

PUBLIC PROSECUTOR

V

JOSHUA MANSI MATAHU

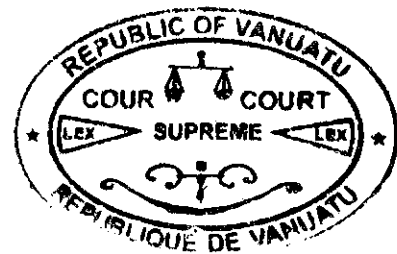
Ruling: *Tuesday July 19th 2016 at 9 am*

Before: *Justice JP Geoghegan*

Appearances: *Lenry Young for the Public Prosecutor*
Kyle Bakeo (PSO) for the Defendant

SENTENCE

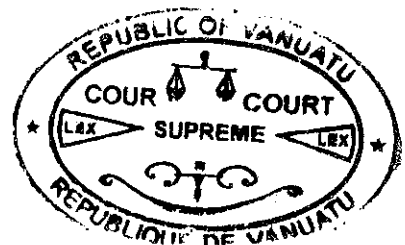
1. Mr. Matahu, you appear for sentence today on a number of charges relating to seven incidents of burglary. There are seven counts of unlawful entry to premises pursuant to Section 143(1) of the Penal Code, each of those counts carrying a maximum sentence of imprisonment of 10 years. There are seven counts of theft pursuant to Section 125(a) of the Penal Code, each of those counts carrying a maximum term of imprisonment of 12 years. And there are five counts of malicious damage pursuant to Section 133 of the Penal Code which carry a fine and/or a maximum term of imprisonment of one year. So these are serious offences and there are a significant number of them.
2. Your offending involves the burglary of a school, three government departments, a central Vila Café and commercial business premises. All seven burglaries occurred over a two week period between March 13th and March 27th this year. In the case of the school you have burgled the



premises on two separate occasions, the first on March 13th and the second on March 22nd. You have stolen camera, computer and electrical equipment as well as approximately VT14,000 in cash. The burglary of the government departments involved the theft of computer equipment and approximately VT13,000 in cash. The burglary of the commercial premises involved the theft of approximately of VT7,000 in cash together with five security cameras, alcohol, food and cigarettes. All of the burglaries have involved physical damage to the properties you have burgled and most of the items which you have stolen appear not to have been recovered.

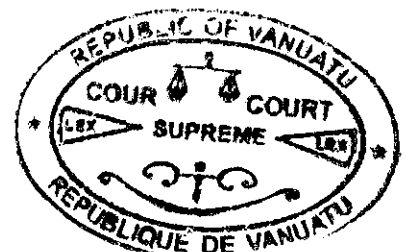
3. I have read your pre-sentence report. That tells me that you are 18 and you have no previous convictions. Your family not surprisingly are shocked by your behaviour and say that they have never seen this type of behaviour from you before. You have had the benefit of an education which is a benefit that many do not have in this country at your age. You are genuine remorseful for your actions. You are clearly not in a position to pay any compensation to your victims given your age and the fact that you are unemployed and there is no reasonable prospect of that payment. I think that the victims recognise the reality of that situation. Your victims seem to me to have expressed compassion and understanding for you given your age and one thing I do hope is that you remember that kindness in the years ahead.

4. I have to say that I am concerned at the remarks that you have made concerning your inability to afford items like touch screen mobile phones and new clothes because you are unemployed and the fact that your family did not give enough help in your opinion to find you a job. It appears to have resulted in you falling in with the wrong crowd and if that is so you might like to take note of how many of your so-called



friends are here in the court to support you today. You need to take more responsibility for your own life and the decisions that you need to make. You need to stop feeling sorry for yourself.

5. I have had the benefit of very careful and helpful submissions both from Mr Young and from Ms. Bakeo. Mr Young in his submission for the prosecution has referred to a number of cases and I will refer to those briefly. There is reference to the case of PP v. Reprep which involved two defendants and five burglaries of residential properties. One of the defendants played the part of a lookout was 20 at that time and was a first time offender. He was only involved in three of the burglaries. The Court in that case adopted a starting point of 3 years imprisonment with a reduction of 6 months for youth and a further 10 months for an early guilty plea, but his sentence was not suspended. In the Public Prosecutor v. Saki the sentencing involved four defendants and one burglary of a residential property. A very significant amount of money was taken in the vicinity of VT2 million. There was confrontation with the occupant of the property and his life was threatened. A weapon was brandished. A starting point was adopted between 6 and 8 years with an end sentence for two of the defendants of 4 years. In the Public Prosecutor v. Nimbau there were four defendants one being charged with seven counts of unlawful entry and six of theft. A 7 year starting point was adopted with an end sentence of 7 years for mitigating and aggravating features which included a significant number of previous convictions.
6. What those cases emphasise is that burglary to use that general term is taken very seriously by the courts.
7. Those cases involve burglary of residential properties and what must be recognised is that your offending involves commercial properties something which the law regards as less serious. The maximum penalty

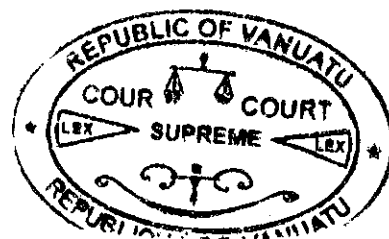


for unlawful entry to a home is 20 years imprisonment. For somewhere not used for human habitation the maximum term of imprisonment is 10 years.

8. Sentencing of you today has to take that into account. There are a number of factors which are significant in terms of adopting a starting point and in fixing a starting point I can take either one offence as the leading offence and then take into account the other offences to achieve an overall sentence or I consider the offences together. What matters is the end result. What can be said in your case is that these burglaries appeared to have been premeditated and have involved the targeting in particular of electronic equipment presumably for on selling. The burglaries have also involved the theft of a moderate amount of cash.

9. In the case of the school you have targeted the same victim twice within a week and that is certainly an aggravating feature. Your offending could correctly be described as spree burglary. The prosecution suggests a starting point of 7 years for the leading offence of theft and 7 years also for unlawful entry. I have to say that I consider such a starting point to be too high as effectively the starting point is referenced not to the property stolen but to the nature of the burglaries. In that regard I have to take note of the fact that these burglaries were commercial premises rather than residential properties.

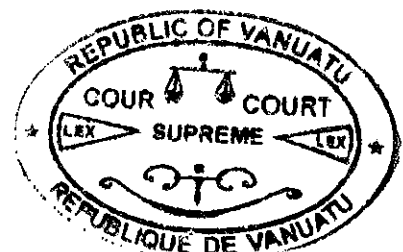
10. Ms. Bakeo has also provided me with very helpful submissions. Those not surprisingly emphasized the fact that you are a first time offender and that you were 18 years old at the time these offences were committed. This offending appears to be well and truly out of character for you. Those are significant factors in any sentencing exercise. Ms.



Bakeo places considerable emphasis on the Court of Appeal decisions in Robert v. Public Prosecutor and Heromanley v. Public Prosecutor. In Robert the facts were very different from those in this case. It involved one charge of burglary with very considerable mitigating factors. Heromanley involved a group of young men aged between 17 and 23 breaking into a home and stealing a substantial amount of cash. Sentences of between 10 months and 8 years were imposed. They were quashed on appeal before the Court of Appeal. Effective sentences of 12 months imprisonment were imposed. In Heromanley the Court of Appeal made observations in respect of sentencing a young offender and the need to emphasize rehabilitation and I am going to quote from the Court of Appeal decision for one moment as it is significant in terms of your sentencing. The Court of Appeal observed the following :

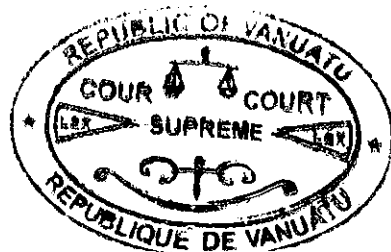
"Whilst the sentencing of young offender is never an easy task the objectives in the interest of society are not seriously in doubt. It is to enable young offenders to be rehabilitated and grow up to become responsible law abiding members of society. This purpose is discernable from the provisions of Sections 37, 54 and 58(8) of the Penal Code Act. In the sentencing of young offenders we consider that the jewel purpose of punishment and deterrence may need to give way to reform and rehabilitation. We consider that the imposition of an immediate sentence of imprisonment on these young first offenders will be an inevitable consequence of exposing the appellants to long term hardened criminals would be count for that purpose and inappropriate."

11. All of those factors apply in your case and the observations of the Court of Appeal simply recognise the fact that young people sometimes do stupid, reckless and impulsive things without thought of the consequences. There is significant and undeniable scientific evidence that that is directly linked to the fact that the brains of young people and

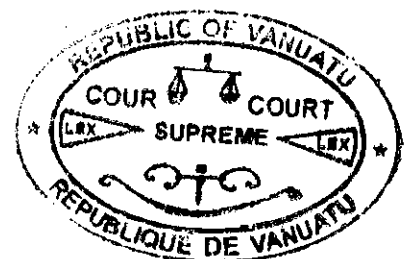


in particular that part of the brain linked to rational thought and appreciation of consequences are still developing. That is why in young people rehabilitation is often more important and of greater benefit to the community than imprisonment.

12. Looking at the starting point in terms of your offending I must take account of the offences first and foremost. As I have said this was pre-burglary and the number of offences have to be taken into account when assessing an appropriate starting point. As I have said I do not accept that the prosecution submissions that the starting point of 7 years is appropriate. If this had been burglaries of dwelling houses with a resident being confronted by the offender 7 years may well be an appropriate starting point. But these were commercial premises and the law, as I have said, treats these differently. For that reason I accept Ms. Bakeo's submissions then the appropriate starting point is one 3 years. There are no personal aggravating features justifying any uplift from that point. As to personal mitigating factors the primary one is your youth and in my assessment that justifies a reduction of 8 months from the starting point of 3 years. Your remorse is reflected in your guilty plea and your cooperation with the police and you are entitled to a further $\frac{1}{3}$ deduction which reduces the end sentence to 18 months imprisonment. From that I deduct a further 6 months to reflect the time that you have spent in custody. That leaves an end sentence of 12 months imprisonment. I regard that sentence as appropriate and accordingly you are sentenced to 12 months imprisonment on each charge of theft and unlawful entry. In respect of the charges of malicious damage the appropriate sentence is one of 6 months imprisonment on each charge. All of those sentences are to be served concurrently.



13. The issue is then one of whether imprisonment should be suspended. You have been in custody since 15th April 2016 and I am told by Ms. Bakeo that this has had a very strong effect on you and I certainly hope that that is so. Ms. Bakeo has referred to a number of significant matters in her submissions which in my view support the suspension of a sentence. They are primarily focused on your youth and the need for rehabilitation and the fact that your imprisonment today has been a significant salutary experience for you.
14. The balance against that of course is the need to denounce and deter your conduct and to take into account the interests of your victims who I have said, by and large, appear to have been compassionate in their views towards you. This is also a serious level of offending. On balance I consider that suspending your sentence while imposing community work and supervision will achieve an appropriate balance between providing for your rehabilitation and imposing a punishment which reflects the seriousness of your offending.
15. As I have said, that you had broken into people's homes, if you were older, if you had had previous convictions then the outcome would be a very different one indeed. Ultimately though your rehabilitation is of far greater benefit to you and to the community than your imprisonment.
16. Accordingly as I have said on the charges of unlawful entry and theft you are sentenced on each count to 12 months imprisonment. On the charges of malicious damage you are sentenced on each count to 6 months imprisonment. They are to be served concurrently. The sentence is suspended for a period of 2 years and you need to know that if you commit any further offence then this sentence of imprisonment will be



activated. In addition you are sentenced to 12 months supervision on the conditions in the pre-sentence report which are as follows:

- (a) That you are to perform a custom reconciliation to the victims where convenient with the assistance of a probation officer and undertake restitution where convenient;
- (b) That you are to undertake any rehabilitation program as directed by a probation officer to help address your offending behaviour;

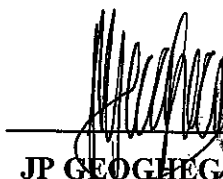
17. You are also sentenced to 150 hours of community work.

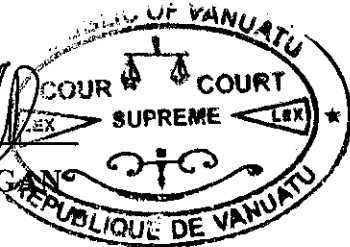
18. In passing the sentence I note that the outset of the sentencing exercise. I explained the sentence that I was going to impose on you and Ms. Bakeo translated that for you in Bislama so I am satisfied that you understand the nature and effect of the sentence which I have just imposed.

19. You have 14 days to appeal this sentence.

Dated at Port Vila this 19th day of July 2016

BY THE COURT


JP GEOGHEGAN
JUDGE

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a book. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COUR SUPREME" are written, with "COURT" on either side. The word "LEX" is written in two small boxes on either side of the central text.