

BETWEEN: CYRIAQUE MELTEK
Appellant

AND: PUBLIC PROSECUTOR
Respondent

Date of Hearing: 4 November 2025

Coram: *Hon. Justice Ronald Young*
Hon. Justice Richard White
Hon. Justice Dudley Aru
Hon. Justice Edwin Goldsbrough
Hon. Justice Viran Molisa Trief
Hon. Justice Maree MacKenzie

Counsel: *Pauline Malites for the Appellant*
Laura Lunabek for the Respondent

Date of Judgment: 14 November 2025

JUDGMENT OF THE COURT

Introduction

1. The appellant pleaded guilty to one charge of unlawful entry of a dwelling house contrary to s 143 of the Penal Code [CAP 135] and one charge of theft contrary to s125 (a) of the Penal Code [CAP 135].
2. The appellant was sentenced to 2 years and 4 months imprisonment. The sentence was not suspended. He now appeals against the severity of the sentence.
3. There are two grounds of appeal:
 - a) That the sentence starting point was too high, resulting in a manifestly excessive sentence.
 - b) That the primary judge did not take into account time spent in custody before sentence.
4. The notice of appeal was outside of the 14 day time limit provided in s201 (1) of the Criminal Procedure Code [CAP 136]. Therefore, an extension of time is required. The sentence was



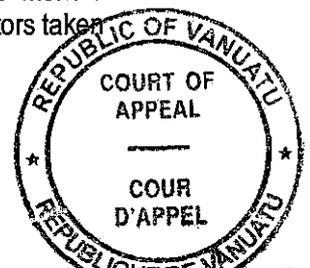
imposed on 21 March 2025. A notice and memorandum of appeal were filed on 1st September 2025. Ms Lunabek, for the respondent did not oppose any extension of time, and we therefore granted an extension of time to appeal.

The facts

5. The appellant and the victim are known to each other. The victim considered the appellant to be his "*brother*" due to a prior work relationship.
6. On 19 September 2024, the appellant called the victim asking if others would be at the victim's home at Nambatri that day. He told the victim that he would come to the house at lunchtime, but he would call the victim first and let him know.
7. When the victim returned home at 5.00 pm, the house had been broken into and items valued at VT246,000 were missing being:
 - A Samsung tablet VT 50,000
 - Cash VT 170,000
 - Perfume VT 22,000
 - A pair of Fijian sandals VT 4,000
8. Only the Samsung tablet was recovered.
9. The victim called the appellant who denied any involvement in the break in. However, the appellant subsequently admitted the offending to police.

Sentence

10. The maximum sentence for unlawful entry of a dwelling house is 20 years imprisonment. The maximum sentence for theft is 12 years imprisonment.
11. The primary judge set a starting point of 4 years' imprisonment for the charge of unlawful entry of a dwelling house (burglary) and a starting point of 3 years imprisonment for the theft charge. The sentences were to be concurrent.
12. In setting the starting point, the primary judge took into account the following aggravating factors:
 - a) Breach of trust
 - b) Premeditation
 - c) The appellant's denial to the victim when asked
 - d) The loss to the victim
 - e) The appellant's prior conviction for similar offending in 2018
13. The sentence was reduced by 12 months (25 percent) for the guilty pleas and 8 months (approximately 18 percent) for personal mitigating factors. The personal mitigating factors taken into account are not identified in the sentence.



14. The end sentence was 2 years 4 months imprisonment, which was not suspended. The sentence commenced on 21 March 2025.

Approach to appeal

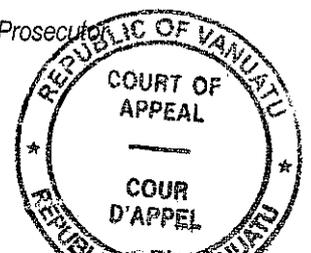
15. In *Naio v Public Prosecutor* [1998] VUCA 1, this Court adopted the principles applying to sentence appeals set out in the decision of the High Court of Australia in *Skinner v R* (1913) 16 CLR 336 at 340 and stated that those principles should be applied in Vanuatu. In *Skinner*, the High Court said that an appellate Court considering a sentence appeal should not determine that a sentence was manifestly excessive or manifestly inadequate unless that was obvious, such as where the sentencing judge has acted on a wrong principle, or had clearly overlooked, undervalued, overestimated or misunderstood some relevant features of the evidence.

The starting point

16. We do not need to consider the appellant's contention that the starting point was too high resulting in a manifestly excessive sentence. That is because, in our view, the primary judge erred in two respects when setting the starting point, so that the sentence is to be set aside and the appellant re-sentenced. The errors are:
- a) The primary judge assessed the appellant's prior conviction for similar offending in 2018 to be an aggravating factor of the offending, and not a personal aggravating factor.
 - b) Assessing the appellant's denial of wrongdoing to the victim as an aggravating feature of the offending. The denial is an irrelevant factor when assessing the seriousness of the offending.
17. It is well settled in Vanuatu that the starting point is the sentence of imprisonment that reflects the seriousness and culpability of the actual offending; that is, the specific actions of the offender and their effect in the context of the specific charge and its maximum sentence. In this step, there is no consideration of circumstances which are personal to the offender. The calculation only has regard to the seriousness of the offence.¹
18. This Court has said on a number of occasions that the past criminal history of an offender is to be considered at the second step of sentencing.² A past criminal history is a personal aggravating factor and not an aggravating feature of the offending, relevant to assessment of culpability.
19. We consider that the appellant's denial of wrongdoing is not an aggravating factor of the offending. The victim spoke to the appellant after he got home that day and noticed that items were missing. The appellant denied he was responsible for the break in. Under Article 5(1)(b) of Vanuatu's Constitution, all people are entitled to the protection of the law. Protection of the law

¹ *Public Prosecutor v Andy* [2011] VUCA 14 and *Philip v Public Prosecutor* [2020] VUCA 40

² *Public Prosecutor v Andy* [2011] VUCA 14; *Siply v Public Prosecutor* [2016] VUCA 22; *Vuti v Public Prosecutor* [2017] VUCA 14; and *Philip v Public Prosecutor* [2020] VUCA 40



includes the presumption of innocence,³ a fundamental right. At that stage, the appellant had not been charged, was entitled to the presumption of innocence and within his rights to deny that he broke into the victim's home. It is irrelevant to the appellant's culpability, and his actions when he unlawfully entered the victim's home.

20. Accordingly, we consider the primary judge erred in setting the start point and set aside the sentence. We propose to re-sentence the appellant.

Re-sentence

Step One: Starting Point

21. Mrs Malites contended that the appropriate starting point is 2 - 2½ years imprisonment. Ms Lunabek conceded that the appropriate starting point was 3 years imprisonment.
22. Burglary of a dwelling house is serious. In *Kalfau v Public Prosecutor* [1990] VUCA 9, this Court said:

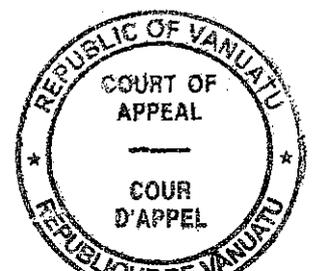
"The house is the most fundamental unit for most families. It includes many aspects of family life which depend, in most cases, on the security of the house in which they live. Violation of that security can have an enormously disruptive effect. Many people whose homes have been subjected to a breaking are affected by it for years - sometimes the remainder of their lives. It is not unusual for some to be left so that they can never feel safe alone again. That is a dreadful legacy of any crime and a criminal who is willing to commit such a crime must expect a serious penalty."

23. This was a daytime burglary, which makes it less serious than a nighttime burglary where there is a heightened risk of confrontation with occupants who may be at home and in bed. This Court made this distinction in *Iakuma v Public Prosecutor* [2023] VUCA 43:

"Dwelling house burglary is and should, in our view, be regarded as serious and, even in the case of a first offender, can merit a sentence of imprisonment. But, as always, there are degrees of seriousness which attach to various scenarios. If the offence is committed during the hours of darkness when occupiers are most likely to be inside, perhaps sleeping, it should be regarded as more serious than an offence committed during the hours of daylight when the house is not occupied. If it is planned or premeditated it may be regarded as more serious, as it may be when gratuitous damage is caused during the commission of the offence. This list is not exhaustive"

24. The relevant aggravating factors present are:
- a) *Planning and premeditation* – While unsophisticated, this was a premeditated burglary. The appellant contacted the victim to ascertain whether the house would be unoccupied during the day. The appellant took advantage of his friendship with the victim, and

³ Article 5(2)(b) of the Constitution



knowledge acquired previously to gain entry into the victim's dwelling and steal from him. This factor is present to a relatively high degree.

- b) *Loss to the victim* - The appellant stole cash and other items valued at VT 246,000. The cash, perfume and a pair of shoes have not been recovered. Following interview by police, the Samsung tablet valued at VT 50,000 was recovered. The victim is out of pocket in the sum of VT 196,000. The cash represented the majority of that amount.
25. There is no guideline case for burglary of a dwelling house. Sentencing is not an exact science because the circumstances will vary, so comparisons with other cases are at best an imprecise guide.⁴ There is little in the way of cases from this Court that assist. In *Iakuma v Public Prosecutor*, this Court considered an appeal against sentence. The four appellants pleaded guilty to burglary of a dwelling and theft. During the burglary, two of the appellants stole 8 bottles of wine of an undetermined value. It was an unplanned burglary, which occurred during the day when the house was unoccupied, and some of the property was recovered. The starting point of 2 years 4 months imprisonment adopted for those two appellants by the sentencing judge was not challenged on appeal. The issue for the appeal was whether the sentence ought to have been suspended. Given the premeditation in the present case and the amount of the loss, we consider the starting point should be higher than the 2 years 4 months imprisonment adopted in *Iakuma*.
26. Both Mrs Malites and Ms Lunabek referred to recent sentences imposed in the Supreme Court, with starting point sentences for burglary of a dwelling and theft between 2 - 4 years.⁵ *Woka* provides some assistance in assessing the starting point here by way of cross check. The defendant pleaded guilty to a charge of burglary of a dwelling and theft. The starting point set by the judge was 3 years imprisonment. The defendant knew the victim and broke into his home and took cash and other items. The relevant aggravating factors were planning and premeditation, damage to property and the value of the stolen goods. In the present case, the appellant did not cause any damage gaining entry, but the value of the stolen items is much higher than the goods in *Woka*.
27. The sentencing cases referred to above provide some assistance. However, it is better to assess the starting point with reference to the features of the offending itself. This was a premeditated daytime house burglary where the appellant took advantage of his prior knowledge to gain entry, took cash and other items, the majority of which have not been recovered. Accordingly, we set a starting point of 3 years imprisonment. That appropriately reflects the appellant's culpability and the seriousness of the offending.

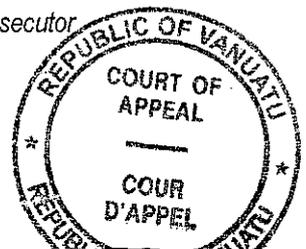
Step Two: Guilty plea and personal factors

Guilty plea

28. The Information was filed in the Supreme Court on 7 February 2025. The appellant pleaded guilty on 25 February 2025. We accept that the appellant entered guilty pleas to the charges at the first reasonable opportunity, and so, consistent with *Public Prosecutor v Andy*, we reduce the

⁴ *Kalfau v Public Prosecutor*

⁵ *Public Prosecutor v Ngwera* [2025] VUSC 211, *Public Prosecutor v Mosul* [2023] VUSC 257, *Public Prosecutor v Woka* [2025] VUSC 1 and *Public Prosecutor v Akuma* [2023] VUSC 145.



sentence by one third. A very early guilty plea showed a degree of remorse, acceptance of responsibility, it saved the victim from having to give evidence, avoided the need for a trial, and it assisted in the administration of justice by reducing Court delays and the saving of Court resources.⁶

29. The sentence is reduced by 12 months for the early guilty plea.

Personal factors

30. Mrs Malites accepted that the only personal factors set out in the defence sentencing submissions capable of mitigating the sentence are remorse and co-operation with police. The other factors simply reflect the appellant's personal circumstances. We do not reduce the sentence for remorse and co-operation with police. Those factors have been sufficiently taken into account in the guilty plea reduction of one third, as the appellant's early guilty plea indicates a degree of remorse and acceptance of responsibility.
31. The appellant has a previous similar conviction. In 2018, he was sentenced to 12 months imprisonment for burglary of a dwelling and theft. Both counsel contended that the sentence should be increased because of that conviction.
32. A sentence should not be increased merely because of a previous conviction. The New Zealand Court of Appeal has noted the tension between ensuring that an offender is not punished twice for the same offending, but also recognising the need for deterrence and public protection, if there is a risk of re-offending in a similar way.⁷ In Vanuatu, this Court has said that a sentencing judge must be careful not to effectively re-sentence an offender in respect of an earlier conviction.⁸
33. One similar conviction more than 6 years ago does not demonstrate a risk of re-offending, warranting an increase to the sentence for deterrent and public protection purposes. To do so in this case would be overly punitive, and risk re-sentencing the appellant for the earlier conviction. That is not to say that sentencing judges should ignore previous convictions. Rather, what is required is a considered assessment of whether a sentence increase is needed for deterrence and public protection.
34. For the reasons given above, we do not increase the sentence for the appellant's past history.

Time spent in custody

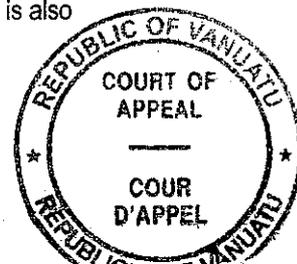
35. It is common ground that the appellant spent 6 weeks in custody before being released on bail, which was overlooked by the primary judge in calculating the sentence.
36. Section 51(4) of the Penal Code [CAP 135] provides that time spent in custody before trial or appeal is to be deducted from a sentence. Relevantly, it says:

51. Calculation of sentence

⁶ The rationale underpinning a reduction for a guilty plea has been explained by this Court cases such as *Taviti v Public Prosecutor* [2016] VUCA 41, *Pipite v Public Prosecutor* [2018] VUCA 53, and *Tevi v Public Prosecutor* [2024] VUCA 43.

⁷ *R v Ward* [1976] 1 NZLR 599 (CA); *Te Hau v R* [2103] NZCA 431 and *Wipa v R* [2018] NZCA 219. There is also a helpful summary of these principles in *Reedy v Police* [2015] NZHC 1069.

⁸ See *Vuti v Public Prosecutor* [2017] VUCA 14.



(4). If the offender has been in custody pending trial or appeal, the duration of such custody is to be wholly deducted from the computation of a sentence of imprisonment.

37. The sentence is to be reduced by 3 months for this factor, the equivalent of a 3 month prison sentence. This gives effect to s 51 of the Penal Code but also takes into account s 51 of the Correctional Services Act 2006 ("the CSA"). Under s 51 of the CSA, an offender is eligible for parole after serving half of the sentence. As explained by this Court in *Moli v Public Prosecutor* [2014] VUCA 37,⁹ fairness to the appellant requires that the 6 weeks in custody is treated as the equivalent of a 3 month prison sentence. Otherwise, he would be unfairly penalised, as time spent in custody would not reflect parole eligibility at half of the sentence under s 51 of the CSA.

End sentence

38. The end sentence is 1 year 9 months imprisonment.

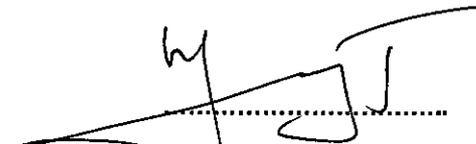
Disposition of the appeal

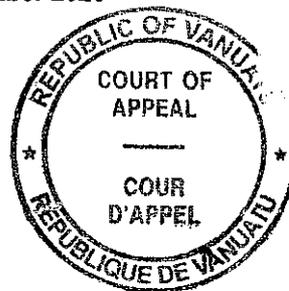
39. For the reasons given above:

- a) The appeal is allowed.
- b) The sentence imposed on 21 March 2025 is set aside.
- c) In its place the appellant is sentenced to imprisonment for 1 year 9 months.
- d) The sentence is backdated to commence on 21 March 2025.
- e) A warrant of commitment reflecting the above sentence will be issued.

Dated at Port Vila this 14th day of November 2025

BY THE COURT


Hon. Justice Ronald Young



⁹ at [17]