

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

Criminal Case No.03 of 2010

PUBLIC PROSECUTOR
V.
MARK MARTIN
LIONEL DAMASSING GIBSON
MARK ANDREW

Coram: Justice D. Fatiaki

Counsel: Mr. Parkinson Wirrick for the State
Mr. Eric Molbaleh for the Defendant

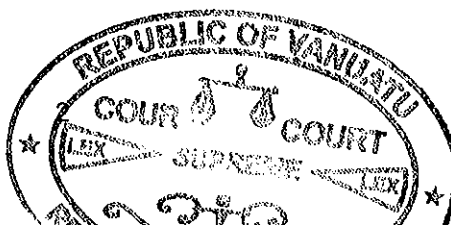
Date of Sentence: 27 August 2010

SENTENCE

1. On 8th April 2010 the 3 Defendant were jointly charged with 6 offences comprised of 2 offences of Malicious Damage; 2 offences of Unlawfully Entering an Office and 2 offences of Theft. The offences are alleged to have occurred in the early hours of Christmas morning on 25 December 2009 and involved the Civil Status Office and the HRD Unit Office that are housed in the same building situated at Independence Park.
2. On 16 April 2010 the three Defendants pleaded guilty to all charges but disputed one of the items alleged to have been stolen from the Civil Status Office. A "newton hearing" was fixed for 3 May 2010 but did not eventuate because the prosecution withdrew the item from the list of stolen property.
3. The items stolen in this case (as finally agreed) are as follows:-
 - (1) Civil Status Office
2 full cartons tusker beer; 1 blue cash box containing VT17,000 cash and a mobile phone;
 - (2) HRD Unit Office
1 wooden box containing coins; VT10,000 cash; a mobile phone; a blue digital camera; and a computer head phone.



4. In both incidents which occurred in close succession, initial entry was gained by ripping away a window fly screen to expose glass louvers which were then removed to enable one of the Defendants to enter the office premises and then open the outer door to allow his co-defendants to enter and remove various items from the offices. The thefts were discovered on the morning when the Acting Director of the Civil Status Office went to the office to pick up the 2 full cartons of tusker beer and found them missing.
5. Police investigations led to the arrest of the First Defendant later that same morning. He was found on the road near Lolam store in possession of a full carton of tusker beer and another carton containing 15 full bottles of tusker; a digital camera; a head phone set with cables and VT1,735 in coins. He was escorted to the police station and interviewed. The First Defendant admitted his involvement in the 2 breaking incidents and named the Second and Third Defendants as his accomplices. He said the Third Defendant Mark Andrew was the mastermind of the scheme.
6. The Second and Third Defendants were later arrested and interviewed. The Third Defendant Mark Andrew admitted stealing from the offices and sharing the contents of the wooden box at a ground near the Child Care Centre behind the Club Vanuatu building. He also accepted that the plan to steal from the offices was his "*decision*". The Second Defendant Lionel Damassing informally admitted taking part in the incident but under caution, elected to speak in Court.
7. Sentencing was originally fixed for Tuesday 24 August but was adjourned at defence counsel's request to enable a custom reconciliation ceremony to be performed by the Defendants on Wednesday 25 August 2010 and a report prepared on it for the benefit of the Court. I have received and read the report which has been most helpful. The custom reconciliation ceremony of "*klinim fes*" was organized and facilitated by the Probation Services who are to be commended for their efforts.
8. I note that from the report that each of the Defendants and their chiefs participated in the ceremony and a mat, yams and money were presented to the Director General of the Ministry of Internal Affairs as well the officers in charge of the Civil Status Office and the HRD Unit.
9. I am informed that the ceremonial presentations were accepted and the Defendants have been forgiven. You also received words of advice and encouragement from the elder present and you each apologized and promised to stay out of trouble in future. I am required by law, in assessing your penalties, to take into account any compensation or reparation made or on your behalf under custom.
10. I have also gleaned the following relevant personal information from each defendant's pre-sentence report:-



Mark Martin (aka Videl Metesas)

- Was born in 1994 in Vao Village, North Malekula and would have been 15 years of age at the time of offending;
- He is the third child in a family of 5 children;
- He attended school to class 6 and left due to financial problems;
- He has skills in building traditional natagura huts;
- His father passed away in 2005 leaving his mother to raise the family on her own;
- He came to Port Vila in search of employment with a view to helping his widowed mother;
- He lives under the protection of Chief Gojolito Antoine;
- He earns a small income as a kava bartender at Stade Nakamal;
- He is a first offender;
- He had a secondary role in the incident and merely followed what his co-defendants told him to do;
- He gave the police whatever share he received from the incidents when he was apprehended that same day;
- He has apologized for his actions and expressed a desire to change his life;

Lionel Damassing

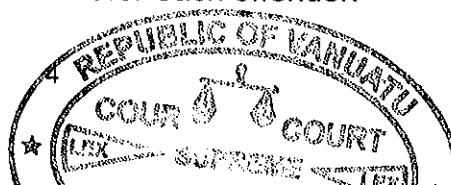
- Born on 1 January 1989 and would have been 20 years of age at the time of the incident;
- He is from Sisivi Village, West Ambrym and currently resides at Pangpang Village, in South East Efate;
- His father died when he was 5 years of age and he was raised by his mother with whom he has a close relationship;
- The defendant is relatively well-educated having completed both primary and secondary school as well as attending a Vanuatu Institute of Technology course in mechanical training which he did not complete owing to financial problems;
- He worked part-time with Kia Motors and is currently dependent on his mother for financial support;
- He has a previous conviction in 2006 for an unrelated sexual offence for which he received a prison sentence and was paroled in November 2007;
- He said he just followed his co-accused without thinking and committed the offences to obtain money to buy more alcohol;

Mark Andrew

- He was born on 20 August 1985 and is from Meriu Village in Tongoa;
- He completed primary school education up to class 6 and has skills in carpentry and electrical wiring;
- His parents divorced at an early age and he was raised by his grandfather;
- He resides with his defector partner and their 6 month old son at Ohlen Area, Port Vila;



- He is presently employed in the Maintenance Section of Airports Vanuatu Ltd. and is paying-off a plot of land at Bladinière Estate;
 - He has a previous conviction for a similar offence in July 2008 for which he received a suspended prison sentence and 24 months supervision;
 - He did not fully and willingly comply with his supervision sentence which had to be cancelled;
 - It was his idea to commit the present offences in order to obtain money to buy more alcohol. He claims he was under the influence of alcohol at the time of committing the offences;
 - He says he feels guilty for what he did and promises not to re-offend if he is given another chance;
11. Although this appears to be an opportunistic offence committed during the festive season and prompted by a desire to obtain money to purchase alcohol the fact that it was repeated even after the Defendants had obtained 2 full cartons of Tusker beer and a box of Vatu coins clearly shows that the purpose and motivation changed after the first offence.
12. I also accept that this was a joint criminal enterprise in which all 3 defendants willingly participated and benefited from. Having said that I also accept that Mark Andrew as the self-confessed leader and eldest of the Defendants must bear the greater responsibility. I also accept that Mark Martin and Lionel Damassing may be treated as first offenders whereas Mark Andrew is not. I also bear in mind that the premises that were broken into were unguarded and unoccupied office premises.
13. In a comprehensive and well thought-out submission prosecuting counsel proposes concurrent sentences of 2 years and 12 months imprisonment for the offences. The case of PP v. David Killion and Others [2004] VUSC 17 was also cited as a sentencing precedent. Counsel also properly conceded in my view that Mark Martin's custodial sentence should be suspended.
14. The sentence of this Court is as follows:-
- For the offences of Malicious Damage I impose on each defendant a sentence of 6 months imprisonment;
 - For the offences of Unlawfully Entering an Office I impose on each defendant, a sentence of 12 months imprisonment;
 - For the offences of Theft I impose a sentence of 18 months imprisonment;
15. All sentences are ordered to be served concurrently making a total sentence of 18 months imprisonment for each offender.



16. I am satisfied and accept however that the sentence of Mark Martin who is the youngest of the Defendants and a first offender who readily confessed to the police and surrendered all of his share of the stolen items, and who pleaded guilty at the earliest opportunity, should be suspended for a period of 2 years and I so order.
17. This means Mark Martin that you will not be returned to prison today. But if you are convicted of another offence in the next 2 years you will have to serve this sentence of 18 months imprisonment in addition to whatever sentence you may receive for your re-offending. I trust your brief experience of being remanded in prison has taught you a valuable lesson and I urge you to stay out of trouble and in future, pick your friends and associates more carefully. To help you in this latter regard I sentence you to 12 months supervision which a special condition that you undertake and complete any counseling programs directed by the Probation Office including the Niu Fala Rod Program.
18. Next, I turn to you Lionel Damassing. Like the first Defendant Mark Martin you are a young person with reasonable future prospects. The difference is that you have already been to prison and it is a shame that that experience does not appear to have deterred you from committing these offences. I accept you were led astray by an older person and I am willing to give you another chance to change your ways before it becomes too late for you. Don't waste this opportunity, it may be your last.
19. Your sentence of 18 months imprisonment is accordingly suspended for a period of 3 years and you too are warned not to re-offend in the next 3 years or you will be required to serve this sentence of 18 months imprisonment along with any other additional sentence that may be imposed for your re-offending. Whether you behave yourself in the next 3 years is entirely in your hands but to assist you to do so you are also sentenced to 2 years supervision with a special condition that you undergo counseling as directed by the Probation Service and you undertake and complete the Niu Fala Rod Programme.
20. I should warn you that failure to comply with the conditions of your supervision sentence is an offence for which you will be liable to a sentence of up to 2 months imprisonment or a fine of VT10,000 and if you are convicted for breaking your supervision order your suspended sentence will very likely be activated in full.
21. Finally, I turn to you Mark Andrew and I regret that it is neither possible nor appropriate to extend to you the same leniency that has been shown to your younger co-defendants. You were the eldest in the group and you should have led them away from crime. Instead, it was your idea to break into and steal from the government offices. I also note your less than impressive past record of failing to comply with the conditions of a previous supervision order.



22. In your case Mark Andrew I decline to order the suspension of any part of your sentence of 18 months imprisonment;
23. Each Defendant is informed of his right to appeal against this sentence if he does not agree with it within 14 days.

DATED at Port Vila, this 27th day of August, 2010.

BY THE COURT


D. FATIAKI
Judge.

