

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Criminal Jurisdiction)

Criminal Case No. 69 of 2010

PUBLIC PROSECUTOR

-V-

JERRY KANAS

Coram: Justice N. R. DAWSON

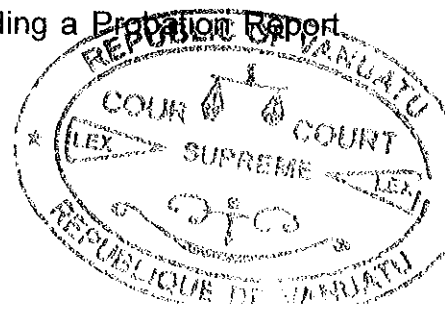
Date of Sentencing: 14th December, 2010

Counsel: Mr. P. Wirrick for Public Prosecutor

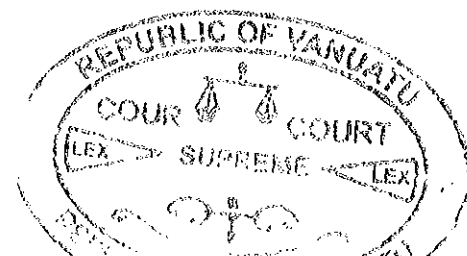
Mr. E. Molbaleh for Accused

SENTENCE

1. Mr. Kanas you appear in Court today for sentencing on the charge of Malicious Damage to Property.
2. The circumstances were that prior to May 2009 the complainant was living with you in a defacto relationship. You separated and she moved into her own rental apartment. About 4 am on 16th May, 2009 she and her friend were asleep in her apartment, you arrived and you were drunk with alcohol. You tore open the fly screen window and you then opened the door to the apartment, went inside and smashed the complainant's TV screen, electric kettle and microwave. You were later that day arrested and cautioned.
3. I note that you are 35 years of age and you have a previous conviction from 12 years ago but it is not a similar type of offending and therefore I will not be taking that into account when I sentence you today. I have read the submissions from the prosecution and heard your counsel speak on your behalf today. I have also had the opportunity of reading a Probation Report prepared for your sentencing.



4. Mr. Kanas in sentencing you it is necessary that you are held accountable for the harm that you caused and a sentence imposed that will promote within you a sense of responsibility, so that this type of offending does not occur again.
5. There is one aggravating factor to your offending and that is that you unlawfully forced an entry into the property in order to commit this offence. In mitigation you have entered an early guilty plea. The Probation Report notes that you say you were intoxicated with alcohol at that time. You need to know Mr. Kanas that intoxication by alcohol is not an excuse. You are responsible for what you do whether you are drunk or whether you are sober. It also notes that you seemed to deny the offending and tried to shift the blame onto the victim. You were saying that the victim always provokes you to make you angry and to start arguments. However I note that it was you that went to her property that time to commit this offending.
6. To your credit it does say that you are ashamed of your behaviour and you feel sorry for the victim and expressed sympathy for her position. The Probation Report expresses the view that you are suitable for a community based sentence because you appeared to demonstrate insight into your offending, you show empathy towards the victim, you seem motivated to address your offending behaviour and you have not committed any other offence for the last 10 years. Your report also notes that the victim has written a letter wanting to withdraw the case and confirm that you and she have forgiven each other. The report say that you have performed a custom ceremony but that is denied by the victim.
7. Mr. Kanas I am persuaded that a community based sentence would be appropriate for this offending. You are therefore convicted and sentenced to 60 hours of community work. You are also sentenced to supervision for a term of 6 months and in addition to the standard conditions I add the conditions that you are to undertake counseling and you are to live where directed by the Probation Officer.



8. You have the right to appeal this sentence. For any appeal you must lodge a notice of appeal within 14 days of today's date.

Dated at Port Vila, this 14th day of December, 2010

BY THE COURT

