

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU

Criminal Case No.323 of 2002  
SC No.20 of 2002  
Judgment No.4 of 2003

(Criminal Jurisdiction)

**PUBLIC PROSECUTOR V. ROGER TOKON  
GERALD MARCEL  
FRED AVOCK**

**Coram: Mr Justice Oliver A.Saksak  
Ms Cynthia Thomas – Clerk**

**Counsels: Ms Linnes Moli for Public Prosecutor  
Mr Hillary Toa for the Defendants.**

**Date of Plea: 20<sup>th</sup> November, 2002.**

**Date of Sentence: 2<sup>nd</sup> May, 2003.**

**SENTENCE**

All three Defendants were each charged with Unlawful Entry contrary to section 143; Theft contrary to section 125(a) and Damage to Property contrary to section 133 of the Penal Code Act [CAP.135]. These offences were committed at Richard Nutley's premises on 28<sup>th</sup> August 2002.

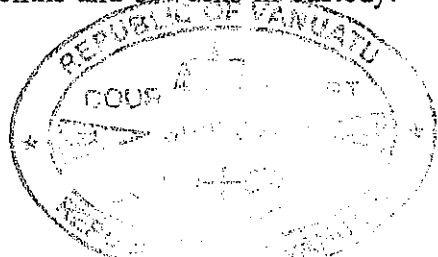
On 20<sup>th</sup> November, 2002 each of the Defendants pleaded guilty to the charges as laid against them.

In imposing sentence on 2<sup>nd</sup> May 2003 I took into consideration factors raised in mitigation by Mr Toa in respect of each of the accuseds.

Roger Tokon is a repeated offender and he does not deserve any leniency. The Court will impose prison terms in respect of each charge against him as follows –

- (a) Unlawful Entry – 11 months;
- (b) Theft – 11 months; and
- (c) Damage – 3 months.

These terms will run concurrently to the effect that he will serve a total of 11 months imprisonment. This will run consecutively with the 22 months imprisonment imposed on him in respect of Criminal Case No.329 of 2002 and the 11 months imprisonment imposed on him by the Court in respect of Criminal Case No.324 of 2002. He has a total of 44 months imprisonment. However he has spent 7 months and 3 weeks in custody.



These are accordingly deducted. The balance that he has to serve is 37 months and 1 week.

Gerald Marcel is a first offender. But the offences he committed are serious. To reflect the seriousness of the offences and to deter others from committing these offences, I consider that I should impose prison terms but have them suspended. Accordingly I impose the following –

- (a) Unlawful Entry – 3 months imprisonment;
- (b) Theft – 3 months imprisonment; and
- (c) Damage – 1 month imprisonment.

These sentences will run concurrently but suspended for a period of 1 year or 12 months from the date of sentence.

Fred Avock is a young man and a first offender. However in Criminal Case No.329 of 2002 he is charged with two counts of Unlawful entry and two counts of Thefts committed at No.1 Restaurant in Luganville on 17-18 July 2002 and at College de Santo on 5<sup>th</sup> September 2002. The present case involves offences committed on 28<sup>th</sup> August 2008. From his record it appears that he is a habitual offender. He repeated the same offences committed in July, August and September. To reflect the seriousness of these offences this Defendant deserves no leniency. The appropriate sentence I consider for Fred Avock is to impose prison terms as follows:-

- (a) Unlawful Entry – 4 months imprisonment;
- (b) Theft – 4 months imprisonment; and
- (c) Damage – 1 month imprisonment.

In total Fred Avock has a total of 4 months imprisonment.

**PUBLISHED** at Luganville this 4<sup>th</sup> day of March, 2004.

**BY THE COURT**

  
**OLIVER A. SAKSAK**  
Judge

