

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

Criminal
Case No. 21/15 SC/CRML

PUBLIC PROSECUTOR

v

MARK MUN ANDREW

BETWIN PAKOA

Date: 7 September 2021
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr C. Shem
Defendant – Mr H. Vira

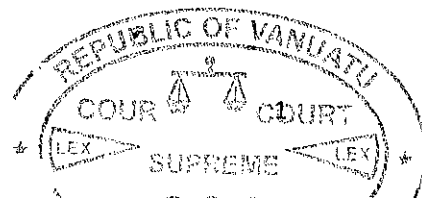
SENTENCE

A. Introduction

1. Mr Andrew and Mr Pakoa pleaded guilty to 4 charges each of unlawful entry (Counts 1, 3, 6 and 8), 3 charges of theft (Counts 4, 7 and 9) and 2 charges of malicious damage to property (Counts 2 and 5). They accepted the summary of facts and were accordingly convicted on their own pleas and the admitted facts.

B. Facts

2. At night on 17 December 2020, the Defendants entered Lolam Building in downtown Port Vila and in doing so, damaged the main glass door on the ground floor of the building knowing that the property belonged to another (Counts 1 and 2).
3. The Defendants forced entry into the office of Marc Gerard of Yumi Wok company on the fourth floor of Lolam Building (Count 3). In doing so, they damaged 2 wooden inner doors, 1 glass door and 7 desk drawers knowing that the property belonged to another (Count 5). They stole an iPhone with a broken screen, drill accessories, a tool box and alcoholic drinks (Count 4). The value of the stolen and damaged properties is at least VT400,000. Mr Gerard received back from the Defendants only the iPhone with the broken screen.



4. The Defendants forced entry into the office of Roy Macdonald of Company Services Limited on the fourth floor of Lolam Building (Count 6). They stole 1 MacBook Pro 13, 1 Lenovo laptop, 2 external hard drives, 1 MiFi box and 1 router charger (Count 7). The value of the stolen property is at least VT300,000. None of it has been recovered.
5. The Defendants forced entry into the office of Didier Hamel-Landry of Titan FX company on the fourth floor of Lolam Building (Count 8). They stole 3 laptops, 1 head set, 1 bottle of champagne, 2 Dell Inspiration 5000 premium 15.6 inch, 1 Dell Inspiration 13500 2 in-1 13.3 inch, a flash drive and 1 Bose pro audio speaker (Count 9). The value of the stolen property is at least VT311,787. None of it has been recovered.
6. Mr Andrew elected to remain silent. Mr Pakoa admitted Counts 1-7 to the Police and elected to remain silent as to Counts 8 and 9.

C. Sentence Start Point

7. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
8. The maximum sentences prescribed in the *Penal Code* [CAP. 135] are:
 - a. theft (s. 125(a)) – 12 years imprisonment;
 - b. unlawful entry (subs. 143) – 10 years imprisonment; and
 - c. malicious damage to property (s. 133, and s. 36 of the *Interpretation Act*) – 1 year imprisonment or VT5,000 fine or both.
9. There are no mitigating factors.
10. The offending is aggravated by:
 - The offending occurred at night time;
 - There was some planning involved;
 - The Defendants broke into 4 separate properties; and
 - The loss suffered with no prospect of reparation or return of the stolen property.
11. The factors set out above require a global sentence start point of 5 years 6 months imprisonment for each Defendant.

D. Mr Andrew - Personal Factors and End Sentence

12. The Prosecution case was strong with the CCTV footage of the Defendants. Accordingly I deduct 25% (16 months) for Mr Andrew's prompt guilty pleas.
13. Mr Andrew is 36 years old. He is in a *de facto* relationship and has 1 child. His partner is overseas with the RSE program. He looks after their child. His lack of parental supervision and broken home with no parental discipline is stated to be the main contributing factor



to his offending. He is stated to be remorseful however that does not sit well given his previous convictions. I deduct 2 months from the sentence start point for Mr Andrew's personal factors.

14. Mr Andrew has previous convictions from 2006 to 2014 for offences including trespass, unlawful entry, theft and damage to property. Mr Andrew offended even though he knew the consequences of offending. An uplift of 3 months is added to the sentence start point.

15. Taking all matters into account, the end sentences imposed concurrently are:

- a. Theft (Counts 4, 7 and 9) 4 years 3 months imprisonment;
- b. Unlawful entry (Counts 1, 3, 6 and 8) 4 years 3 months imprisonment; and
- c. Malicious damage to property (Counts 2 and 5) 6 months imprisonment.

16. The sentences are back-dated to run from 24 July 2021 as Mr Andrew has already spent 46 days in custody.

E. Mr Pakoa - Personal Factors and End Sentence

17. The Prosecution case was strong with the CCTV footage of the Defendants. Accordingly I deduct 25% (16 months) for Mr Pakoa's prompt guilty pleas.

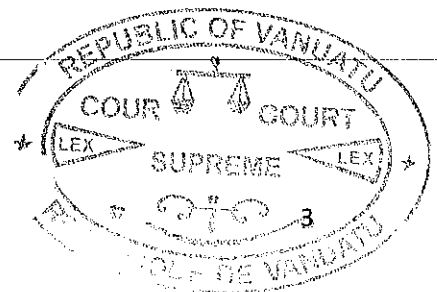
18. Mr Pakoa is 24 years old. He only completed primary education. He has good family and community relationships. He is remorseful. He has no previous convictions. He had always lived on Tongoa island and just arrived in Port Vila when he committed the offending. Peer pressure is stated to be the main contributing factor to his offending. I deduct 10 months from the sentence start point for Mr Pakoa's personal factors including his youth and immaturity.

19. Taking all matters into account, the end sentences imposed concurrently are:

- a. Theft (Counts 4, 7 and 9) 3 years 4 months imprisonment;
- b. Unlawful entry (Counts 1, 3, 6 and 8) 3 years 4 months imprisonment; and
- c. Malicious damage to property (Counts 2 and 5) 6 months imprisonment.

20. The sentences are back-dated to run from 1 August 2021 as Mr Pakoa has already spent 38 days in custody.

21. I consider the differences in sentences between Mr Andrew and Mr Pakoa are also a reflection of Mr Andrew, who has previous convictions, being the lead offender who led Mr Pakoa astray. Mr Pakoa unfortunately succumbed to peer pressure, participating in the offending.



F. Suspension of Sentence

22. Mr Andrew's prompt guilty pleas and family circumstances count in favour of suspension of sentence. However, he is a repeat offender therefore a strong deterrent element is required as well as to hold Mr Andrew accountable for his offending. I therefore decline to exercise my discretion to suspend his sentences.
23. Mr Pakoa's prompt guilty pleas, lack of previous convictions, youth and immaturity count in favour of suspension of sentence. On the other hand, the offending was serious. I consider Mr Pakoa's chances of rehabilitation are better served by keeping him out of custody therefore suspend his sentences for 2 years. Mr Pakoa is warned that if he offends again within the next 2 years, he will need to serve the sentences imposed today in addition to any other penalty that may be imposed on him for the further offending.
24. In addition, Mr Pakoa is ordered to complete 12 months of supervision and 120 hours of community work.
25. Mr Andrew and Mr Pakoa have 14 days to appeal the sentence.

**DATED at Port Vila this 7th day of September 2021
BY THE COURT**


Justice Viran Molisa Trief

