was due to that breach that the appellant was treated differently by the sentencing Judge on 12 June 2023. He had absconded and a warrant of arrest had to be issued to apprehend him. He should have been in Court on 21 December 2022 when William Kai was sentenced but he deliberately flouted his bail conditions.
17. Had the appellant been present on 21 December 2022, he would have been before the Court with an unblemished character and the Judge might have been persuaded to apply section 57 of the Penal Code to suspend sentence, as he did with William Kai.
18. The appellant's absconding was in relation to the very sentence he now seeks to appeal against. It was therefore proper for the Judge to have considered that factor to exercise his sentencing discretion to impose a custodial sentence instead of a suspended sentence. The fact that he absconded indicated that he was not prepared to respect the order of the Court which granted him bail. This attitude on his part went directly to his character, and was properly taken into account: *Section 57 (i) (a) (iii) of the Penal Code*. A party who cannot be relied on to abide bail conditions may similarly not honour the requirements of a suspended sentence, involving as it does a measure of trust.
19. There was no room for complaints about the Judge not applying the equality and parity principles as the circumstances applying to Mr. Kai and Mr. Rarua were different.

Result

20. There is therefore no merit in this appeal. Accordingly, it is dismissed.

Dated at Port Vila, this 18th day of August 2023

BY THE COURT



Hon. Chief Justice Vincent LUNABEK

