

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

BIONI VARAVARA

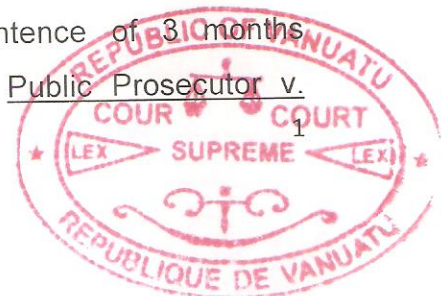
Mr Justice Oliver A. Saksak

Mr P. Wirrick for Public Prosecutor
Miss J. Tari for Defendant

Date of Sentence: 21st August 2012

SENTENCE

1. Bioni Varavara, you pleaded guilty to one count of unlawful possession of cannabis contrary to section 2(62) of the Dangerous Drugs Act Cap 12.
2. This is a serious offending because Parliament has placed the maximum penalty of a fine not exceeding VT100 Million or imprisonment for a term not exceeding 20 years or to both such fine and imprisonment.
3. On 20th April 2012 at around 7 O'clock a.m at your residence at Radio Station area you were seen by a relative of yours cutting up some cannabis leaves into smaller pieces with a scissors. You tried to hide the leaves. Your uncle Keith Ninisia took the leaves to the Police. The Police arrested you on 24th April 2012. The leaves were tested and were confirmed to be cannabis leaves. You do not dispute those facts.
4. The weight of the leaves were not given. However the Police took a photograph (1). There is no doubt it is quite a large quantity. By comparison and basing on assumption it may fall within the same quantity as in the Sope Case. In that case, the Court of Appeal upheld the Supreme Court sentence of 3 months imprisonment suspended for 12 months. The case of Public Prosecutor v.



Kalsakau [2010] VUSC 47 was a case where the defendant had some seeds, dried leaves and 2 joints wrapped together which in total would amount to a far larger quantity than in the Sope Case, but the defendant was given a discharge. What I think contributed to that decision were the defendant's remorse and apology for his conduct. Your case is clearly distinguished from Kalsakau's Case lacking those two factors.

5. Your Pre-Sentence Report shows:-

- (a) You date of birth at 28th July 1998. This inconsistent with your date of birth given on your Registration of Birth being 12th September 1997. The latter may be the correct date but is still doubtful without the Municipal Record and the Hospital Records to verify the date of your birth. This document was only issued on 26th June 2012 after the Court expressed its view to see a document to that effect on 25th June 2012.
- (b) You left college at year 9 in 2009. You would have been 14 years at that level.
- (c) You have said that you started smoking marijuana when you were 14 years old (page 2, 9th paragraph, last sentence). Surely, that could not be referring to April 2012 when you were caught preparing the leaves by your uncle. And the first sentence of the first paragraph on page 2 asserts that you are 14 years old. These statements do not make sense and are inconsistent, creating doubt over your age. Working on the assumption or premise that in 2009 you were 14 years old, then you would in 2012 be around 16 or 17 years old.
- (d) You use and smoke marijuana four times in a week in the mornings and evenings.
- (e) You are aware consuming marijuana is against the law of Vanuatu and that it can have negative impact on your health but you have made no attempts to



refrain from consuming it. (See page 3, paragraph 2). This would make the sentence of a discharge (according to Kalsakau's Case) and a Community Work Sentence as recommended, as unworkable and impracticable.

6. I am therefore of the view that a custodial sentence is necessary as a deterrence. I feel inclined to impose a suspended sentence but that would merely be an academic exercise because you have committed other offences for which you have been charged and pleaded guilty in Criminal Case No. 32 of 2012, for which I can indicate to you at this stage that you will certainly be sent to prison.
7. I do not accept that you are only 14 years old. My belief is that you are around 17 years old. Section 17 of the Penal Code Act as submitted by defence counsel does not apply to you. The convention on the rights of children, as submitted has some relevance but it does not give you absolute protection from being punished according to law.
8. For reasons stated, the Court convicts you and sentences you to a term of imprisonment for a period of one (1) month. This sentence will run concurrently with any other sentences of imprisonment imposed for your other offendings in Criminal Case No. 32 of 2012.
9. That is the sentence of the Court. You have a right of appeal within 14 days if you so choose.
10. I order the destruction of cannabis leaves or substance held by the Police within 7 days from today.

DATED at Luganville this 21st day of August 2012.

BY THE COURT


OLIVER A. SAKSAK
Judge

