

**IN THE SUPREME COURT  
OF THE REPUBLIC OF VANUATU  
(CRIMINAL JURISDICTION)**

**CRIMINAL CASE NO. 101 OF 2014**

**PUBLIC PROSECUTOR**

**V**

**LUKE SLAY**

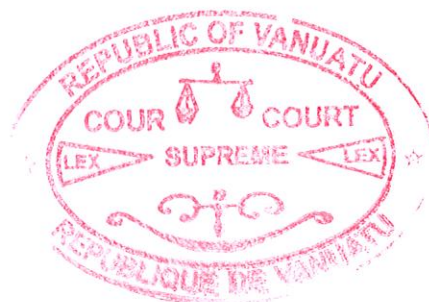
**Coram: Justice Mary Sey**

Counsel: Damien Boe for the Public Prosecutor  
Brian Livo and Stephen Carlo (PSO) for the Defendant

Date of Decision: 20 February 2015

### SENTENCE

1. **Luke Slay** you appear today for sentencing having been convicted on 18<sup>th</sup> February 2015 upon your own guilty plea to one count of Cultivation of Cannabis contrary to section 4 of the Dangerous Drugs Act [CAP 12].
2. No dispute is taken with the summary of the facts presented by the prosecutor. Sometime in or around the month of February 2010, some police officers had received information that you had cultivated a number of cannabis plants at your premises at Rory village, Malekula. They found and uprooted 6 stems of plants. A report showed that the plants they had taken were cannabis with a total weight of 55 grams.
3. Sentencing guidelines for cannabis cultivation offending can be found in the case of **Columbus Wetul v Public Prosecutor** [2013] VUCA 26 where the Court of



Appeal adopted the three broad categories which were applied by the Court of Appeal of New Zealand in **The Queen v Maria Dallas Terewi** [1999] 3 NZLR 62.

4. In the **Wetul** case, the Court of Appeal considered it appropriate to divide cannabis cultivation offending into three categories:

*"Category 1 consists of the growing of a small number of cannabis plants for personal use by the offender without any sale to another party occurring or being intended. Offending in this category is almost invariably dealt with by a fine or other non-custodial measure. Where there have been supplies to others on a non-commercial basis the monetary penalty will be greater and in more serious cases or for persistent offending a term of community work and supervision or even a short custody term may be merited. (It is to be noted in this connection that there is no separate offence in relation to section 4 offence of cultivation for supplying or possession for supply, as opposed to importation, sale, supply or possession (s.2).*

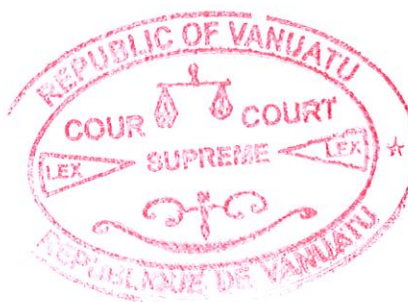
*Category 2 encompasses small-scale cultivation of cannabis plants for a commercial purpose, i.e. with the object of deriving profit. The starting point for sentencing is generally between two and four years but where sales are infrequent and of very limited extent a lower starting point may be justified.*

*Category 3 is the most serious class of such offending. It involves large-scale commercial growing, usually with a considerable degree of sophistication and organization. The starting point will generally be four years or more.*

*The Court went on to state that: "It is to be understood that the border-line between each category may in specific cases be indistinct and sometimes incapable of exact demarcation. The numbers and sizes of plants are relevant factors for each category depending on the circumstance of each case.*

*However, although relevant, they may not be an adequate guide where intensive cultivation methods are being employed with a view to enhancing the yield of usable cannabis for example by producing plants with higher narcotic levels."*

5. Defence counsel submits that your case falls under category 1 and that offending in this category is almost invariably dealt with by a fine or other non-custodial measure.



6. There are mitigating factors including the fact that you entered an early guilty plea. You are 38 years old and you got married 15 years ago. You have 3 children. One attends College de Luganville in year 12 and the other two attend primary school in Malekula. You have demonstrated remorse for your offending and you do not have any previous convictions.
7. In arriving at my sentence, I have considered all the aggravating and mitigating factors presented in the submissions by the prosecutor and defence counsel. Be that as it may, I am also mindful of the fact that the cultivation and growth of cannabis in Vanuatu needs to be denounced by the Court. This is a serious charge that carries a fine of VT100,000,000 or a maximum term of imprisonment of 20 years or both.
8. I accept defence counsel's submission that your offending falls at the low scale of category 1 as outlined above. You planted 6 stems of cannabis and no evidence has been adduced before Court that they were for supply or commercial purposes.
9. I am therefore sentencing you to 12 months imprisonment suspended for a period of 2 years. In addition, you are sentenced to 40 hours community work.
10. The Court also orders that the cannabis found in possession of the defendant be condemned in accordance with section 18 (1) (b) of the Dangerous Drugs Act [Cap 12].
11. You have 14 days within which to file a notice of appeal against this sentence if you do not like it.



Dated at Lakatoro, Malekula this 20th day of February, 2015.

BY THE COURT

  
**M.M. SEY**  
Judge

