

**PUBLIC PROSECUTOR**

**v**

**MICAH JONAH**

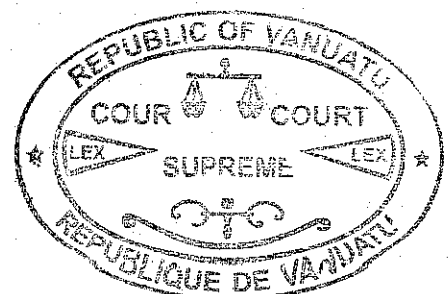
Date of Plea: 17 June 2024 and 19 November 2024  
Date of Sentence: 28 January 2025  
Before: Justice M A MacKenzie  
Counsel: Ms J Tete for the Public Prosecutor  
Mr JS Garae for the Defendant

---

**SENTENCE**

---

1. Mr Micah Jonah, you appear for sentence having pleaded guilty to the following eight charges, which relate to 4 separate victims:
  - a. *Victim one*- Representative charge of unlawful entry of a dwelling house and a representative charge of theft.
  - b. *Victim two*- Unlawful entry of a dwelling house and theft.
  - c. *Victim three*- Unlawful entry of a place not used for human habitation (a truck) and theft.
  - d. *Victim four* - Unlawful entry of a dwelling house and theft.
2. In summary, there are three charges of unlawful entry of a dwelling house, one charge of unlawful entry of a truck and four charges of theft.
3. The maximum penalties for these offences are:



- a. Unlawful entry of a dwelling house contrary to s 143(1) of the Penal Code- 20 years imprisonment.
- b. Theft contrary to s125(a) of the Penal Code- 12 years imprisonment.
- c. Unlawful entry of a place not used for human habitation – 10 years imprisonment.

## **The Facts**

### *Victim One*

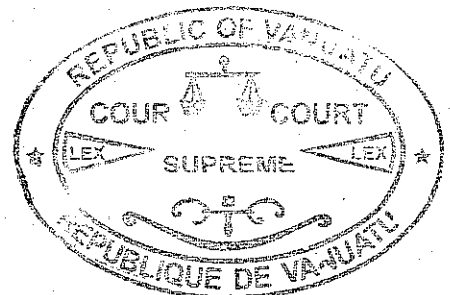
4. Between 1 January and 30 July 2023, you entered into the victim's house in Luganville on three separate occasions. On the first occasion you entered through a window and stole stock shoes valued at VT 3000. On the second occasion you broke a door lock to gain entry. You stole VT 2000 and other items. On the third occasion, you broke the cement wall of the house and stole some coins. You were caught in the act.
5. Under caution, you made full admissions to this offending.

### *Victim Two*

6. During the night of 4 February 2024, you unlawfully entered the second victim's home in Luganville by cutting the fly screen and removing two windows. You saw a phone and charger and stole them. The victim noticed that the phone was missing when he got up at 5.30 am.
7. Under caution, you made full admissions to this offending, which took place at night.

### *Victim Three*

8. On 14 February 2024, you entered the third victim's truck and stole various items belonging to him, including a bag containing a laptop, cards and documents and VT 5000. This took place in Luganville also. The victim had parked his truck and got out to open a gate. He saw you at that time. You took advantage of the situation to then steal the victim's property.
9. Under caution, you made full admissions of this offending. You used the money and kept the laptop and bag in your house.
10. You were then remanded in custody for the above offending on 20 February 2024, but then you were released on bail on 23 May 2024. However, you offended again on bail.



### *Victim Four*

11. During the day on 16 August 2024, and while on bail, you entered the fourth victim's home. She was at home preparing food, initially on the veranda. The victim's handbag was on a table on the veranda and contained VT 1.5 million and other items. At one point she went inside to cook the food she had prepared. When she came back to the veranda, she noticed that her handbag had gone. You were seen that same day buying alcohol, and chicken.
12. Under caution, you admitted climbing over the fence and entering the victim's property and taking the handbag while the victim was in the kitchen. While the victim's handbag was recovered, the money was not.

### **Sentencing purposes/principles**

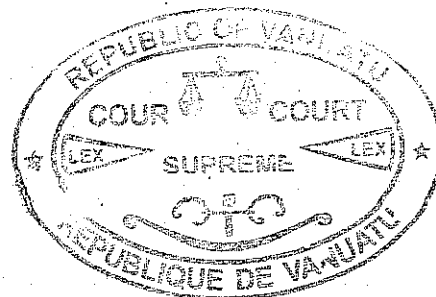
13. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions, and help you to rehabilitate. It must also be generally consistent.

### **Approach to sentence**

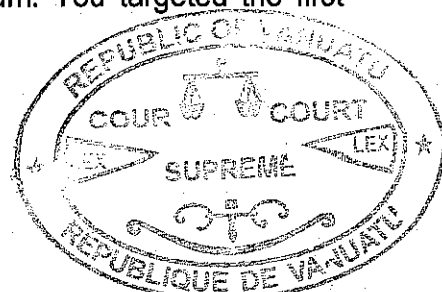
14. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

### **Starting point**

15. The first step is to set a starting point to reflect the aggravating and mitigating features of the offending, and with reference to the maximum penalties for the offences.
16. The lead offending involves the charges of unlawful entry of a dwelling house. I will set a starting point on a global basis to reflect the totality of the offending. There will be concurrent sentences for the theft charges and the unlawful entry of the truck.
17. The aggravating factors of the unlawful entry of a dwelling house offending are:
  - a. Scale and degree – there are three separate victims, targeted over an approximately 18-month period. This was repetitive offending. Further, in relation to the first victim, the offending was repeated. You were persistent and entered the home on 3 separate occasions.
  - b. The incident involving the second victim took place at night. A nighttime burglary involves a heightened risk of confrontation. While the burglary at victim four's home occurred during the day, she was home, increasing also the risk of confrontation.



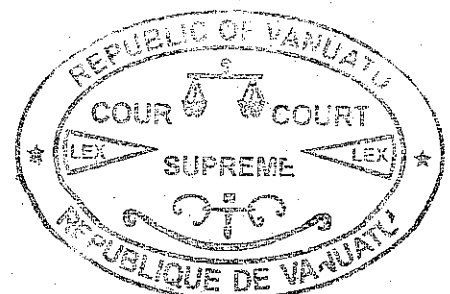
- c. You caused damage to the homes of victim's one and two in order to gain entry.
  - d. There was a degree of planning and premeditation involved in the burglaries-entering when the first victim was not at home, when the second victim was at home and asleep at night, and when the fourth victim was inside her home.
  - e. On all three occasions, you stole property. The fact that you stole VT 1.5 million cash during the burglary on 16 August 2024, which remains unrecovered, is a significant aggravating factor.
  - f. At the time of the last burglary on 16 August 2024, you were on bail for similar offending.
18. There are no mitigating features of the offending itself.
  19. In relation to the entry of the truck, the aggravating factors are the value of the property taken and that some of the property was not recovered. There are no mitigating features of that offending.
  20. Counsel have referred to cases to assist the Court with setting an appropriate starting point. The prosecutor submits there should be a starting point of 6 years imprisonment for the lead offending, being the dwelling house burglaries, with concurrent starting points for the other offending- 4 years for the theft charges and 2 years for the unlawful entry of the truck. In the defence submissions, a starting point of 1 -2 years' imprisonment is proposed.
  21. I do not intend to discuss the cases cited by counsel in detail. While consistency in sentencing is important, none of the cases are squarely on point. As the Court of Appeal said in *Kalfau*, sentencing is not an exact science, and the circumstances will vary from case to case. *Rony v Public Prosecutor* [2017] VUCA 23 does however provide assistance in setting the starting point. Relevantly, the primary offender was sentenced in relation to 5 charges of unlawful entry of a dwelling house and 5 charges of theft. Another defendant was sentenced in relation to 4 charges of unlawful entry of a dwelling house and 4 charges of theft. Over a short period of time in October/November 2016, 5 different residences at Havannah Harbour were broken into and various items of property stolen, including liquor, cash, mobile phones, laptops, a fishing net and an air rifle. Some of the items were recovered. The Court of Appeal said that the starting point adopted by the primary judge of 7 years imprisonment was within the appropriate sentencing range.
  22. In the present case, you acted alone. However, consistent with *Rony*, the present case involves repeated burglary offending, and on each occasion property was stolen. As noted, the unrecovered VT 1.5 million is a significant sum. You targeted the first



victim's property on 3 separate occasions and entered the second victim's home at night. People are entitled to feel safe in their own home, and this type of offending takes away a sense of safety. Given the aggravating factors I have referred to, and taking *Rony* into account, I adopt a starting point of 6 years imprisonment.

### **Guilty plea and personal factors**

23. You pleaded guilty at an early opportunity. You are entitled to a one-third reduction for your guilty plea. The plea has saved the victims from having to give evidence. That equates to a discount of 2 years from the starting point.
24. You are now aged 22 years. At the time of the offending, you were aged between 20 and 21 years, so relatively young. I do not accept the submission that you are genuinely remorseful. Remorse needs to be robustly evaluated. It need not be exceptional but must be actually experienced. First, you offended in a similar manner after being granted bail, and second, the presentence report notes your view that what is good in your life is stealing. In that regard, it appears from the presentence report that you stole for commercial gain.
25. You do have family support, although your family seem to be at a loss as to how to assist you. You have also had periods of employment.
26. You are not a first offender. In May 2023 you were sentenced to 2 months imprisonment, suspended for 18 months for possession of cannabis. You were also sentenced to 6 months supervision. According to the presentence report, you breached the supervision sentence. I do not increase the sentence to take into account the cannabis conviction because it is unrelated. The fact though, that you continued to offend subject to the suspended sentence, is relevant and of concern.
27. Given your relative youth, I reduce the sentence by 7 months, which is approximately 10 percent. A larger reduction is not warranted here given that this was not one-off impulsive offending. A hallmark of youth is impulsivity, and your offending does not fall into that category. Young people generally have a greater capacity for rehabilitation, and while I hope that will be the case for you, your lack of compliance with the supervision sentence and continued offending, give pause for thought in terms of your rehabilitative prospects.
28. You were initially remanded in custody between 20 February 2024- 23 May 2024, a period of about 3 months. That is an effective sentence of 6 months imprisonment. The sentence is further reduced by 6 months for that factor. You have been in custody now since the final burglary. Your current custodial remand commenced on 20 August 2024. I will address that shortly.



## End Sentence

29. The end sentence is 2 years 11 months imprisonment for each of the unlawful entry of a dwelling house charges. There is to be a concurrent sentence of 18 months imprisonment on each of the theft charges, and a concurrent sentence of 12 months imprisonment for the unlawful entry of the truck charge.
30. Your counsel asks that the sentence be suspended pursuant to s 57 of the Penal Code. This is opposed by the prosecutor who submits that the community needs to be protected from this type of behaviour.
31. 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. This is serious burglary offending. It involved dwelling house burglaries. It was brazen and repeated burglary offending, including targeting one victim's home on 3 separate occasions, and entering into another home at night and when the occupants were home. You committed a burglary of a home while on bail for burglary offending. I accept that you are relatively young and acknowledge what is said about youth offenders in *Heromanley v Public Prosecutor* [2010] VUCA 25. However, after weighing and balancing all the relevant factors, I decline to suspend the sentence in whole or in part. Suspending the sentence, both wholly or for a period of time, will not meet the need for accountability, deterrence and denunciation. The offending is too serious. You are not remorseful and appear to be stealing for commercial gain. As such, community protection is also a relevant sentencing need. Further, you have demonstrated that you will offend while subject to a suspended sentence, so I assess suspension will have little deterrent effect. You have breached the supervision sentence. In your case, the need to mark the offending overrides youth principles, and rehabilitative prospects.
32. The sentence is to commence immediately and is back dated to commence on 20 August 2024, when your most recent custodial remand started.
33. You have 14 days to appeal against the sentence.

**DATED at Port Vila this 28th day of January 2025  
BY THE COURT**

.....  
Justice M A Mackenzie

