

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

Criminal
Case No. 19/888 SC/CRML

PUBLIC PROSECUTOR
v
JIMMY IAUMA IARUEL

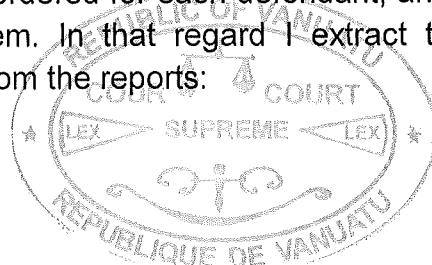
Criminal
Case No. 19/889 SC/CRML

PUBLIC PROSECUTOR
v
WILLY KARISO

Before: Justice Fatiaki
Appearance: L. Young for the State
H. Rantes for the Defendants
Date of Sentence: 14 June 2019

SENTENCE

1. Although the defendants were charged and committed separately, their cases are so closely related that it is convenient to sentence them together given the common elements including: the identical charges of Possession of Cannabis; the fact that the defendants were arrested together in the same police operation and both pleaded guilty ("*i tru*") at their arraignment on 10 June 2019. The only difference between them is in the quantity of cannabis found on them. In **Jimmy Iaruel's** case it was **1 gram** of dried cannabis and in **Willy Kariso's** case it was **41 grams**.
2. The brief facts are that on 25 February 2019 a police patrol team acting on information went to Bethel Village and arrested the defendants after dried leaves was recovered from their trouser pockets. The defendants were escorted to the Police Station and the dried leaves were chemically tested and returned a presumptive test result which was positive for cannabis. The cannabis was then weighed.
3. Upon their conviction pre-sentence reports were ordered for each defendant, and I am grateful for the information provided in them. In that regard I extract the following personal details and mitigating factors from the reports:

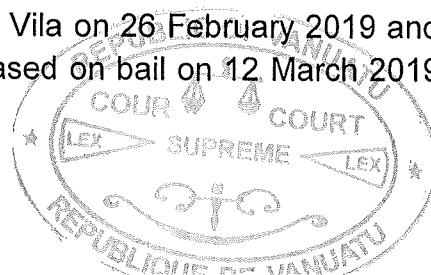


Jimmy lauma laruwel

- He was born on 16 August 1993 and would have been 26 years at the time of the offence. He is originally from Iauknawauk Village, West Tanna;
- He never attended school and can't read or write. He is married with 3 children and his wife is pregnant to their fourth child. He is a sole bread-winner and provides for his family's needs through subsistence farming and selling his produce in the market;
- He maintains good relations with his chief and the community and is considered a hard worker;
- He is a first time offender and expressed his remorse to the probation officer and promises in future, to stop using cannabis and instead, concentrate on his family's welfare;
- He pleaded guilty at the first opportunity and has sincerely apologised to his parents, the police and his chief;
- He had one (1) gram of cannabis in his possession;

Willy Kariso

- He was born on 31 January 1999 and would have just turned 20 years at the date of the offence. He is from Loukatai Village, West Tanna, and resides under the care of his parents;
 - He is currently a Year 13 boarder at Tafea College doing an Arts course. He hopes to pursue his studies to tertiary level and he is considered an above-average student;
 - He maintains good relations with his chief, his school administration and his parents. He is considered a bright young man with good future prospects;
 - He told the probation officer that he suffered depression and first became involved with cannabis in 2013 when his name was left off the list of students who were selected to continue their studies at Lycée LAB in Port Vila. That was when he came under the influence of his peer groupings and learnt about cannabis;
 - He bought the **41 grams** of cannabis found in his possession from the boys at Loukatai Village for his personal use;
 - He is a first time offender and pleaded guilty at the earliest opportunity. He expressed his remorse to the probation officer and apologised to his parents. He promises not to continue using cannabis.
4. Both defendants were remanded in custody to Port Vila on 26 February 2019 and remained in custody for 2 weeks before being released on bail on 12 March 2019



when the file was re-transferred back to the Magistrate's Court, Tanna for committal on 26 March 2019.

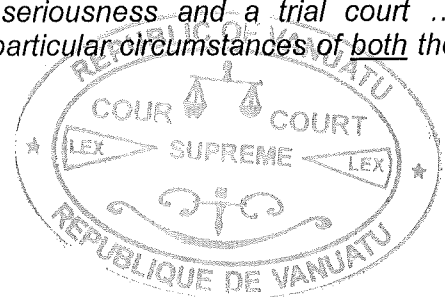
5. The sentencing of young offenders is never an easy exercise but the overriding public interest is not in doubt and is eloquently articulated by the Acting Principal of Tafea College when he said in support of Willy Kariso's bail application:

"The College is also aware of the legal framework of the law. The College main concern is Kariso's education. Let us all respect the law of our country but we must also give our children a chance to realise their mistake or weakness. The nation needs our children for tomorrow's future".

(see also: Heromanley v Public Prosecutor [2010] VUCA 25 at paras. 17 and 18 and Tabeva v Public Prosecutor [2018] VUCA 55 at paras. 43, 44 and 47).

6. Prosecuting counsel without identifying any aggravating factors, submits that a short suspended sentence of between 4 to 6 months imprisonment "*is appropriate*" in the of case both defendants.
7. Defence counsel also agrees that "*the appropriate sentence for possession of prohibited substance and materials is one of suspended sentence and 150 hours of community work*".
8. However neither counsel referred to the two (2) weeks that the defendants were remanded in custody in Vila away from their homes and families and the salutary lessons that would have taught them about the isolation and harshness of prison life which hopefully they are unlikely to forget for some time. The stigma of their convictions and having a criminal record should not be ignored either.
9. Furthermore, it is not suggested that either defendant was a cultivator of cannabis or had intended to sell the cannabis recovered from their possession or that the cannabis was of a commercial quantity not solely intended for personal consumption.
10. I accept that Jimmy Iaruel's possession of one (1) gram of cannabis is less serious than the 41 grams recovered from Willy Kariso's trouser pocket, but, equally Willy Kariso's relative youth and good future prospects are strong mitigating factors that militate against the imposition of an immediate custodial sentence.
11. As the Court of Appeal said in Tukoro v Public Prosecutor [1999] VUCA 9:

"Drug offences like any other offences against the criminal law are capable of being committed with varying degrees of culpability and seriousness and a trial court ... sentencing an offender must always bear in mind the particular circumstances of both the offending as well as the offender".



12. In light of the foregoing I do not propose to undertake the sentencing exercise suggested in Kal Andy's case, instead, I sentence the defendants as follows:
- **Jimmy lauma laruel** is sentenced to 12 months Supervision with a special condition that he attend a drug awareness and rehabilitation program directed by his probation officer. He is also ordered to perform 50 hours of Community Work.
 - **Willy Kariso** is sentenced to 12 months Supervision with a special condition that he attend a drug awareness and rehabilitation program directed by his probation officer and he is further ordered to perform 80 hours of Community Work.
13. The 42 grams of cannabis recovered from both the defendants is forfeited and condemned for destruction within 7 days.
14. Each defendant is advised that he has 14 days to appeal his sentence if he disagrees with it.

DATED at Isangel, Tanna, this 10th day of June, 2019.

BY THE COURT



D. V. FATIAKI
Judge.