

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(CRIMINAL JURISDICTION)**

**CRIMINAL CASE NO 13 OF 2013**

**PUBLIC PROSECUTOR**

**v**

**GIBSON WILLIAM**

**Coram:** Justice Mary Sey

**Counsel:** Mrs Losana Matariki for the Public Prosecutor  
Mr. Andrew Bal for the Defendant

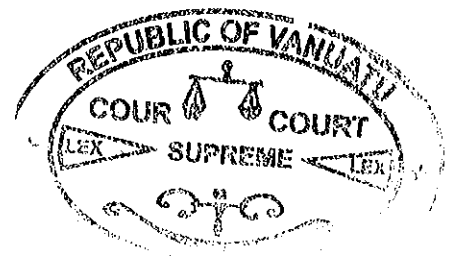
**Date of Sentence:** 29 April 2013

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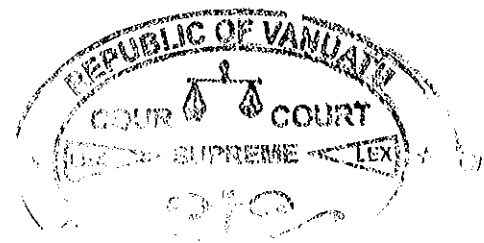
**SENTENCE**

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1. Gibson William, you appear today for sentence having pleaded guilty on 2 April 2013 to one count of Unlawful Entry, contrary to section 143(1) of the Penal Code Act [CAP135] and one count of Theft, contrary to section 125 (a) of the Penal Code Act. You were convicted accordingly on both counts.
2. The brief facts of the offending are provided by the prosecution in their brief facts. Your lawyer accepted them on your behalf and he conceded that you entered your guilty pleas on the basis of these facts.



3. The summary of the facts are as follows:
- (i) On the evening of 2 June 2011, the complainant Leitangis Edward, who is the house girl for the owner of the property into which the defendant had unlawfully entered, had left the property to visit her house for a while. While still at her house, Leitangis sent her daughter to get some rainwater from her employer's house. On her way to the other house and back, the complainant's daughter noticed that there were three boys outside the compound, watching her.
  - (ii) As she went into the house she noticed that the house was broken into and the window was open. She returned to where her mother was and told her to go and check the big house as she had noticed that it had been broken into. The complainant made her way to the big house straight away and noticed that the big Flat TV screen was missing from its stand.
  - (iii) Meanwhile the defendant went around in a bus trying to sell the Flat TV Screen and at Mele Village; he spoke to Patrick Matautava, and told him that he was selling the flat screen for 30,000 vatu.
  - (iv) Patrick offered to buy the TV on condition that he is allowed to test it to show that it was in good condition. Patrick also noticed that the TV screen did not have a remote control.
  - (v) The defendant with the assistance of another man from Mele fixed the TV screen and it worked. Patrick then paid 25,000 for the TV screen. In his statement Patrick stated that he was not aware that the TV screen was stolen.
  - (vi) The matter was reported to the police and after investigations the defendant was arrested and taken to the police station for further



questioning. In his statement and during the interview with the police, the defendant admitted that he broke into Patricia Bochenski's house at No. 3 Area, by breaking the screen and window, and stole the TV screen which he later sold to Patrick Matautava.

4. In considering your sentencing, I have taken into account the submissions of the prosecution, the submissions of your lawyer and the pre-sentence report filed by the Shefa probation officer. I have also considered the guideline judgments referred to me by state counsel and I will apply them in the present case.
  
5. Entering into a property of another person unlawfully and stealing properties of that person once you are in the house are serious offences as reflected in the maximum penalties set by law as follows:

**Section 143 (1) of the Penal Code Act [CAP 135]** provides that:

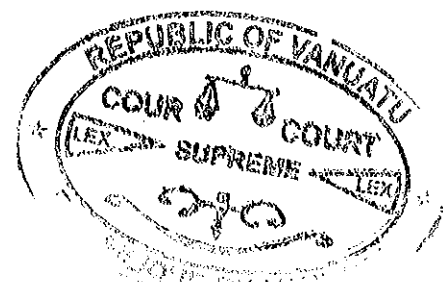
*“No person shall enter or be in any house, building tent, vessel or other place with intent to commit an offence therein.*

*Penalty: Imprisonment for 20 years where the place is used for human habitation Imprisonment for 10 years where the place is not used for human habitation”.*

**Section 125 (a) of the Penal Code Act [CAP 135]** provides that:

*“No person shall cause loss to another by theft.*

*Penalty: Imprisonment for 12 years”*



6. The seriousness of your offending is aggravated by the following factors:

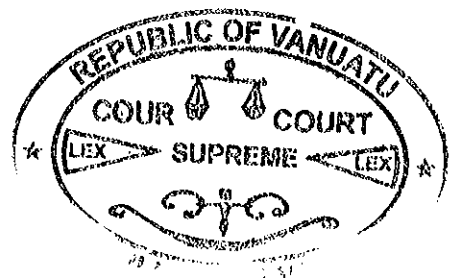
1. There was a degree of premeditation
2. The damages caused to the property
3. The time of the offence which was at night
4. Previous convictions of theft and unlawful entry

7. In the case of **Public Prosecutor v. Luke** 2011] VUSC 46 Weir J stated:

*"It is an aggravating factor that you have 2 previous convictions for similar offences in 2000 and 2009 for unlawful entry and theft. On both occasions you were dealt with by way of fines and also on the 2nd occasion, a suspended sentence of imprisonment was imposed. To take account of your previous criminal offending, the starting point of 12 months imprisonment is uplifted by 6 months to 18 months imprisonment. You are entitled to remission of one third of that sentence to give you credit for your confession and your early plea of guilty. The end sentence is 1 of 12 months imprisonment. From that must be deducted the amount of time you have spent in custody – approximately 4 months. On the lesser charge of theft, you are sentenced to 3 months imprisonment which is a concurrent term."*

8. The burglary of dwelling houses must always be taken seriously by the Court. See **Public Prosecutor v Raprap** [2011] VUSC 89 where his lordship Spear J. said:

*"This sentence must hold you fully accountable for what you have done; it must denounce your conduct and promote in you a sense of responsibility for your activities. You have caused substantial lost to others not just because*

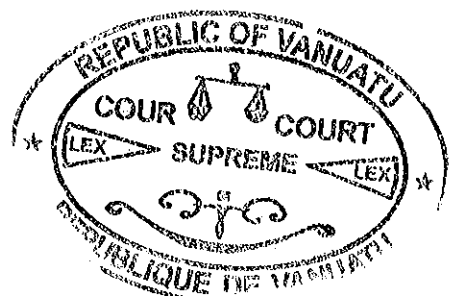


*of the items that you have taken but also because they will no longer feel safe in their homes. It is an easy activity to perform, breaking into someone else's home, and it is often difficult to apprehend those people who have done so. When they are caught they need to be punished so that people will appreciate that it is not worth the risk."*

9. Gibson William, the pre-sentence report on you shows that you are 26 years of age and that you are in a defacto relationship and you also have a son. The report also shows that, according to Correctional Services Department records, you are a second time offender and you are currently serving your sentence at the Stade Low Risk Correctional Centre. You were sentenced to Supervision on 14/10/2011 for a period of two years. However, you did not comply with your supervision sentence and you re-offended by committing Unlawful Entry and Theft for which you were sentenced and you are now serving a term of 3 years and 4 months imprisonment which started on 09/01/2012 and which would end on 09/05/2015.
10. You are undoubtedly a repeat offender and this factor cannot be overlooked by the Court. It is clear that prison is the only option available to the Court when it comes to sentencing you. In the case of **Public Prosecutor v. Denny** [2010] VUSC 125, when sentencing the defendant, his lordship Fatiaki J. remarked as follows:

*"Alex Denny during your most recent sentencing in December 2009 the Court said*

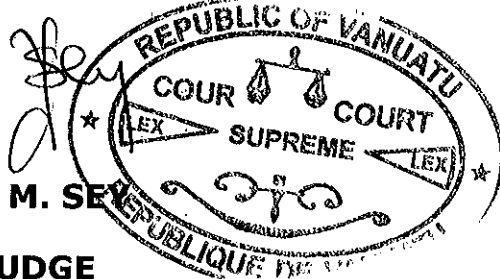
*... You are now a recidivist offender for offences of this type. That means that prison is the only option available to the Court when it comes to sentencing you ..."*



11. Gibson William, I note your early plea of guilty and the fact that the stolen item has been returned to the owner. I therefore sentence you to 3 years imprisonment as a starting point for the first count of Unlawful Entry and, after proper balance; I reduce this sentence to 2 years imprisonment. For the second Count of Theft, I impose a custodial sentence of 6 months imprisonment as a starting point which, after a one third reduction for your early guilty plea, brings it to a custodial sentence of 2 months imprisonment.
12. Both sentences are hereby ordered to run concurrently with your existing prison sentence.
13. You have 14 days to appeal your sentence if you are not happy with it.

**Dated at Port Vila this 29th day of April, 2013.**

**BY THE COURT**



**M. M. SEY**

**JUDGE**