

**PUBLIC PROSECUTOR**

**-V-**

**JERRY FARAI**

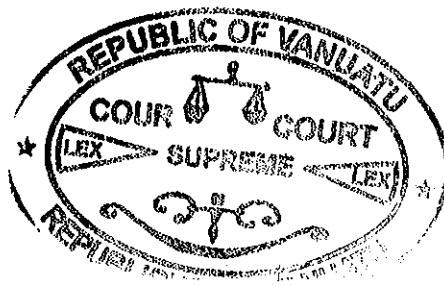
Coram: Justice D. Fatiaki

Counsel: Mr. T. Garae for the State  
Mrs. Pakoasongi for the Defence

Date of Sentence: 9<sup>th</sup> June 2010

**SENTENCE**

1. On 2 March 2010 the defendant pleaded guilty and was convicted of two offences namely, Unlawful Entry into a Dwelling House contrary to Section 143 (1) of the Penal Code which carries a maximum penalty of 20 years imprisonment and Theft contrary to Section 125 (a) of the Penal Code which carries a maximum penalty of 12 years imprisonment.
2. The prosecution's case which the defendant admitted, was that on the evening of 21 January 2010 whilst the complainant was at home having dinner with friends, the defendant entered their compound and stole AUD\$10,270 and VT2000 in cash; a Sony Digital camera and a Nokia Mobile phone from a handbag which the defendant had succeeded in lifting to an open bedroom window by using a long piece of wood he had found in the compound.
3. The defendant then went to the Trader Vics nightclub where he spent AUD\$ 500 on drinks and gave the bartender AUD\$ 50. The following day the defendant exchanged some AUD\$ notes at the Goodies Money Exchange.
4. Acting on information the police arrested and interviewed the defendant who admitted committing the offences. The defendant also voluntarily returned the Digital camera, (with a missing memory card); the mobile phone (with a broken screen) and AUD\$ 7, 800. 00 in cash. All the recovered properties were returned to the complainants.
5. The defendant's pre-sentence report discloses the following relevant personal details :



- The defendant was born on 2 May 1992 and was not yet 18 years of age at the time of committing the offences;
- Although he was born and raised in Luganville, Santo, his parents divorced when he was only 9 years of age and he was raised by an aunt who lived at Beverly Hills in Port Vila;
- He now lives with his best friend's family at Nambatu area where he fled to after being ill-treated by an uncle he was living with;
- He completed year 7 at school and was working on a trial basis at the Abattoir meat factory when he committed the offences. He has since lost his job.

The report assesses the defendant as being a "low risk of re-offending" and recommends non-custodial sentences of supervision and community work

6. State Counsel also supports a non-custodial sentence in this case noting that the defendant's "actions were a 'one -off' event that was out of his character .....and not something that he planned but.....a 'crazy idea' just suddenly came to him on the evening of Thursday 21 January 2010 to commit the offence."
7. In Henry Kalfau v PP [1990] VUCA 9 the Court of Appeal in upholding a custodial sentence of 6 years imprisonment for a first offender who pleaded guilty to 4 separate burglaries said:

*"Measured in terms of the effect on the victim, many Courts place home breaking particularly at night, in a similar category as crimes of violence. This is not an unreasonable approach.*

*The house is the most fundamental unit for most families. It includes many aspects of family life which depend, in most cases, on the security of the house in which they live. Violation of that security can have an enormously disruptive effect. Many people who have been subjected to a breaking are affected by it for years, sometimes, the remainder of their lives. It is not unusual for some to be left so that they can never feel safe alone again. That is a dreadful legacy of any crime and a criminal who is willing to commit such a crime must expect a serious penalty"*

In this case, the complainant told the probation officer that she fears leaving her home because of what happened.

8. In PP v. Bill David Pala and 2 others [2007] VUSC 89 the Hon. Chief Justice recognized that "unlawful entry and theft are becoming more prevalent in Vanuatu, and, in particular, in and around Port-Vila."



9. In this case I am dealing with a young first offender with reasonable future prospects if given another chance. I am also conscious of the provisions of section 37 of the Penal Code which urges the Court in considering what sentence to impose, *"to have regard to the possibility of keeping offenders in the community as far as that is practicable and consistent with the safety of the community."* This is especially true of young offenders where the interests of both the community and the offender are essentially the same in wanting to see that its young people grow up to become useful and law-abiding members of society.
10. After careful consideration I am satisfied that this was an opportunistic crime committed on the spur of the moment without any elaborate planning on the defendant's part. I am also satisfied that the defendant is genuinely remorseful for his *"crazy idea"* and deserves another chance. I am also conscious that you have already spent 3 months remanded in custody awaiting your sentence.
11. Accordingly, Jerry Farai I will not return you to prison today but in order to help you stay out of trouble and serve as a reminder to you of your foolish actions, I will impose a sentence of 9 months imprisonment suspended for 12 months on condition that you commit no further offences.
12. You are warned that if you are convicted of another offence within the next 12 months you will be required to serve this sentence of 9 months imprisonment in addition to any other sentence you may receive for your re-offending. Whether this occurs or not, is entirely in your hands and I urge you to behave yourself.
13. Jerry Farai if you do stay out of trouble for the next 12 months then you will no longer have to serve this sentence of 9 months imprisonment.
14. In addition, and to help you stay out of trouble, I impose on you a sentence of 12 months supervision the conditions of which will be explained more fully to by the Probation Officer. I should warn you that breach of your supervision conditions is an offence punishable with 3 months imprisonment and/or a fine of up to VT10, 000.

**DATED at Port Vila, this 9<sup>th</sup> day of June, 2010.**

**BY THE COURT**

  
**D. FATIAKI**  
Judge.

