

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

Criminal
Case No. 21/926 MC/CRML
AND 21/1104 consolidated

BETWEEN: Public Prosecutor

AND: Alison Betuel
Defendant

Date of Plea: ***21st April 2021***
Date of Sentence: ***28th April 2021***
Coram: ***Trevor NAIEU***
Appearances: ***Terry Toas for Public Prosecutor***
Defendant in Person

SENTENCE

A. Introduction

1. Mr Alison Betuel pleaded guilty ("*Yes hemi tru*") to unlawful entering dwelling house, theft and escape.

B. Facts

2. On 21 March 2021 at around 4 O'clock in the early hours of the morning in Toak Village on the Island of Ambrym, Mr Betuel entered a store belonging to one Philemon Lulu and stole cash money of 100,000 Vatu.
3. On that same day Mr Betuel uses the cash money he stole to purchase himself a flight ticket to Santo Island. The complainant later noticed the cash money was stolen and knew right away that Mr Betuel stole that cash money because he approached him at his store the earlier afternoon of the 20 March 2021 requesting the complainant to lend him some cash money that he would refund later but his request was denied.

4. The complainant then informs the authorities in Ambrym who then quickly notify the Lakatoro Police Officers. Mr Betuel's flight to Santo on the 28 March 2021 will transit through Norsup airport in Malekula before going to Santo. Without the knowledge of Mr Betuel, the Lakatoro Police Officers arrested him at Norsup airport when his transit flight landed.
5. A warrant to remand Mr Betuel was granted by this Court on the 30 March 2021 and for him to appear for Plea on the 7 April 2021.
6. Mr Betuel however escaped from custody on the 1st April 2021 and stole 14 package roll of Marijuana and a machete in the Lakatoro Police station evidence and storage room. Without any knowledge of the area cause he was never been to Malekula before he manages to get to the coastal area whereby he saw a canoe and decided to use the canoe and battle out to the ocean with hope of going to Santo Island.
7. His hope and aim to get to Santo Island failed when he became hungry and came to shore in one of the outer Islands of Malekula. When the locals of the Island saw him and because he asks them for food and directions to Santo Island, they quickly decided to notify the Lakatoro Police Station of a stranger asking for directions to Santo Island with intention to get there using a canoe.
8. The Lakatoro Police officers quickly inform the locals of the Island about a person who escaped from custody and the description of the person matched that stranger therefore he was restrained by the People of the Island from going anywhere while the Police officers makes their way over and arrested him and brought him back to custody.

C. Conviction

9. Conviction is hereby entered against Mr Betuel for all the offending's upon satisfaction that all the elements of the offences of unlawful entering dwelling house, both counts of theft and escape are met.

D. Sentence start point

10. The sentence start point is arrived at after having considered the maximum sentence available for these offending's and the careful assessment of the mitigating and aggravating factors of the offending's.
11. The maximum penalty for unlawful entering dwelling house is 10 year imprisonment.
12. The maximum penalty for theft is 12 year imprisonment.

13. The maximum penalty for escape is 5 year imprisonment.
14. There are no mitigating factors to the offending of unlawful entering dwelling house and theft that happened in Ambrym Island but there is one mitigating factor to the offending of escape and theft that happened while on remand which is:
- The Police officer who was on duty negligently forgot to lock Mr Betuel's remand cell after formal routine checks at the close of business hours by leaving the key hanging on the remand cell locker and going home resulting Mr Betuel's decision to use that window of opportunity to escape.
15. The aggravating factors are as follow;
- A degree of planning was involved
 - Cause business loss to the victim
 - Already Spent (57, 560Vatu) more than half of the money stolen
 - Intention to flee away to another island
 - Intention to escape lawful custody
 - Putting the life of Police officers and the general public in Malekula at risk
 - Smoked 12 package roll of the Marijuana stolen at the Lakatoro Police station
 - Lost the machete stolen at the Lakatoro Police station.
16. The start point I set for the offending of both the counts of theft will be concurrent and is 2 years imprisonment.
17. The start point I set for the offending of unlawful entering dwelling house is 6 months imprisonment.
18. The start point I set for the offending of escape is 6 months imprisonment.
19. The start point I set for all the offending will be a concurrent sentence of 3 years imprisonment.

E. Personal Factors

20. Mr Betuel is a first time offender with no previous conviction and pleaded guilty at the earliest opportunity given saving the Courts time and expense in conducting a trial. This also shows an acceptance of wrong doing and an indication of remorse. Mr Betuel's early guilty plea awarded him a one third deduction to his sentence.
21. Mr Betuel spends a total of 28 days in remand awaiting plea and sentencing.

22. Mr Betuel is a young man of 27 years of age and is unemployed and has a de-facto partner and they have a Son who is 8 years old.

23. For Mr Betuel's personal factors the sentence is reduced by 12 months.

F. End Sentence

24. The end sentence appropriate for Mr Betuel's offending will be a concurrent sentence of 2 years imprisonment.

G. Suspension

25. The end sentence imposed can be suspended wholly or in part according to certain circumstances.

26. This defendant should not have committed the offences of escape and theft at the Lakatoro Police station if the Police officer(s) in charge at the material times execute his functions professionally and with caution. This issue should be addressed to the relevant authority and be treated seriously not to happen again.

27. There is no need for the defendant to serve periods of immediate imprisonment upon satisfaction that his personal mitigating factors outweighs the aggravating factors and provided that he had spend 28 days on remand awaiting plea and sentencing which will play a huge part of deterrence and rehabilitation to himself.

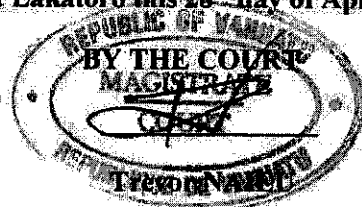
28. The end sentence is therefore suspended for 2 years.

29. The defendant must maintain a good character and not commit any other or similar offences within 2 years from this sentence in order to remain in the community whereby default will have him arrested to serve this sentence.

H. Right to Appeal

30. The Defendant is advised of his right to appeal this sentence within 14 days if he does not agree with it.

Dated at Lakatoro this 28th day of April 2021



Magistrate