

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

CRIMINAL CASE No.142 OF 2009

PUBLIC PROSECUTOR - v - JEAN YVES SHEM

Coram: *Chief Justice Vincent Lunabek*

Counsel: *Mr Tristan Karae for the Public Prosecutor
Mr Henzler Vira of Public Solicitor's office for the Defendant*

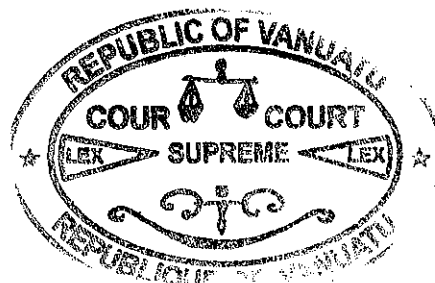
SENTENCE

This is the sentence of the Defendant, Jean Yves Shem. You are charged with the following offences: Unlawful Entry, contrary to Section 143 of the Penal Code Act [CAP.135] (count 1); Damage to Property, contrary to Section 133 of the Penal Code Act [CAP.135] (count 2) and Theft, contrary to Section 125(a) of the Penal Code Act [CAP.135] (count 3).

On 17 December 2009, you pleaded guilty to each and all above counts. You are accordingly convicted on each of these offences.

The brief facts are that on 22 September 2009, in the night, you and a friend of your went to Neil Thomas University at Agathis. Once there, you went to the window veranda and removed 3 louvers from the window. You then entered the premises through that window.

The two doors inside the premises were locked. You took a screw driver and you unscrew the handles of the 2 locked doors. Once you entered the 2 offices, you took 2 laptops and one audio tape and you went outside through the main doors of the premises. You took the items you stole with you. You sold away a laptop to one of



your friends at VT4,500. You gave the other laptop to Robert who is your brother-in-law. Robert then gave the laptop to the police at the police station in Port-Vila.

The probation report shows that you come from a family of five and you live with your mother's sister at Switi area. Your mother died when you were five years old. Your father has retired from work and has gone to Santo.

The report shows that you are not a first time offender. You have previous convictions for unlawfully entering a dwelling house and theft. You were 15 years old at the time of your previous conviction and you were sentenced to imprisonment on 19 August 2008. You were released on the 19 August 2008. You did not comply with your standard conditions of Parole. A breach has been filed with the state prosecution.

You are 16 years of age at the time of your offending in the present case. You were remanded in custody since 2 October 2009 which is a total period of two (2) months and 10 days. You show you are remorseful for what you did.

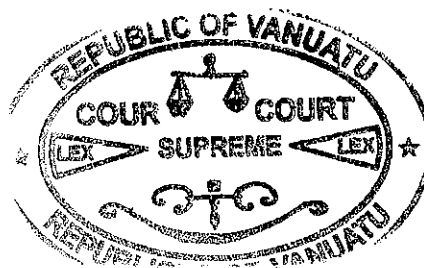
The following aggravating factors exist in this case:

- The Defendant Jean Yves Shem has previous convictions on the offences of unlawfully entering a dwelling house and theft.
- The Defendant has breach his standard conditions of Parole.
- These offences are committed during the night.

In mitigation, the Defendant pleaded guilty to the three offences. The items were recovered by the police.

The offences of unlawful entry to premises of others, damage to properties of others and theft are serious offences.

In sentencing you, I take into consideration what is said in the report, the submissions the prosecution counsel and those of your counsel and after balancing



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the aggravating factors and the mitigating ones and after cross-referencing them, the aggravation outweigh the mitigating factors.

You are sentenced to 1 year imprisonment for Unlawful Entry, contrary to Section 143 of the Penal Code Act [CAP.135]; 6 months for damage to property, contrary to Section 133 of the Penal Code Act and 1 year for theft, contrary to Section 125(a) of the Penal Code Act.

You shall serve those sentences concurrently. This means that you shall serve 12 months imprisonment. A period of two months and 10 days is to be deducted in your credit for the time you have spent in custody.

You are ordered to serve 9 months and 20 days imprisonment with immediate effect.

I have considered whether or not I should suspend the imprisonment sentence. I decline to do so as you have previous conviction for unlawful entry and theft and you breach your terms of Parole and the natures of the offences you have committed are so serious that they do not warrant a suspension.

You have 14 days to appeal this sentence if you are not happy with it.

DATED at Port-Vila this 23rd day of December 2009

BY THE COURT

Vincent LUNABEK
Chief Justice

