

BETWEEN: The Public Prosecutor
Prosecutor

AND: Mali Bwibwi
Defendant

Coram: Justice Aru
Counsel: Ms. M. Taiki the Public Prosecution
Mr. R. Willie for the Defendant

SENTENCE

Introduction

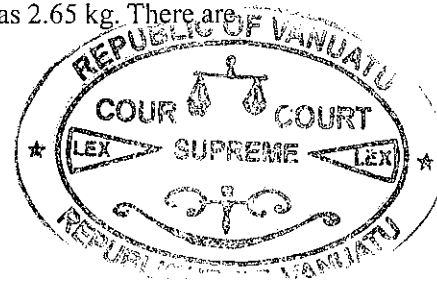
1. Mr Mali Bwibwi pleaded guilty to one count of cultivation of cannabis and one count of possession of cannabis.

The facts

2. On 4 April 2021, the complainant a police officer and Sergeant Peter Solwie were attending to a crime scene investigation at the defendant's house at Monix Hill when they discovered a garden of plants, seedlings in a red container and dried leaves suspected to be marijuana plants and a nursery.
3. The tallest of the plants measured 246 cm and shortest was 5 cm .In total there were 54 plants and 93 seedlings in a red dish. A cannabis presumptive test carried out on the dried leaves showed that the plants weighed 2.65 kgs and positively identified to be cannabis.
4. When the defendant was arrested and cautioned he admitted the offending that he had started planting marijuana in 2017. He admitted that he sells some and keeps some for his personal use.

Starting point

5. The maximum penalty for cultivation and possession of cannabis is a fine not exceeding VT 100 million or term of imprisonment not exceeding 20 years or to both fine and imprisonment.
6. The offending in this case is aggravated by the number of plants inclusive of seedlings which total around 147 plants and the net weight of the dried leaves was 2.65 kg. There are no mitigating factors of the offending.



7. This case falls at the lower end of the scale in Category 1 of the three broad categories of offending of this type identified by the Court of Appeal in *Wetul v Public Prosecutor* [2013] VUCA 26. The defendant is only charged with cultivation and possession of cannabis. The starting point of sentence is therefore 12 months imprisonment to be concurrent for both counts.

Personal factors

8. A guilty plea was entered at the first available opportunity. Considering the strength of the prosecution case had the matter been tried I will allow a deduction of 25 percent for the guilty plea.
9. The Same Day Report states that the defendant is now 31 years old and completed his primary education at Santo East school before moving on to Matevulu College to do year 7 and 8. He also attended Rowhani School. He lives by himself at Monix Hill and earns his incoming from gardening. His chief told the probation officer that the defendant does not involve himself in community activities and prefers to be by himself and involves in using and cultivating marijuana. He is a member of Bahai Faith.
10. As the defendant has spent some time in custody, his sentence is further reduced by 2 months.

End sentence

11. The end sentence is therefore 7 months imprisonment to be concurrent. Considering the nature and circumstances of the offending I will suspend the sentence for a period of 2 years. Should the defendant reoffend during this time, the suspended sentence will be reactivated to be served in custody.
12. In addition the defendant will perform 70 hours of community work.
13. The defendant has 14 days to appeal if he is not happy with the decision.

DATED at Luganville this 18th day of June, 2021

BY THE COURT

D. Aru
Judge

