

PUBLIC PROSECUTOR

-v-

PAUL WARI
YANICK WAKO

SENTENCE

I look at the case of each defendant separately, although they were both involved together at the start of this incident.

Yanick Wako you have pleaded guilty to theft in that you kept watch outside the house of Justin West while Paul Wari went in and stole a key. If you are a look out you are just as much involved as the person who went in. I only sentence you for theft, but you could easily have been charged with unlawful entry. The maximum sentence for theft is 12 years. The maximum for unlawful entry is 20 years if you go into a house.

I can understand it is difficult if you have little or no money and cannot get a job. But if everyone who is in that position starts stealing then very quickly Vanuatu will become a very unhappy place.

I accept you did not know there would be violence in the house. I accept you did not intend that. You must understand if you go out to steal or commit unlawful entry then sometimes violence will happen. It does not happen if you don't go out to steal.

You are a young man. You have no previous convictions. It is quite possible you were influenced by Paul Wari. The two of you went to the shop in the afternoon.

It is also very much to your credit that when you realised what happened you went to the police and told them. I can understand at that time you were frightened and very upset at what had happened.

It is also to your credit that you have pleaded guilty.

I accept you are very sorry for what happened at that night. That was clear when you spoke to me.

You have been remanded in custody since 10 June. That is just over two months. I take that into account.

Sentence is 6 months imprisonment suspended for 3 years .
Explained.

I turn to Paul Wari. Your record is bad. You have several previous convictions for theft and unlawful entry. The latest of those attracted a sentence of 3 years imprisonment in total.

You were released on licence on 31st December 1999. This tragedy happened on 9 June. I cannot tell from the face of the papers before me if these offences were committed whilst on licence. It is almost certain they were. In any event whether during the period of the licence or shortly after its expiring that is an aggravating feature.

You are still a young man. I give you great credit for the fact you admitted these matters to the police and you have pleaded guilty. This is particularly so given the seriousness of the offences.

I also accept that when you went out on that evening you did not intend to kill or seriously harm anyone. I also accept that even after you had assaulted Justin West you did not intend he should die.

You say that there was a fight with him and he had a knife. There is a kitchen knife in one of the photographs. You say you ran around the room for a while trying to avoid him. You say you got the knife from him and then

you fought. You hit him to the face and body and he fell. You then tied his hands and legs and then took the key and left.

• But you severely beat a man much older than yourself. You tied his hands and you tied his feet and you left him. It might be if you had not done that or you had called help immediately he would not have died. I don't know.

You didn't go home or go away then. You continued with your plan, took the key to his shop and set off to steal from that shop. It was then you were caught. By that time Justin West was dead. You escaped and were arrested later.

The Penal Code says the maximum sentence for this offence is 10 years. This case must come at the top end of the scale. I accept you have no previous convictions for violence to the person.

• Giving credit for the guilty plea and the other matters I have mentioned I sentence you on Count 1 to eight years.

For sentencing purposes I treat counts 2 to 5 as one offence. They arise out of the same set of facts.

The most serious of these is unlawful entry into a dwelling house. That carries a maximum sentence of 20 years. You already have several convictions for unlawful entry.

When you unlawfully enter a person's house, even if they do not know until the next day, you make them frightened. They feel insecure in their own house. If they wake up while you are in the house that terrifies them. All this, because you want to steal.

• The general perception is that unlawful entry into dwelling houses is increasing. I do not know if that is true or not. Everyone should understand if anyone unlawfully enters another's house to steal or commit any other offence then the courts will look to imprisonment. This is particularly so if there are people in the house or it is at night.

If a person unlawfully enters the house of another there is always the risk there is someone in there and they are awake or wake up. There is

always the possibility then that violence will occur. That is caused because of the unlawful entry. That is what happened in this case.

• If you had not decided to steal the key to steal from Goodies Shop Justin West would be alive today. You even went to the shop in the afternoon. If when he woke up you had left his house he would still be alive. But you went on with your plan.

I give credit for your admissions and guilty plea.

Whilst there are no specific deterrent sentence or extended sentence provisions in Vanuatu I find the correct sentence for the unlawful entry, count 3 is 6 years. I order count 2, no separate penalty, count 4 – 3 years concurrent and count 5, no separate penalty.

• I have sentenced you to 8 years for the assault and a total of 6 years for the other offences. The question is whether these sentences should run concurrently or consecutively. Each sentence can stand separately on its own for the offence concerned. If they are to run consecutively I must look to the overall sentence in relation to the wrong doings. The circumstances of each could be regarded as aggravating the other. I must also look to the deterrent effect.

It is also clear you are a very dangerous man and the public should be protected from you. The maximum that could have been ordered for the unlawful entry is twenty years. If one regards the death as a severely aggravating feature of that, then giving credit of approximately one third for the mitigation 14 years would be within the correct range.

I do consider each of these two offences as separate entities and not aggravating features of each other.

• I therefore consider they should run consecutively.

• The total sentence is 14 years. The question of release on licence is not a matter for the court but for the minister. The release by Presidential pardon is not a matter for me. I would suggest that it is not appropriate in your case.

Expressed concern that defendants coming to and from court/prison unescorted. Ask Public Prosecutor to take it up with the police

DATED at Port Vila, this 24th day of August 2000

BY THE COURT

R. J.

R. J. COVENTRY

Judge

