

**BETWEEN: Public Prosecutor**

**AND: Mark Filai**  
Defendant

*Date:* 23 July 2020  
*By:* Justice G.A. Andrée Wiltens  
*Counsel:* Mr L. Young for Public Prosecutor  
Mr S. Garae for the Defendant

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**SENTENCE**

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A. Introduction

1. Mr Filai pleaded guilty and accepted the summary of facts relating to 5 charges; 3 allege theft and two allege unlawful entry. The maximum sentence for theft is a term of 12 years imprisonment; and due to the nature of the premises unlawfully entered, the maximum sentence for that offending is 20 years imprisonment.

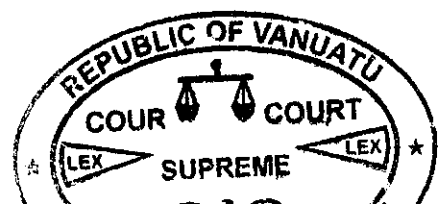
B. Facts

Charges 1, 3 and 5: Theft (x2) and Unlawful Entry

2. On 10 November 2019, in the Radio Station area, Luganville, Mr Filai entered the first complainant's dwelling house without authority and stole a guitar. The next evening he returned and stole 2 black speakers.

Charge 2 and 4: Theft and Unlawful Entry

3. On 27 March 2020, in the Radio Station area, Luganville, Mr Filai entered the second complainant's dwelling at around 11pm without authority and stole her Alcatel mobile phone. The second complainant saw Mr Filai and recognised him again the next day so as to be able to report him to the police.
4. When questioned, Mr Filai admitted the offending. He explained that he had on-sold the phone to a person called David from Ambrym. Subsequently David met with the second complainant and returned the phone to her. He wanted her to pay him the VT 3,000 he had paid to Mr Filai.



C. Aggravating Factors of the Offending

5. There are aggravating factors to the offending:

- The repeat nature of the offending – 5 criminal acts in an 5-month period;
- The offending occurred at night time; and
- All the offending involves dishonesty.

D. Mitigating Factors of the Offending

6. The police recovered all the stolen property, so the complainants will be slightly mollified. But there is still Vt 3,000 missing that Mr Filai has presumably spent.

E. Start Point

7. The lead offending is the unlawful entries. I set the start point for this offending, on a global basis taking all 5 offences into account, at 3 years imprisonment. I adopt a start point of 27 months imprisonment for the unlawful entry offences; with an uplift of 3 months for each of the thefts.

F. Personal Factors

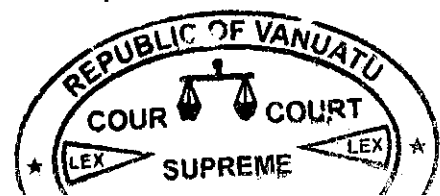
8. Mr Fila's pleas were entered at the first available opportunity. On the other hand, the evidence against him was exceedingly strong, especially after his admissions. The discount I am prepared to allow is one of 25%.
9. Mr Filai is 22 years of age. He lives with his pregnant de facto partner. He is unemployed and makes his living by gardening. He explains the offending is due to a lack of income.
10. He has no previous convictions and claims to be remorseful. However 5 offences of dishonesty do not sit well with such claim. Further, the PSR reports earlier indiscretions have resulted in custodial remands, even though no convictions were entered. Mr Filai also claimed to be on good terms with his local Chief, but the Chief disputed that and advised he was unsure that Mr Filai had learnt anything by the experience of having been arrested and remanded in custody, or from his earlier brushes with the law.
11. A custom reconciliation ceremony has not been undertaken, but Mr Filai has indicated willingness. The PSR writer considers he remains at medium risk of further offending.
12. For his personal circumstances, the sentence start point is further reduced by 3 months.

G. End Sentence

13. Taking all of those matters into account, the end sentence is 24 months imprisonment. I impose that on the unlawful entry charges, and 6 months imprisonment on each of the theft charges. All the sentences are to be concurrent, and the sentences are to run as from 1 July 2020 to reflect the 3 weeks or so Mr Filai has already served.

H. Suspension

14. It would be entirely wrong to suspend this sentence in whole. However, I am prepared to suspend some of the sentence. Accordingly 12 months of the sentence is to be suspended for 3 years. Mr Filai needs to serve the



remainder, namely 12 months. He also needs to stay offence-free for the next 3 years to avoid having to serve the balance of his sentence.

15. By suspending half the sentence, I am satisfied there is a deterrent element to the sentence, as well as holding Mr Filai accountable for his wrong-doing. Further, the short sentence he actually must serve means his rehabilitation prospects will not be dimmed by a lengthy spell of imprisonment.

I. Other

16. Mr Filai has 14 days to appeal this sentence if he disagrees with it.

**Dated at Luganville this 23rd day of July 2020**

**BY THE COURT**

*G.A. Andrée Wiltens*  
Justice G.A. Andrée Wiltens

