

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

Criminal
Case No. 20/3368 SC/CRML

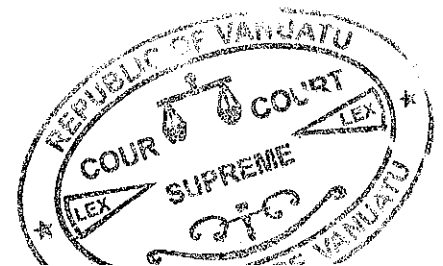
BETWEEN: Public Prosecutor

AND: Brandon Ishmael Tarosa
Defendant

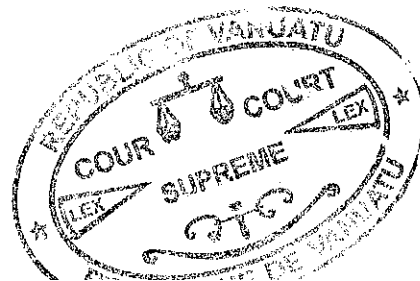
Date of Plea: 1st February 2021
Date of Sentence: 5th February 2021
Before: Justice Oliver.A.Saksak
Counsel: Mr Paul Sarai for Public Prosecutor
Mrs Pauline Malites for Defendant

SENTENCE

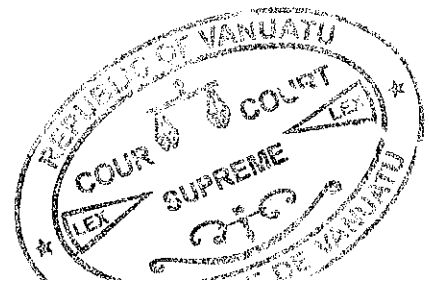
1. The defendant admitted committing the offences of Unlawful entry to dwelling house (section 143 (1)), the theft (section 125 (1)(a), and indecent act (section 98 (a)) on 1st February 2021.
2. On 12th October 2020 the defendant entered the dwelling house of Janneth Tangwah situate at the Seventh Day Adventist church at No. 2, Port Vila without permission or authorisation.
3. The defendant then stole a Lenovo mobile phone valued at VT 15.000 and cash of more than VT 30.000.
4. He then approached the complainant who was in bed sleeping. He stood over her and masturbated himself over her head. The complainant woke up and saw the defendant masturbating. He then escaped.
5. The defendant spent VT 20.000 of the cash he stole. The police recovered only VT 10.000. The Lenovo phone has not been returned or recovered.
6. The complainant seeks an order for the restitution of VT 10.000 and VT 15.000 being the cost of the mobile phone stolen.



7. The defendant committed very serious offences but in a package, on one complainant on the same night.
8. The offence of unlawfully entering a dwelling house carries the maximum penalty of 20 years imprisonment. Theft carries the maximum penalty of 12 years imprisonment and act of indecency act carries the maximum penalty of 7 years imprisonment.
9. There was no mitigating circumstances for the commission of these offences.
10. Taking all the circumstances surrounding the commission of the offences together with the seriousness the offences committed, I set the starting sentences as follows:-
 - (a) For unlawful entry- 4 years imprisonment
 - (b) For Theft-3 years imprisonment concurrent.
 - (c) For indecency act- 2 years imprisonment concurrent.
11. In total the defendant shall serve a concurrent sentence of 4 years imprisonment for all three offences he committed.
12. I now consider mitigating the defendant's sentence.
13. There has not been any pre-sentence report filed by the Probation Service but I take account of the submissions made by Mrs Malites.
14. I accept, despite prosecution's submissions that the defendant is entitled to the full 1/3 as an entitlement for his guilty plea. Therefore his sentence is reduced by 1 year and 4 months.
15. When I orally announced the sentence on 5th February 2021 I said the balance after deduction was 3 years 8 months. The correct calculation should have been 2 years and 8 months.
16. For his personal factors. I note he is only 16 years and 9 months old. He his from Nguna and Paama, living at No. 2 with his parents. He ended his education at Year 10 in 2020. He was expelled as a result of his offendings.



17. He was remanded at the Correctional Centre from 14th October 2020 but released on bail some 14 days later 28th October 2020.
18. He has clean past criminal record. For all those factors I deduct 6 months from his balance of sentence of 2 years and 8 months. His end sentence is therefore 2 years and 2 months.
19. I have considered the submissions made by Mrs Malites in relation to section 54 of the Penal Code Act and Article 37 of the Convention on the Rights of the Child.
20. The Penal Code Act provides for other forms of sentences the Court can impose other than imprisonment.
21. I therefore impose a sentence of imprisonment but, suspend the sentence under section 57 of the Act for a period of 3 years from the date of sentence on good behaviour. This means for a period of three years the defendant must not commit these offences again or any other criminal offences for which he would be charged and convicted. If he does, his sentence will be activated and he will go to prison for 2 years and 2 months.
22. To mark the seriousness of his offendings, the public disapproval of his actions, to deter him and others, to protect the vulnerable, and to punish him adequately I impose a sentence of community service for 100 hours, and supervision for a period of 3 years. This is in order to ensure his rehabilitation.
23. There will be separate orders issued in relation to the defendant's 100 hours of community service and supervision. These will be administered by Corrections and Probation Services.
24. Finally I order the defendant to repay to the complainant the sums of VT 10.000 and VT 15.000 being for the mobile phone stolen, within a period of 1 month (by 5th March 2021).



25. The defendant may wish to appeal this sentence if he disagrees with it. He has 14 days to do so.

DATED at Port Vila this 5th day of February 2021

BY THE COURT


OLIVER A. SAKSAK

Judge

