

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

**RINGIAU ANDRE
MARK PETER
JIMMY WARREN
MARK CHAEL
KASPA DAMIEN
JOHN BONG
MICHEL BONG
REUBEN BONG**

Mr Justice Oliver A. Saksak

Mr P. Wirrick for the State
Miss J. Tari for the Defendants

SENTENCE

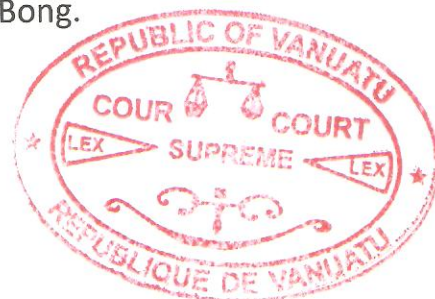
1. On the night of 17th December 2011 there was a break and enter into the Au Bon Marche Shop at the Side River, Luganville. In the process a large amount of cash in the sum of VT3,000,000 and AU\$300 were stolen. The owner of the shop Mrs Anna Lew, a 79 year old lady was grabbed by one of her assailants who covered her mouth with his hand and threatened her with a chisel or a screwdriver held against her neck. She was then forced to open the money safe after which the intruders helped themselves to the



money in it. They then left the building leaving the victim, Mrs Lew tied up on her bed. The two intruders rejoined two others of their group who were keeping watch outside and walked off to Jimmy Warren's residence at Sarakata. It was there that they shared the money between themselves who in turn gave some of the money to Kaspas Damien, John Bong, Michel Bong and Reuben Bong.

2. Mrs Lew made formal complaints to the Police who investigated and arrested these defendants. Subsequently they were charged with 8 counts as follows :-

- Count 1: Unlawful Entry Contrary to Section 143 of the Penal Code Act Cap 135 (the Act) against Andre Ringiau and Mark Peter.
- Count 2: Theft Contrary to Section 125 (a) of the Act against Andre Ringiau and Mark Peter.
- Count 3: Robbery Contrary to Section 137 of the Act against Andre Ringiau and Mark Peter.
- Count 4: Aiding Theft Contrary to Section 30 and 125 (a) of the Act against Jimmy Warren and Mark Chael.
- Count 5: Receiving Property Dishonestly Obtained Contrary to Section 131 of the Act against Kaspas Damien.
- Count 6: Receiving Property Dishonestly Obtained Contrary to Section 131 of the Act against John Bong.
- Count 7: Receiving Property Dishonestly Obtained Contrary to Section 131 of the Act against Michel Bong.



Count 8: Receiving Property Dishonestly Obtained Contrary to Section 131 of the Act against Reuben Bong.

3. On 8th February 2012 defendants Mark Peter, Mark Chael, Jimmy Warren, Kaspas Damien, John Bong, Michel Bong and Reuben Bong pleaded guilty to the charges against them.
4. On 9th March 2012 Andre Ringiau pleaded guilty to the charges of Unlawful Entry, Theft and Robbery.
5. On the basis of their guilty pleas the Court recorded convictions against each of the 8 defendants.
6. In Sentencing the defendants today the Court has had regard to the Pre-Sentence reports filed by the Probation Service in respect to each defendant, except Andre Ringiau. The Court has also considered all submissions made by the Prosecutor and defence Counsel, Miss Tari.
7. Both Counsel submitted the case authorities of
 - (i) Heromanley v. Public Prosecutor [2010] VUCA 12
 - (ii) Public Prosecutor v. Kilton [2003] VUSC 111
 - (iii) Kalfau v. Public Prosecutor [1990] VUCA 9

The Prosecutor also cited the case of Public Prosecutor v. Killion and Others [2004] VUSC 17 and Defence Counsel cited the Case of Public Prosecutor v. Paul Shem [2010] VUSC 142, and Public Prosecutor v. Gideon [2002]. All these cases are helpful authorities providing guiding

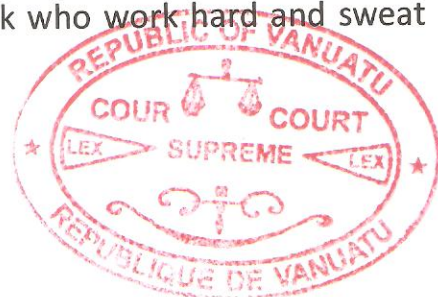


principles on Sentencing. However each case differs from the others in their facts and circumstances.

8. The features that make the defendants offendings in this case serious are -

- (a) The victim is a 79 year old woman.
- (b) She was subjected to actual threats of grievous bodily harm with a metal (as a weapon).
- (c) She was tied up and left alone on her bed after she was robbed.
- (d) The physical, psychological and financial impact on the victim of her age.
- (e) The offendings of unlawful entry, theft and robbery took place in the night and within the security of the family home of the victim (see *Kalfau v. Public Prosecutor*)
- (f) Of more than VT3,000,000 stolen, an amount of VT2,500,000 is still unrecovered and unaccounted for.

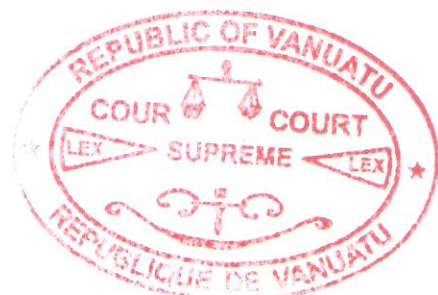
9. The amount of more then VT3,000,000 stolen and distributed and used by these defendants were earned through hard work and sweat of a 79 year old victim. The defendants, except for Andre Ringiau (25 years) are aged between 19 and 21 years old. Jimmy Warren does not know his age. But apart from Andre Ringiau who was an escapee from lawful detention at the time, all the other 7 defendants are strong young men with no steady employment with any regular wage. Young men such as these should find themselves gainful employment and earn a living for themselves instead of taking advantage of the rich and the weak who work hard and sweat for



their money, to unjustly enrich themselves. That is grossly unfair and those who commit those offences can expect that imprisonment is the only appropriate penalty. And being a young offender should make little difference in these circumstances.

10. The Court takes judicial notice of Criminal Case No. 31 of 2011 Public Prosecutor v. Opas Gere and 4 Others [2011] VUSC 39. The ages of these defendants ranged from 19, 20, 22, 25, 26 and 28. The offences they committed were unlawful entry (Sect. 143), theft (Sect. 125), receiving property dishonestly obtained (Sect. 131) and trading without proper firearms license (Sects. 3 (b) and 6 (c) of the Fire Arms Act Cap 198. 60 boxes of ammunition (bullets) were stolen. The Victim was Mrs Anna Lew, the same victim in the present case. The offendings took place on three separate occasions in June 2011. This current case is the second offending against the same victim in a space of less than seven months. It is an unacceptable trend. Victims such as these need protection and that can only be achieved by punishment of imprisonment to serve the following purposes -

- (a) Act as a deterrence to both the offenders and others who are minded to act like wise
- (b) Public disapproval of the offenders behavior
- (c) Adequate punishment for the offenders
- (d) Mark the gravity of the offences.



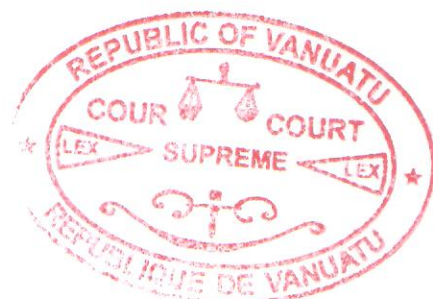
11. In the case of Public Prosecutor v. Opas and Others, this Court considered and adopted the Sentencing principles in Public Prosecutor v. Killion and Others and Heromanley v. Public Prosecutor and imposed imprisonment sentences on defendants for unlawful entry and theft and Community Work for the other three offenders who received stolen property.

12. Having said all that, I now pronounce the following sentences -

(a) Andre Ringiau

- (i) For Robbery as the lead offence - 6 years as the starting point increasing it to 7 years for aggravating features.
- (ii) Theft - 6 years as the starting point with no uplift.
- (iii) Unlawful Entry - Sect. 143 – 6 years as the starting point with no uplift.

Your sentences for theft and unlawful entry will be served concurrently with your 7 years imprisonment for robbery. However for your early guilty plea and in light of PP v. Gideon you are entitled to 1/3 reduction. This means that 16 months (1 year and 4 months) are deducted from your 7 years leaving the balance at 68 months which is 5 years and 8 months. I order that 5 years and 8 months be served cumulatively (in addition) to your current imprisonment term of 21 years and 3 months.



(b) Mark Peter

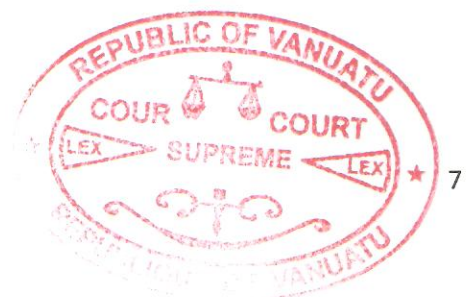
- (i) For Robbery as the lead offence - 6 years imprisonment as the starting point with an uplift of 1 year for aggravating features making a total of 7 years imprisonment.
- (ii) For Theft - 6 years imprisonment – concurrent.
- (iii) For Unlawful Entry - 6 years imprisonment concurrent. In total you will serve 7 years imprisonment. However you are entitled to a 1/3 reduction like Andre Ringiau, bringing the balance down to 5 years and 8 months. Your term begins on the date you were first remanded in custody.

(c) Jimmy Warren

For aiding unlawful entry and theft by waiting outside and keeping watch - 6 years imprisonment with no uplift. However you are entitled to a 1/3 reduction for your early guilty plea bringing you 6 year term down to 4 years imprisonment. These 4 years are cumulative to your existing 1 year term.

(d) Mark Chael

For aiding unlawful entry and theft - 6 years imprisonment as the starting point with no uplift. However you too are entitled to a 1/3 reduction for your early guilty plea bringing your 6 year term down to 4 years imprisonment. Your sentence begins from the date of this sentence.



(e) Kasper Damien

For receiving VT400,000 being moneys dishonestly obtained. It appears you knew these moneys were stolen. You pleased yourself with these moneys and used it all with no chance of recovery any of it back. You deserve an immediate custodial term as the appropriate punishment. You are sentenced to 8 months imprisonment. Two months are deducted due to your early guilty plea. You have to serve the balance of 6 months imprisonment beginning from the date of this sentence.

(f) Reuben Bong

For receiving about VT28,000 being moneys dishonestly obtained. You have used up that money with no chance of recovering it. You have a string of other serious offences from 2009 to 2010 which are still pending before the Magistrate Court. Although no convictions have yet been recorded these indicate you are a habitual offender with no respect for the law. You deserve an immediate custodial sentence. I therefore sentence you to 4 months imprisonment. 2 months are deducted for your early guilty plea. You will serve the balance of 2 months imprisonment to commence immediately today.

(g) Michel Bong

For receiving VT10,000 being moneys dishonestly obtained. It appears you have returned the money to the police. It appears from your pre-sentence report that you are in some sort of employment. Under these circumstances I impose a sentence of supervision under Section 58 F.



You are placed under supervision for a period of 6 months. You must report to the Probation Service within 72 hours from today's date.

(h) John Bong

For receiving VT180,000 being moneys dishonestly obtained. You used up VT10,000 and returned the rest through the Police. Under these circumstances I sentence you also to supervision under Section 58 F of the Act. Like Michel Bong you too will be placed under supervision for a period of 6 months from today. You must report to the Probation Service within 72 hours. In addition I order restitution of VT10,000 to be paid into Court within 14 days from today. This money will upon payment, be returned to Mrs Lew.

13. These are the sentences the Court imposes on each of you. Each of you have a right of appeal within 14 days if you so choose.

DATED at Luganville this 16th day of March 2012.

BY THE COURT


OLIVER A. SAKSAK

Judge.

