

**PUBLIC PROSECUTOR v GEORGE LEE DAVID
MICHAEL KALO**

Before: Chief Justice V. Lunabek

Appearances: Mr D Boe for the State
Mr RT Willie for the Defendant

Date of Plea: 24 April 2023

Date of Sentence: 3 May 2023

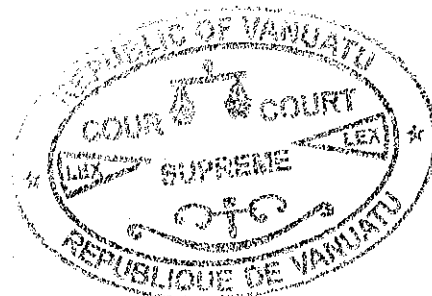
SENTENCE

A. Introduction

1. Defendants George Lee David and Michael Kalo, you both appear for sentence today, 3 May 2023. On 24 April 2023 each of you entered guilty pleas on one count of unlawful entry into dwelling house (Count 1) three counts of theft (Counts 2, 3 and 4) and one count of possession of cannabis (Count 5),

B. Facts

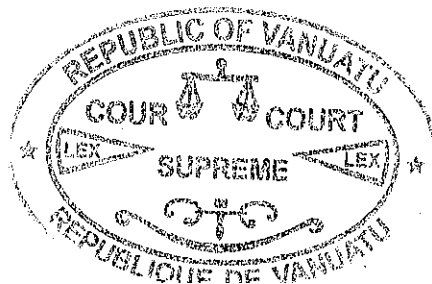
2. The facts are these. You were both from the Eastern side of Santo island and you bot reside there.
3. On 1st November 2022, one Marry Berry lodged a complaint at the Santo Police that someone had entered into her house between 2 October and 5 October 2022 and stole some of her belongings as there were no one inside the house at that time. The items stolen in Marry Berry's house include:
 - One flat screen 32 inches;
 - Two solar street lamps;
 - One solar home system;
 - Three solar panel;
 - Three string cutters;



- One axe;
 - Three bush knives;
 - One button phone;
 - Two small knives;
 - One floor mat;
 - One chainsaw;
 - One kiddles;
 - One frying pan.
4. You both admitted that you had taken those properties and that you have returned them back to the police. The pre-sentence report provided indicate that the properties you have both stolen in Harry Berry's house are all returned to her, save a solar panel.
 5. On 24th December 2022, you both admitted that you stole 33 heads of kava that belonged to one Michael Kalo on Mr Kalo's kava garden and that you both sole them to Jacob from Natawa at VT41,000.
 6. On 28th December 2022, you both again admitted you stole 25 heads of kava which belonged to the complainant (Mr Kalo) and you both admitted you sole the kava to one Jacob for VT33,000.
 7. On 30th December 2022, when the police arrested you both and searched you both, the police found you were both in possession of substance cannabis. The cannabis substance was tested and the result was positive. The net weight was of 17.4 grams.

C. Sentence Start Point

8. Unlawful entry into a dwelling house carried a maximum penalty for 20 years imprisonment. Theft carries a maximum penalty for 12 years imprisonment. The maximum penalty for possession of cannabis substance is fine not exceeding 100 million Vatu or to a term of imprisonment not exceeding 20 years or to both such fine and imprisonment.
9. The offences of unlawful entry, theft and possession of cannabis substance are serious offences as reflected by the respective maximum sentences imposed by law.
10. In this case, the summary of facts provided by the prosecution upon which you admitted and entered guilty pleas respectively on each of the five (5) counts constitute three (3) set of criminal activities that are separate but joined into one information charge. The first set of the criminal activities is about the unlawful entry into a dwelling house and theft of the properties of the owner of the dwelling house (Counts 1 and 2). The second set of criminal activities involved stealing of heads of kava belonging to a person, sale of kava and used the proceeds of sale on 2 occasions (Counts 3 and 4). The third set of criminal activities



involves cannabis substances found in your possession after you were both arrested and searched by the police.

11. The following aggravating factors exist in this case:
- Both defendants stole the kava heads and used the proceeds of sale totaling of VT73,000;
 - The offence of theft is repeated;
12. The following factors reflect the personal circumstances of the offending that all the items stolen by both defendants are recovered by the police.
13. I consider the global circumstances of the offending, I treat the unlawful entry and theft in Counts 1 and 2 as leading offences. I set a start point sentence of 4 years imprisonment on the offences of unlawful entry and theft in Counts 1 and 2 to be concurrent to each other. I set 3 years imprisonment for theft in Counts 3 and 4 to be concurrent to each other and to the lead offences. I set 6 months for the offence of possession of cannabis to run concurrently with the others. You are both sentenced to 4 years imprisonment as a start point sentence for the offending.

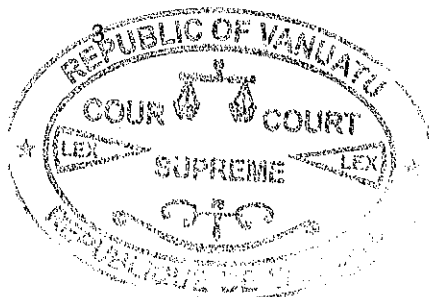
D. Mitigation

George Lee David

14. According to the report, you are 17 years old at the time of the incident. You are a single young man. You originate from South Imaki, Tanna, and you live with your parents at Manioc village, East Santo. You are number 4 of 5 children in the family. You said you witness violence and fighting at home. You stated that your own father (Mr Neil Jones) is currently at the Correctional Centre serving an imprisonment sentence term of 8 years.
15. Your highest level of schooling is year 8. You could not continue due to financial constraints. You assisted your mother to pay the school fees of your other siblings.

Michael Kalo

16. The report shows that you are an unemployed young man and you are single. You are the second born in a family of seven children. Your three sisters and younger brother are still in school. You helped your older brother and mother to pay the school fees of your siblings. Your mother is a widow. You live with your mother and you said you live at Manioc village,



East Santo. You are 20 years of age at the time of offending. Your highest level of education is year 7.

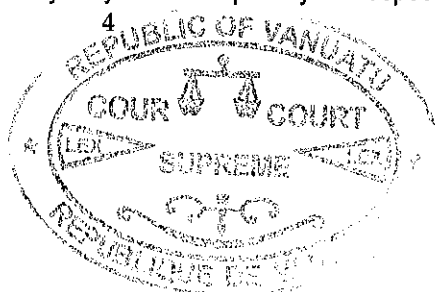
17. You have skills in gardening and carpentry. You work hard and you help the members of your family and community.

For you both

18. You both stated your actions of unlawfully entering into Mrs Harry Berry's house and of stealing her properties were triggered by the actions of her son (Mr Edwin) who shot you both in the river.
19. You both expressed remorse for your wrong doing. You have learnt lessons when you are both in the correctional centre. You both realize you have made mistakes by retaliating towards Mr Edwin's actions. There is no custom reconciliation yet done and you are both prepared to participate in such custom ceremony with Mrs Harry Berry and her family if the opportunity is given.
20. It is a good thing that you both realize that retaliation is not the way forward. For the purpose of your sentencing, retaliation is not mitigation. But here, I am prepared to give you each an allowance of 6 months for your respective personal circumstances.
21. You both pleaded guilty at the first opportunity given to you both by the authorities. You are entitled to one third reduction of your respective start point sentence.

E. End Sentence

22. Your respective end sentence is 2 years and 2 months imprisonment.
23. You were both remanded in custody since January 2023 on different dates. George Lee David, you were remanded on 2 January 2023 until sentenced today. You have already served a pre-custodial period of 122 days which is equivalent to 4 months and 3 days. This pre-custodial period that you have already served must be deducted to your end sentence of 2 years and 2 months. Your final end sentence is 1 year 10 months and 3 days.
24. Michael Kalo, you were remanded on 10 January 2023. You have already served a pre-custodial period of 114 days which is equivalent to 3 months and 24 days. This pre-custodial period will be deducted to your end sentence of 2 years and 2 months imprisonment. Your final end sentence is 1 year 11 months and 24 days imprisonment.
25. I consider whether or not the circumstances of your offending, the seriousness and your respective personal characters justify that I suspend your respective end sentences. You



are both young at the time of offending (17 and 20 years). You have learned a lesson in your respective pre-custodial period. You have each realize that retaliation is not the way to respond to conflicts situation. I will and I am prepared to give you both a chance to amend for your own life in the future.

26. Mr George Lee David, your end sentence of 1 year 10 months and 3 days is suspended for a period of 2 years.
27. Mr Michael Kalo, your end sentence of 1 year 11 months and 24 days is suspended for a period of 2 years.
28. The consequence and implication of the suspension of your respective term of imprisonment are explained to you both. Each understands them.
29. In addition to your respective suspension of imprisonment term sentence, you are each ordered to undergo 6 months probation with special conditions that:
 - (a) You reconcile with Mrs Mary Berry upon your release from correctional facilities (if all parties are agreeable on the reconciliation). This is the beginning of a process that could enable each of you to make amends for your actions and demonstrate a commitment to changing behaviours;
 - (b) You both participate in the following programs:
 - (i) Anger management;
 - (ii) Alcohol and drugs awareness;
 - (iii) Conflict resolution programs.
30. You have each 14 days to appeal your respective sentence if you are unsatisfied with it. The 14 days starts today.

DATED at Luganville, Santo, this 3rd day of May, 2023

BY THE COURT

Chief Justice V. Lunabek

