

BETWEEN: Public Prosecutor

AND: Fathy Jimmy
Defendant

Date: 24 February 2020
By: Justice G.A. Andrée Wiltens
Counsel: Ms L. Lunabek for Public Prosecutor
Ms K. Karu for the Defendant

SENTENCE

A. Introduction

1. Mr Jimmy has pleaded guilty and accepted the summary of facts relating to 4 charges; two allege theft and two allege unlawful entry. The maximum sentence for theft is a term of 12 years imprisonment; and due to the nature of the premises unlawfully entered, the maximum sentence for that offending is 20 years imprisonment.

B. Facts

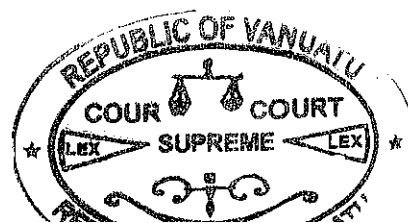
Charge 1: Theft

2. On 12 January 2019, in the Tagabe area, Port Vila, Mr Jimmy stole a laptop and a hard drive, valued at VT 75,000. He was observed to be loitering near the house, but he was not seen to reach in through an open window and help himself to property belonging to another.
3. Mr Jimmy on-sold the laptop the same day for VT 10,000, dishonestly claiming to be the rightful owner and requiring to raise funds to pay for school fees.

Charge 2 and 3: Theft and Unlawful Entry

4. On 28 July 2019, Mr Jimmy unlawfully entered a kitchen in a property at Blacksands. The owner returned at 6am to find a number of items stolen:

- 2 saucepans valued at VT 20,000;



- 1 bag of rice valued at VT 2,000;
 - Kitchen utensils, valued at VT 3,000;
 - A blanket, valued at VT 1,500;
 - 3 pairs of slippers, valued at VT 1,200; and
 - a pair of Nike shoes, valued at VT 3,000.
- Total value: VT 30,700.

5. Mr Jimmy on-sold one of the saucepans for VT 3,000 and the bag of rice for VT 1,000 later that same week.

Charge 4: Unlawful Entry

6. On 14 September 2019 Mr Jimmy was observed by the owner of a home in Prima Area, Port Vila to be unlawfully entering the home. The owner disturbed Mr Jimmy's evident intent to steal, and he chased after him. The owner was assisted by police officers who arrested Mr Jimmy.
7. When questioned, Mr Jimmy made several admissions in relation to the charges. He admitted committing Charge 1 and taking part in Charges 3 and 4.

C. Aggravating Factors of the Offending

8. There are aggravating factors to the offending:
- The repeat nature of the offending – 4 criminal acts in an 8-month period; and
 - All the offending involves dishonesty, with no realistic prospects of reparation.

D. Mitigating Factors of the Offending

9. There are none.

E. Start Point

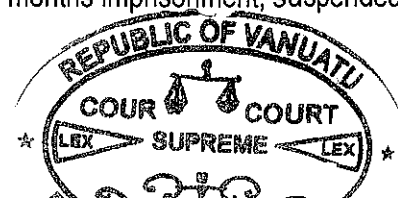
10. The lead offending is the unlawful entries. I set the start point for this offending, as required to be identified by *PP v Andy* [2011] 14, on a global basis taking all 4 offences into account, at 2 years 6 months imprisonment. I adopt a start point of 21 months imprisonment for offences 2 and 3 together; with an uplift for charge 1 of 3 months, and an uplift for charge 4 of 6 months.

F. Personal Factors

11. Mr Jimmy is 31 years of age. He is single and un-employed. The PSR does not read well. It indicates he is well known for this type of activity within the community. Accordingly his links with his family and his immediate community are poor. There is suggested to be a link with the consumption of drugs.
12. A custom reconciliation ceremony has not been undertaken, but Mr Jimmy has indicated willingness. That willingness is too little, too late to have any real impact on the sentence that must be imposed.
13. There is no basis for a reduction from the sentence start point for Mr Jimmy's personal factors. Indeed, there must be an uplift of the sentence to take into account his previous convictions:

5 August 2008 Unlawful Entry and theft 3 months imprisonment

5 June 2012 Unlawful possession of dangerous drugs 12 months imprisonment, suspended for 2 years plus 50 hours of community work; and



25 October 2012 sexual intercourse without consent 6 years imprisonment.

14. Given that only the first two of these previous convictions are of a similar nature to the present charges, the uplift I impose is one of 4 months imprisonment.
15. The final matter of mitigation is Mr Jimmy's guilty pleas. I note that he "bargained" with the prosecution in relation to Charge 5, which indicates that there was no true remorse - just expediency was behind the pleas. However, the pleas were entered at the first available opportunity. On the other hand, the evidence against Mr Jimmy was exceedingly strong, especially after his admissions. The discount I am prepared to allow is one of 25%.

G. End Sentence

16. Taking all of those matters into account, the end sentence that must be imposed is one of 25 months imprisonment. I impose that on Charges 2 and 4. In respect of Charges 1 and 3, I impose sentences of 3 months imprisonment. All the sentences are to be concurrent, and the sentences are to run as from 12 January 2020 to reflect the 6 weeks Mr Jimmy has already served.

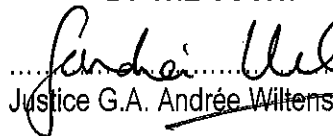
H. Suspension

17. It would be entirely wrong to suspend this sentence in whole or in part. There is nothing exceptional in this case to justify suspension. Indeed the opposite is the case – there are very good reasons to impose actual incarceration. To do otherwise would undermine the deterrent effect this sentence is intended to have to ensure no further similar offending occurs and to hold Mr Jimmy accountable for his conduct and the effect of his conduct on the complainants.
18. I would have given more attention to the possibility of rehabilitation but for Mr Jimmy's previous convictions, which all resulted in terms of imprisonment. I note also he was only out of his parole period by 3 months prior to again offending dishonestly.

I. Other

19. Mr Jimmy has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 24th day of February 2020
BY THE COURT


Justice G.A. Andrée Wiltens

