

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

Criminal  
Case No. 20/488 SC/CRML

**BETWEEN: Public Prosecutor**

**AND: Thomas Kalo**  
Defendant

Date: 12 March 2020  
By: Justice G.A. Andrée Wiltens  
Counsel: Mr D. Boe for the Public Prosecutor  
Mr S. Garae Jnr for the Defendant

---

**SENTENCE**

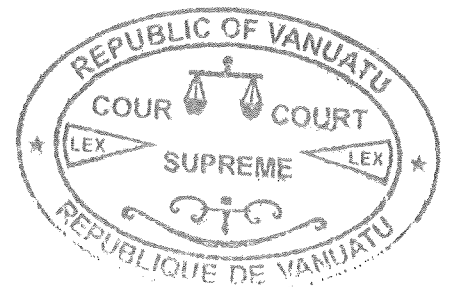
---

A. Introduction

1. Thomas Kalo has pleaded guilty to unlawful entry (x3) and theft (x3). The maximum sentence for these offences are terms of 20 years and 12 years imprisonment, respectively. They are very serious offences.

B. Facts

2. In September 2019, Thomas unlawfully entered a house in the Palm Estate area of Luganville at nighttime and stole a pair of binoculars, a drone, a video camera and a bottle of red wine.
3. On 2 October 2019, Thomas unlawfully entered the same house at Palm Estate at nighttime and stole a bundle of keys and a set of headphones.



4. On 3 November 2019, Thomas again unlawfully entered the same house at Palm Estate at nighttime and stole a .22 rifle, an I-pad, a laptop, a speaker and VT 20,000 cash.
5. When interviewed by the police Thomas made full admissions.

C. Aggravating/Mitigating Factors to the Offending

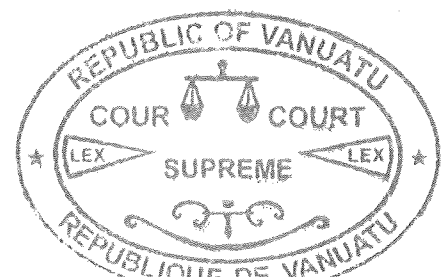
6. The repeat nature of the offending is an aggravating factor; also that the offending occurred under the stealth of darkness. It is further aggravating to target the same home on 3 separate occasions over a 3 month period.
7. The fact that all the stolen goods have been recovered is a mitigating factor of the offending.
8. The start point that I would ordinarily adopt as appropriate for this offending and the criminal culpability involved is one of 3 years imprisonment. Not only is the offending serious, but the complainants have a right to feel aggrieved by virtue of the repetitive nature of the offending.
9. It is important that Thomas realizes how serious his offending is, and recognizes the effects his criminal conduct has on those most affected, namely the complainants. His parents also are entitled to feel let down – I have little doubt they did not raise Thomas to act in this way.

D. Personal Factors

10. Thomas is but 14 years old. He is a student in Year 9 at a local school. He resides with his parents in the Showgraon area of Luganville. He has no previous convictions. As a result of this offending, he has experienced being incarcerated for a day – it is to be hoped he learnt from that experience.
11. There has to date been no custom reconciliation ceremony.
12. Thomas' pleas were entered at the earliest possible opportunity. Accordingly, a discount for that is usually allowed to reflect the saving of Court time and expense as well as the remorse indicated by the pleas – up to a maximum of one-third, depending on the strength of the prosecution case.

E. Youth Factors

13. Due to Thomas' age, section 54(1) of the Penal Code has application. That requires the Court to sentence a person under the age of 16 years to imprisonment only if there is no other appropriate method of punishment. Further, if the ultimate sanction of imprisonment is imposed, the Court is obliged to set out the reasons for adopting that course.
14. Vanuatu is a signatory to The Convention on the Rights of the Child. Article 37 of that Convention stipulates that the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used as a measure of last resort and for the shortest appropriate period of time. The Convention also requires every child alleged to



have infringed the criminal law to be treated in a manner which takes into account the "...desirability of promoting the child's reintegration and the child's assuming a constructive role in society".

15. The Courts have frequently stated that where young offenders are to be sentenced, the sentencing principles of reformation and rehabilitation should be the foremost considerations, even when the offending can properly be regarded as very serious: *Heromanley v PP* [2010] VUCA 25 and *PP v Malkorkor* [2015] VUSC 147.
16. An added consideration is that there are currently no facilities for separately incarcerating young offenders in Vanuatu. I note that Article 37 of the Convention on the Rights of the Child sets out a presumption that every child deprived of his/her liberty shall be separated from adults. This is not currently possible in Vanuatu.
17. There are also numerous authorities dealing with the specific discounts available to young offenders. This relates to the scientifically established position that there are significant neurological differences between young persons and adults – and seemingly more so in the case of young males than young females. The New Zealand Court of Appeal authority of *Rolleston v R* [NZCA] 611 expounds on this.

F. Sentence

18. The reasons for Thomas' offending are unclear. However the intervention, at this stage, of the law should be such as to clearly afford him as much assistance as possible in reforming and rehabilitating. To that end I see no merit in entering convictions, and those convictions remaining as part of his persona for the next several years until they are expunged from his record.
19. Taking all the above considerations into account, the end sentence that I impose on Thomas is pursuant to section 42 of the Penal Code to order Thomas to come up again before the Court for sentence if called upon within a period of 2 years. Accordingly, there is no sentence imposed for these 6 offences at this stage – and indeed, if Thomas does not reoffend in any way in the next 2 years he will not be sentenced for this offending. However, if Thomas does re-offend in any manner, he will be called up to be sentenced for these offences – as well as any other sentence he may receive.
20. I deal with these current offences in this way on condition that Thomas undertakes and satisfactorily completes 12 months of supervision.
21. Thomas has 14 days in which to appeal this sentence if he does agree with it.

**DATED at Luganville this 12th day of March 2020**

**BY THE COURT**

  
Justice G.A. Andrée Wiltens

