

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

Criminal
Case No. 21/2883 SC/CRML

PUBLIC PROSECUTOR

v

**ATANAS JAMES
ALICK DICK**

Date: 8 June 2022
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms L. Lunabek
Defendant – Ms F.L. Kalsakau

SENTENCE

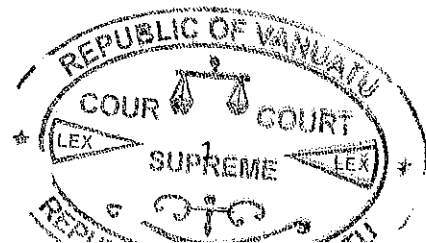
[with corrections made]

A. Introduction

1. Mr James pleaded guilty to unlawful entry and theft (Charges 1 and 2). Mr Dick pleaded guilty to complicity to theft (Charge 3). They were convicted on their own pleas and the admitted facts.

B. Facts

2. Around 1am in the morning on 30 June 2021, Mr James moved an iron bar of the window of Grey Shop at the Korman area of Port Vila to one side, removed 6 louvers and unlawfully entered the shop (Charge 1). He stole and carried away 14 alcoholic drinks with a total value of VT23,800 (Charge 2). Mr Dick kept watch outside the shop (Charge 3).
3. Mr James gave Mr Dick 2 bottles of spirits and 3 bottles of Tusker beer. Mr Dick's little brother found out and told their father. Mr Dick's father asked Mr Dick where he got the bottles and Mr Dick told him about the break-in and theft. Mr Dick's father returned the bottles to the Grey Shop owner.
4. Mr James and Mr Dick made full admissions to the Police.



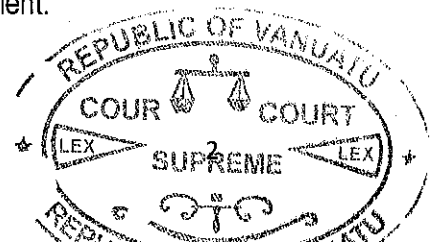
C. Sentence Start Point

5. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
6. 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. Complicity to theft (ss 122, 125 and 30) – 12 years imprisonment.
7. There are no mitigating factors however the offending is aggravated by:
 - The offending occurred at night time;
 - There was some planning involved;
 - The offending involved 2 culprits; and
 - The loss suffered with no prospect of reparation or return of the remaining stolen property.
8. The factors set out above require a global sentence start point of 2 years 6 months imprisonment for Mr James and 12 months imprisonment for Mr Dick.

D. Mr James - Personal Factors and End Sentence

9. Mr James cooperated with the Police and pleaded guilty at the first opportunity. Given the strength of the Prosecution case, he had little option but to plead guilty. For these factors, I deduct 25% from the sentence start point.
10. Mr James is 23 years old. He is in a *de facto* relationship and has 1 child. He is the primary care-giver for his child while his partner has paid employment. He is stated to be remorseful however that does not sit well given his previous convictions. The shop owner refused to take part in any custom reconciliation ceremony. I deduct 3 months from the sentence start point for Mr James' personal factors.
11. At delivery of sentence, I stated that Mr James had previous convictions however I am grateful to counsel for their assistance in clarifying that he does not. Accordingly, there is no uplift added to the sentence start point.
12. Taking all matters into account, the end sentences imposed concurrently are:

- a. Theft (Charge 2) 19 months imprisonment; and
- b. Unlawful entry (Charge 1) 15 months imprisonment.



E. Mr Dick - Personal Factors and End Sentence

14. Mr Dick cooperated with the Police and pleaded guilty at the first opportunity. In addition, he told his father what happened as soon as his father asked him. For these factors, I deduct 25% from the sentence start point.
15. Mr Dick is 15 years old. He only completed 5 years of primary school. He has good family and community relationships. He is remorseful. He has no previous convictions. He had just arrived in Port Vila from Tanna island when he committed the offending. Peer pressure is stated to be the main contributing factor to his offending. I further reduce the sentence by 6 months for Mr Dick's personal factors including his youth and immaturity.
16. Taking all matters into account, the end sentence imposed for complicity to theft (Charge 3) is 120 hours community work.
17. In addition, Mr Dick is ordered to complete 12 months of supervision including attending the *Niufala Rod* programme or any other rehabilitation program required of him by the Department of Correctional Services.
18. I consider the differences in sentences between Mr James and Mr Dick are also a reflection of Mr James, who has previous convictions, being the lead offender who led Mr Dick astray. Mr Dick unfortunately succumbed to peer pressure, participating in the offending.

F. Mr James – Suspension of Sentence

19. Mr James' prompt guilty pleas, youth and family circumstances count in favour of suspension of sentence. However, a strong deterrent element is required to hold Mr James accountable for his offending. In view of Mr James' relative youth, his responsibilities as primary care giver for his child and prospects of rehabilitation, I am prepared to suspend part of the sentence. Mr James is to serve 6 months of his imprisonment sentence. I suspend the remaining 13 months of Mr James' imprisonment sentences for 2 years. Mr James is warned that if he offends again within the next 2 years, he will need to serve the remaining 13 months of the sentences in addition to any other penalty that may be imposed on him for the further offending.
20. Mr James and Mr Dick have 14 days to appeal.

**DATED at Port Vila this 8th day of June 2022
BY THE COURT**


Justice Viran Molisa Trief

