

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

Criminal Case No. 08 of 2010

PUBLIC PROSECUTOR
V.
JEAN YVES SHEM

Coram: Justice D. Fatiaki
Counsel: Mr. Tristan Karae for the State
Mr. Tom Loughman for the Defendant
Date of Sentence: 9th June 2010

SENTENCE

On 2nd March 2010 the Defendant was charged in an information containing 12 Count s. He pleaded guilty and was convicted on 3 Count s of Damaging Property; 3 Count s of Unlawful Entry; and 3 Count s of Theft. The remaining 3 Count s which charged similar offences were not admitted and remain on the file.

The facts of the case relates to three separate burglaries that occurred in the Ohlen/Freswota area of Port Vila and involves three different premises – Jacklyn John's shop (Count s 1 to 3); the Father's Home Church storeroom (Count s 4 & 5); and, the private residence of Pastor Joshua Betfo (Count s 9 to 12).

In respect of the shop and storeroom, on the night of the date alleged on each Count the Defendant broke a door lock, entered the premises and stole the items listed in the information. From the store he stole mainly food and grocery items and VT15,000 in cash; and from the Home Church storeroom the Defendant and a friend stole musical equipment, 2 flash drives and VT3,000



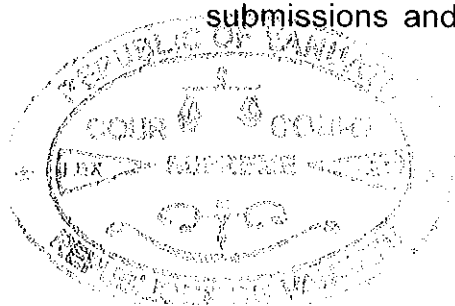
cash; from the Pastor's home which was entered during broad daylight, the Defendant stole Vt53,000 cash out of a locked bag after breaking the lock. Of this sum only VT21,000 has been recovered and returned to the Pastor.

Jean Shem your case has been called today for sentence to be passed on you for your convictions. I have also received and considered the pre-sentence report prepared on you and I note your following personal circumstances:

- You are 17 years of age, the youngest son in a family of 5 and of mixed Tanna and Santo parentage;
- Your mother died giving birth to you and you were raised by an aunt and then later by your father;
- You say that you have a good relationship with your father but he lives in Santo and you live with relatives in Port Vila;
- You have minimal education (up to class 4) and you are unemployed;
- You are a heavy user of cannabis and you told the Probation Officer that *"smoking cannabis and hanging out with friends"* is the highlight of your life. Indeed you had been smoking cannabis when you committed these most recent offences;
- You have 2 prior convictions for similar offences committed with your elder brother, for which you received prison sentences of 4 months and 9 months respectively;

The probation officer who prepared the pre-sentence report attributes your offending to a *"lack of community or family support, excessive use of cannabis and a lack of choice of (good) role models"*. You wish to return to your aging father in Santo once you are released from prison.

Jean Shem, I have considered all of the above and your lawyer's written submissions and the only mitigating factors in your favour are that you readily



admitted the offences and have pleaded guilty, and also some of the stolen items and cash has been recovered;

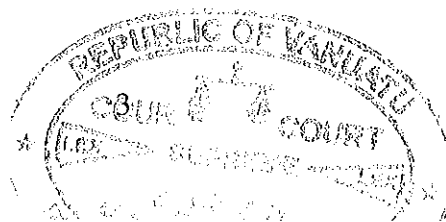
The aggravating factors which in this instance, clearly outweighs the mitigating factors, includes:

- The repetitive nature of your offending;
- Your prior record of similar offending;
- The fact that most of the stolen cash has not been recovered; and
- The lasting impact on the victims. The shopkeeper says they are fearful of sleeping soundly at night and, Pastor Obed Sandy of the Father's Home Church says the theft of the musical instruments and equipments left him: *"feeling hurt, shocked and heartbroken that he almost resigned from his post as pastor"*.

I have also considered the following cases that have been helpfully drawn to my attention in the Public Prosecutor's submissions, namely: PP v. Killion [2004] VUSC 17; PP v. Noal [2005] VUSC 102; PP v. Kenneth Atuary [2007] VUSC 93. In all of these cases the court expressed its concern at the growing incidents of these types of crimes in the Port Vila area and imposed custodial sentences of immediate and suspended prison terms on the offenders.

It is never an easy task to send a young person to prison but I would be failing in my duty to protect the innocent law-abiding citizens of Port Vila if I did not do my part to curb the growing incidence of such crimes. It is regrettable that it was your elder brother who first introduced you to criminal activity but also, you do not appear to have learnt your lesson from having been in prison before.

Jean Shem the most lenient sentence that this Court can impose on you is 9 months imprisonment on each of the 9 Counts that you have been convicted of. I also order that the sentences on Counts 2, 5 and 12 be served consecutively but



concurrently with Counts 1, 3, 4, 9, 10 and 11 making a total cumulative sentence of $(9 \times 3) = 27$ months imprisonment. When you come out of prison I urge you to return to your father in Santo and start a new crime-free life.

You have 14 days to appeal against this sentence if you do not agree with it.

DATED at Port Vila, this 9th day of June, 2010.

BY THE COURT

D. FATIAKI
Judge.

