

PUBLIC PROSECUTOR

v

**FABRICE MALEB
JORDANO MALEB
JEAN NOEL MALEB**

Date: 16 October 2023
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms M. Meltebury
Defendant – Mr K.S. Amos

SENTENCE

A. Introduction

1. The Defendant Fabrice Maleb pleaded guilty to unlawful entry (Charge 1) and theft (Charge 2).
2. The Defendant Jordano Maleb pleaded guilty to unlawful entry (Charges 1 and 5), theft (Charges 2 and 6) and malicious damage to property (Charge 7).
3. The Defendant Jean Noel Maleb pleaded guilty to unlawful entry (Charge 3) and theft (Charge 4).
4. The Defendants are convicted on their own pleas and the admitted facts.

B. Facts

5. On 7 February 2022, at night, Jordano Maleb damaged the door pin that used to lock the door of the Jean Andre Vidil Secondary School canteen at Vao, Malekula, knowing that it was school property (Charge 7). Then he and Fabrice Maleb unlawfully entered the school canteen (Charge 1). They stole 4 tins of fish, 4 tins of

tuna, 5 shampoo bottles, one box of pencils, 10 chewing gums and 1 packet of lollies (Charge 2).

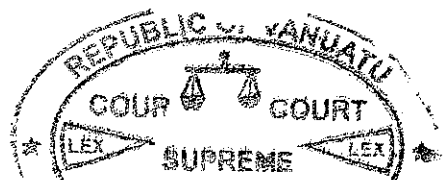
6. Also on 7 February 2022, at night, Jean Noel Maleb unlawfully entered the same school canteen (Charge 3). He stole 1 carton of noodles, 1 bag of 25 kg rice, 3 packets of chewing gum, 10 tins of fish and some tins of tuna (Charge 4).
7. On 8 February 2022, at night, Jordano Maleb unlawfully entered the Jean Andre Vidil Secondary School principal's office (Charge 5) then stole a laptop, charger and double plug (Charge 6).
8. The Defendants admitted the offending to the Police. Jordano Maleb returned the laptop, charger and double plug.

C. Sentence Start Point

9. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
10. The maximum sentences prescribed in the *Penal Code* [CAP. 135] are:
 - a. Theft – 12 years imprisonment (s. 125(a));
 - b. Unlawful entry of dwelling house where the place is not used for human habitation – 10 years imprisonment (subs. 143(1)); and
 - c. Malicious damage to property – 1 year imprisonment (s. 133).
11. The offending is aggravated by being committed at night time and the loss caused to the complainant school. It is a mitigating factor of Jordano Maleb's offending that he returned the items that he took away from the principal's office.
12. The global start point adopted as appropriate for this offending and the criminal culpability involved is 2 years imprisonment.

D. Mitigation – Fabrice Maleb

13. Fabrice Maleb's pleas were entered at the earliest possible opportunity. One third is deducted from the sentence start point for the early guilty pleas.
14. Mr Maleb is 21 years old, from Vao village, North East Malekula. He is a Year 9 leaver. He is in part-time informal employment in construction works. He has no previous convictions. He has not committed any other offending and complied with his bail conditions which shows his strong prospects of rehabilitation.
15. He is stated to be remorseful, including as reported by the pre-sentence report writer. The school principal refused Mr Maleb's attempt at a custom reconciliation



ceremony. He remains willing to perform such ceremony if accepted by the school principal or school board.

16. A further 3 months is deducted from the sentence start point for Mr Maleb's personal factors.
17. Mr Maleb served time in custody in the cell at the Lakatoro Police Station from 17 February 2022 to 3 March 2022 totalling 15 days, effectively 1 month's imprisonment. Accordingly, a further month is deducted from the sentence point.

E. End Sentence – Fabrice Maleb

18. 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.
19. Taking all matters into account, the following end sentences are imposed concurrently:
 - a) Theft (Charge 2) 12 months imprisonment; and
 - b) Unlawful entry (Charge 1) 8 months imprisonment.
20. The Court has a discretion under s. 57 of the *Penal Code* to suspend all or part of the sentence where it is not appropriate to make an offender suffer immediate imprisonment "... (i) in view of the circumstances; and (ii) in particular the nature of the crime; and (iii) the character of the offender."
21. This offending was serious. However, Mr Maleb'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 2 years. Mr Maleb 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.
22. In addition, Mr Maleb is to complete 60 hours of community work.

F. Mitigation – Jordano Maleb

23. Jordano Maleb was 15 years old at the time of the offending and is now 16 years old. He is from Vao village, North East Malekula. He is currently a Year 8 student. He has no previous convictions. He has not committed any other offending and complied with his bail conditions which shows his strong prospects of rehabilitation.
24. He has served 15 days in custody prior to sentencing, an effective term of 1 month imprisonment. It is to be hoped that he learnt from that experience.



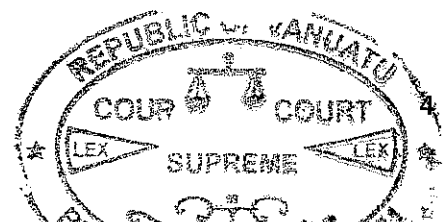
25. The school principal refused Mr Maleb's attempt at a custom reconciliation ceremony.
26. Mr Maleb's pleas were entered at the earliest possible opportunity.
27. Given Mr Maleb's youth and immaturity, reform and rehabilitation should be foremost considerations: *Herromanley v Public Prosecutor* [2010] VUCA 25.

G. End Sentence – Jordano Maleb

28. Taking all the above considerations into account, the sentence that I impose on Jordano Maleb pursuant to s. 56 of the *Penal Code* is to order Mr Maleb to come up again before the Court for sentence if called upon within a period of 2 years from today.
29. Accordingly, there is no sentence imposed for the 5 offences at this stage – and indeed, if Mr Maleb does not reoffend in any way in the next 2 years he will not be sentenced for this offending. However, if Mr Maleb does re-offend in any way, he will be called up to be sentenced for these offences – as well as any other sentence he may receive. I trust that Mr Maleb will make the most of the opportunity given him by the Court today to not offend again in the future.

H. Mitigation – Jean Noel Maleb

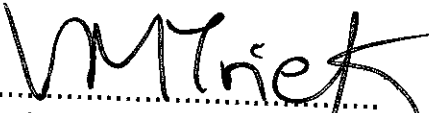
30. Jean Noel Maleb's pleas were entered at the earliest possible opportunity. One third is deducted from the sentence start point for the early guilty pleas.
31. Mr Maleb is 26 years old, from Vao village, North East Malekula. He is a Year 10 leaver. He has no previous convictions. He has not committed any other offending and complied with his bail conditions which shows his strong prospects of rehabilitation.
32. The school principal refused Mr Maleb's attempt at a custom reconciliation ceremony. His family remains willing to support him to perform such ceremony if accepted by the school principal or school board.
33. A further 3 months is deducted from the sentence start point for Mr Maleb's personal factors.
34. Mr Maleb served time in custody in the cell at the Lakatoro Police Station from 17 February 2022 to 3 March 2022 totalling 15 days, effectively 1 month's imprisonment. Accordingly, a further month is deducted from the sentence point.



I. End Sentence – Jean Noel Maleb

35. 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.
36. Taking all matters into account, the end sentences imposed concurrently are as follows:
- a) Theft (Charge 4) 12 months imprisonment; and
 - b) Unlawful entry (Charge 3) 8 months imprisonment.
37. The Court has a discretion under s. 57 of the *Penal Code* to suspend all or part of the sentence where it is not appropriate to make an offender suffer immediate imprisonment "... (i) in view of the circumstances; and (ii) in particular the nature of the crime; and (iii) the character of the offender."
38. This offending was serious. On the other hand, Mr Maleb'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 2 years. Mr Maleb 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.
39. In addition, Mr Maleb is to complete 60 hours of community work.
40. The Defendants have 14 days to appeal.

**DATED at Lakatoro, Malekula this 16th day of October 2023
BY THE COURT**


Justice Viran Molisa Trief

