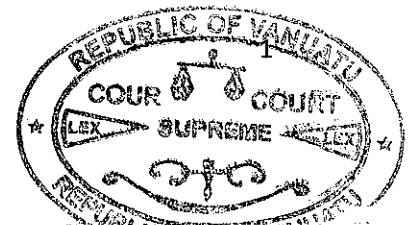


PUBLIC PROSECUTOR VS. ANTHONY KIEL

Date of Hearing: Tuesday, December 6th, 2016.
Before: Justice James Paul Geoghegan
In Attendance: Mr Lendy Young appears for the Public
Prosecutor
Mr Harrison Rantes appears for the
Defendant

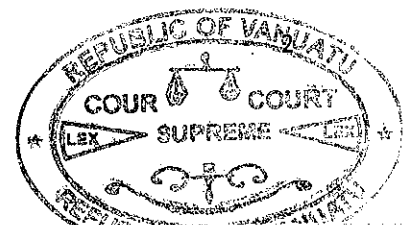
SENTENCE

1. Anthony Kiel you appear for sentencing in respect of 5 charges of unlawfully entering a dwelling house contrary to section 143 of the Penal Code and 5 five charges of theft contrary to section 125(a) of the Penal Code. The charges of unlawfully entering a dwelling house carry a maximum term of imprisonment of 10 years. The charges of theft carry a maximum term of imprisonment of 12 years.
2. The brief of facts tells me that these offences involve the burglary of three different business premises in the Nambatri area between July and August this year. One of those premises, the Ino Makas Store was burgled by you on three separate occasions. You entered the Ino Makas Store on July 22nd, 23rd and 24th during the evening and stole alcohol, TVL cards and cash. The total cash taken appears to be around VT12,000.
3. On August 27 at around 11:30pm you approached the female victim from behind while she was standing outside a store in the Nambatri area and you have snatched the brown wallet she was holding in her hand. The wallet contained a drivers license, a passport and approximately VT100,000 as well as other items. The victim has had her passport,



wallet and cards returned to her. You apparently spent the money on alcohol, food and bus fares.

4. On August 28 you have broken into the Mok Store premises at Nambatri where you have stolen 5 car batteries. You have hidden these on the golf course at Le Lagon however they were discovered by others and returned to the Police and presumably then to the owner. Accordingly in that case there has been no loss to the victim. That is however because of the honesty of the persons who found the batteries that you have stolen.
5. The final charge of unlawful entry involves you breaking into the Volcanic Earth premises in the Nambatri area on August 28. You have attempted to take a cash box and 2 jackets. It appears however that while you took those items outside you have left them at the property and accordingly there has been no loss to the owner of the business premises.
6. It appears from reading the summary that they may have been others involved in these matters or that you have supplied some of the alcohol to your friends. As I said to you earlier you will note that none of your friends, so called, are here to support you today and you might want to think about that as you serve your sentence.
7. I have read your pre-sentence report which tells me that you have not been without opportunity. You have had the opportunity to complete your secondary education and enrol at university, however you chose not to. Instead, you have chosen a life which appears to involve sitting around with your friends and drinking alcohol. As I commented to you before starting this sentencing you appear to be an intelligent young man with potential to do well and you need to be determined to achieve that potential in the future. You have said that your friends encouraged you to carry out these offences and no doubt peer pressure has had some influence, but here is the thing. As I have said, you have a brain and the ability to make your own decisions. None of the friends who have enjoyed the alcohol you shared with them, are here now to share some of the penalty.
8. You appear to have something of a dysfunctional relationship with some of your family although your father wishes to stand by you and support you.

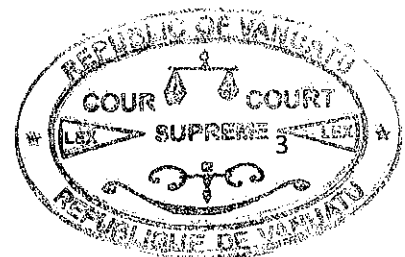


9. I accept, as is referred to in the pre-sentence report that you are remorseful. There has been no reconciliation ceremony and frankly that appears unlikely.
10. Offenders like you rarely have any appreciation of the consequences of their offending. In the case of the Ino Makas Store and other commercial premises, they involve small businesses with the owners working hard to try to make a living. Repeated offending of this kind against them can affect them far more deeply than you would appreciate.
11. As to the theft of the wallet, the victim was a New Zealander. Vanuatu is a country which relies heavily on tourism and this sort of offending damages the reputation and therefore the prosperity of this country.
12. I have read the prosecution submissions and the prosecution has referred to three authorities, **Public Prosecutor v. Raprap**¹, **Heromanley v. Public Prosecutor**² and **Public Prosecutor v. Matahu**³. **Raprap** and **Matahu** involved multiple charges of unlawful entry and theft. In **Raprap** there were five burglaries. In **Matahu** seven burglaries. **Heromanley** involved only one burglary but approximately 6 million vatu was stolen. In **Matahu** I referred to the need to emphasize the difference in terms of penalty between unlawful entry to a business premises which carries a maximum sentence of 10 years and unlawful entry to a residential dwelling which carries a maximum sentence of 20 years. That is an important distinction. These burglaries involved unlawful entry to business premises.
13. The Public Prosecutor has set out various relevant factors to be taken into account. I refer to those as follows:-
- a) It involves a series of offending or multiple offending.
 - b) The offending occurred at four different places and four different people.
 - c) The offending occurred on different dates.
 - d) The offending was premeditated.
 - e) The offending occurred and targeted business houses.

¹ [2011] VUSC 89

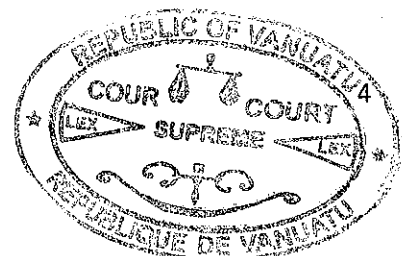
² [2010] VUCA 25

³ [2016] VUSC 93



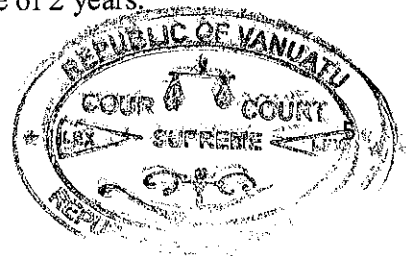
- f) The offending occurred at night.
 - g) The offending caused substantial loss to the complainants.
 - h) You were the “sole ring leader”. A reference to the fact that you were the sole ring leader is wrong, and the reality is that if you are a sole offender you cannot be a ring leader. There must be other co-offenders involved for that status to apply to you. I accordingly attach no weight at to that submission.
 - i) You once breached your bail conditions.
 - j) Then there is a reference to the offending being serious in the eyes of the law as reflected by the penalties.
14. Many of those aggravating features are merely variations of others. The most significant factor is the number of offences involved and in the case of the Ino Makas Store repeated targeting of one retailer. It also involves a concerning event of bag snatching on the street and that is offending where deterrence must apply.
15. The Public Prosecutor proposes a starting point of 3 years imprisonment in respect of the offending.
16. Mr Rantes on your behalf refers to the cases of the **Public Prosecutor v. Matahu**, **Public Prosecutor v Mafe⁴** and **Public Prosecutor v. Tamaki⁵**. Mafe and Tamaki involved a single burglary and sentences of 2 years imprisonment and 20 months imprisonment respectively, suspended. Mr Rantes submits that an appropriate sentence would be one of 2 years imprisonment with that term to be suspended.
17. The purposes of sentencing must be to hold you accountable, to denounce your conduct, to deter you and others from offending in this way, to provide for the interests of the victims where possible and to provide for rehabilitative needs where appropriate.
18. I consider firstly the burglary of the commercial premises. As I have said those premises were targeted by you and in the case of the Ino Makas Store targeted repeatedly. That is a seriously aggravating feature of the offending. I consider an appropriate starting point to be one of 3 years imprisonment. From that 3 years I deduct 1 year for your early guilty plea which includes an allowance in my assessment

⁴ [2011] VUSC 219



for your remorse which is a component of an early guilty plea. I do not consider any other mitigating factors to be present which would necessitate a further reduction.

19. I consider the theft in count 7 of the information to be worthy of separate consideration involving, as it did, what effectively amounted to a street assault that night. This is serious offending in its own right and needs to be denounced. I consider that the end position of an additional 6 months term of imprisonment reflects the need to denounce this behavior without offending against the principle of totality.
20. The total sentence to be imposed is therefore 2 and ½ years imprisonment.
21. I do not propose to order any compensation as it is clear that you do not have the means to pay.
22. As to the issue of suspension of your sentence, I take specific account of section 37 of the Penal Code which requires the Court to have regard to keeping offenders in the community were appropriate and sections 57 and 58 regarding the suspension of sentences. I take account also of the fact that you are a first time offender and that you are 23 years old.
23. Having said that, I consider the offending as being serious and particularly your repeated targeting of business premises and the theft from the victim Ms Schofield. Accordingly I consider that I should suspend half of your sentence only and that you should serve part in order to underline the unacceptability of this kind of offending and to deter you and others from engaging in it. What I would repeat to you though, is that you are a young man with some potential but you are the only one who can realize that potential. You need to choose positive and good people to be around. I have no doubt that when you complete this sentence you have the ability to do well in life and I hope that you do.
24. Accordingly, on counts 1 to 6 inclusive and 8 to 10 inclusive you are sentenced to 2 years imprisonment with those sentences to run concurrently. On count 7 you are sentenced to 6 months which is cumulative on the sentence of 2 years.



25. You are to serve 1 year and 3 months imprisonment with the remaining 1 year and 3 months suspended for a period of 18 months. Your sentence of imprisonment is deemed to have commenced on 11 October 2016.
26. I am of the view that you would also benefit from a sentence of supervision, and having considered the Penal Code I consider that I am not prevented from imposing a sentence of supervision despite the fact that you are serving half of your sentence. You are accordingly additionally sentenced to 12 months supervision to take effect from your release on the suspended sentence and on the condition that you undertake such courses, counselling, treatment or training as directed by your Probation Officer to address the causes of your offending and that you complete such courses counselling treatment or training to the satisfaction of your Probation Officer.
27. You have 14 days to appeal the sentence.

DATED at Port Vila this 6th day of December, 2016.

BY THE COURT

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JAMES H. GEORGHEGAN

Judge

