

PUBLIC PROSECUTOR

V

PASCAL DANIEL

MALACHI JUNIOR

Coram: *Hon. Chief Justice V. Lunabek*

Counsel: *Mr C Shem for the State*
Mr F Tasso for the Pascal Daniel
Mrs K B Karu for the Malachi Junior

Date of Pleas: *28 March 2024*

Date of Sentence: *07 May 2024*

SENTENCE

I. Introduction

1. Mr Pascal Daniel ("*Mr Pascal*") and Malachi Junior ("*Mr Malachi*"). You both appear today for sentence.
2. On 28 March 2024, each of you pleaded guilty to the following offences and admitted to the relevant corresponding facts:
 - Mr Pascal, you pleaded guilty to:
 - One count of malicious damage to property, contrary to Section 133 of the Penal code [CAP. 135] ("*the Act*");
 - One count of unlawful entry to a non-dwelling house, contrary to Section 143(1) of the Act;



- One count of theft, contrary to Section 125(a) of the Act.
- Mr Malachi, you pleaded guilty to:
 - One count of complicity to unlawful entry to a non-dwelling house, contrary to Sections 30 and 143(1) of the Act;
 - One count of complicity to theft, contrary to Sections 30, 122(1) and 125(a) of the Act; and
 - One count of receiving property dishonestly obtained, contrary to Section 131 of the Act.

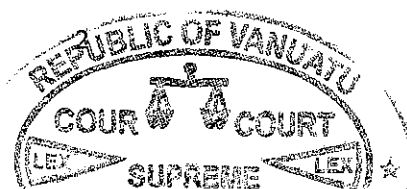
II. Facts

3. The above offences occurred inside the office of Vanuatu Brewing Company Limited at Tagabe area, Port Vila sometimes at night on the 29th of August 2023.
4. A complaint was made to the police on the next day 30th August 2023 by the human resource manager of the Vanuatu Brewing Limited. The complainant stated that some unknown persons have broken into the office of the Vanuatu Brewing at Tagabe area in Port Vila. She stated that upon such entry some money was stolen. And in her opinion the intruder(s) entered the building through the window of the General Manager of the company.
5. The investigations progressed and the police had obtained statements from the following witnesses:
 - (a) **Emily Jimmy**

The witness works also at the Vanuatu Brewing company. She made a witness statement to the police on 30th day of August 2023. In her statement she stated that she arrived at the office around 7:30am on the 30th of August 2023. She stated that she got to her desk and found out that some money from her desk were stolen. She then asked Rachel who enquired with the boss who confirmed that there was break in at the office.

She stated that they then observed that the window to the General Manager's office was open;
 - (b) **Rebecca Tabeva**

The witness is the supervisor of the purchasing department at the Vanuatu Brewing company. She made a report to the police on the 30th of August 2023 alleging that



she got to work in the morning noticing that all the staffs of the company were outside. She found out that her laptop on her desk was missing along with its charger. She stated that the stolen property was gray in colour and HP brand which cost VT120,000;

(c) Arnold Bulewak

The witness stated that he got to work in the morning on the 30th of August 2023 and upon entry he noticed the window and door of the general manager's office was open. He stated that total cash that was stolen was VT18,000, a bottle of whisky worth VT20,000, 2 vodka worth VT20,000 and 2 mobile phones were taken away.

(d) Berry Charlie

The witness stated that he remembered on one occasion he was drinking alcohol in his yard when he was approached by Jimmy Steeve and Ruben. At that time Ruben had just returned from seasonal employment in Australia. They heard him playing loud music in his yard so they entered. They brought along with them some alcoholic drinks as well. He stated that he noticed that they were drinking a bottle which its head resembles a skeleton;

(e) Jimmy Aru

The witness has testified in a police report that on the 30th of August 2023 at around 6pm, he saw Malachai opened his bag and removed a bottle of alcohol which its head was shaped as a skeleton and gave it to him to drink;

(f) Willie Garae

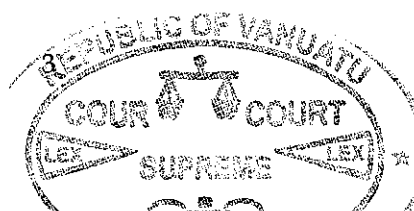
The witness stated that he remembered drinking a whisky drink in a bottle with its head resembling human skull sometimes in the month of August 2023. He stated that at that time after he had drunk kava, Malachi told him that they were going to drink alcohol. He stated that Malachai brought the whisky and they drunk it together with some boys at Tagabe area in Port Vila;

(g) Gorden Toriri

The witness stated that he drank alcohol with some boys in August 2023. And that the alcohol they had at that time was in a bottle which its head looks like human skull. He stated that it was brought to them by Malachai.

(h) Junior Sahe

Police Constable Junior produced a report dated 20th day of September 2023. The report contains a total of VT448,176 of stolen properties and VT108,588 costs of damage properties. The report is annexed as annexure "A" to the prosecution brief of facts. The detailed of the police report is reproduced below:



"Date: September 20, 2023

Police Report

This report is served to certify that Mrs Eliane Kilman had submitted a statement to the Police on the 30th of August 2023.

Mrs Eliane Kilman reported that on the night of this date the 30th of August 2023 there was a major break-in reported during that time that the intruder unlawfully entered the premises of Vanuatu Brewing Limited and stole a total of items totaling up to VT448,176, also leaving a damage of items valued up to VT108,522. So this statement submitted was made particularly confirming the stolen item mentioned above. So, the total cost of damage and stolen items was total up to VT556,698.

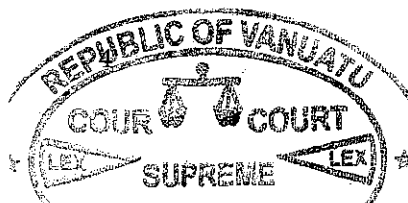
Items stolen

Item description of stolen goods	Qty	Unit value	Total value
Hp Laptop intel core i7 with charger	1	149,491	149,491
Dell inspiron Laptop intel core i5 with charger	1	117,546	117,546
Samsung galaxy A04	1	19,995	19,995
Nambawan tote bag	1	610	610
Samsung mobile phones	2	34,995	69,989
Samsung mobile phones A02	1	19,995	19,995
Petty cash	1	18,800	18,800
Crystal head vodka 3L	1	27,480	27,480
Chivas Regal 12YO 4, 5L	1	24,270	24,270
TOTAL			VT448,176

Items Damaged

Item Description of damaged goods	Qty	Unit value	Total value
Computer screen	1	83,822	83,822
Broken window	1	19,500	19,500
Door handle	1	5,200	5,200
TOTAL			VT108,522

6. Mr Pascal, you were cautioned on the 20th day of November 2023. You stated that you remembered that you and Malachai had planned to do as alleged. You admitted that you both crossed the wasted water from Wan Small Bag yard to Vanuatu Brewing. You got inside the building first then Malachai followed behind. You stated that you opened the cyclone shutter and got inside. And while inside, you took two drinks, one of which its head looks like human skull. You stated that you saw Mr Malachai took a laptop and a phone. You admitted taking VT500 from inside an office. You stated that after you both reached Malachai's home, Malachai then took away the alcohol drink that its head looks like the human skull from you.
7. Mr Malachi, you were cautioned on the 21st day of November 2023. You admitted doing as alleged. You stated that you and Mr Pascal crossed to the alleged building from the Wan Small Bag Centre. You stated that you waited outside and only Pascal went in and brought with him two bottles of alcohol drink, a laptop, a bag and a basket. You stated that you took



one laptop and the bottle of alcohol which its head looks like human skull. You stated that you had also sold the laptop at an amount of VT10,000 and used the money to buy alcohol for consumption.

III. Sentence Start Point

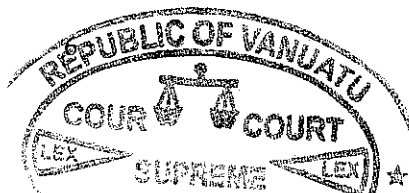
8. The sentencing start point is determined by reference to the maximum penalties available for the current offending, taking into consideration the aggravating and mitigating factors of the offending.
9. Here, the following maximum penalties for the offences are available:
 - Unlawfully entering and complicity to unlawful entry into a non-dwelling house – 10 years imprisonment (Counts 2 and 3);
 - Theft and complicity to theft – 12 years imprisonment (Counts 4 and 5);
 - Malicious damage to property – 1 year (Count 1); and
 - Receiving property dishonestly obtained – 1 years (Count 6).
10. In the present case, there is more than one offence. On an overall assessment, theft and complicity to theft are treated as the available maximum of 12 years and also the leading offending on concurrent basis.
11. In the present case, the following aggravating factors exist:
 - (a) There was a joint enterprise in the commission of the offences on the night of 29 August 2023;
 - (b) The offences occurred at night;
 - (c) There were a high degree of premeditation and planning in the commission of those offences;
 - (d) There was no prospects of reparation;
 - (e) The financial loss sustained by the victims – physical damaged properties amounting to VT108,522; and stolen properties amounting to VT164,144. There is, therefore a total loss of VT269,666;
 - (f) The offences are committed by more than one man with multiple victims.



12. On an overall assessment, I take all the above into account. I consider the prosecution and the defence submissions on comparable cases. I consider the circumstance of this case, I set a sentence start point of 3 years and 6 months imprisonment.

IV. Mitigation and End Sentence for Mr Malachi Junior

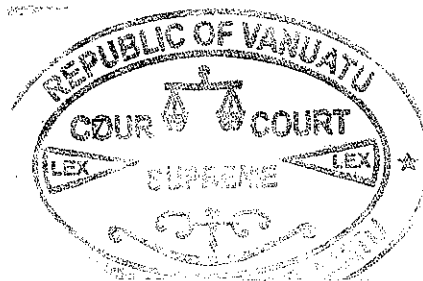
13. I first consider the circumstances of defendant Malachi Junior. I do not identify any personal factor leading to the offending. You are from Nguna Island. You are 26 years old. You have 3 brothers and 3 sisters. You live in a defacto relationship with a woman (Suzanne Sahe) who was 8 months pregnant. You said you have good relationship with your chief and community. You attended Vila North Primary School. Your parents were separated. Your mother could not afford to pay for your school fees and your siblings. You have skills in gardening and fishing. Your ambition is to develop your custom land and look after your unborn child.
14. You were employed for 7 months in the Agriculture Department. You assisted your mother with the costs of living and to pay the school fees of your siblings.
15. You are a first-time offender. You knew the plan of the offending as you were watching while Mr Pascal entered the property. The main contributing factors to your offending are the influence of your friend (co-offender) and your desire for alcohol liquor.
16. You felt sorry for what you did and would not re-offend again in the future. You wanted the victims to forgive you. You promised to change as you realize the mistakes you had made.
17. I give you a credit reduction allowance of 4 months to reflect on your mitigating factors. The remaining balance of your sentence is 3 years and 2 months imprisonment.
18. I consider the circumstances of your pleas in this case, I give you a credit reduction allowance of 25% to reflect on your guilty pleas given at the earliest opportunity taking into consideration the strength of the prosecution's case.
19. Your remaining sentence is 29 months i.e., 2 years and 5 months imprisonment.
20. I consider the nature and circumstances of this offending and your character as an offender, I refuse to suspend your term of 2 years and 5 months imprisonment.
21. You were kept in pre-custodial period on remand since 16 January 2024 until you are sentenced today. The time you have already spent will be deducted in your favour.



22. Mr Malachi, you are ordered to serve 2 years and 5 months imprisonment which is deemed to start on 16 January 2024 to take into account of the time you have already spent in custody.
23. You have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days starts on the date of this sentence.

V. Mitigation and End Sentence for Mr Pascal Daniel

24. I now deal with the circumstances of Defendant Pascal Daniel.
25. Mr Pascal, you are not a first-time offender. You have previous offending and convictions of the same nature with the current offending. You were convicted and sentenced to similar charges in 2022. Mr Pascal, you also have prior offending. You were recently convicted and sentenced to similar charges this year 2024 in the case of Public Prosecutor v Pascal Daniel and Kenneth Pakoa Case No. 23/3284. The offending in which Mr Pascal, you were convicted on in the case cited was committed after the conviction in this present case.
26. I treat this as your personal mitigating factors leading to the offending. I will add up 3 months to your sentence start point to reflect on your previous convictions.
27. Your sentence start point is increased to 3 years and 9 months imprisonment.
28. You are the third to 2 eldest brothers of a step-mother who is in defacto relationship with your father. You come from Louno village on East of Tanna, Whitesands area. You had a defacto partner and you heard that she was 8 months pregnant. You claim the unborn child is yours. You reached Year 11 at Lycée LAB in 2019, and due to mischief with drinking alcohol your father stopped to pay for your school fees. You were partly employed in various employments. Your intention is to go overseas as seasonal worker.
29. You seem not to accept responsibility for your wrongdoing in the offending. You minimize your offending blaming your co-offender (Mr Malachi Junior). You are now 21 years of age.
30. There is no mitigating factors to be taken into account for your sentencing.
31. I note your guilty pleas. I consider the circumstances of your guilty pleas, I decide to give you an allowance reduction of 25% for your earlier guilty pleas taken the strength of the prosecution's case.



32. The balance of your remaining sentence is 34 months i.e. 2 years and 10 months imprisonment.
33. You were remanded in custody on 9 October 2023. You had been in custody since you were sentenced in the matter of Public Prosecutor v Pascal Daniel and Kenneth Pakoa Case No. 23/3284 on 19 March 2024. The time you have spent were considered in your favour in your sentence of 19 March 2024 in the case of Public Prosecutor v Pascal Daniel and Kenneth Pakoa referred to earlier.
34. Mr Pascal, your sentence of 2 years and 10 months imprisonment is not going to be suspended.
35. You are ordered to serve your term of 2 years and 10 months imprisonment immediately at the completion of your current term of 3 years imprisonment you are currently serving.
36. You have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days starts on the date of this sentence.

DATED at Port Vila, this 7th day of May, 2024.

BY THE COURT

Hon. Chief Justice Vincent LUNABEK

