

**PUBLIC PROSECUTOR - v - BRIAN MICHEL
KAWAS JOE**

*Mr Tristan Karae for the Public Prosecutor
Ms Jessica Palaud for the Defendant*

SENTENCE

This is the sentence of the above named Defendants: Brian Michel and Kawas Joe. Each of you entered a guilty plea in respect to the offence of Theft, contrary to s. 125 (a) of Penal Code Act (Cap 135) on 13 May 2013. The maximum penalty for such an offence is 12 years imprisonment. Theft is a serious offence as reflected by the length of the penalty imposed by law.

The brief facts of your offending are provided by the prosecution. Your lawyers accepted them on your behalf before you entered your guilty pleas. They are summarised as follows:

On the night of 22nd January 2011 you broke into Greg Lee's house at Rentabau, South East Efate and stole various items including 1 outback inventory (charger), 3 Tosan Batteries, 1 Panasonic DVD player with its remote, sonic video recorder, a large quantity of DVDs, 2 box of alcohol, a large number of jewellerys, food, 3 mobile phone, 2 stereo speakers and 1 knife.

Greg Lee and his wife spent the night in Vila when the offence took place. One of his workers Philimon James who sometimes live with them at the house, decided to spend the Saturday night at Rentabau Bridge. He locked up the house and then left. The next morning Sunday 23rd January 2011 on his return he noticed the door for the house was wide open with screen broken and louvers removed. He immediately rang Mr Greg, he also searched around the place and plantation to see if he could find anything except a 1 foot pump lying near the road.

Mr Greg arrived at the scene around 8.30am to 9.00am and joined Philemon for the search. They could not find any items until Tuesday 25th February 2011 when Mr Philemon went back to Rentabau Bridge at Lulu Dick's parents' house and there he found Lulu Dick crying to his parents, confessing that he and other Defendants stole from Greg's house. Lulu Dick also mentioned that he and other Defendants went to the house around 6.00pm at night, Brian broke the screen, removed four louvers from the window and they went inside and stole whatever items they could take with them. All food items and alcohols have been consumed. The police were informed by formal complaint which was made. They investigated the case and various statements were taken from witnesses and Defendants voluntarily.

The following items were taken by the defendants but already recovered and returned to the complainant:



Outback Inverter/Charger 350,000vt
3 Tojan Batteries 90,000vt
Panasonic surround stereo 85,000vt
Sony Video Recorder 140,000vt
2 Stereo speakers large 40,000vt

When I consider the sentencing, I do have the benefit of submissions from the prosecution and submissions from your lawyer. I have the benefit of a pre-sentence report filed in respect to defendant Kawas Joe. I do also have a pre-sentence report for defendant Brian Michel dated 26th June 2013.

Brian Michel

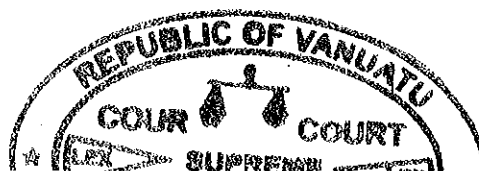
You are now 22 years of age. You have two young daughters. You were separated from the mother of your children. You have no remunerated job. You are addicted to alcohol. You were the main person or leader behind the present criminal activities as you had pressured the other defendant Kawas Joe to involve in the offending. I do not accept that you were pressured by Defendant Lulu Dick as he was much younger than you. This offence occurred in the night. You broke the screen of the window of the house of the complainant. You removed four (4) louvers from the window. You entered into the house. You stole the properties referred to above. You are not a first time offender. You have previous convictions for rape, contrary to s.91 and intentional assault causing damage of permanent nature, contrary to s.107 (b) of Penal Code Act (Cap 135). You are currently serving an imprisonment sentence of 3 years commencing 23 April 2012. You are sentenced to 4 years imprisonment as a starting point for your offending in this case.

In mitigation, you entered a guilty plea. Your sentence will be reduced to $\frac{1}{3}$. An allowance of 17 months will be given for the fact that most of the items are recovered and returned to the complainant and also for any other mitigating factors referred to in your pre-sentence report.

You receive an end term sentence of 15 months Imprisonment. I consider suspending it. I note that you committed this offence of theft on 26th February 2011 when you were 18 years of age with others. The commission of this offence occurred before the offending against which you are now serving an imprisonment sentence. I decide and I suspend your sentence of 15 months imprisonment for a period of 3 years instead of having you locked up again in jail. This is your chance to be back in the community and re-habilitate. During the suspension of your imprisonment term of 15 months, you must keep the peace and must not re-offend. If you re-offend during the suspension period, I will recall you and resentence you by re-activating the imprisonment sentence I suspend today.

In addition to your suspended imprisonment sentence of 15 Months, I order you to perform 80 hours of community work and 6 months of supervision under the following special conditions:

1. To undertake any counselling programme as directed by the Probation Officer.
2. To undertake the niufala program as directed by the Probation Officer.



Brian Michel, as you are now serving an imprisonment term of ~~3 years~~ suspended sentence of 15 Months and your community order of 80 hours and your supervision order of 6 Months shall take effect at the end of your current imprisonment term of 3 years. I order accordingly.

Kawas Joe

You were born on 1st January 1997. You were 14 years old at the time of your offending. Your parents are from Tanna Island. You reside with your parents at Rentapau Bridge Area, Efate. You attended Rentapau Primary School and completed grade 1. You have good relationship with your parents, family and community. You assisted your parents and depend on them for your daily subsistence. You committed the offence of theft because you were pressured by your co-offender, namely Brian Michel. You pleaded guilty to your offending. You are a first time offender.

I consider whether or not I should give you the same starting point Imprisonment sentence than Brian Michel for parity based considerations as you were involved in the same criminal activities. I decline to do so although an imprisonment sentence should be an appropriate sentence for the offence of theft committed at night in a sleeping house.

Again and relevantly, I consider your age; the fact that you were influenced by your peer pressure; your other mitigating factors which out-weigh the aggravating factors and having regard to the possibility of giving you a chance in life by keeping you in the community; I order that you perform 40 hours of community work and 6 months of supervision under the following special conditions:

1. To undertake peer pressure counselling as directed by the Probation Officer.
2. To undertake any other counselling programme as directed by the Probation Officer.
3. You must complete the Niufala Road Programme as directed by the Probation Officer.

For both Defendants

Brian Michel and Kawas Joe, you have each 14 days to appeal your respective sentence if you are unsatisfied with it. This right of appeal starts at the date of your sentence.

DATED at Port-Vila this 27th Day of June 2013

BY THE COURT
Vincent LUNABEK
Chief Justice

