

PUBLIC PROSECUTOR

-v-

MICHEL KEMU
SABA NURAK

Coram: Justice Treston

Mr. Tevi for Public Prosecutor
Mr. Kausiama for Defendants

Date of sentencing: 13 April 2006

SENTENCE

* Mr. Kemu and Mr. Nurak you appear for sentence on a number of charges.

Mr. Kemu, you have pleaded guilty to count 2, damage to property, and the maximum penalty for that offence is 1 year imprisonment. You are charged with another offence and pleaded guilty to count 3, unlawful entry, where the maximum penalty is 20 years imprisonment. You have pleaded guilty to count 4 a charge of theft, involving VT1.5 million cash, a camera worth \$3,000 and other items where the maximum penalty is 12 years imprisonment. You were charged with another person for that offence and with another person for count 5, damage to property, maximum penalty 1 year. Again with another person you have been charged with count 6, unlawful entry, again with a maximum sentence is 20 years imprisonment and with that same person count 7 you are charged



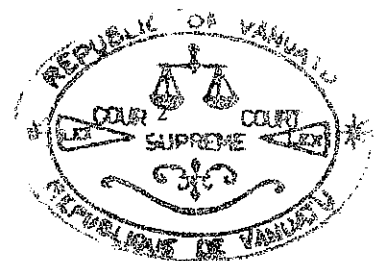
with another count of theft, 12 years maximum, involving 7 cartons of whiskey and 2 cartons of cigarettes and 1 1/2 cartons of other liquor. So this was major offending in anyone's view.

Mr. Nurak, you are charged with count 8 to which you pleaded guilty being a count of aiding theft. That involved the whiskey, the cigarettes and the other liquor which has already been referred to.

On 19 November 2005 when the victim and his wife returned from Australia, they discovered their house had been broken into and various valuable items had been stolen and damaged. Included at the time in the stolen items was VT1.5 million cash in VT5,000 notes and VT22,000 in VT1,000 notes. Also stolen was a valuable dive camera, some perfume, a traveling bag with documents inside, a makeup case, another camera and 7 cartons of Black label whiskey together with 2 cartons of cigarettes and one and a half cartons of other liquor. Much electronic equipment was also damaged and you later admitted that you had stolen the property. Mr. Kemu, you said you took some of the liquor to Tanna and started to operate a shop there and you had spent some money and gave other money away to friends. Mr. Nurak, you were the person who assisted carrying cartons to Mr. Kemu's house.

The Prosecutor submitted to me that the sentence for you Mr. Kemu, with reference to other case authorities, should be 5 years imprisonment and he points out to me various aggravating features that I shall refer to shortly.

Mr. Kausiama submitted to me that a sentence of 2 years would be appropriate in your case. Of course I take into account the other cases which have been referred to me by the Prosecutor. Mr. Kemu, I am told by your lawyer that you are 28 years old from Tanna. You are a church member, you have cooperated with the police and are a

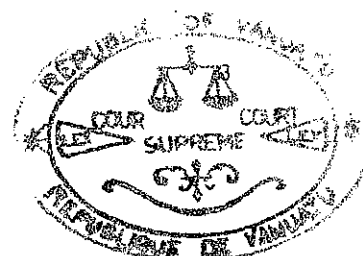


first offender. You have pleaded guilty as soon as possible which is submitted is a sign of your remorse and contrition. You are unemployed. You say that the offences of theft and unlawful entry were planned with another defendant who is yet to be dealt with and you carried out the theft accordingly. Your share of the cash was VT500,000 and you took a carton of cigarettes and 2 cartons of whiskey. All of those items have been consumed and you have spent the money. Some money was spent on travelling to and from your home island of Tanna where you established a shop to sell some of the items which shop has now been closed by the police. Land transport cost you other money and you gave other money away to friends and acquaintances.

Mr. Nurak you were what your lawyer calls an innocent bystander and helped Mr. Kemu take some of the stolen property to his house. You are a first offender.

When I approach sentencing I must take into account the accountability that you both have to the community and to the victims. I must point out your responsibility and provide for the victims' interest, as best I can. Nothing has been said about reparation but I assume that in your circumstances none can be paid. I must denounce your conduct, particularly you Mr. Kemu, and endeavour to deter you and other likeminded offenders from this sort criminality which is becoming too wide spread in our community. I must protect the community and the victims, if I am able. The victims of course have lost their property and although some small amount has been recovered most of it has now gone.

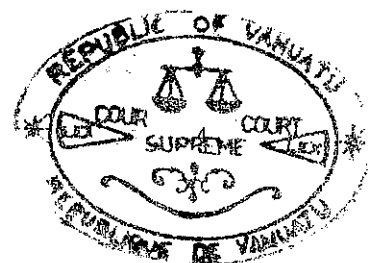
For you Mr. Kemu the aggravating features include the unlawful entry into a dwelling house, the loss and damage caused to the victims, the clear premeditation and planning of this offending and the fact that you adopted such a cavalier attitude to the proceeds of



your crime that you simply dissipated it by consuming the alcohol and cigarettes and spending the money. Balanced against that, of course, I take into account your plea of guilty, for which credit will be given to you, the fact that you are a first offender, never having been before the Courts before and the remorse, contrition and apology which you have expressed to the Court.

For you Mr. Nurak, you were foolish in the extreme in assisting someone with what clearly could only have been understood to be stolen property but you were much less involved in the whole incident than your co-offender Mr. Kemu. I also give you credit for your plea of guilty and your limited involvement and the fact that you are also a first offender and you demonstrate remorse and contrition by your plea of guilty to the single charge which you face.

For your Mr. Kemu because of the scale of this offending and the loss to the victims the only result can be imprisonment. I deal with you in this way, on count 2, damage to property, you are sentenced to imprisonment for 9 months. Count 3, unlawful entry, imprisonment for 7 years. Count 4, theft, 5 years imprisonment. Damage to property, Count 5, nine months imprisonment. Count 6, unlawful entry for the second time, imprisonment 7 1/2 years. Count 7, theft, of the other items, 5 years imprisonment. If they were added all altogether you would be in prison for a long, long time but I accede to the request of your counsel in allowing you to serve all of those sentences concurrently, that is together, which means that the term that is appropriate in circumstances is 7 1/2 years imprisonment. However, I reduce that sentence as I must for the mitigating factors that I have pointed out including the plea of guilty, your unblemished record and the other factors. Having allowed you appropriate deductions, the sentence I today impose is 5 1/2 years imprisonment.


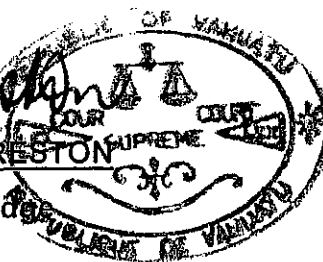


Mr. Nurak, you are sentenced on the charge of aiding theft to 2 years imprisonment but because of the factors in your case that I have considered I suspend your sentence for a period of 2 years. You were much less involved than your co-offender. A suspended sentence means this, I have exercised my discretion in allowing you to remain in the community but if you are convicted of any other offence against the Penal Code or any other legislation within that period of 2 years, this original sentence of 2 years imprisonment will be immediately executed and in that case will not be concurrent with any fresh sentence. That means that if you come back to Court for any offence in the next 2 years, this 2 years sentence will be put in force together with any thing for any new matter. Do you understand that? (The accused indicates that he does.)

Each of you has 14 days to appeal your sentence if you are not satisfied about it.

Dated AT PORT VILA on 13 April 2006

BY THE COURT



P. I. TRESTON
Judge