

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

Criminal
Case No. 18/2727 SC/CRML

BETWEEN: Public Prosecutor

AND: Trixie Feandre
Defendant

Date: 14 December 2018
Before: Justice G.A. Andrée Wiltens
In Attendance: Ms B. Pakoasongi for the Public Prosecutor
Mr F. Tasso for the Defendant

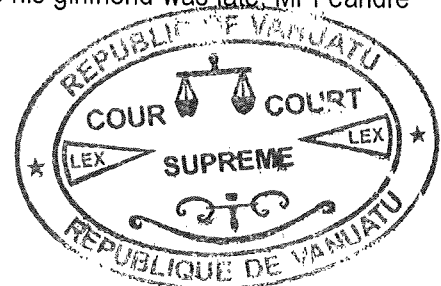
SENTENCE

A. Introduction

1. Mr Feandre pleaded guilty to 4 charges in all: 2 charges of unlawful entry of a dwelling house, with a maximum sentence of firstly 10 years imprisonment (as the bar was not used for human habitation) and secondly 20 years imprisonment in respect of the school dormitory; and 2 counts of theft, each with a maximum sentence of 12 years imprisonment.

B. Facts

2. On 1 June 2018, Mr Feandre was on his way home from the Office Pub when he noticed a lack of security guards at the Banyan Bar. He scaled the fence and took bottles of wine from a fridge and bottles of spirits from behind the bar, which he placed in a cardboard box – some 20 bottles in all. He hid the box in a garden and went to hail a bus. By the time he returned to the garden, Mr Feandre saw security guards on duty and he abandoned the box of stolen alcohol.
3. On 16 June 2018, Mr Feandre went to meet his girlfriend at the Lycee LAB school Year 14 dormitory. He was again under the influence of alcohol. As his girlfriend was late, Mr Feandre entered the Year 14 dormitory and stole 2 lap tops.



4. Mr Feandre's explanation is that he has no recollection of the theft from the school; he simply woke up with the laptops lying beside him.

C. Aggravating Factors of the Offending

5. There are a number of aggravating factors to the offending – firstly all the offending involves dishonesty, it was all perpetrated at night, involving property of significant value, and the alcohol has not been recovered.
6. Mr Toaliu submitted that an overall starting point of 7 years was appropriate to take into the totality of Mr Feandre's criminal culpability. Ms Bakeo submits a start point of a suspended sentence is appropriate, and concludes that Mr Feandre's 5 months in custody ought to be the telling factor is ending with Mr Feandre paying costs to the prosecution and dealing with him on a "time served" basis.

D. Mitigating Factors of the Offending

7. There are no mitigating factors relating to the offending.

E. Start Point

8. The start point for this offending, as required to be identified by *PP v Andy* [2011] 14, is set at 4 years imprisonment, on a totality basis taking both offences into account.

F. Personal Factors

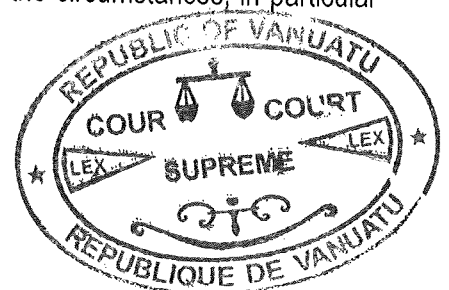
9. Mr Feandre has a clear previous record. He is still relatively young, being 20 years old. He is said to be remorseful, and a useful member of his family who rely on his earning capacity. Those factors enable a discount of 8 months imprisonment from the start point.
10. The voluntary consumption of alcohol is said to explain this offending. However, the Courts have consistently said that the consumption of alcohol cannot be mitigation.
11. The final matter of mitigation is Mr Feandre's pleas. For his pleas, I allow 33.3% reduction to the end sentence.

G. End Sentence

12. Taking all of those matters into account, the end sentence that be imposed is one of 2 years 3 months imprisonment. I impose that on all charges concurrently, and the sentence is to commence from the date of his incarceration, namely 31 July 2018.

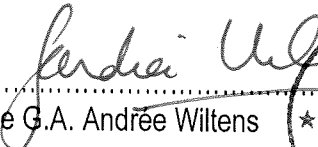
H. Suspension

13. Section 57(1) of the Penal Code requires the Court to consider whether the end sentence should be imposed immediately or suspended. The Court has jurisdiction to suspend the sentence if immediate incarceration is inappropriate in view of the circumstances, in particular the nature of the crime, and the character of the offender.



14. Suspending Mr Feandre's sentence is within my discretion. I take into account his immaturity and lack of previous convictions, plus his prompt pleas. He has already served over 5 months in prison. In those circumstances it is appropriate to suspend the end sentence for 2 years.
15. Accordingly, the sentence of 2 years 3 months imprisonment is suspended for 2 years. Mr Feandre needs to understand that he needs to remain offence free for 2 years from today, or he will be incarcerated for 2 years 3 months.
16. Suspending a sentence is often accompanied by a direction that the offender be subject to a period of supervision by the Probation service, to ensure that re-offending risks are minimised. I am satisfied that is required in this instance. Accordingly 12 months supervision is also imposed on Mr Feandre.
17. Mr Feandre has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 14th day of December 2018
BY THE COURT


Justice G.A. Andrée Wiltens

