

PUBLIC PROSECUTOR

- v -

JIMMY SAKI LERAK

*Mr Leon Malatugun for the Public Prosecutor
Mr Andrew Bal for Defendant*

SENTENCE

This is the sentence of the Defendant Jimmy Saki Lerak.

On 5 November 2013, you entered guilty pleas on following counts:

- Unlawful Entry, contrary to s.143 of Penal Code (Count 1); and
- Malicious Damage to property contrary to s.133 of Penal Code (Count 2);
and
- Theft, contrary to s.125(a) of the Penal Code Act [Cap135]

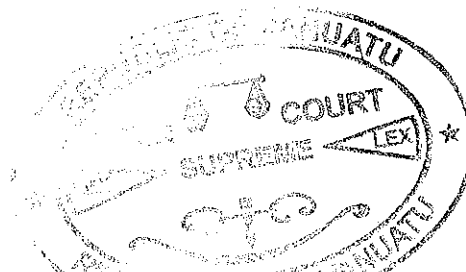
The brief facts of your offending are as follow:-

On the 7th of October 2012 at around 10:00am in the morning, you made a plan and went into the residence of the complainant at No.3 area in Port Vila, near Peter Pan School. You broke the glass of the house of the complainant with a hammer and entered into the house. You then took VT35,000, two (2) small camera and one (1) Nokia mobile phone (small size). You then gave one (1) camera to your girl friend. The other camera and the Nokia mobile phone were misplaced by you at your home and you had used up all the VT35,000 for your own use.

Unlawful entry into a dwelling house carries a maximum penalty of 20 years imprisonment. Malicious damage to property carries a maximum penalty for 1 year imprisonment or a fine of VT5,000 or both. The offence of theft carries a maximum penalty of 12 years imprisonment. You are liable upon your convictions on maximum imprisonment sentence up to 20 years.

The facts of this case show a series of offences that form part of the same overall transaction and cause harm to the same person and particularly unlawfully entering into a dwelling house and theft.

The unlawful entry offence in Count 1 is the lead offence. Any sentence passed on theft offence in Count 2 shall ran concurrently. I consider the damage to property offence as an aggravating factors to the lead offence.



A handwritten signature in black ink, appearing to be 'A', is located to the right of the court seal.

When I consider your sentencing I take into account of what is said in the pre-sentence report (when relevant), what the prosecution says in their submissions and what your lawyer says in his submissions on your behalf.

You have committed serious offences. The seriousness of your offendings are reflected in the maximum penalties imposed by law as referred to above.

In the present case, your offending is aggravated by the following factors:

- There is a high degree of pre-mediation and planning as you got a hammer with you to execute your plan when you used it to break the glass of the house.
- You gave a camera to your girl friend – That camera is not returned to the owner.
- You use the amount of VT35,000 for your personal use.

You are sentenced to 48 months imprisonment as a starting point.

The report shows that you are 29 years of age. You originate from Tasmatt Village on Mere Lava Island, Torba Province, Vanuatu. You only attended grade 5 at Santa Maria Primary School. You have skills in plumbing, gardening and limited knowledge in construction mainly building houses. You tell the writer of this report that you are currently unemployed. You are under the care and support of your eldest sister Mrs Edwish Sakias the bread winner in the home. Your ambition is to start a new shop business in the future to help you with your living.

In mitigating, you are a first time offender. You plead guilty at the first opportunity given to you by the court.

You have already spent some time in pre-custody (24 days).

You now express feelings of remorse and guilt. You felt sorry for your victim and you felt disgraced.

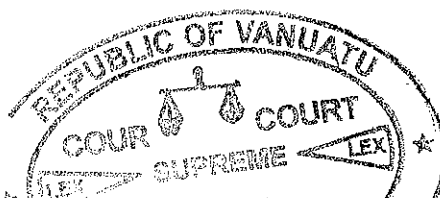
On balance between the aggravating and the mitigating factors, and after cross-referencing with each others, following allowances are made:

- 1/3 deduction for early guilty plea.
- 5 months for other mitigating factors including the pre-custody time period.

You have an end sentence of 27 months imprisonment which is your effective sentence in respect to both counts 1 and 3 of unlawful entry and theft and to be concurrent with each other. 3 months imprisonment in respect to count 2 of damage to property to be concurrent to the others.

Is it appropriate to suspend your imprisonment sentence of 27 months?

The report shows that you knew right from the start that what you were doing was wrong. You also knew that you could stop but you decided to carry out your offending.



It is also noted that the complainant wants the stolen items and cash money to be returned back to her.

You told your lawyer to tell the Court that you are unemployed and your big sister is prepared to refund Vatu 35,000 to the complainant by this Friday 6 December 2013.

You told your lawyer to inform the Court that you have given back a camera and the Nokia Mobile to the Police at the time of investigation. You also accept that you gave a camera to your girl friend and she went to Santo. That camera was not returned to the owner. I accept what you said and take them into account in your sentencing.


Your sentence of 27 months imprisonment is suspended for a period of 2 years. You must not re-offend during the suspension period. If you re-offend, your sentence of 27 months imprisonment shall be re-activated.

In addition, you are ordered to perform 100 hours of community work. You shall also repay to the complainant vatu 35,000 by this Friday 6 December 2013.

You have 14 days to appeal your sentence if you are unsatisfied with it.

DATED at Port-Vila this 3rd day of December 2013

BY THE COURT


Vincent LUNABEK
Chief Justice

