

PUBLIC PROSECUTOR

V

RICKY ERICK

*In Attendance: Mr. Ken Massing for the State
Ms. Barbara Taleo for the defendant*

SENTENCE

A. Introduction

1. Mr. Ricky Erick pleaded guilty on the charge of unlawful entry, theft and intentional assault.
2. He is therefore convicted as charged.

B. Facts

3. There are several complaints filed by two respective complainants against the defendant.
4. The first complainant is Ms. Kamata Joelle.
5. She alleges that on 15 January 2024 whilst at her home in Palm Estate Area at around 10 to 10.30 pm, she was watching TV but the dogs were barking so loud that she went out to check if someone was outside her house.
6. As she opened the door, her dogs ran out and were barking as if something strange was happening outside her house.
7. She then took her flash light outside and flashed it towards the dark from the verandah of her house and on each side of her house.

8. She then noticed that someone was hiding behind a water tank.
9. She then went back inside her house to get her phone and call the police.
10. As she came out of her bedroom, the defendant grabbed her hard on her mouth in order to prevent her from screaming aloud.
11. Meanwhile, the defendant had a hammer in his possession. He wore a blue and white beachwear pants and had no shirt on as he used his shirt to cover his face.
12. As the defendant grabbed the complainant on her mouth, she grabbed the hammer and grasped it firmly on her hand and in doing; she struggled with the defendant to retain possession of the hammer.
13. The defendant then punched her on her left eyebrow that she fell backwards and hit her head hard on the floor but she quickly slept on top of the hammer so that the defendant does not have access to it.
14. The complainant suffered injuries as a result of the assault and was not able to see clearly for some time.
15. The defendant demanded VT 5,000, laptop and alcoholic drinks from the complainant but she told him she had none of these things and that he can go into the house and find out for himself.
16. As he entered her house, the complainant went and report the incident to her friend and they went back to her house but the defendant had left the house with her flashlight.
17. The second complainant is Nelson Emil of Nguna Island who resides at Show Ground Area.
18. He stated that on 16 January 2024 at 3.12 am, his dad woke him up and told that someone had entered their house.
19. He then found out that the defendant had removed four louvre glasses in his bedroom window to gain entry into the house and stole his canon camera while he was fast asleep.
20. The defendant then proceeded into the sitting room and stole a button phone, purple and blue color touch screen phone, blue Samsung Galaxy AO1 phone and a Samsung Galaxy A14 phone.
21. The police arrested the defendant on 17 January 2024 and upon cautioning, he admitted his offending.

C. Sentence starting point

22. The maximum penalty of unlawful entering of a dwelling house is 20 years imprisonment, theft- 12 years imprisonment and intentional assault causing temporary injuries- 5 years imprisonment.
23. The Court need to assess the overall culpability of the offending on the concurrent basis as reflected in the two step approach consideration as set out in Philip v Public Prosecutor [2020] VUCA 490 adopting Moses v R [2020] NZCA 296).
24. In this case, the maximum penalty of 20 years imprisonment.
25. There are no mitigating aspects of the offending. The aggravating factors are:
 - The intrusions into dwelling houses at night where the complainants and their family members are entitled to feel safe and secure.
 - The offending was carefully planned and thought out.
 - The first complainant is considered vulnerable and sustained injury while struggling to defend herself.
 - There were significant losses as some of the items stolen were not recovered.
 - Recurrence of unlawful entry and theft on the span of 1 day.
26. The Court accepts that based on the case authorities submitted by both counsels, the starting point in a global scale of 3 years is set in respect to the charge of unlawful entry as the lead offence. I set 2 years for theft and 15 months for intentional assault to be concurrent to each other and to the lead offence.

D. Deductions for Guilty Plea

27. The defendant pleaded guilty at first opportunity.
28. He is therefore entitled to one-third reduction of his starting sentence, which is 12 months.

E. Personal Factor

29. The defendant is 28 years of age.
30. He lives in a defacto relationship and has two children whose age are 3 years and 1 year.
31. He is a first time offender.

32. He expressed remorse for his actions.
33. He pleaded guilty at first given opportunity.
34. He cooperated with the Police during investigation and made an early admission to his offending.
35. He has been remanded in custody until today for a period of 2 month.
36. For his personal factor, I make a further discount of 8 months.

F. End Sentence

37. The sentencing principles achievable in this case amongst others expressed in *Public Prosecutor v Vahirua* [2018] VUSC 15 are to hold you accountable for your conduct, to denounce your criminal conduct, to protect the community, to promote sense of responsibility for the harm done and to assist in your rehabilitation and re-integration.
38. Taking into account all matters in relation to all matters aggravating and mitigation personal to your offending, the end sentence imposed on your offending is 1 year and 4 months imprisonment.
39. However, I accept that this sentence be suspended for 2 years after taking into account the submissions by counsel that the defendant is a young person with responsibilities of financially sustaining his defacto partner and young children through selling of kava juice in the kava bar.
40. This means he must not re-offend within 2 years.
41. If he reoffends again within 2 years, this suspended sentence will be lifted and he will serve 1 year and 4 months imprisonment together with any other sentences imposed on him for his re-offending.
42. For completeness, I also order 60 hours of community work sentence.
43. He is to see a Probation Officer in the Correctional Department no later than 72 hours to discuss his community sentence work plan.
44. The Officer in charge of the Correctional Center in Luganville, is to release the defendant forthwith.

G. Appeal

45. He has 14 days to appeal to the Supreme Court if he is not satisfied with this sentence.

DATED at Luganville, this 26th day of April 2024

BY THE COURT



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MOSES PETER
Senior Magistrate

The image shows a red circular stamp from the Republic of Vanuatu Magistrate Court. The stamp contains the text 'REPUBLIC OF VANUATU' at the top and bottom, and 'MAGISTRATE COURT' in the center. A blue ink signature is written over the stamp and extends to the left.