

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

Criminal
Case No. 23/3252 SC/CRML

PUBLIC PROSECUTOR

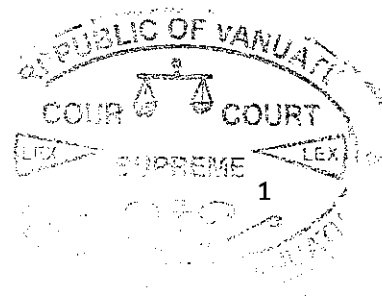
v

**JEAN YVES SHEM
STANLEY IAPUT
BILL DAVID
LARRY JOSEPH
RODNEY NGWERA
MICHEL ASIAL
TYSON PHILEMON
MANUEL JOB
KAMMY RUBEL
JOHN NAMAKA**

Date: 6 June 2024
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr C. Shem
Defendant Mr Shem – Mr A. Bal
Defendant Mr Iaput, via video link from Luganville Court House – Mr A. Bal
Defendants Mr David, Mr Ngwera & Mr Asial – Mrs M. Markward
Defendant Mr Joseph – Mrs K. Karu
Defendant Mr Philemon – Mr F. Tasso
Defendant Mr Job – Mr R. Rongo
Defendant Mr Rubel – Ms J. Tari
Defendant Mr Namaka – Ms F. Kalsakau

SENTENCE

[Corrections under the slip rule to paras 114, 115, 120(i), 126 & 131(i)]



A. Introduction

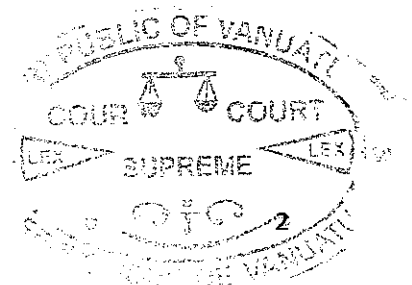
1. The Defendants pleaded guilty to the following charges against them of unlawful entry, attempted unlawful entry, theft, attempted theft and malicious damage to property:
 - a) Jean Yves Shem (also known as Jean Yve Shem) – charges 1-5, 8, 10, 16, 18, 19, 21, 23, 24, 26, 27, 29, 31, 33, 34, 36 and 38;
 - b) Stanley Iaput – charges 2, 3, 6, 9, 12 and 13;
 - c) Bill David (also known as David Bill) – charges 5, 7, 8, 11, 14, 15, 17, 40 and 41;
 - d) Larry Joseph – charge 16;
 - e) Rodney Ngwera – charges 20, 22-24, 28, 30, 32, 35 and 37;
 - f) Michel Asial – charges 25, 30, 35 and 37;
 - g) Tyson Philemon – charges 30, 32 and 39;
 - h) Manuel Job – charge 38;
 - i) Kammy Rubel – charges 35 and 37; and
 - j) John Namaka – charges 22-24, 32, 35 and 37.
2. The Defendants are convicted on their own pleas and the admitted facts set out in the Amended Summary of Facts filed on 1 March 2024.

B. Facts

1st Offending (Supreme Court Registry)

Charges 1-3

3. At night on 28 April 2023 at the office of the Supreme Court Registry in Port Vila, the Defendant Jean Yves Shem willfully and unlawfully damaged the doors of the office and the lock to the main gate, knowing that the property belonged to another. He caused damage to the doors of the offices (Charge 1):
 - a) Office of the Training and Development Coordinator;
 - b) Office of the Sheriff;
 - c) Office of Deputy Master;
 - d) Office of Technology and System Officer;

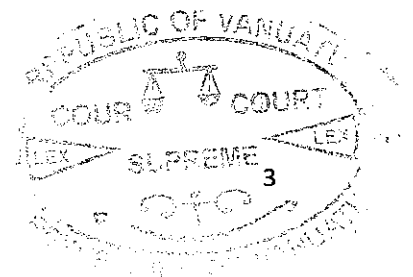


- e) Office of Accounts; and
 - f) Office of the Supreme Court Master.
4. Then Defendant Jean Yves Shem and the Defendant Stanley Iaput entered the office of the Supreme Court Registry with the intention to commit an offence (Charge 2). Upon entry of the Supreme Court premises, Mr Shem and Mr Iaput took and carried away the following properties (Charge 3):
- a) VT113,000 cash belonging to Hon. Justice Edwin Goldsbrough. The money was taken from the Judge's desk drawer;
 - b) 1 black Xiaomi phone Redmi belonging to Emma Scadeng. The property was also taken from the drawer of her desk;
 - c) 2 USB memory sticks taken from the Supreme Court Master's office.
5. None of these items were returned to their rightful owners.
6. The Defendants were caught after CCTV footage captured them refueling the RV28 vehicle at Tagabe fuel station. This vehicle belonged to the Supreme Court of Vanuatu, and they had driven it away at the time of the offending and later parked it at the airport where it was retrieved.
7. Both Defendants were cautioned. Mr Iaput admitted that Mr Shem gave him the VT40,000 that he had used to buy two mobile phones at Computer World.
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2nd Offending (Super Cool)

Charges 4-6

8. At night on 15 May 2023, the Defendant Jean Yves Shem used a pinch bar to cause damage wilfully and unlawfully and forcefully open the main door and 2 internal doors and frames of the Super Cool business office in Port Vila, knowing that the property belonged to another. The total value of damaged properties was VT500,000 (Charge 4).
9. The Defendants Mr Shem and Mr David unlawfully entered the Super Cool office with intention to commit an offence (Charge 5).
10. The Defendant Stanley Iaput kept watch outside the premises (Charge 6).
11. Manuel Williams, the security guard, observed the Defendants that night and attempted to approach them but they chased him away.



12. The Defendants admitted the offending to the Police.

3rd Offending (Bottle-O Shop)

Charge 7

13. During the early hours of 15 May 2023, the Defendant Bill David wilfully and unlawfully caused damage to the padlock of the entrance to the shop by using a bolt cutter to cut open the lock to the main door making way for entry into the Bottle-O Shop, knowing that the property belonged to another. This was captured on CCTV footage. Mr David admitted doing so in his caution interview.

Charge 8

14. The Defendants Jean Yves Shem and Bill David entered the premises of the Bottle-O Shop with the intention to commit an offence and loitered inside the shop.

15. Upon cautioning, they both admitted to entering the premises.

Charge 9

16. The Defendant Stanley Iaput stood watch outside while Mr Shem and Mr David unlawfully entered the Bottle-O Shop. The CCTV footage shows Mr Iaput waiting outside and he also admitted in his caution interview that he only stood watch at that time.

Charge 10

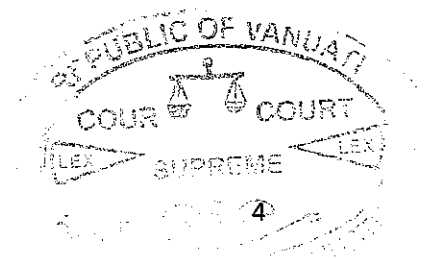
17. The Defendant Mr Shem took and carried away a red cash box containing VT276,000 and 3 hand watches. CCTV footage shows Mr Shem taking away that cash box. He admitted in his caution interview that he took and carried away some money from those premises.

18. The cash money was not returned in any way to the complainant.

Charge 11

19. The Defendant Bill David took and carried away VT137,000 cash which was the total cash made by the Bottle-O Shop business that Friday and Saturday. The CCTV footage shows him completely emptying the till machine. He admitted doing so during his caution interview.

20. The money was not returned in any way to the complainant.



Charge 12

21. At the time of the offending the Defendant Stanley Iaput only stood watch. He did not enter the premises; however, he knew that the other two Defendants were entering to steal inside the shop. He kept watch to allow them to do that. He was complicit to the theft of VT413,000 cash and 3 hand watches.

Charge 13

22. The money that was taken by the Defendants Mr Shem and Mr David was shared amongst the three of them. The Defendant Mr Iaput admitted receiving VT30,000 at that time.

4th Offending (Post Office)

Charge 14

23. At night on 29 May 2023, the Defendant Bill David forcefully entered the premises of Vanuatu Post Limited at the Stade area in Port Vila. He broke one of the main doors to the mail room to gain entry.

Charge 15

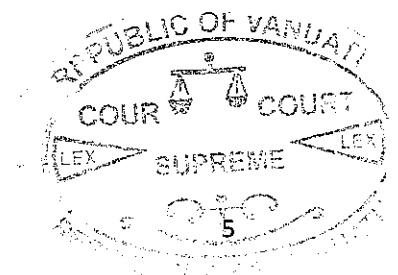
24. The Defendant Bill David entered the premises of Vanuatu Post Limited with the intention to commit an offence. He accepted in his Police interview that he entered the premises of the Vanuatu Post as alleged.

Charge 16

25. At the time of the offending, both the Defendants Jean Yves Shem and Larry Joseph stood watch outside the Vanuatu Post office. They did that to allow Mr David to enter the premises with the intention to commit an offence.

Charge 17

26. Whilst inside the premises of Vanuatu Post, the security guard interrupted the Defendant Bill David. He dropped a black bag on his way out of the premises containing:
- a) 1 black pinch bar;
 - b) JBL speaker;

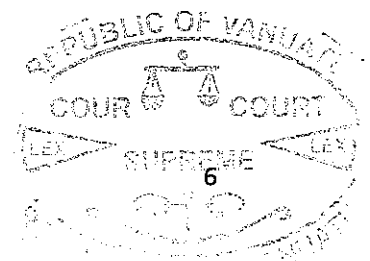


- c) Screw driver;
 - d) Nikon digital camera
27. The Defendant Bill David admitted that he had stolen the JBL speaker from inside the premises of Vanuatu Post.
28. The JBL speaker was retrieved by the police and returned to its owner.
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5th Offending (Colardeau School)

Charges 18 & 19

29. On the night of 3 June 2023, the Defendant Jean Yves Shem used a bolt cutter to cut the chain to the back gate of the Colardeau School (Lycée Français Le Clézio de Port Vila). The Defendant Jean Yves Shem used a pinch bar to damage and open the door to the administration office of the school and damaged the alarm sensor. He attempted to enter the office of the Colardeau School with intention to commit an offence. The alarm sounded and they were disturbed by a resident at the school shining a torch on them then they fled. They left a black Redmi mobile phone in the playground which contained a picture of the Defendant Mr Shem.
30. He wilfully and unlawfully caused damage to the following items of property at the Colardeau School knowing that they belonged to another.:
- a) Office door;
 - b) Alarm sensor;
 - c) Computer lab door;
 - d) Toilet door; and
 - e) Gate chain.
31. The cost of fixing these doors amounted to VT230,000 (Meyer Construction invoice) and repairing the broken sensor cost VT5,645 (Vate Electrics also invoice) hence the total cost of the repair and/or replacement of the properties of Colardeau School amounted to VT235,645.
32. Mr Shem admitted using a pinch bar to open the administration office door. He also confirmed losing his mobile phone at that time.
33. The Defendant Rodney Ngwera stated that he saw the defendant Jean Yve Shem remove a bolt cutter from a carry-on bag and used it to cut open the chain of the gate.



Charge 20

34. The Defendant Rodney Ngwera stood watch while the Defendant Jean Yves Shem unlawfully entered the premises of Colardeau School. He admitted during cautioning that Mr Shem had asked him to keep watch outside the back gate while he entered the school compound.
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6th Offending (Vurobaravu residence, Tagabe Agriculture station)

Charge 21

35. In the daytime on 4 June 2023, the Defendant Jean Yves Shem used a pinch bar to forcibly open the main door, which was locked at the time, to the Vurobaravu dwelling house at the Tagabe Agriculture station in Port Vila. There was no one at the house as they had all gone to church.
36. Mr Shem admitted in his caution interview that he used a pinch bar to forcibly enter the house.

Charge 22

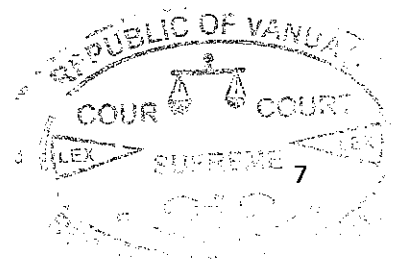
37. The Defendants Rodney Ngwera and John Namaka aided Mr Shem to wilfully and unlawfully damage and break the front door of the Vurobaravu dwelling house. The door was damaged, particularly the door lock.
38. Mr Shem admitted in his caution interview that he was accompanied at the time by Mr Ngwera and Mr Namaka.

Charge 23

39. The Defendants Mr Shem, Mr Ngwera and Mr Namaka entered the Vurobaravu dwelling house with intention to commit an offence.

Charge 24

40. The Defendants Mr Shem, Mr Ngwera and Mr Namaka took and carried away the following properties from the Vurobaravu dwelling house:
- a) 2 laptops;
 - b) 1 MiFi device;
 - c) 3 school bags;



- d) 1 JBL speaker; and
 - e) A tin of money.
41. One of the stolen bags and laptop belonged to a student studying at the University of South Pacific.
42. The Defendant Mr Shem stated during his caution interview that he and the other defendants did as alleged. He stated that they took and carried away 3 bags of clothes, a tin of money and two laptops. He stated that one of the laptops was black in colour while the other was white.
43. Only one laptop and a bag containing 3 flash drives was retrieved by the police. There are no prospects of recovery and or reparation of the other stolen properties.

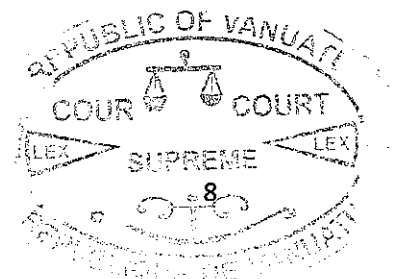
Charge 25

44. After the stealing of the properties from the Vurobaravu dwelling house, the Defendant Mr Shem handed one of the bags to the Defendant Michel Asial. Mr Asial knew that the bag was stolen property. The bag contained a white laptop Ollee, serial number 1310520A01431 model L141HTN6SPW, 3 flash drives and a pin-to-pin cable.
45. Subsequently, Mr Asial handed the bag to Christlen Loman who took it to Tanna. The Police retrieved the bag during their investigation.
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7th Offending (Central School)

Charges 26 & 27

46. At night on 4 June 2023, the Defendant Jean Yves Shem cut open the chain of the gate to the Port Vila Central School; then cut the security mesh to the window of the administration office and broke two louvers to allow himself access into the building and knowing that the property belonged to another. He entered the office with intention to commit an offence.
47. The door to the principal's office was severely damaged along with its frame. The cost of the damaged properties is as follows:
- a) Cash box worth VT200,000;
 - b) 2 damaged doors and their frames worth VT110,000; and
 - c) Damage to security screen would cost VT90,000.



48. The Defendant Mr Shem admitted during cautioning that he opened the door with a pinch bar, entered the office and stole property.

Charge 28

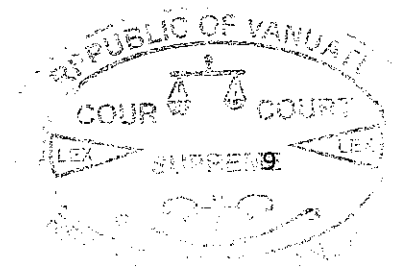
49. The Defendant Rodney Ngwera was present with the Defendant Jean Yves Shem on 4 June 2023 during the stealing at the Central School in Port Vila. At that time, Mr Ngwera kept watch while Mr Shem unlawfully entered the school's premises.
50. During cautioning, Mr Ngwera admitted that his role at that time was to keep watch. He knew clearly that Mr Shem unlawfully entered the office of the school with the intention to steal.

Charge 29

51. After unlawfully entering the Central School premises, the Defendant Jean Yves Shem carried away a cash box from inside the principal's office. The cash box was dragged out from the principal's office and pushed to a clear space from which the other Defendants Rodney Ngwera, Michel Asial and Tyson Philimon helped him to load it onto a truck. Mr Philimon drove the truck carrying the cash box away.
52. The Defendant Mr Shem admitted to the offending. He stated that he took and carried away a grey cash box from the school. He further stated that after the cash box was removed from inside the office, he got the other Defendants Rodney Ngwera, Micheal Asial and Tyson Philimon to help him move and load the cash box. Defendant Jean Yve Shem admitted that the truck which the cash box was loaded on to was driven by the defendant Tyson Philimon.

Charge 30

53. On the night of the incident after the Defendant Mr Shem removed the cash box from inside the office, he obtained the assistance of the Defendants Rodney Ngwera, Micheal Asial and Tyson Philemon who helped him to load the cash box onto a truck and carry it away.
54. The Defendant Tyson Philimon drove a vehicle inside the school compound through the back gate of the school towards the Independence Park forcefully opened by Defendant Mr Shem. All the other three Defendants then assisted Mr Shem to load the cash box into the truck and drive it away.
55. The defendant Rodney Ngwera, Micheal Asial and Tyson Philimon clearly understood that what they were doing at that time was wrong but did so with intention to deprive the owner of its property. They were complicit to Mr Shem's theft of the cash box.



56. The Defendant Rodney Ngwera admitted that he assisted to load the cash box into the vehicle.
57. The Defendant Tyson Philimon admitted that he drove the vehicle at that time. He admitted that he drove inside the school compound, and picked up the cash box which was left on the field.
58. The Defendant Micheal Asial admitted that he assisted to load the truck with the cash box inside the Central School compound. He stated that the Defendant Mr Shem told him that if he opened the cash box, he would give him some money.

Charges 31 & 32

59. After the cash box was lifted into the truck by the Defendants Mr Shem, Mr Ngwera, Mr Asial and Mr Philimon, it was taken to Ohlen subdivision area in Port Vila and unloaded. Out there, Mr Shem forcefully opened the cash box while others kept watch. The cash box only contained office files, keys and flash drives.
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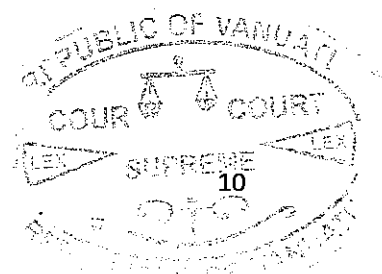
8th Offending (APTC)

Charge 33

60. At night on 5 June 2023, the Defendant Jean Yves Shem forcefully opened two doors to the Australia Pacific Technical Coalition (APTC) school building to get in. After that, he cut open the chain to the main gate to allow for the bus to be driven through by the Defendant John Namaka.

Charges 34 & 36

61. The Defendant Mr Shem then unlawfully entered the premises with intention to commit an offence and took and carried away properties belonging to another. Mr Shem stole the following properties from the APTC school building with a total value of VT413,363 (excluding the bus):
 - a) The school HiAce Toyota bus;
 - b) Dominator HS-5D cash 6 fire safety data of value equivalent to 333,913vt;
 - c) Cash money worth of 59,450vt;
 - d) Samsung A10 Mobile Phone worth 18,000vt; and
 - e) Computer mouse valued at VT 2.000;



62. The Defendant Mr Shem admitted the offending.

Charges 35 & 37

63. At that time, the Defendants John Namaka, Michel Asial, Kammy Rubel and Rodney Ngwera stood watch to allow for the Defendant Mr Shem to unlawfully enter the APTC school building. These Defendants also assisted Mr Shem to load the APTC school bus with the cash box. Mr Namaka drove the school bus out of the compound and later parked it close to the airport where it was retrieved. The Defendants admitted that they were complicit to Mr Shem's unlawful entry of the APTC school building and the theft that he committed there.

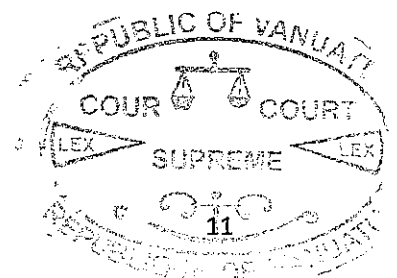
Charges 38 & 39

64. The Defendant Jean Yves Shem tried to open the cash box that he stole from the APTC school building but was not successful. He then loaded the said cash box into a vehicle driven by the Defendant Tyson Philimon and took it to the Defendant Manuel Job's premises at Erakor half road area where they loaded a generator, grinder, pinch bar, and crowbar onto the truck and drove to Eratap.
65. At Eratap, they failed to cut open the cash box the first time. So, Mr Shem and Mr Job returned to Mr Job's garage, took another bigger grinder, and returned and managed to cut open the cash box, knowing that it belonged to another.
66. Both the Defendants Mr Shem and Mr Job admitted the offending.
67. The defendant Tyson Philemon was cautioned and admitted that he only stood watch at that time.
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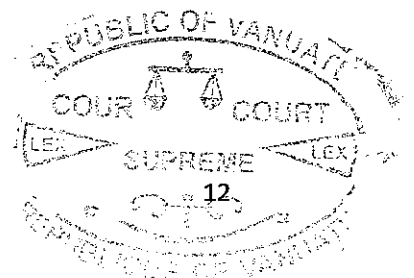
9th Offending (Bellevue)

Charges 40 & 41

68. At night on 28 August 2023, the Defendant Bill David unlawfully entered the Peng dwelling house at Bellevue area in Port Vila (Charge 40) and stole the following properties (Charge 41):
- a) 1 carry-on bag;
 - b) 3000 Chinese currency equivalents to VT54,000;
 - c) American and Australian dollar equivalent to VT50,000;
 - d) VT300,000 cash money;



- e) 1 bottle alcohol Macallan – 700 litres; and
 - f) One mobile phone
69. After Mr David's arrest, the Police found in his possession a black carry-on bag which contained total cash money of VT237,000. That money was retrieved by the Police with the black carry-on bag and returned to its rightful owner.
70. Mr David admitted the offending in his caution interview.
- C. Sentence Start Point
71. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
72. The maximum sentences prescribed in the *Penal Code* [CAP. 135] are:
- a) Unlawful entry of dwelling house – 20 years imprisonment (subs. 143(1));
 - b) Theft – 12 years imprisonment (para. 125(a));
 - c) Complicity to theft – 12 years imprisonment (s. 30 & para. 125(a));
 - d) Receiving property dishonestly obtained – 12 years imprisonment (s. 131);
 - e) Accessory after the fact – 12 years imprisonment (subs. 34(1) and para. 125(a));
 - f) Unlawful entry of non-residential building – 10 years imprisonment (subs. 143(1));
 - g) Attempted unlawful entry of non-residential building – 10 years imprisonment (s. 28 & subs. 143(1));
 - h) Complicity to unlawful entry of non-residential building – 10 years imprisonment (s. 30 & subs. 143(1));
 - i) Complicity to attempted unlawful entry of non-residential building – 10 years imprisonment (s. 28, s. 30 & subs. 143(1));
 - j) Malicious damage to property – 1 year imprisonment (s. 133); and
 - k) Complicity to malicious damage to property – (ss 30 & 133).
73. There is no mitigating feature of the offending unless stated otherwise.
74. The aggravating factors of the offending of Jean Yves Shem included the following:



- Repeated offending at 8 different locations within a period of less than 2 months;
- Joint criminal enterprise;
- The offending was premeditated and well planned;
- Multiple victims;
- The significant losses caused to the victims; and
- No prospect of reparation.

75. The aggravating factors of the offending of Stanley Iaput, Bill David, Rodney Ngwera, Michel Asial, Tyson Philemon and John Namaka included the following:

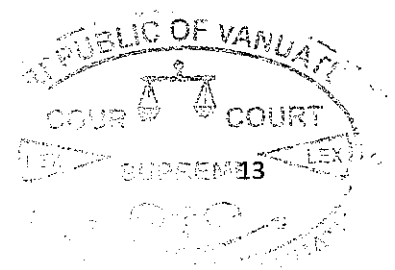
- Repeated offending;
- Joint criminal enterprise;
- The offending was premeditated and well planned;
- Multiple victims;
- The significant losses caused to the victims; and
- No prospect of reparation.

76. The aggravating factors of the offending of Larry Joseph, Manuel Job and Kammy Rubel included the following:

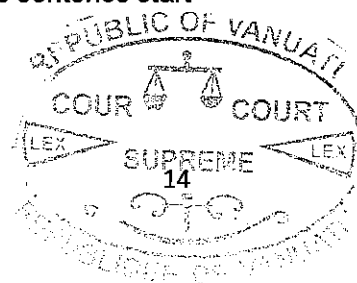
- Joint criminal enterprise;
- The offending was premeditated and well planned; and
- No prospect of reparation.

D. Sentence – Jean Yves Shem

77. Mr Shem was involved in the offending at 8 different premises. He unlawfully entered a dwelling house (the Vurobaravu residence) and 5 non-residential buildings (the Supreme Court Registry, the Super Cool office, the Bottle-O Shop, the Central School and the APTC school building. He and Mr Iaput were released on bail on 28 April 2023 and on the same date, unlawfully entered and stole from the Supreme Court Registry. He attempted to unlawfully enter the Colardeau School main office and aided Mr David by keeping a lookout while Mr David unlawfully entered the Vanuatu Post Limited office.



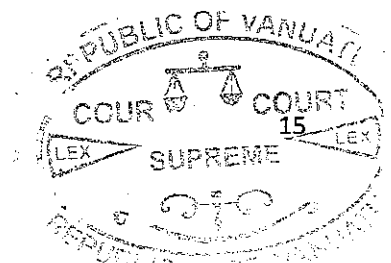
78. Mr Shem caused damage of over VT1,000,000 to properties belonging to another person. He stole VT448,450 cash and numerous items of valuable property: a school bus, 2 cash boxes, 2 mobile phones, 2 USB memory sticks, 3 hand watches, 2 laptops, 1 MiFi device, 3 school bags and 1 JBL speaker. Only one laptop was returned to its owner; the rest of the valuable properties were not.
79. Mr Shem unlawfully entered the dwelling house and non-residential buildings that he did with others' assistance but he was the principal offender. The other Defendants assisted him on his instructions with the exception of the offending at the Vanuatu Post Limited premises.
80. Mr Shem pleaded guilty to 21 charges: a joint charge of unlawful entry of a dwelling house contrary to subs. 143(1) of the *Penal Code* [CAP. 135] (Charge 23), joint charges of unlawful entry of a non-residential building contrary to subs. 143(1) (Charges 2, 5 and 8), unlawful entry of a non-residential building (Charges 27 and 34), a joint charge of complicity to unlawful entry of a non-residential building contrary to s. 30 and subs. 143(1) (Charge 16), attempted unlawful entry of a non-residential building contrary to s. 28 and subs. 143(1) (Charge 19), joint charges of theft contrary to para. 125(a) (Charges 3 and 24), theft contrary to para. 125(a) (Charges 10, 29 and 36), a joint charge of malicious damage to property contrary to s. 133 (Charge 38), and malicious damage to property (Charges 1, 4, 18, 21, 26, 31 and 33).
81. It is a mitigating feature of the offending that there was no one home when Mr Shem unlawfully entered the Vurobaravu residence and that 1 laptop was returned to its owner.
82. The maximum sentences prescribed, and the mitigating and aggravating factors of the offending, require a global sentence start point of 8 years imprisonment. I reject the defence submissions to adopt a starting point of 20 months imprisonment – that is far too low given the scale of Mr Shem's offending and his culpability.
83. Mr Shem has more than 15 prior convictions for similar offending [**Annexure "A"** attached to Prosecution's Sentencing Submissions]. In 2017, he received a 3-week imprisonment sentence. In 2014, he was sentenced to 2 years imprisonment. Other convictions and sentences occurred prior to that.
84. He did not receive any further sentence of imprisonment in the 5 years following the date of expiry of the sentence imposed in 2017, therefore in accordance with ss 58ZG and 58ZH of the *Penal Code*, he was rehabilitated by the lapse of that time and those convictions recorded in **Annexure "A"** have been omitted.
85. However, in 2022, Mr Shem received concurrent sentences of imprisonment for 16 months for unlawful entry, 8 months for cannabis possession and 8 months for escape from lawful custody. Accordingly, I add a 3 months uplift to the sentence start point for the conviction of a similar nature.



86. Mr Shem's pleas were entered at the first available opportunity. He is 30 years old and has two children although he is estranged from them.
87. According to the pre-sentence report writer, alcohol may be a contributing factor to his offending but that may be a way of minimizing his offending, as well as his unemployment and limited support from families.
88. Given the strength of the Prosecution case, 20% (19 months) is deducted from the sentence start point for the early guilty pleas, which are the only mitigating factors personal to the offender.
89. The applicable sentencing principles are to denounce and express public disapproval of such offending, to deter the defendant and others from such offending, to protect the community and to hold the defendant accountable for his offending.
90. Taking all matters into account, the following end sentences for Jean Yves Shem are imposed concurrently, commencing on 14 June 2023 when he was remanded in custody:
- i) Unlawful entry of a dwelling house (Charge 23)
6 years 8 months imprisonment;
 - ii) Theft (Charges 3, 10, 24, 29 and 36) 6 years imprisonment;
 - iii) Unlawful entry of a non-residential building (Charges 2, 5, 8, 27 and 34)
5 years 6 months imprisonment;
 - iv) Complicity to unlawful entry of a non-residential building (Charge 16)
3 years imprisonment;
 - v) Attempted unlawful entry of a non-residential building (Charge 19)
3 years imprisonment; and
 - vi) Malicious damage to property (Charges 1, 4, 18, 21, 26, 31, 33 and 38)
1 year imprisonment.
91. The end sentences will not be suspended as there are no exceptional circumstances warranting suspension. An immediate custodial sentence must be imposed for this serious offending.

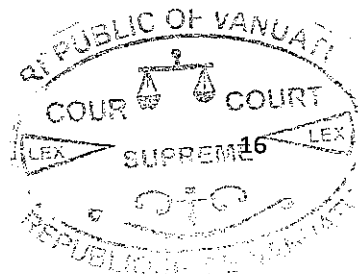
E. Sentence – Stanley Iaput

92. Mr Iaput unlawfully entered a non-residential building and aided Mr Shem and Mr David by keeping a lookout for them whilst they unlawfully entered non-residential buildings with the intention to steal. He and Mr Shem were released on bail on 28 April 2023 and on the same date, unlawfully entered and stole from the Supreme



Court Registry. He committed theft, complicity to theft and received VT30,000 cash which was dishonestly obtained.

93. Mr laput pleaded guilty to 6 charges: a joint charge of theft contrary to para. 125(a) of the *Penal Code* (Charge 3), complicity to theft contrary to s. 30 and para. 125(a) (Charge 12), and receiving property dishonestly obtained contrary to s. 131 (Charge 13), a joint charge of unlawful entry of a non-residential building contrary to subs. 143(1) (Charge 2) and complicity to unlawful entry of a non-residential building (Charges 6 and 9).
94. The maximum sentences prescribed, and the mitigating and aggravating factors of the offending, require a global sentence start point for Mr laput of 4 years imprisonment.
95. Mr laput's pleas were entered at the first available opportunity. Given the strength of the Prosecution case, 20% (9 months) is deducted from the sentence start point for the early guilty pleas.
96. He is 21 years old. He is a Year 6 leaver. His mother passed away in 2022; he lives with his father. He is unemployed. The pre-sentence report writer noted that Mr laput is not a first time offender but did not give more information than that. He also noted that Mr laput has a high risk of reoffending. Prior convictions were not raised by either the Prosecution or Mr laput's lawyer. Accordingly, I will treat Mr laput as if he does not have prior convictions.
97. A further 13 months is deducted from the sentence start for Mr laput's personal factors including his youth and immaturity.
98. The applicable sentencing principles are to denounce and express public disapproval of such offending, to deter the defendant and others from such offending, to protect the community and to hold the defendant accountable for his offending.
99. Taking all matters into account, the following end sentences for Stanley laput are imposed concurrently, commencing on 5 July 2023 when he was remanded in custody:
 - i) Theft (Charge 3) 2 years 2 months imprisonment;
 - ii) Complicity to theft (Charge 12) 2 years 2 months imprisonment;
 - iii) Receiving property dishonestly obtained (Charge 13) 2 years 2 months imprisonment;
 - iv) Unlawful entry of a non-residential building (Charge 2) 2 years imprisonment; and



- v) Complicity to unlawful entry of a non-residential building (Charges 6 and 9) 1 year 6 months imprisonment.

100. The end sentences will not be suspended as there are no exceptional circumstances warranting suspension. An immediate custodial sentence must be imposed for this serious offending.

F. Sentence – Bill David

101. Mr David was involved in the offending at the Super Cool office, the Bottle-O Shop, the Vanuatu Post Limited premises and at the Peng residence. He unlawfully entered one dwelling house and 3 non-residential buildings. He caused damage to two of these premises. He stole VT541,000 cash and a JBL speaker. The speaker was retrieved after he left it behind while fleeing from the Vanuatu Post Limited premises. VT237,000 cash was returned to its owner Mr Peng.

102. Mr David pleaded guilty to 9 charges: unlawful entry of a dwelling house contrary to subs. 143(1) of the *Penal Code* [CAP. 135] (Charge 40), theft contrary to para. 125(a) (Charges 11, 17 and 41), joint charges of unlawful entry of a non-residential building contrary to subs. 143(1) (Charges 5 and 8), unlawful entry of a non-residential building (Charge 15) and malicious damage to property contrary to s. 133 (Charges 7 and 14).

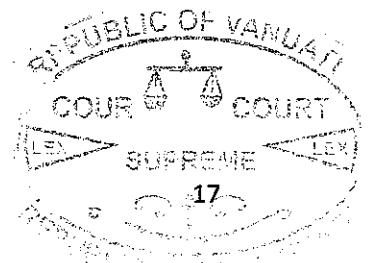
103. The maximum sentences prescribed, and the mitigating and aggravating factors of the offending, require a global sentence start point of 7 years imprisonment.

104. Mr David has more than 10 prior convictions for similar offending, the most recent in 2010 [Annexure "B" attached to Prosecution's Sentencing Submissions]. In 2010, he received a 4-month imprisonment sentence. In 2009, he was sentenced to 1 year 7 months imprisonment. Other convictions and sentences occurred before that.

105. He did not receive any further sentence of imprisonment in the 5 years following the date of expiry of the sentence imposed in 2010, therefore in accordance with ss 58ZG and 58ZH of the *Penal Code*, he was rehabilitated by the lapse of that time and his convictions have been omitted. Accordingly, Mr David is deemed to have no prior convictions.

106. Mr David's pleas were entered at the first available opportunity. Given the strength of the Prosecution case, 20% (16 months) is deducted from the sentence start point for the early guilty pleas.

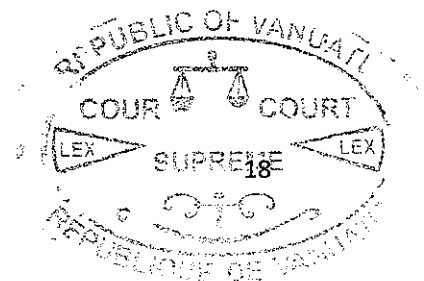
107. Mr David is 34 years old. He is in a *de facto* relationship and has 2 children. He is a Year 6 leaver. He has been previously employed in construction.



108. A further 12 months is deducted from the sentence start point for Mr David's personal factors which is predominantly his prior clean record (in accordance with ss 58ZG and 58ZH of the *Penal Code*).
109. Mr David served time in custody from 28 June 2023 to 28 July 2023 when he was released on bail. On 21 August 2023, he was remanded in custody.
110. The applicable sentencing principles are to denounce and express public disapproval of such offending, to deter the defendant and others from such offending, to protect the community and to hold the defendant accountable for his offending.
111. Taking all matters into account, the following end sentences for Bill David are imposed concurrently, commencing on 21 July 2023 to take into account the period of time that he has served in custody prior to sentencing today:
- i) Unlawful entry of a dwelling house (Charge 40)
4 years 8 months imprisonment;
 - ii) Theft (Charges 11, 17 and 41) 4 years 6 months imprisonment;
 - iii) Unlawful entry of a non-residential building (Charges 5, 8 and 15)
4 years imprisonment; and
 - iv) Malicious damage to property (Charges 7 and 14)
8 months imprisonment.
112. The end sentences will not be suspended as there are no exceptional circumstances warranting suspension. An immediate custodial sentence must be imposed for this serious offending.

G. Sentence – Larry Joseph

113. Mr Joseph has been convicted on a sole charge of complicity to unlawful entry of a non-residential building contrary to s. 30 and subs. 143(1) of the *Penal Code* (Charge 16). He kept watch to allow Mr David to unlawfully enter and steal from the Vanuatu Post Limited premises.
114. The maximum sentence prescribed, and the mitigating and aggravating factors of the offending, require a sentence start point of 2 years 6 months imprisonment.
115. Mr Joseph's plea was entered at the first available opportunity. One third (10 months) is deducted from the sentence start point for the early guilty plea.
116. Mr Joseph is 25 years old. He is in a *de facto* relationship and has a child. He was raised by his grandparents. His grandmother has passed away. He is a Year 4 leaver. He was previously employed in construction.



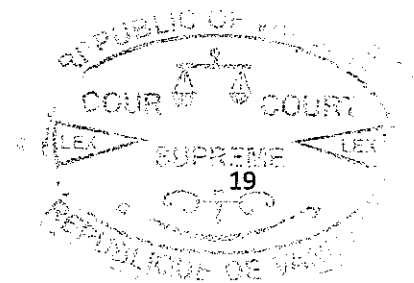
117. He has no prior convictions.
118. A further 12 months is deducted from the sentence start point for Mr Joseph's personal factors.
119. The applicable sentencing principles are to denounce and express public disapproval of such offending, to deter the defendant and others from such offending, to protect the community and to hold the defendant accountable for his offending.
120. Taking all matters into account, the following end sentence is imposed for Larry Joseph:

- i) Complicity to unlawful entry of a non-residential building (Charge 16)
8 months imprisonment.

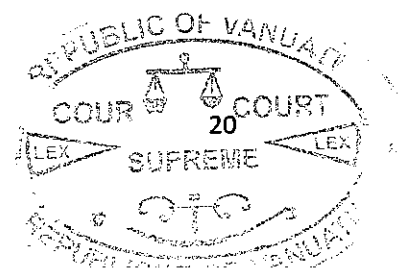
121. Mr Joseph was remanded in custody on 30 October 2023, although that was in relation to other offending. He has therefore served 7 months 6 days in custody, an effective imprisonment sentence of 14 months and 12 days. Accordingly, he has served the time required in respect of this sentence and is to be immediately released.

H. Sentence – Rodney Ngwera

122. Mr Ngwera was involved in the offending within a span of 3 days at the Colardeau School, at the Vurobaravu residence, at the Central School and at the APTC school compound. He unlawfully entered a dwelling house, maliciously damaged property, aided Mr Shem to cause damage to a dwelling house and a cash box, and stood watch on two different occasions so that Mr Shem could unlawfully enter the premises and steal property worth over VT413,363.
123. Mr Ngwera pleaded guilty to 9 charges: a joint charge of unlawful entry of a dwelling house contrary to subs. 143(1) of the *Penal Code* [CAP. 135] (Charge 23), a joint charge of theft contrary to para. 125(a) (Charge 24), joint charges of complicity to theft contrary to s. 30 and para. 125(a) (Charges 30 and 37), a joint charge of complicity to unlawful entry of a non-residential building contrary to s. 30 and subs. 143(1) (Charge 35), unlawful entry of a non-residential building (Charge 28), complicity to unlawful entry of a non-residential building (Charge 20) and joint charges of complicity to malicious damage to property contrary to ss 30 and 133 (Charges 22 and 32).
124. It is a mitigating feature of the offending that there was no one home when Mr Ngwera unlawfully entered the Vurobaravu residence.



125. The maximum sentences prescribed, and the mitigating and aggravating factors of the offending, require a global sentence start point of 5 years imprisonment.
126. Mr Ngwera's pleas were entered at the first available opportunity. Given the strength of the Prosecution case, 20% (12 months) is deducted from the sentence start point for the early guilty pleas.
127. Mr Ngwera is 20 years old. He is a Year 8 leaver. He lacks parental support at home as his parents are separated. He has no prior convictions. He is stated to be remorseful.
128. A further 14 months is deducted from the sentence start point for Mr Ngwera's personal factors including his youth and immaturity.
129. Mr Ngwera served time in custody from 10 June 2023 to 3 August 2023 (25 days), an effective imprisonment sentence of nearly 2 months. Accordingly, a further 2 months is deducted from the sentence start point.
130. The applicable sentencing principles are to denounce and express public disapproval of such offending, to deter the defendant and others from such offending, to protect the community and to hold the defendant accountable for his offending.
131. Taking all matters into account, the following end sentences for Rodney Ngwera are imposed concurrently:
- i) Unlawful entry of a dwelling house (Charge 23)
2 years 8 months imprisonment;
 - ii) Theft (Charge 24) 1 year 6 months imprisonment;
 - iii) Complicity to theft (Charges 30 and 37) 1 year 6 months imprisonment;
 - iv) Complicity to unlawful entry of a non-residential building (Charges 28 and 35)
1 year 6 months imprisonment;
 - v) Complicity to attempted unlawful entry of a non-residential building (Charge 20)
1 year 6 months imprisonment; and
 - vi) Complicity to malicious damage to property (Charges 22 and 32)
8 months imprisonment.
132. This offending was serious. However, Mr Ngwera's previous clean record, his youth and immaturity, his prospects of rehabilitation and the need for reform and rehabilitation over punishment for this young offender (*Heromanley v Public Prosecutor* [2010] VUCA 25) favour suspension of sentence. I am therefore prepared to exercise my discretion under s. 57 of the *Penal Code* to suspend the sentences for 2 years. Mr Ngwera is warned that if he is convicted of any offence during that 2-

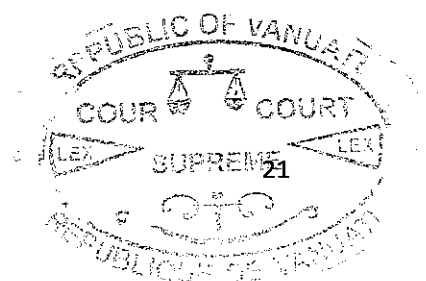


year period that he will be taken into custody and serve these sentences of imprisonment, as well as the penalty imposed for the further offending.

133. In addition, Mr Ngwera is to complete 12 months of supervision and undertake 150 hours of community work.

I. Sentence – Michel Asial

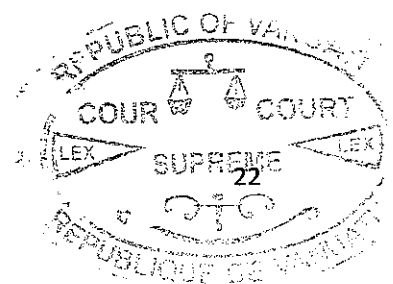
134. Mr Asial was involved in the offending at the Central School and the APTC school compound. He aided Mr Shem to steal valuable items resulting in two joint charges of complicity of theft. He disposed of stolen property which he knew belonged to another, from the Vurobaravu residence. Those properties were retrieved.
135. Mr Asial pleaded guilty to 4 charges: joint charges of complicity to theft contrary to s. 30 and para. 125(a) of the *Penal Code* [CAP. 135] (Charges 30 and 37), accessory after the fact contrary to subs. 34(1) and para. 125(a) (Charge 25) and a joint charge of complicity to unlawful entry of a non-residential building contrary to s. 30 and subs. 143(1) (Charge 35).
136. The maximum sentences prescribed, and the mitigating and aggravating factors of the offending, require a global sentence start point of 3 years 6 months imprisonment.
137. Mr Asial's pleas were entered at the first available opportunity. Given the strength of the Prosecution case, 20% (8 months) is deducted from the sentence start point for the early guilty pleas.
138. Mr Asial is 20 years old. He was 19 years old at the time of the offending. He is a Year 3 leaver. He is single and resides with his parents. He works with his father at the Furet Plantation. He has no prior convictions. He is stated to be remorseful.
139. A further 14 months is deducted from the sentence start point for Mr Asial's personal factors.
140. Mr Asial served time in custody from 20 June 2023 to 14 August 2023 (55 days), effectively 3 months and a half months imprisonment. Accordingly, a further 3 months and a half months is deducted from the sentence start point.
141. The applicable sentencing principles are to denounce and express public disapproval of such offending, to deter the defendant and others from such offending, to protect the community and to hold the defendant accountable for his offending.
142. Taking all matters into account, the following end sentences for Michel Asial are imposed concurrently:



- i) Complicity to theft (Charges 30 and 37) 1 year 4 and a half months imprisonment;
 - ii) Accessory after the fact (Charge 25) 1 year imprisonment; and
 - iii) Complicity to unlawful entry of a non-residential building (Charge 35) 1 year 4 months imprisonment.
143. This offending was serious. However, Mr Asial's previous clean record, youth and immaturity, prospects of rehabilitation and the need for reform and rehabilitation over punishment for this young offender (*Heromanley v Public Prosecutor* [2010] VUCA 25) favour suspension of sentence. I am therefore prepared to exercise my discretion under s. 57 of the *Penal Code* to suspend the sentences for 2 years. Mr Asial is warned that if he is convicted of any offence during that 2-year period that he will be taken into custody and serve these sentences of imprisonment, as well as the penalty imposed for the further offending.
144. In addition, Mr Asial is to complete 12 months of supervision and undertake 150 hours of community work.

J. Sentence – Tyson Philemon

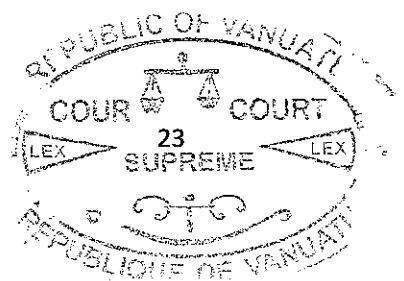
145. Mr Philemon was involved in the offending at the Central School. He aided Mr Shem to steal from the Central School office and then aided him to maliciously damage the cash box, knowing it was property belonging to another person.
146. Mr Philemon pleaded guilty to 3 charges: a joint charge of complicity to theft contrary to s. 30 and para. 125(a) of the *Penal Code* [CAP. 135] (Charge 30), a joint charge of complicity to malicious damage to property contrary to ss 30 and 133 (Charge 32) and a charge of malicious damage to property (Charge 39).
147. The maximum sentences prescribed, and the mitigating and aggravating factors of the offending, require a global sentence start point of 2 years imprisonment.
148. Mr Philemon has a prior conviction, though not for similar offending to the present case [**Annexure "D"** attached to Prosecution's Sentencing Submissions].
149. Mr Philemon's pleas were entered at the first available opportunity. Given the strength of the Prosecution case, 20% (4 months) is deducted from the sentence start point for the early guilty pleas.
150. Mr Philemon is 30 years old. He is in a *de facto* relationship and has 3 children. He is a Year 5 leaver. He works with a construction company in Port Vila. He has good support from his chief and community.



151. He has no prior convictions. He is stated to be remorseful, including as reported by the pre-sentence report writer.
152. 12 months is deducted from the sentence start point for Mr Philemon's personal factors.
153. Mr Philemon served time in custody from 20 June 2023 to 28 June 2023 (9 days). Accordingly, a further 2 weeks is deducted from the sentence start point.
154. The applicable sentencing principles are to denounce and express public disapproval of such offending, to deter the defendant and others from such offending, to protect the community and to hold the defendant accountable for his offending.
155. Taking all matters into account, the following end sentences for Tyson Philemon are imposed concurrently:
- i) Complicity to theft (Charge 30) 7 months 2 weeks imprisonment;
 - ii) Complicity to malicious damage to property (Charge 32) 6 months imprisonment; and
 - iii) Malicious damage to property (Charge 39) 6 months imprisonment.
156. This offending was serious. However, Mr Philemon's previous clean record, willingness to perform a custom reconciliation ceremony with the complainant and prospects of rehabilitation favour suspension of sentence. I am therefore prepared to exercise my discretion under s. 57 of the *Penal Code* to suspend the sentences for 1 year. Mr Philemon is warned that if he is convicted of any offence during that 1-year period that he will be taken into custody and serve these sentences of imprisonment, as well as the penalty imposed for the further offending.
157. In addition, Mr Philemon is to complete 100 hours of community work.

K. Sentence – Manuel Job

158. Mr Job was involved in the offending of causing damage to the cash box stolen from the Central School. He pleaded guilty to a sole charge of malicious damage to property contrary to s. 133 of the *Penal Code* [CAP. 135] (Charge 38).
159. The maximum sentence prescribed, and the mitigating and aggravating factors of the offending, require a sentence start point of 6 months imprisonment.
160. Mr Job has two prior convictions from 2018, for unlawful entry and theft for which he received a 1 year 4 months imprisonment sentence [Annexure "E" attached to Prosecution's Sentencing Submissions]. On 28 June 2021, he was sentenced to 3 years imprisonment for domestic violence and intentional assault, and on 13 March

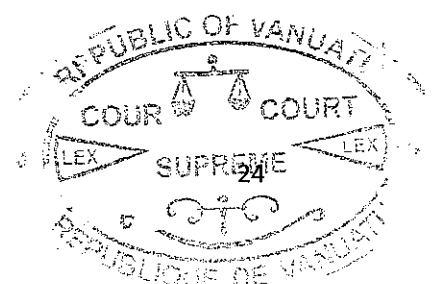


2023, released on parole which will end on 28 June 2024 (as noted by the pre-sentence report writer). An uplift of 1 month is added to the sentence start point for the prior convictions.

161. Mr Job's plea was entered at the first available opportunity. One third (2 months) is deducted from the sentence start point for the early guilty plea.
162. Mr Job is 30 years old. He is in a *de facto* relationship and has 2 children. He is a Year 7 leaver. He is self-employed running a mechanic workshop (garage) business. He is stated to be remorseful.
163. A further 3 months is deducted from the sentence start point for Mr Job's personal factors.
164. The applicable sentencing principles are to denounce and express public disapproval of such offending, to deter the defendant and others from such offending, to protect the community and to hold the defendant accountable for his offending.
165. Taking all matters into account, the following end sentence is imposed for Manuel Job:
 - i) Malicious damage to property (Charge 38) 2 months imprisonment.
166. The sentence is suspended for 1 year in view of Mr Job being approached to aid in the offending rather than being the lead offender, his family responsibilities and his prospects of rehabilitation. Mr Job is warned that if he is convicted of any offence during that 1-year period that he will be taken into custody and serve these sentences of imprisonment, as well as the penalty imposed for the further offending.
167. In addition, Mr Job is to complete 60 hours of community work.

L. Sentence – Kammy Rubel

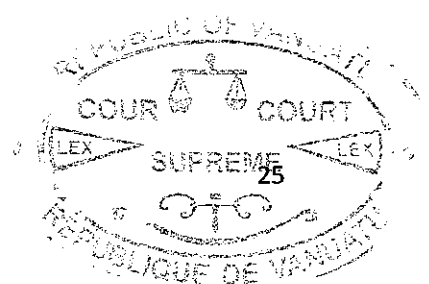
168. Mr Rubel aided Mr Shem by keeping a lookout while Mr Shem unlawfully entered the APTC school building and stole properties there amounting to VT413,363 (excluding the school bus).
169. He pleaded guilty to 2 charges: a joint charge of complicity to unlawful entry of a non-residential building contrary to s. 30 and subs. 143(1) of the *Penal Code* (Charge 35) and a joint charge of complicity to theft contrary to s. 30 and para. 125(a) (Charge 37).
170. The maximum sentences prescribed, and the mitigating and aggravating factors of the offending, require a global sentence start point of 2 years 1 month imprisonment.



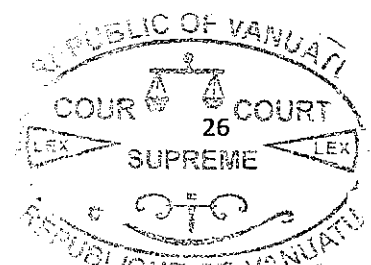
171. Mr Rubel's pleas were entered at the first available opportunity. One third (8 months) is deducted from the sentence start point for the early guilty pleas.
172. Mr Rubel is 17 years old. At the time of the offending, he was 16 years old. He is a Year 7 leaver. He has limited parental support as his parents are separated. He is unemployed. He has no prior convictions. He is stated to be remorseful.
173. A further 15 months is deducted from the sentence start point for Mr Rubel's personal factors particularly his youth and immaturity.
174. The applicable sentencing principles are to denounce and express public disapproval of such offending, to deter the defendant and others from such offending, to protect the community and to hold the defendant accountable for his offending.
175. Taking all matters into account, the following end sentences for Kammy Rubel are imposed concurrently:
- i) Complicity to unlawful entry of a non-residential building (Charge 35)
2 months imprisonment; and
 - ii) Complicity to theft (Charge 37) 2 months imprisonment.
176. Mr Rubel served time in custody from 17 June 2023 to 19 July 2023 (1 month and 2 days), effectively 2 months imprisonment sentence. He has served the time required in respect of this sentence.

M. Sentence – John Namaka

177. Mr Namaka was involved in the offending at the Vurobaravu residence, at the Central School and the APTC school compound. He entered the Vurobaravu dwelling house, aided Mr Shem to steal property and stood lookout at the APTC school compound. He helped to lift the Central School cash box onto the truck.
178. Mr Namaka pleaded guilty to 6 charges: a joint charge of unlawful entry of a dwelling house contrary to subs. 143(1) of the *Penal Code* [CAP. 135] (Charge 23), a joint charge of complicity to unlawful entry of a non-residential building contrary to s. 30 and subs. 143(1) (Charge 35), a joint charge of theft contrary to para. 125(a) (Charge 24), a joint charge of complicity to theft contrary to s. 30 and para. 125(a) (Charge 37) and joint charges of complicity to malicious damage to property contrary to ss 30 and 133 (Charges 22 and 32).
179. It is a mitigating feature of the offending that there was no one home when Mr Namaka unlawfully entered the Vurobaravu residence.



180. The maximum sentences prescribed, and the mitigating and aggravating factors of the offending, require a global sentence start point for Mr Namaka of 4 years imprisonment.
181. Mr Namaka entered his pleas at the first available opportunity. Given the strength of the Prosecution case, 20% (9 months) is deducted from the sentence start point for the early guilty pleas.
182. Mr Namaka is 18 years old. He is a Year 6 leaver. He has had some experience in construction works. He is stated to be remorseful. The pre-sentence report writer attributed his offending to peer pressure and insufficient parental support as his parents are separated.
183. Mr Namaka has a prior conviction from 2023 for unlawful entry and one for theft. On appeal, he was resentenced to 9 months and 2 weeks, and ordered to be immediately released as he had been in custody for the equivalent of 14 months and 2 weeks: Decision dated 30 May 2024 in *Namaka v Public Prosecutor*; CRAC 23/3276 (unreported). I will treat the balance of 5 months effective imprisonment sentence (14 months and 2 weeks less 9 months and 2 weeks = 5 months balance) as time served for the purposes of the present proceeding. Accordingly, I deduct a further 5 months from the sentence start point for time already served in custody and another 9 months for Mr Namaka's personal factors, particularly his youth and immaturity.
184. The applicable sentencing principles are to denounce and express public disapproval of such offending, to deter the defendant and others from such offending, to protect the community and to hold the defendant accountable for his offending.
185. Taking all matters into account, the following end sentences for John Namaka are imposed concurrently:
- i) Unlawful entry of a dwelling house (Charge 23)
2 years 1 month imprisonment;
 - ii) Theft (Charge 24)
1 year 6 months imprisonment;
 - iii) Complicity to theft (Charge 37)
1 year 6 months imprisonment;
 - iv) Complicity to unlawful entry of a non-residential building (Charge 35)
1 year 6 months imprisonment; and
 - v) Complicity to malicious damage to property (Charges 22 and 32)
8 months imprisonment.
186. The offending was serious. However, in view of Mr Namaka's lengthy period of imprisonment which ended on 31 May 2024, his youth and the need for reform and




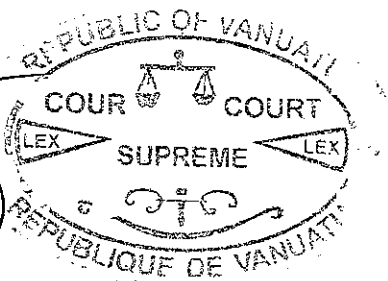
rehabilitation over punishment for this young offender (*Heromanley v Public Prosecutor* [2010] VUCA 25), I am prepared to exercise my discretion under s. 57 of the *Penal Code* to suspend the sentences for 2 years. Mr Namaka is warned that if he is convicted of any offence during that 2-year period that he will be taken into custody and serve these sentences of imprisonment, as well as the penalty imposed for the further offending.

187. The Defendants have 14 days to appeal.

188. I record my thanks to counsel for their helpful submissions.

**DATED at Port Vila this 6th day of June 2024
BY THE COURT**


Justice Viran Molisa Trief



The seal of the Supreme Court of Vanuatu is circular. It features a central emblem of a scale of justice. The text 'REPUBLIC OF VANUATU' is written along the top inner edge, and 'REPUBLIQUE DE VANUATU' along the bottom inner edge. The words 'COUR' and 'COURT' are positioned on either side of the scale, and 'LEX' is written on two small banners flanking the word 'SUPREME' in the center.