

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

Criminal
Case No. 23/3284 SC/CRML

PUBLIC PROSECUTOR

v

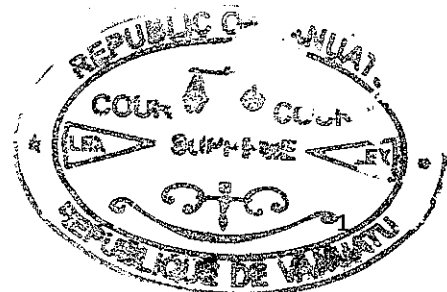
PASCAL DANIEL
KENNETH PAKOA

Date: 19 March 2024
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr C. Shem
Defendant P. Daniel – Mr J. Garae
Defendant K. Pakoa - Ms J. Tari

SENTENCE

A. Introduction

1. The Defendant Pascal Daniel pleaded guilty to malicious damage to property contrary to s. 133 of the *Penal Code* [CAP. 135] (Charges 1 and 6), a joint charge of unlawful entry of a non-dwelling house contrary to subs. 143(1) (Charge 2), theft contrary to subs. 122(1) (Charge 3) and attempted theft contrary to s. 28 and subs. 122(1) of the *Penal Code* (Charge 5). He is convicted on his own pleas and the admitted facts.
2. The Defendant Kenneth Pakoa pleaded guilty to a joint charge of unlawful entry of a non-dwelling house contrary to subs. 143(1) of the *Penal Code* (Charge 2), theft contrary to subs. 122(1) (Charge 4), attempted theft contrary to s. 28 and subs. 122(1) (Charge 5) and complicity to malicious damage to property contrary to ss 30 and 133 of the *Penal Code* (Charge 7).

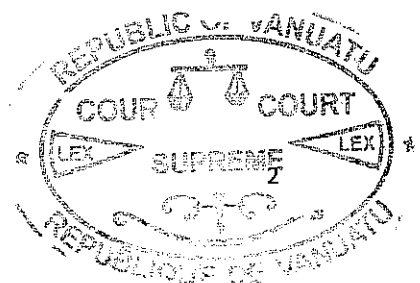


B. Facts

3. During the night on 8 October 2023, Mr Daniel wilfully and unlawfully damaged the window louvers and security window screen of the Tebakor Whole Sale Shop at Tebakor area in Port Vila (Charge 1). Then Mr Daniel and Mr Pakoa entered the shop with intention to commit an offence (Charge 2).
4. Mr Daniel, without a claim of right, took and carried away VT8,500 and a Digicel smart phone with the intention to permanently deprive the owner of those items (Charge 3). Mr Pakoa, without a claim of right, took and carried away VT8,000 with the intention to permanently deprive the owner of it (Charge 4).
5. Mr Daniel and Mr Pakoa also attempted to steal 2 cartons of Vodka cruiser, lighters, box Talio, tobacco pipes and cash from the Bred Bank ATM machine. When the Police and the shop manager arrived at the shop, after being alerted by the security guards, they found all the cash register machines wide open and those items gathered and left at the front counter (Charge 5).
6. Mr Daniel had wilfully and unlawfully caused damage to the Bred Bank ATM machine, knowing that it belonged to another. The cost of the damage is up to VT600,000 (Charge 6).
7. Mr Pakoa had helped Mr Daniel to wilfully and unlawfully cause damage to the shop window louvers and security window screen, and to the Bred Bank ATM machine, knowing that the property belonged to another (Charge 7).
8. The defendants admitted their offending when interviewed by the Police.

C. Sentence Start Point

9. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
10. The maximum sentences prescribed in the *Penal Code* [CAP. 135] are:
 - a. Theft – 12 years imprisonment (subs. 122(1));
 - b. Attempted theft – 12 years imprisonment (s. 28 and subs. 122)(1));
 - c. Unlawful entry of non-dwelling house – 10 years imprisonment (subs. 143(1));
 - d. Malicious damage to property – 1 year imprisonment or VT5,000 fine or both (s. 133, *Penal Code* and subs. 36(3), *Interpretation Act* [CAP. 132]); and



e. Complicity to malicious damage to property – 1 year imprisonment or VT5,000 fine or both (ss 30 and 133, *Penal Code* and subs. 36(3), *Interpretation Act*).

11. There are no mitigating aspects of the offending.

12. The aggravating factors of the offending are as follows:

- The offending was premeditated and well-planned;
- Joint criminal enterprise;
- The offending occurred at night;
- No prospects of reparation;
- The financial loss sustained by the victims; and
- Multiple victims.

13. The factors set out above require a global sentence start point of 3 years 6 months imprisonment.

D. Personal factors – Pascal Daniel

14. Mr Daniel is 20 years old. He is a Year 11 leaver.

15. Mr Daniel has previous convictions from 2022 and 2024 for similar offending. Three months are added to the sentence start point for the previous convictions as he has a history of similar types of offences.

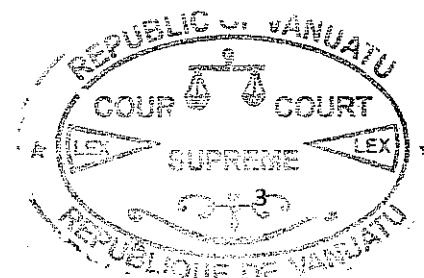
16. Mr Daniel pleaded guilty at the first opportunity however he had little option but to do so given the strength of the Prosecution case. Accordingly, 22% is deducted from the sentence start point.

17. I make no further deductions for Mr Daniel's personal factors.

E. End Sentence – Pascal Daniel

18. The applicable sentencing principles are to denounce and express public disapproval of such offending, to deter the defendants and others from such offending, to protect the community and to hold Mr Daniel accountable for his offending.

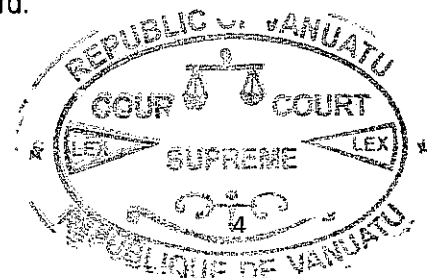
19. Taking all matters into account, the following end sentences are imposed concurrently:



- i) Unlawful entry of non-dwelling house (Charge 2) 3 years imprisonment;
 - ii) Theft (Charge 3) 2 years imprisonment;
 - iii) Attempted theft (Charge 5) 2 years imprisonment;
and
 - iv) Malicious damage to property (Charges 1 and 6) 1 year imprisonment.
20. The sentences are backdated to run from 9 October 2023 when Mr Daniel was taken into custody.
21. There are no exceptional circumstances warranting suspension of Mr Daniel's sentences.

F. Personal Factors and End Sentence – Kenneth Pakoa

22. Mr Pakoa is 17 years old. He was aged 17 at the time of the offending. He is a Year 12 student. Since the offending, he has moved away from Tebakor area to live at Nambatu area with his widowed mother to avoid the friendship group from the area and their bad influence. He has no previous convictions.
23. Mr Pakoa pleaded guilty at the first opportunity however he had little option but to do so given the strength of the Prosecution case. I accept that he is remorseful for the offending.
24. Mr Daniel was the principal offender, pleading guilty to two charges of malicious damage to property, and Mr Pakoa his co-defendant who pleaded guilty to complicity to malicious damage to property. Mr Pakoa is objectively less culpable than Mr Daniel.
25. The offending was serious. On the other hand, Mr Pakoa is a first-time offender and is a student. . He is a child as defined in the *Convention on the Rights of the Child*. Due to his age and immaturity, he must be considered to have good prospects of rehabilitation Mr Pakoa has spent 2 weeks and a day in custody prior to sentencing (9-24 October 2023), effectively one month's imprisonment. I trust that he has learnt from that experience and in the future, take care to behave in a manner that does not break the criminal law of the country so that he can fulfil his potential and be a good citizen.
26. The intervention, at this stage, of the law should be such as to clearly afford Mr Pakoa as much assistance as possible in reforming and rehabilitating. To that end, I see no merit in entering convictions, and those convictions remaining as part of his persona for the next several years until they are expunged from his record.



27. Taking all of the above considerations into account, the end sentence that I impose on Mr Pakoa pursuant to subs. 56(1) of the *Penal Code* is to order him to come up again before the Court for sentence if called upon within a period of 2 years. Accordingly, there is no sentence imposed for the 4 charges at this stage – and indeed, if Mr Pakoa does not re-offend in any way in the next 2 years, he will not be sentenced for this offending. However, if Mr Pakoa does re-offend in any manner, he will be called up to be sentenced for these offences – as well as any other sentence that he may receive.
28. The defendants have 14 days to appeal the sentence.

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


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Justice Viran Molisa Trief

