

BETWEEN: **KEVIN HEROMANLEY
DAVID TANGA
CHARLOT JEAN BAPTISTE
KELLY HEROMANLEY
NANDO KAI
MICHAEL PAUL**
Appellants

AND: **PUBLIC PROSECUTOR**
Respondent

Coram: *Chief Justice Vincent Lunabek
Justice J. Bruce Robertson
Justice John von Doussa
Justice Nevin Dawson
Justice Daniel Fatiaki*

Counsel: *Mr Jacob Kausiama for the Appellants
Mr Bernard Standish for the Respondent*

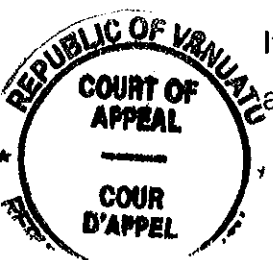
Date of hearing: 29th April 2010

Date of decision: 30th April 2010

APPEAL MEMORANDUM

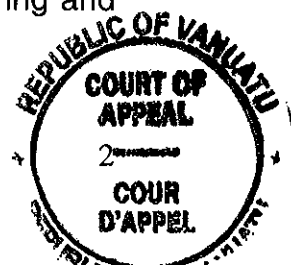
1. The Notice of Appeal in this matter was filed on 22nd April 2010 and has been placed before the Court on short notice with a Memorandum of Appeal. The Court has also received a copy of the trial judge's sentencing remarks in the case.

It is possible to discern from the materials available to the Court that this was a case involving 8 teenagers and an adult who broke into an unoccupied



residence at night and stole a large sum of money and other valuable items which they then shared amongst themselves. All benefited from the joint criminal enterprise in varying degrees and all participated in it in varying capacities.

3. The appellants were jointly arraigned on 8th April 2010 before the Supreme Court at Luganville and pleaded guilty to various charges of Malicious Damage, Unlawful Entry, Theft and Receiving Property Dishonestly Obtained.
4. They were convicted on their pleas and 6 of the teenagers were sentenced to immediate terms of imprisonment ranging from 10 months to 8 years. In the case of the offenders who faced more than one charge, their prison sentences were ordered to be served cumulatively. The 3 remaining offenders including the adult were sentenced to between 40 and 50 hours of community service. The trial judge also imposed sentences of restitution on all 9 offenders in varying amounts and in default of payment, imprisonment of 1 week for every VT1,000 remaining unpaid.
5. It appears from the trial judge's sentencing remarks that more than half of the stolen cash was recovered and although there is mention of the appellants' guilty pleas no apparent discount has been given for the same in the sentences imposed.
6. State counsel has also flagged a possible breach of the provisions of section 58ZD(3) of the Penal Code in respect of the default prison sentences imposed in the sentences for restitution.
7. The appellants all appeal against the manifest severity and lawfulness of the sentences imposed by the sentencing judge.
8. The Court did not have sufficient material before it to finally dispose of the appeal on its merits and the matter was listed for the Court to consider whether the appellants should be released on bail pending the hearing and determination of their appeals.



9. We are grateful to counsel for the valuable assistance provided to the Court including a consent memorandum indicating that this is an appropriate case for the granting of bail pending appeal.
10. Thee Court orders that each of the appellants is granted bail pending the appeal in terms of the draft consent memorandum filed and subject to the conditions therein.
11. The appeal is listed to be heard at the next session of the Court of Appeal and the Court directs the relevant authorities to prepare and file Compensation Reports relating to each of the Appellants in accordance with section 41 of the Penal Code Act [CAP.135] for the assistance of the Court, before the hearing of the appeal.

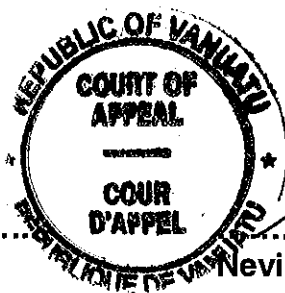
DATED at Port-Vila this 30th day of April 2010

BY THE COURT


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Vincent LUNABEK CJ


.....
J. Bruce ROBERTSON J


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John von DOUSSA J




.....
Nevin Dawson J


.....
Daniel FATIAKI J