

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

**Criminal
Case No. 21/1161 SC/CRML**

**BETWEEN: The Public Prosecutor
Prosecutor**

**AND: James Jack
Defendant**

Coram: Justice Aru

**Counsel Ms. J. Tete the Public Prosecution
Mr. H. Vira for the Defendant**

SENTENCE

Introduction

1. Mr James Jack was charged with one count of threat to kill, two counts of unlawful entry of a dwelling house and two counts of theft .He pleaded guilty to all the charges and is convicted accordingly.

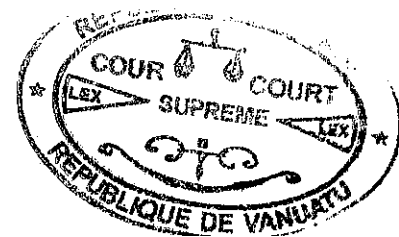
The facts

Count 1

2. On 29 November 2020 the defendant was drunk and when he got home he became angry and threatened to kill his father. He told his father “*bae mi kilim ded yu, bae mi kilim ded yu, yu harem*” (I will kill you, I will kill you, you hear me). On saying that he reached for an iron rod but his father pulled it out from him. He grabbed a spade but it was again removed by his father. His father told him that they will go into town to buy him something. Upon reaching town they drove to the Police station and his father reported the defendant to the Police.

Counts 2 & 3

3. The defendant stole items from two different houses in the early hours of 26 December 2020. On the 25 December 2020 the defendant had been drinking with some friends. A witness who had been drinking with the defendant at that time said the defendant was drunk before going home. Early the next morning the defendant saw the witness and asked the witness to follow him and showed the witness what he had stolen.



4. According to the first complainant, in the early hours of 26 December 2020 he was asleep when his mother heard someone entering the house but did not pay attention thinking it was a family member. When she got up and went outside to the veranda she realised the complainant's slippers were not there. She asked the complainant's wife where the complainant was and she responded that the complainant was still asleep in their bedroom. On further inspection they realised the complainant's slippers and a pair of trousers were missing. They had no idea who took these items. When the Police raided the defendant's house the complainant saw his slippers and trousers among the stolen items.

Counts 4 & 5

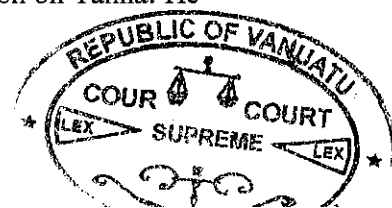
5. The second complainant had gone to bed at around 7pm on the night of 25 December 2020. When they woke up on the morning of 26 December they realised that some of their belongings were missing. Items stolen were a single mattress, a sewing machine, a small bicycle, a pair of shoes, three medium sized umbrellas and a mountain bike.
6. These items were found in the defendant's house by the Police.

Starting point

7. The maximum penalty available for the offence of threats to kill is 15 years imprisonment. For unlawful entry of a dwelling house where the place is used for human habitation is 20 years imprisonment and for theft is 12 years imprisonment.
8. The offending is aggravated by the following factors:-
 - The offending was repeated
 - There is an element of planning
 - The offending occurred at night
 - The defendant was under the influence of alcohol
9. It was submitted by the prosecution that the only mitigating factor of the offending is that all the stolen items have now been returned to the victims.
10. The lead offence in the defendant's offending is unlawful entry of a dwelling house used for human habitation therefore the overall starting point of sentence is 4 years imprisonment.

Personal factors

11. The defendant entered a guilty plea at the first available opportunity. The sentence will be reduced by one third being the maximum discount allowable for the guilty plea.
12. A Pre-Sentence Report was filed as directed and gives the following information about the defendant. He is 21 years old and is originally from Port Resolution on Tanna. He



comes from a family of four and he is the eldest in the family. He is a first time offender and lives with his parents. He attended school up to year 10 but could not complete his studies due to financial difficulties. His skills are in playing soccer and construction work. He intends to do seasonal work overseas as well to support his family. He is currently unemployed and depends on his parents for financial support. He is a member of the Apostolic Church.

13. He told the writer of the report that he regrets his actions. Although he says he performed a custom reconciliation on 18 May 2021 by exchanging a mat and VT2000 with one of the victims that could not be verified or confirmed with any of the victims.

14. The sentence is further reduced by 11 months.

End sentence

15. The end sentence is therefore 18 months imprisonment for the lead offence. For threats to kill and theft the end sentences are 12 months imprisonment and 4 months imprisonment respectively. The sentences are to be served concurrently.

Suspension

16. Defence Counsel submits that whatever sentence is imposed should be suspended. I have considered the circumstances and in particular the fact that the defendant was under the influence of alcohol when he committed the crime and most of the items stolen have been returned to their owners. The defendant is also a first time offender. He is a young man and can be rehabilitated by a non-custodial sentence rather than sending him to jail today.

17. The sentence is therefore suspended for a period of 2 years. Should he reoffend during this period, the suspended sentence will be reactivated to be served in custody.

18. In addition he will perform 200 hours of community work and be under supervision for a period of 12 months.

19. The defendant has 14 days to appeal if he is not happy with the decision.

DATED at Port Vila this 23rd day of June, 2021

BY THE COURT

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D. Afu
Judge

