

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

Criminal
Case No. 24/1653, 24/1653 SC/CRML

PUBLIC PROSECUTOR

v

JOABE SESE

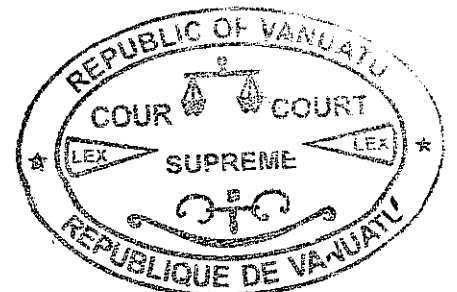
Date of Plea: 17 June 2024
Date of Sentence: 24 September 2024
Before: Justice M A MacKenzie
Counsel: Public Prosecutor – Mr L Young
Defendant – Ms A Yeeon (Holding papers for Ms B Taleo)

SENTENCE

1. Mr Joape Sese, you appear for sentence having pleaded guilty to three charges;
 - a. Theft contrary to section 125 (a) of the Penal Code [CAP135] x 2. The maximum penalty is 12 years imprisonment.
 - b. Possession of cannabis. The maximum penalty is 20 years imprisonment, or a fine not exceeding VT 100 million or both.

The Facts

2. On 9 April 2024, you went to the Sunshine Store in Luganville. You asked for air freshener. When you left the store the security alarm went off. You were asked to stop but continued to your vehicle. You took with you 6 large knives. Under caution, you chose only to speak in Court.



3. On 21 April 2024, you again went to the Sunshine Store in Luganville. You left with 3 bush knives. You did not pay for them. Later that day at the police station, you were found to be in possession of .037 g cannabis. Under caution, you admitted to stealing the knives and being in possession of cannabis.

Sentencing purposes/principles

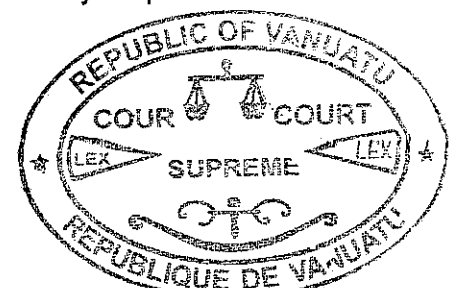
4. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions and help you to rehabilitate. It must also be generally consistent.

Approach to sentence

5. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

Starting point

6. The first step is to set a starting point taking into account the aggravating and mitigating features of the offending and with reference to the maximum penalties for the offences.
7. The aggravating factors are;
 - a. You targeted the same premises on 2 separate occasions.
 - b. Property was taken on both occasions, being in total 9 knives. I do not have any information as to the value of the knives.
 - c. A degree of planning.
 - d. The cannabis involved a small quantity.
8. There are no mitigating features of the offending itself.
9. The lead offending is the two instances of theft. A global starting point is appropriate, having regard to *Kalfau v Public Prosecutor* [1990] VUCA 9.
10. Both counsel have filed written submissions as to the appropriate starting point, and referred the court to cases to assist in selecting the appropriate starting point. I have considered *Public Prosecutor v Narai* [2022] VUSC 234, a case cited by the prosecutor.



The two co offenders were sentenced in relation to a charge of theft. They stole the victim's car. The victim managed to recover the vehicle, but it was damaged. The starting point was 3 years imprisonment.

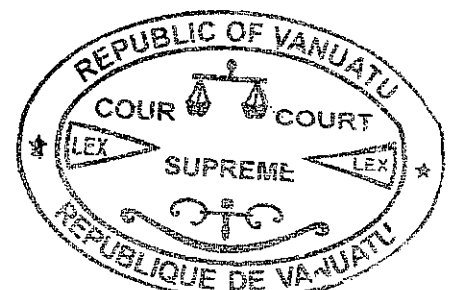
11. While recognising that the maximum penalty for unlawful entry of a dwelling (for non-human habitation) has a lower maximum penalty, assistance can be gained from cases involving entry into premises such as supermarkets and the theft of items. For example, *Amos v Public Prosecutor* [2024] VUSC 199. The two defendants broke into the Au Bon Marche Numbatu on two separate occasions at night and on the second occasion, took a large volume of items. They were charged with unlawful entry and theft. On appeal to the Supreme Court, the starting point of 2 years imprisonment was upheld. Looked at in this manner, I consider that a starting point of 3 years imprisonment is too high.
12. I adopt a global starting point of 2 years imprisonment for the theft charges, with reference to the aggravating features, and *Amos v Public Prosecutor*. The possession of cannabis requires a starting point of no more than 6 months imprisonment on a concurrent basis.

Guilty plea and personal factors

13. You pleaded guilty at an early opportunity, so the sentence is reduced by one third. That equates to a discount of approximately 8 months from the starting point.
14. You are aged 33 years. You are from Malekula. You live on Santo. You are married with four children. You operate a taxi. You have been before the Court previously but because that was in 2009 you are deemed to be rehabilitated. So, I put that to one side. You are sorry for your actions. You are willing to undertake a custom process. For these factors, I reduce the starting point by 2 months imprisonment, which equates to approximately 5 %.
15. You were remanded in custody for 33 days between 22 April 2024 and 24 May 2024. That is an effective sentence of 2 months imprisonment. The sentence is to be reduced by 2 months for this factor.

End Sentence

16. The end sentence is 12 months imprisonment for each of the theft charges, to be served concurrently. There is a concurrent sentence of 1.5 months imprisonment for the possession of cannabis charge.
17. Your counsel asks that the sentence be suspended pursuant to s 57 of the Penal Code. This is opposed by the prosecutor. Under s57 of the Penal Code, there is a discretion



to suspend the sentence. I must take into account the circumstances, the nature of the offending and your character.

18. Of concern is the fact that you stole from the Sunshine Store on two separate occasions. I do not have any information as to the value of the knives you stole. However, I acknowledge that you pleaded guilty, are apologetic for your wrongdoing, and are willing to engage in a custom reconciliation. A key issue in relation to suspension of the sentence, is that today I was advised that you are now remanded in custody. This is because you face new charges, being possession of cannabis, and domestic violence. There is a committal hearing coming up, although the possession of cannabis charge will not be pursued. You have allegedly offended on bail. Whilst this is only an allegation, it is concerning you have allegedly committed another offence on bail. That counts against suspension of the sentence.
19. After weighing and balancing all the relevant factors, I decline to suspend the sentence. Suspending the sentence will not meet the need for accountability, deterrence and denunciation, given the repeat nature of the theft offending and that you have allegedly offended on bail.
20. The sentence is to commence immediately. Whilst you have been on bail, you spent a period of time in custody. Therefore, section 50 of the Penal Code does not apply; *Jack v Public Prosecutor* [2024] VUCA 39.
21. The cannabis material is to be destroyed.
22. You have 14 days to appeal.

DATED at Port Vila this 24th day of September 2024
BY THE COURT

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Justice M A MacKenzie

