

PUBLIC PROSECUTOR

V

ALICK JOHN

Coram: *Hon. Chief Justice V. Lunabek*

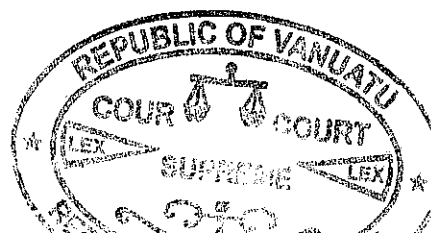
Counsel: *G. Kanegai for the Public Prosecutor*
PK Malites for the Defendant

Date of Pleas: *22 Feb. 2022*

Date of Sentence: *24 May 2023*

SENTENCE

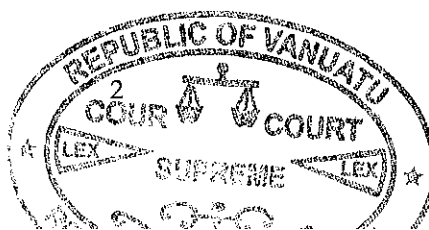
1. Alick John, you appeared today for sentence after pleading guilty to two (2) Counts of unlawful entry, two (2) Counts of Theft and one (1) Count of Malicious Damage to Property, contrary to ss. 143, 122(1) and 133 of the Penal Code respectively.
2. You are 27 years of age and you reside at Tagabe area, Port Vila. You are from Laman Bay area, Epi Island.
3. In the early morning of 27 February 2022, you unlawfully entered into two different dwelling houses located at Number 2 Wallis area, Port Vila, within a timeframe of one hour from 3:00am to 4:00am. You committed the offences of theft and damaged properties of others.
The first dwelling house
4. The first dwelling house belongs to one Jocelyne Wright. She is a lady of 53 years of age. She is unemployed.
5. She lodged a complaint that on 27 of February 2022 at around 3:00am someone entered into her house at Number 2 Wallis area. She stated that she rested on the couch at the sitting room because she is a person with special need.



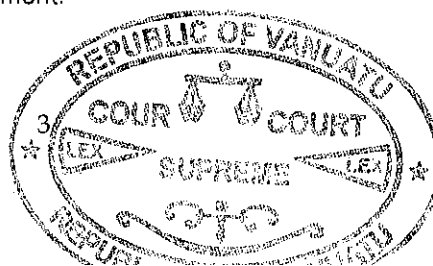
6. At that time, she heard a noise inside the house. When she turned, she saw a young boy. She stated that as a soon as the boy saw her, he took off with her purse and the bag that was hanging on a cupboard.
7. She also stated that later on that day, you also stole her smart A5 Samsung smartphone. She made a statement on the 4 March 2022 confirming that she received her A5 Samsung smartphone and her wallet back. They were given to her by the police.

The second dwelling house

8. The second dwelling house belongs to one Mahlon Lauri, a citizen of the Solomon Islands of 44 years of age and who resides also at the Number 2 Wallis area.
9. He lodged a complaint that on 27 February 2022 at around 4:00am, you had unlawfully entered into his dwelling house. You stole his property and caused damage to his property. He stated that he was awoken by the noise of broken glasses but that he did not attend to.
10. He stated that the alarm rung at 4:00am and he left his bedroom to do some exercise. As soon as he was out of the room, he saw you standing in the hallway and holding onto a bush knife. You then covered your face with your left hand.
11. You then run outside and Mr Lauri chased after you shouting out loud that, "*one steal man*".
12. You tried to escape by climbing over the wall. Mr Lauri held onto your shoulders and pulled you down. You managed to escape again and you run around the house 2 times. On the third round, Mr Lauri kicked your leg causing you to fall to the ground and Mr Lauri apprehended you and tied you up.
13. Mr Lauri then called a friend who alerted the police.
14. Mr Lauri's wife and daughter witnessed the incident of your apprehension by Mr Lauri.
15. As a result of your conduct, you damaged one louver and mosquito screen of Mr Lauri's dwelling house.
16. You were taken to the police station. A police officer (Micah Lelekele) conducted a search on you and found you had in your possession a black purse. The purse contained a white Samsung phone and national ID card of Tony Wright and Jocelyne Wright.
17. You were cautioned on the 27th February 2022 and you admitted the offending as alleged against you.
18. Unlawful entry into a dwelling house carries a maximum penalty of 20 years imprisonment. The maximum penalty for theft is 12 years imprisonment. Malicious damage to property carries a maximum penalty of VT5,000 or imprisonment for 1 year or both. The offences are serious in nature.



19. You accepted the following aggravating factors to the offending:
- Premeditation and some degree of planning. You resided at Tagabe/Bladinière area. You travelled almost 4 kilometers to offend;
 - The offending occurred in the early hours of the morning, a time where you anticipated that people will be asleep;
 - Fear caused to the victims. The victims felt unsafe in their own house where they should be safe;
 - Repetition of offending within one hour;
20. The police recovered part of the properties stolen and in particular, the bag and the A5 Samsung mobile phone in the first dwelling house. I treat this as personal factors of the offending.
21. In these multiple offences committed in the course of an hour, the lead offending is the unlawful entries. The start point for this offending is set on a global basis, considering all 5 offences together at 4 years imprisonment. A start point of 45 months imprisonment is adopted for the unlawful entry offences, with an uplift of 3 months for each of the thefts and malicious damage to property. The sentence start point is 4 years (or 48 months).
22. Mr Alick John's guilty pleas were entered at the first available opportunity. The evidence is strong against you as you were physically apprehended by one of the victims while you were unlawfully entering the second dwelling house in that morning of 27 February 2022 at about 4:00am. You accepted and admitted these facts. I give you a discount of 33%.
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23. Mr John Alick, you are 28 years old. You reside at Tagabe area with your relatives. You are from Laman Bay, Epi Island. You explained the offending is due to being under the influence of alcohol that contributed to your offending. That is not mitigation.
24. You have no previous convictions and you claimed to be remorseful. However, the 5 offences of dishonesty committed in this case, were premeditated and planned as you have to travel some 4 kilometers from your place of residence at Tagabe area to be at Wallis Number 2 area in that early part of the morning of 27th February 2022.
25. A custom reconciliation ceremony has not been undertaken.
26. For your personal circumstances, the sentence start point is further reduced by 3 months.
27. I take all these matters into consideration, your end sentence is 30 months imprisonment for the unlawful entry charges, 12 months imprisonment on each of the theft charges, and 6 months imprisonment on the charge of malicious damage to property. All the sentences are to be served concurrently.
28. Your end sentence is 30 months imprisonment.



29. The pre-sentence report confirms that you were remanded on 27 February 2022 and released on bail on 30 May 2022 awaiting sentence. You have already spent a total of 93 days (3 months and 1 day) in pre-custodial period before you were released on bail. This represents an effective sentence of 6 months imprisonment. That period must be deducted from your end sentence.
30. The remaining balance of your end sentence is 24 months imprisonment.
31. Although, you are on bail conditions and one of the conditions is that you must appear in Court to receive your sentence on the date and time fixed by the Court. As the sentence date was adjourned to another date, a summons was specifically issued and served on you with the date and time of your sentence. You were summoned to appear in Court at Dumbea on Tuesday 9 May 2023 at 4:00PM to receive your sentence. The summons was served on you and a proof of service was filed in support of the service of the summons on you. You failed to attend the Court as summoned.
32. A warrant has been issued on 9 May 2023 for your arrest, to keep you in custody and to bring you to Court on Monday 22nd May 2023 at 3:30PM for sentence. As you were not at the place you told the court to be while on bail, another warrant was issued on Monday 22 May 2023 for your arrest. You were arrested on Tuesday 22 May 2023; you were kept 1 day in custody and you are brought to court today for sentence.
33. An uplift of 1 month to your end sentence of 24 months is made to reflect your absconding situation. Your end sentence is 25 months imprisonment. I deduct 2 days from the 1 day you have spent in custody after your arrest on Tuesday 23 May 2023.
34. Your final end sentence is 24 months and 28 days imprisonment.
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35. I consider the nature and circumstances of your offending, your character as the offender, a suspension of your imprisonment term of 24 months and 28 days is not warranted.
36. You shall start serving your sentence of 24 months and 28 days imprisonment today Wednesday 24 May 2023.
37. You have 14 days to appeal against this sentence if you are unsatisfied with it. The 14 days starts at the date of this sentence i.e., 24 May 2023.

Dated at Port Vila, this 24th day of May 2023

BY THE COURT


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Vincent LUNABEK
Chief Justice

