

(Criminal Jurisdiction)

**PUBLIC PROSECUTOR**

**VS.**

**BILL DAVID**

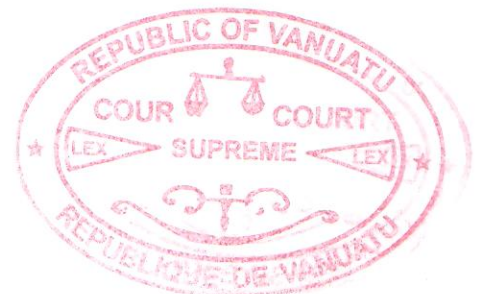
Mr Justice Oliver A. Saksak  
Mrs Anita Vinabit – Clerk

Mr Parkinson Werrick for the Public Prosecutor  
Miss Jane Tari for the Defendant

Date of Submissions Hearing: 3<sup>rd</sup> August 2012  
Date of Sentence: 16<sup>th</sup> August 2012

### **SENTENCE**

1. Bill David you were part of the group of defendants namely Vanua Duvu, Meleune Bae, Stanley Jack and Jean Mark Nimbali who were charged separately in Criminal Case No. 26 of 2012. You were charged and appeared separately because you were arrested much later by the Police.
2. You were charged with seven Counts as follows –
  - (a) Unlawful Entry (Counts 1, 3, 5 and 7); and
  - (b) Theft, (Counts 2, 4 and 6).
3. On 25<sup>th</sup> July 2012 you pleaded guilty to all these seven charges. These are very serious offendings. For unlawful entry under Section 143(1) of the Penal Code Act Cap 135 (the Act) the maximum punishment is 20 years imprisonment where the place is used for human habitation and 10 years imprisonment where the place is not used for human habitation. And for theft, the maximum penalty is 12 years imprisonment.

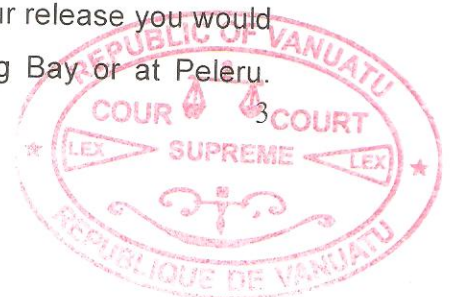


4. The facts to which you have accepted show that –

- (i) On the night of Friday 13<sup>th</sup> April 2012, you accompanied Meleune Bae, and Jean Mark Nimbal by walking from BP Burn Area to Santo Roofing Ltd compound at Side River.
- (ii) At the premises of Santo Roofing Ltd while your two friends kept watch, you went to the back, climbed over the fence, removed two louvers from a window and gained entry into the building. Once inside you broke part of the wall near the handle to the door of the office. You then opened the door, gained entry into the office and stole VT25,000 from the cash box, some extension cords, some tools, some meat from the office fridge and a mobile phone. You then returned to your two friends, gave each of them cash of VT2,000 and left the scene.
- (iii) The second occasion took place on the night of 22<sup>nd</sup> April 2012, some nine days later. This time at College de Santo with Jean Mark Nimbal, Vanua Duvu and Meleune Bae. You were the one who assisted your friends to cut the fence with bolt cutters before Vanua Duvu gained entry into the school compound. He forced his way into the office and using a pinch-bar forced open the cash box and the metal cupboard, causing considerable damage to these properties. You then entered the office and stole a computer lap-top, and VT20,500 in cash. You and your friends then left.
- (iv) The third occasion occurred on the night of 28<sup>th</sup> April 2012 some 6 days later. You and Vanua Duvu and Stanley Jack entered Kamewa School. You cut the fence with bolt cutters and gained entry. You forced the office door open and stole one large knife before leaving the scene.



- (v) The fourth occasion occurred on the night of 29<sup>th</sup> April 2012, only one day later when you, Stanley Jack and Vanua Duvu again entered College de Santo. You again cut the fence and you all gained entry. You then removed two louvers from a window and entered the school laboratory. Vanua Duvu went into the Kitchen, the store room and office and stole three large tins of powdered milk, one tin of Milo, four tins of tuna and two plastic bags containing meat. Vanua Duvu shared these items with Stanley Jack who kept watch as he was committing unlawful entry and theft.
5. In considering and assessing your appropriate punishment, the Court has been assisted by the cases submitted by the Public Prosecutor. These are the cases of Herromanley v. Public Prosecutor [2010] VUCA 25 and Kalfau v. Public Prosecutor [1990] VUCA 9. Defence Counsel submitted the cases of Bule v. Public Prosecutor [2005] VUSC 167; Public Prosecutor v. David Killion and Others [2004] VUSC 17 and Public Prosecutor v. Gere [2011] VUSC 298 apart from Kalfau's. These cases lend support to their submissions that terms of imprisonment are appropriate and that sentences should be made to run concurrently in light of the totality principle, established in Kalfau's case. Both Counsel submitted a starting point of 6 years imprisonment for each Count before allowing uplifts for aggravating features and reductions due to mitigating factors.
6. I have seen your pre-sentence report which show that in 2008 you were convicted and imprisoned for 16 months for committing unlawful entry, theft, intentional assault and driving away a vehicle without the owner's consent. It has been some four years since then and the Court appreciates that you have tried to be a good person by engaging yourself with cattle farming and vegetable gardens. I note your mother is not happy to have you back at the Correctional Centre but it appears she has done nothing at all to assist you. Since your release you would have been better off perhaps on Malekula, at Big Bay or at Peleru.



However, you chose to return to Santo to live with your aunt at BP Burn knowing full well you would fall at the hands of your peers. You were the one who should have stopped your friends or discouraged them because you did the same and was sent to prison as punishment. Instead it appears you were the one who led your friends as the expert.

7. In addition the above features are the aggravating features which are:-
  - (a) The offences involved careful planning and premeditation.
  - (b) There were substantial damage and loss to all properties of the victims which have not been recovered and cannot be made good by you.
  - (c) Your offences were repeated on four occasions against three separate victims.
  - (d) You have committed other criminal offences for which you have been charged as co-offender in Criminal Cases 18-24 and 27 of 2012 and in Criminal Case No. 32 of 2012. In other words you are a habitual offender.
8. Taking all that into consideration, for the Court to impose a sentence which would serve (a) as a deterrent for you and for others; (b) to mark the gravity of your offences; (c) to mark public disapproval of your unlawful actions; (d) to protect the public; and (e) to punish you adequately, 6 years as the starting point for you is on the lower side of the scale. It is my view that seven years is more realistic. I therefore convict and sentence you to 7 years imprisonment on each of the seven (7) Counts. To adhere to the totality principle, I order that these sentences of 7 years on each Count run concurrently.
9. I consider that an uplift of 2 years is necessary in your case due to the aggravating features as stated. I Order that 2 years be added to your concurrent sentences of 7 years imprisonment making a total of 9 years imprisonment.



10. I now consider your mitigating factors in order to allow a reduction of your sentence. Seven factors were submitted by defence counsel but I consider that only one is of relevance. That is the fact that you pleaded guilty at the first given opportunity. According to precedent, you would be entitled to a 1/3 reduction. However, as a repeat offender it is my view that you should not be entitled to the full 1/3 reduction but only to 50% of that 1/3. In figures you would have been entitled to a reduction of 3 years from your 9 years sentence but for the reasons stated only 1 year and 6 months reduction are allowed. However, to avoid a crushing effect on you, I allow a further reduction of 6 months leaving the balance at exactly 7 years imprisonment.
11. In the final analysis, Bill David you are sentenced to 7 years imprisonment as a concurrent sentence in respect to all the 7 Counts you pleaded guilty to.
12. Your sentence is deemed to have begun on 23<sup>rd</sup> July 2012 when you were remanded in custody by this Court.
13. You have a right of appeal. If you so choose, you may appeal within 14 days.

DATED at Luganville this 16<sup>th</sup> day of August 2012.

BY THE COURT

  
OLIVER A. SAKSAK

Judge

