

**IN THE MAGISTRATES COURT
OF THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

**Criminal Case No.
1875/24MC/CRML**

PUBLIC PROSECUTOR

V

JEFFREY MASSING

FELIX JOHNTALO

DAVID TEVI

CHRISTY DAVID

JEAN VYE RORY

*In Attendance: Mr. Solomon Asang for the State
Mr. Junior Garae for the defendants*

SENTENCE

A. Introduction

1. The defendants namely Jeffrey Massing, Felix Johntalo, David Tevi, Jean Yves Rory and Christy David all pleaded guilty on the charges of theft and complicity to theft.
2. They are accordingly convicted as charged.

B. Facts

3. The complainant is Mr. Archie Dagata who originates from the Philipines and was employed by Esah Store as the Warehouse Supervisor.
4. He filed a complaint in the Police in Luganville alleging that on 18 May 2024, the defendants stole from the warehouse of the Store.

5. At the material time the defendants namely David Tevi, Christy David and Jean Yves Rory were employed at Esah Shop while Jeffrey Massing and Felix Johntalo were working for South Malekula Shipping.
6. On that date, the defendant Jean Yves Rory has arranged for Jeffery Massing to collect him with two other defendants- David Tevi and Christy David.
7. It appeared that Jeffery Massing had accompanied defendant- Felix Johntalo who drove the South Malekula Shipping lorry to collect the rest of the defendants.
8. The vehicle driven by Felix Johntalo was registered as S10818 on the number plate.
9. The defendants then went to the Warehouse and loaded the lorry with goods particularized as:
 - o 22 Bags of Rice valued at VT 74,580
 - o 21 cartons of canned Tuna valued at VT 110,880
 - o 11 cartons of canned Chinese mackerel valued at VT 39,600
 - o 5 cartons of oxford canned meat valued at VT 43,500
 - o 9 cartons of Voila valued at 34,560
 - o 1 carton of Lolly valued at VT 7,000
10. The total value of the items stolen by the defendants is VT 310,120.
11. While the defendants were loading these goods into the lorry, the complainant drove in to lock the gate to the Warehouse.
12. As he noticed that the goods had been loaded into the lorry, he drove in to see what was going on, however, the defendants chased him away as they threw stones at his vehicle.
13. The complainant drove off and went straight to the Police Station and reported the matter to the police.
14. Meanwhile, the defendant had left with the goods to Jeffrey Massing's house but the Police arrived soon after and intercepted the goods then took them back to the warehouse.
15. The defendants were arrested and when cautioned, they all admitted their offending.

C. Aggravating / Sentence starting point

16. The maximum penalty of theft and complicity to theft is 12 years imprisonment.
17. There are no mitigating aspects of the offending. The aggravating factors are:

- There was some degrees of planning.
- Offending occurred after business hours.
- There was an intention to cause a business to suffer substantial loss.
- Joint enterprise as the defendants grouped together to commit the offences.
- There was breach of trust by three of the defendants who worked in the complaint company.

18. In considering the aggravating factor, I set a starting point of 2 years imprisonment.

D. Deductions for Guilty Plea

19. The defendants pleaded guilty at first opportunity.

20. They are therefore entitled to one-third reduction of their starting sentence, which is 8 months.

E. Personal Factor

For Jeffrey Massing:

- He is 43 years of age.
- He resides at Palm Station.
- He has four children who all attended school.
- He worked as the Operations Manager at South Malekula Shipping but was terminated due to his offending.
- He is currently unemployed.
- He suffers heart problem (medical report issued).
- He is a first time offender.
- He expressed remorse for his actions.
- He pleaded guilty at first given opportunity.
- He cooperated with the Police during investigation.
- He has been remanded in custody for 11 days.

For Felix Johntalo:

- He is 40 years of age.
- He is from Kole Village but resides at Panpan area.
- He lives in a de facto relationship and has one child.
- He used to work as a driver for South Malekula Shipping but was terminated due to his offending.

- He is currently unemployed.
- He is a first time offender.
- He expressed remorse for his actions.
- He pleaded guilty at first given opportunity.
- He cooperated with the Police during investigation.
- He has been remanded in custody for 11 days.

For David Tevi and Christy David:

- David Tevi is 24 years of age and Christy David is 27 years of age.
- Both defendants are brothers.
- They currently reside with their parents at Chapuis Area.
- They were employed at Esah Shop but were terminated due to their offending.
- They are currently unemployed.
- They pleaded guilty at first given opportunity.
- They are first time offenders.
- They express remorse for their actions.
- They cooperated with the Police during investigation.
- They were remanded in the Correctional Centre for 17 days.

For Jean Yves Rory:

- He is 40 years of age.
- He resides at Panpan area.
- He lives in a de facto relationship and has five child three of whom attended school.
- He used to work at Esah Shop but was terminated due to his offending.
- He is currently unemployed.
- He is a first time offender.
- He expressed remorse for his actions.
- He pleaded guilty at first given opportunity.
- He cooperated with the Police during investigation.
- He has been remanded in custody for 6 days.

For the defendants' personal factor, I make a further discount of 9 months.

F. End Sentence

21. Taking into account all matters in relation to aggravating and mitigation personal to your offending, the end sentence imposed on each of you for your offending is 7 months imprisonment.

22. However, I accept that your sentence be suspended for 1 year after taking into account the submissions by your counsel that:
- All of you were terminated from your employment because of your offending.
 - You all have served 6 to 17 days in prison.
 - The items stolen were recovered on the same day and taken back to Esah Shop.
 - Despite your unemployment, your immediate family relies on you for maintenance and support.
23. This means you must not re-offend within 1 year. However, if you reoffend again within 1 year, this suspended sentence will be lifted and he will serve 7 months imprisonment together with any other sentences imposed on you for your re-offending.
24. For completeness, I also order fine of VT 8,000 and VT 2,000 prosecution cost on each of you to be paid in 30 days from today.
25. This sentencing principles desired to be achieved in your sentencing (*Public Prosecutor v Vahirua* [2018] VUSC 15) are:
- To hold you accountable for your conduct
 - To protect the community
 - To denounce your criminal conduct
 - To assist you in your rehabilitation and reintegration.
26. The Officer in charge of the Correctional Centre in Luganville is to release the defendants forthwith.

G. Appeal

27. You have 14 days to appeal to the Supreme Court if you are not satisfied with this sentence.

DATED at Luganville, this 13th day of September 2024

BY THE COURT



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MOSES PETER
Senior Magistrate

