

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

Criminal
Case No. 21/2500 SC/CRML

BETWEEN: Public Prosecutor

AND: Linda Poindy
Defendant

Date: 22 April 2022
By: Justice G.A. Andrée Wiltens
Counsel: Mr L. Young for the Public Prosecutor
Mr B. Livo for the Defendant

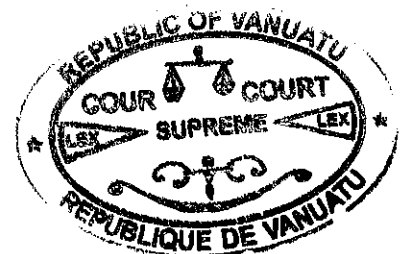
Sentence

A. Introduction

1. Ms Poindy pleaded guilty to 21 charges of theft.

B. Facts

2. In June 2006, Ms Poindy was the Port Vila branch manager of the National Bank of Vanuatu ("NBV"). She was terminated from that position in July 2007.
3. An internal NBV investigation revealed that, between June 2006 and May 2007, Ms Poindy had used and/or transferred NBV funds from various general ledgers to defraud NBV of a total of VT 3.488 million; and subsequently made false entries to disguise the defalcations.
4. When interviewed by the police in September 2008, Ms Poindy made full admissions.

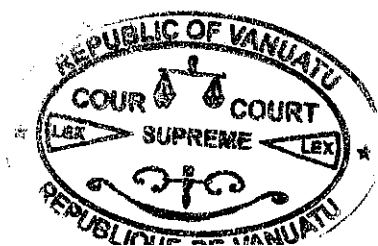


C. Sentence Start Point

5. The sentence start point is to be assessed by having regard to the maximum penalty available for the offending and factoring in the aggravating and mitigating aspects of the offending.
6. The maximum penalty for theft is 12 years imprisonment. The main authority in Vanuatu relating to theft of this magnitude is *Hinge v PP* [2019] VUCA 39, which approved of the general tariffs set out in *PP v Mala* [1996] VUSC 22.
7. The offending is aggravated by:
 - The number of dishonesty offences committed over a period of 11 months;
 - The premeditation and planning involved, including repeated attempts at concealment
 - The large amount of money stolen and complete lack of reparation to date; and
 - The gross abuse of trust involved as a branch manager towards her employer.
8. There is no mitigation to the offending.
9. I adopt a sentence start point of 4 years imprisonment, taking all the offending into account on a global concurrent basis.

D. Mitigation

10. Ms Poindy was charged with this offending on 21 July 2021. She pleaded guilty, although not at the first opportunity, on 25 March 2022. The evidence against her was overwhelming, including her admissions. Accordingly, the mitigation available for Ms Poindy's relatively early guilty pleas is set at a reduction of 20% from the sentence start point.
11. Ms Poindy is 43 years old, married with 3 children, all of whom are still being educated – two are still at school, one is at University. Her husband's work requires frequent travel so she is largely responsible for caring for the children. She has been employed for the past 2 years with the Ministry of Public Utilities.
12. Ms Poindy has no previous convictions; nor has there been any further offending following these events. She is remorseful, although there has been no custom reconciliation ceremony. Ms Poindy has offered to pay reparation at the rate of VT 50,000 per month, which offer is accepted by NBV.
13. For these personal factors, I further reduce the sentence start point by 8 months.
14. Finally, there has been an extraordinary delay in the laying of the charges. During that 13-year period, Ms Poindy's life has undoubtedly been affected, due to the uncertainty of her position. In the circumstances, there will be a further deduction from the sentence start point of 12 months.



E. End Sentence

15. Ms Poindy's end sentence is 18 months imprisonment.
16. The seriousness of the offending would ordinarily militate against suspension of sentence. However, this is no ordinary case; it is an exceptional one.
17. Firstly, I take note of the unexplained 13-year delay in the laying of the charges. Secondly, I note further that there has been no further offending since mid-2007, which is significant. Thirdly, I accept Ms Poindy's offer of reparation, and that requires her to be able to continue to work.
18. Those factors, taken together with Ms Poindy's personal circumstances, satisfy me that, most unusually, the sentence for this series of very serious charges ought to be suspended.
19. Accordingly, on all charges concurrently, Ms Poindy is sentenced to 18 months imprisonment suspended for 2 years. She needs to remain offence-free for 2 years from today to ensure she does not need to serve the period of 18 months imprisonment for this offending.
20. Additionally, she is ordered to make full reparation to NBV of VT 3.488 million at the rate of VT 15,000 per fortnight, by way of automatic deductions from her bank account. The first such payment is to be made on 29 April 2022, with further similar payments every second Friday thereafter until the full amount stolen has been repaid.
21. Ms Poindy has 14 days to appeal the sentence.

Dated at Port Vila this 22nd day of April 2022
BY THE COURT


Justice G.A. Andrée Wiltens

