

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

Criminal
Case No. 23/3147 SC/CRML

PUBLIC PROSECUTOR

v

PASCAL DANIEL

Date: 19 March 2024
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms M. Taiki
Defendant – Mr J. Garae

SENTENCE

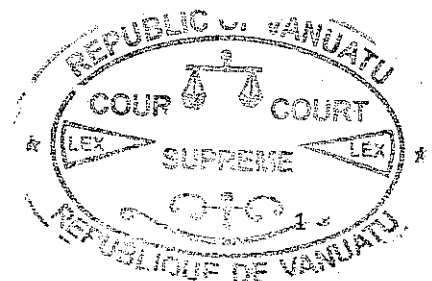
A. Introduction

1. The Defendant Pascal Daniel pleaded guilty to unlawfully entering a non-dwelling house contrary to subs. 143(1) and theft contrary to subs. 122(1) and para. 125(a) of the *Penal Code* [CAP. 135] (Charges 1 and 2 respectively).

B. Facts

18 November 2022

2. At the time of the offending, Mr Daniel was unemployed. He lives at Tebakor area (behind the All-in-One shop) in Port Vila, within the same area as the Esah Corporation shop at Tebakor.
3. At night on Friday 18 November 2022, Mr Daniel and friends were drinking alcohol and smoking cigarettes outside the All-in-One shop at Tebakor area, directly opposite the Esah Corporation shop. During this time, Mr Daniel made a plan to break into the Esah shop and commit theft.



19 November 2022

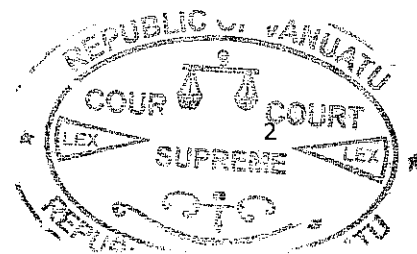
4. In the early morning hours of 19 November 2022, at around 12.30-12.40am, Mr Daniel crossed the road to the Esah shop, went through the Dinh Enterprises premises and climbed over the fenced wall between it and the Esah shop. He jumped up onto the Esah shop roof top, and removed a plywood sheet which covered a hole in the roof. He knew that a hole was there because he had created a hole in the roof on a previous occasion. Mr Daniel jumped down that hole and entered the shop (Charge 1).
5. The shop's CCTV footage showed that Mr Daniel then went into the Accounts Room and stole a total of VT3,532,005 cash. The cash money was in denominations of VT10,000, VT5,000, VT2,000, VT1,000, VT500 and assorted coins. Mr Daniel collected all these cash monies and placed in the handbag he had with him. He then left the shop the same way he had entered it.
6. He returned to see his friends in front of the All-in-One shop. He brought 3 cartons of Tusker beer for his friends from a black-market vendor behind the All-in-One shop (Charge 2).

20 November 2022

7. On Sunday 20 November 2022, in the morning, Mr Daniel and a few of his friends were still drunk and intoxicated on alcohol in front of the All-in-One shop. Mr Daniel stopped a bus and asked to go for a joy ride. He gave the driver VT6,000. The driver agreed and Mr Daniel and his friends boarded the bus.
8. They stopped at Kawenu Beach. Mr Daniel left the bus to speak with a friend of his at the beach. He pulled out a thick rolled up band of cash and showed it to his friend. Mr Daniel told his friend that he had taken the money from the Esah shop at Tebakor. He reboarded the bus and they left.
9. They stopped at Zacharie shop at Fresh Wota. Mr Daniel entered the shop and bought a carton of Tusker beer. He reboarded the bus and the joy ride continued.
10. The bus stopped at the Korman area fuel station to refuel. Mr Daniel gifted VT2,000 to the station staff, then paid for VT2,000 fuel. He instructed the driver to drive them to the Au Bon Marche Tassiriki supermarket where he bought a 25kg bag of rice and a salusalu.

21 November 2022

11. On 21 November 2022, Mr Daniel and a few of his friends continued their drinking spree at Tebakor area. They boarded a bus and went to Low Price shop. There, Mr Daniel bought a carton of Tusker beer. They reboarded the bus and went to



Erakor where they swam in the sea. Towards evening, they reboarded the bus and returned to the Tebakor area.

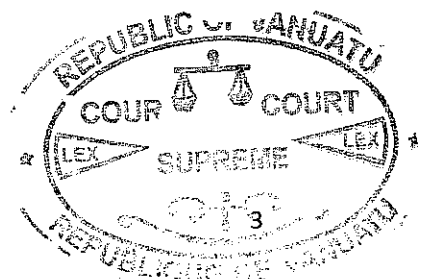
12. At Tebakor area, the drinking continued. Mr Daniel purchased more alcohol and beers from the black-market vendor behind the All-in-One shop. He also willingly gave out VT2,000 cash notes to his friends who were with him at the time.

25 November 2022

13. On 25 November 2022, around 5pm, at Manples area (next to the Fisheries building), Mr Daniel met a group of his friends there. He bought alcoholic drinks for the group. He would give money and instruct one of his friends to go purchase more drinks from nearby shops whenever they finished the drinks.
14. Mr Daniel admitted his offending when interviewed by the Police on 26 November 2022.

C. Sentence Start Point

15. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
16. The maximum sentences prescribed in the *Penal Code* [CAP. 135] are:
 - a. Theft – 12 years imprisonment (subs. 122(1) & para 125(a)); and
 - b. Unlawful entry of non-dwelling house – 10 years imprisonment (subs. 143(1)).
17. There are no mitigating aspects of the offending.
18. The aggravating factors of the offending are as follows:
 - The offending was planned and premeditated;
 - The defendant caused damage to the victim's property;
 - The offending occurred at night; and
 - The substantial loss caused to the complainant business with no prospect of reparation.
19. The factors set out above require a global sentence start point of 5 years imprisonment.



D. Personal Mitigating Factors

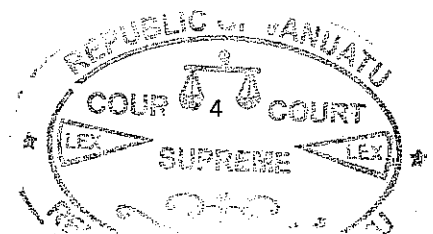
20. Mr Daniel pleaded guilty at the first opportunity however he had little option but to do so given the strength of the Prosecution case. Accordingly, 22% is deducted from the sentence start point for the early guilty pleas.
21. Mr Daniel is 20 years old. He is single and unemployed.
22. A further six months is deducted from the sentence start point for Mr Daniel's personal factors, particularly his youth and immaturity.
23. Mr Daniel has served time in custody from 26 November 2022 to 17 February 2023 (84 days), effectively 5 and a half months imprisonment, therefore a further 5 and a half months is deducted from the sentence start point.

E. Personal Aggravating Factor

24. Mr Daniel has previous convictions from 2022 for similar offending: *Public Prosecutor v Daniel*; CRC 22/2530 (27 October 2022) (unreported). He received an end sentence of 11 months imprisonment which was suspended for 18 months. The suspended sentence has not yet expired.
25. Within a month of receiving that sentence, Mr Daniel committed the offending resulting in the present proceedings. The nature of the offending in both cases is similar. It is clear he has not taken the responsibility and opportunities given to him to be rehabilitated. There is a risk that he will commit further offending. In the circumstances, Mr Daniel's suspended sentence is **activated** pursuant to para. 57(1)(c) of the *Penal Code*.
26. Mr Daniel must now serve the activated sentence of 11 months imprisonment and then **consecutive** to that, the end sentences imposed today in the present proceedings.

F. End Sentence

27. The applicable sentencing principles are to denounce and express public disapproval of such offending, to deter Mr Daniel and others from such offending, to protect the community and to hold Mr Daniel accountable for his offending.
28. Taking all matters into account, the following end sentences are imposed concurrently:
 - i) Unlawful entry of non-dwelling house (Charge 1) 2 years, 11 and a half months imprisonment; and
 - ii) Theft (Charge 2) 2 years 6 months imprisonment.



29. These end sentences are to be served **consecutively** to the activated sentence of 11 months imprisonment which was imposed in *Public Prosecutor v Daniel*; CRC 22/2530 (27 October 2022).
30. There are no exceptional circumstances warranting suspension of Mr Daniel's sentences.
31. Mr Daniel has 14 days to appeal the sentence.

**DATED at Port Vila this 19th day of March 2024
BY THE COURT**

VM Trief
Justice Viran Molisa Trief

