

OF

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

Criminal Case No. 148 of 2014

PUBLIC PROSECUTOR VS- ESAL WILLIE

Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Losana Matariki for the State
Jacob Kausiama, Public Solicitor for the Defendant*

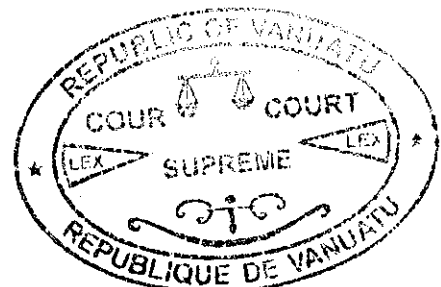
Date: *31st October 2014*

SENTENCE

1. Esal Willie you are for Sentence today for having pleaded guilty on 7th October 2014 to two charges of unlawful entry contrary to section 143 and to theft contrary to section 125 (a) of the Penal Code Act Cap. 135 ("*the Act*").
2. These are serious charges because unlawful entry into a dwelling house carries a maximum penalty of 20 years imprisonment and theft carries a maximum penalty of 12 years imprisonment.
3. The facts show you are 20 years old. Sometimes on 16th July 2014 upon his return home the complainant discovered that his house had been broken into and two rifles were taken from the house. He reported the matter to the police who investigated and arrested you. Upon questioning by Police you admitted going into the complainant's house without permission and taking the two rifles. You rode off on a bicycle but three people saw you with the rifles wrapped up in a piece of cloth. The police recovered one of the rifles from you but the other was not recovered.

You have conceded these facts.

4. Your victim is a foreigner living in Vanuatu. You entered his compound and his dwelling house and took his rifles away without permission or authority. You intended to deprive him permanently of his property. The properties are rifles or guns which can become deadly and dangerous weapons if they are not used or handled correctly.



5. For those factors the appropriate sentence for you has to be a custodial one to serve as-
- A deterrence to you and others,
 - A public disapproval or condemnation for your action,
 - Marking the seriousness of your offendings,
 - An adequate punishment.
6. I consider in light of the cases of PP v. Mafe [2011] VUSC 219 and PP v. Andrew [2011] VUSC 106 which are of course different in their facts and circumstances, that the starting point for you shall be 2 years imprisonment for unlawful entry and 2 years imprisonment for theft. These sentences however will run concurrently.
7. I have seen the mitigating factors made on your behalf by the Public Solicitor. I accept that you are entitled to a 1/3 reduction for your early guilty plea. Your concurrent sentence of 2 years is therefore reduced from 24 months to 16 months imprisonment.
8. I note that you are a young man of 20 years with no previous convictions. You cooperated well with the police and made full admissions and I note you are remorseful for your actions. For these factors the Court is of the view that your sentence should be suspended for a period of 2 years on good behaviour. That means that within a period of 2 years from this date, you must not commit these offences again or any other criminal offence against any Act, Regulation, Rule or Order. If you do, you will automatically go to prison to serve your 16 months imprisonment. This sentence is imposed under section 57 of the Act.
9. Further, to reflect the seriousness and the deterrence factors of your offendings, the Court accepts that you should, instead of go to prison immediately, do some community service.
10. Pursuant to section 58N of the Act the Court sentences you to 100 hours of community service. You must report in person to the Probation Office as soon as practicable, not later than 72 hours after this sentence is imposed, and as directed at any other time during the sentence for the purpose of monitoring the sentence.
11. I am aware you are currently in custody on remand. You are hereby released forthwith. I understand there is a bail application pending hearing and determination. That application is no longer necessary and is deemed withdrawn.
12. That is the sentence of the Court. You have a right of appeal within 14 days, if you so choose.

DATED at Port Vila this 31st day of October 2014
BY THE COURT


OLIVER.A.SAKSAK
Judge

