

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

Criminal
Case No. 21/1957 SC/CRML

BETWEEN: Public Prosecutor

AND: Trevor Kalo
Defendant

Date: 24 August 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr C. Shem for Public Prosecutor
Ms F. Kalsakau for the Defendant

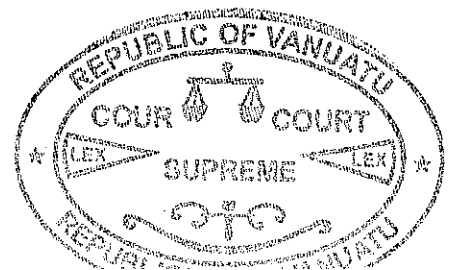
Sentence

A. Introduction

1. Mr Kalo pleaded guilty to a charge of unlawful entry and a second charge of theft.

B. Facts

2. On 2 March 2021, Mr Kalo removed some window louvres to enter the complainant's home at night. He had covered his face so that only his eyes and mouth were visible. He went through a room where a child was sleeping and proceeded into the complainant's bedroom. He took a mobile phone from under her pillow and was heading to another room when the complainant's daughter was woken by the intrusion and alerted the complainant. The complainant reported the matter to the police.
3. The police located a suspect, Mr Kalo, the next day. Witnesses, including Mr Kalo's father, had told the police that Mr Kalo had very recently acquired a mobile phone. Accordingly, Mr Kalo was apprehended on 12 March 2021 and he was questioned under caution by the police. He made a full confession to both offences



4. On 16 March 2021, the police returned the complainant's mobile phone, which had been taken during the burglary. They had recovered the stolen property from Mr Kalo.

C. Sentence Start Point

5. The sentence start point is to be assessed by having regard to the maximum sentence available for this offending, and factoring in both the aggravating and mitigating aspects of the offending.

6. The maximum sentence for unlawful entry of a dwelling house is 20 years imprisonment; and for theft it is 12 years imprisonment.

7. The offending is aggravated by the following matters:

- The unlawful entry occurred at night, with members of the family asleep at the time;
- The effects on the complainant, who no longer feels safe in her own home, and the trauma visited on the young daughter who was rudely awoken in the night by a burglar in her room; and
- The fact that there was pre-meditation and planning involved.

8. There are no mitigating aspects to this offending.

9. I adopt a sentence start point of 32 months imprisonment, on a global concurrent basis taking both offences into account.

D. Personal Factors

10. Mr Kalo pleaded guilty to the charge at an early stage. However, the evidence against him was very strong, and accordingly a guilty plea was really his only option. However, his plea indicates that he has accepted his wrong-doing, and it has also saved Court time and expense. For Mr Kalo's prompt plea I reduce the sentence start point by 25%.

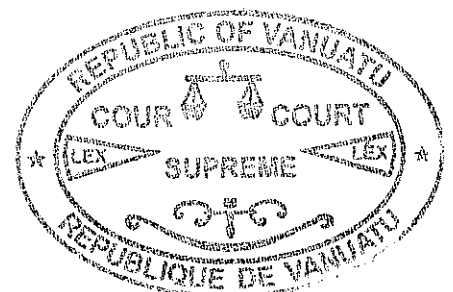
11. Mr Kalo is 17 years old, single. He has had limited education and helps his family by gardening and fishing.

12. He has no previous convictions.

13. Mr Kalo has not performed a custom reconciliation ceremony, but he is willing to do so.

14. He blames this offending on peer pressure by older friends and his consumption of alcohol. Neither is a mitigating factor. The consumption of alcohol was entirely voluntary and cannot excuse this conduct. There is no evidence to suggest the involvement of others in the offending.

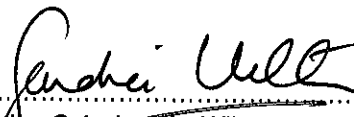
15. For Mr Kalo's personal factors, I reduce the sentence start point by a further 3 months. For his youth and immaturity, I reduce the sentence start point by a further 15 months.



E. End Sentence

16. Mr Kalo's end sentence is set at 6 months imprisonment on both charges concurrently.
17. This Court has a discretion to suspend all or part of the sentence in certain circumstances. There are considerations both in favour of suspension and against. This offending is serious. It involved the deliberate and planned breaking into of another's home for dishonest purposes. The maximum penalties prescribed indicate the seriousness of this type of criminal conduct. On the other hand, Mr Kalo has pleaded guilty promptly and accepted his wrong-doing. The stolen property has been recovered. Mr Kalo has not enjoyed the privilege of higher education, and is young and immature. His prospects for reparation must be considered favourably.
18. In the circumstances, I am prepared to suspend the sentence for 2 years. Mr Kalo needs to stay offence-free for that period to ensure he does not serve the 6 month sentence imposed for this offending.
19. As well, in order to hold Mr Kalo accountable for his dishonesty and as a deterrent to him and other members of the community who might be tempted to act in this fashion he is additionally ordered to complete 12 months of Supervision and to undertake and successfully complete the Niu Rod programme.
20. Mr Kalo has 14 days to appeal the sentence.

Dated at Port Vila this 24th day of August 2021
BY THE COURT


Justice G.A. Andree Wiltens

