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

Consolidated
Case No. 20/2237, 20/2238,
20/3220 MC/CRML

PUBLIC PROSECUTOR

V

STEVE KAI KALWATMAN

Date of Sentence: 17th February, 2021

Before: FSam

In Attendance: Mr George_M for the State

Mr Moli_L for the Defence & Defendant.

Copy: The State Prosecution, The Public Solicitor, Defendant.

SENTENCE

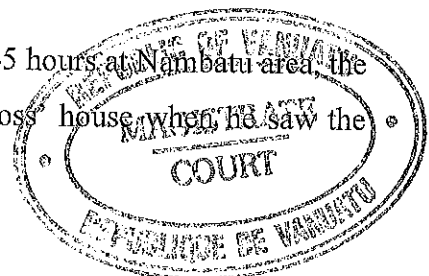
Introduction

1. This is a consolidated proceeding wherefrom the accused Mr Steve Kai Kalwatman Plead guilty to two counts of theft Contrary to section 125(a), two counts of unlawful entry contrary to section 143, and one count Escape from lawful custody contrary to section 84 of the penal Code [Cap 135]. He was convicted on all counts accordingly.

Background Facts

2. Because there are three separate offending from which the above mentioned charges were filed against the accused, Mr Kalwatman, the facts of these offending will be looked at separately.

3. Firstly, on the 10th of March 2020, around 7:45 hours at Nambatu area, the complainant Mr Remy Roy was driving to his boss' house when he saw the



defendant Mr Kalwatman with a bottle of gas outside Mr Andrew Leong's (his boss') residence and knowing the defendant well, he suspected the defendant had stolen the bottle gas. He went to his boss' house and told the gardener to check their boss' bottle gas when the gardener did and noticed the bottle gas was missing. A complaint was lodged with the police wherefrom the defendant was arrested and upon being cautioned, he admitted taking the gas bottle and sold it to origin energy for VT2,500 and used the proceed from the sale.

4. The second offending happened at Tasiriki area, Port Vila, at a Bradley Potgieter's residence. This complainant is from South Africa and he reported that on the 3rd of July 2020, around 02:06 hours in the morning, a man entered his house and stole a chain saw and a bicycle and left. The chain saw was orange in colour and worth VT27, 000 and the bicycle which belonged to his son, was worth VT 40.500. It was when Mr Potgieter realized the next morning that the items were missing, that he played his video camera and saw the accused taking the times, and he reported this to the police. Upon arrest and cautioning, the accused admitted taking the items and that he sold them for VT20,000 and used up the proceeds of the sale.'
5. The third offending happened on the 2nd of September, 2020 around 16:30 hours when the police was executing an arrest warrant issued by the court on the 26th of August 2020 against the accused, following his earlier offending aforementioned and noncompliance to summons to attend court. He was spotted by Corporal Jimmy Nimisa who then informed officer Kevin Kerry Boe, the complainant officer. The complainant and other officers pursued the accused and caught him at Uncle Bill store area, where the accused was ordered to walk with the complainant to the police station, while the complainant was grabbing onto the accused's shirt. The accused complained telling the complainant to let go of him so he can follow the complainant. The officer did let go of him when the accused pushed him away and ran across the road towards the sea front area and into the market where Mr Boe and the other officers lost the accused. He was later arrested and cautioned on the 18th of September, 2020, where he admitted running away from the police custody because he did not want to go to jail.



The Law

6. The relevant provisions in relation to the accused's offending are set out below:

(a) Section 143 of the penal code act [cap 135] on unlawful entering a dwelling house states:

"143. Unlawfully entering dwelling house

(1) No person shall enter or be in any house, building, tent, vessel or other place with intent to commit an offence therein.

Penalty: Imprisonment for 20 years where the place is used for human habitation."

(b) Section 122(1) and 125(a) of the Penal Code in relation to the offence of theft states:

"122. Theft defined

(1) A person commits theft who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof;

125. Prohibition of theft, misappropriation and false pretences

No person shall cause loss to another –

(a) by theft;

(b)

Penalty: Imprisonment for 12 years."

(c) And section 84 on Escape states:



“84. Escape

No person being in lawful custody shall escape from such custody.

Penalty: Imprisonment for 5 years.”

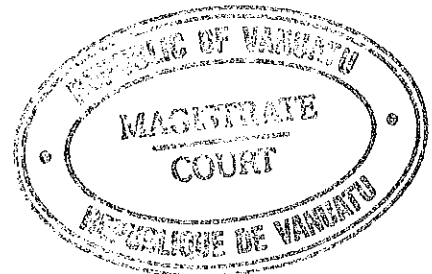
Aggravating and Mitigating Factors

7. The aggravating factors of the offending are the seriousness of the offences committed by the accused, and as reflected in the maximum penalties of the offences, the offences were planned and carried out with intent to enter into dwelling houses of another person, take their properties without their consent and with intent to deprive them of same, and in the event causing loss to the victims, that the accused is a habitual offender showing he has no respect for the community at large. The accused also one prior conviction of similar offence of theft in 2019 and the current offending shows Mr Kalwatman has no respect even for the law.

8. Factors in mitigation are that the accused admitted the offending and pleaded guilty to all three charges, the items taken were recovered, he had spent a month in custody from 16th November to 16th December, 2020, he is 41 years of age and is a father of 3 children and although unemployed, supports his de facto wife whom he resides with at Tebakor area.

Starting Point & Deductions

9. I have considered relevant case authorities cited by both counsels, and set a starting point of 15 months imprisonment for the two counts of unlawful entry, 6 months imprisonment for the two counts of theft and 3 months imprisonment for Escape from lawful custody. Therefore a global starting point of 24 months imprisonment for all the 5 counts in total against the accused.



10. While the accused pleaded guilty at the earliest available opportunity, the evidence against him is overwhelming and I find he only admitted the offending because he did not have much choice but to do so, therefore, a 25 % deduction instead is considered for his guilty pleas. This leaves a sentence of 18 months imprisonment. There will be three (3) months uplift for his prior conviction and aggravating factors.

11. Two (2) months is deducted for his mitigating and personal factors. One (1) months is also deducted for his prior custody before release.

End Sentence

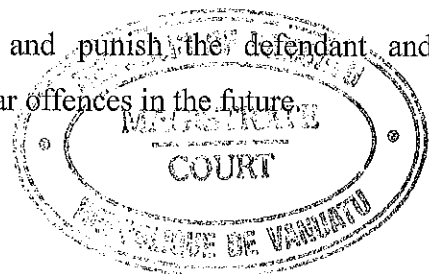
12. The end sentence arrived at is 18 months imprisonment sentence to be served concurrently. That is, for the two counts of unlawful entry, I sentence the accused to serve 9 months imprisonment, for the two counts of theft, he is to serve 6 months imprisonment and for the count of Escape, 3 months imprisonment. He is to serve all sentences concurrently.

Suspension

13. It would be wrong to grant a suspension of sentence, however, I consider the accused's personal circumstances and allow suspension of his sentence for two years, on condition he does not reoffend within the next two years, because in the event he does reoffend, his suspended sentence will be uplifted and he will serve the 18 months prison term imposed against him.

14. In addition to his suspended sentence, I further order the accused to 12 months supervision under the authorized probation officer, and that he undertakes 50 hours community work wherefrom he must report immediately to the probation officer responsible in seeing to the activation of this community work order.

15. This sentence is necessary to deter and punish the defendant and likeminded offenders from committing similar offences in the future.



16. The Accused has 14 days to appeal this sentence if he is not happy with it.

DATED at Port Vila, this 17th day of February, 2021.

BY THE COURT



FSam

Magistrate

