

PUBLIC PROSECUTOR

v

BEX TAVO WEA

Date of Plea: 24 May 2024
Date of Sentence: 9 July 2024
Before: Justice M A MacKenzie
Counsel: Ms. S. R. Langon for the Public Prosecutor
Mr. H. Vira for the Defendant

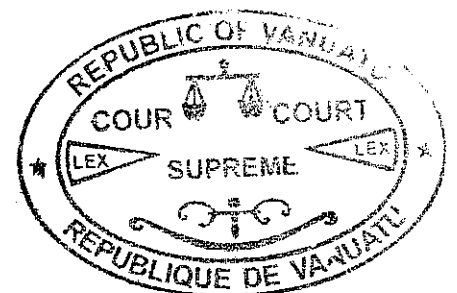
SENTENCE

Introduction

1. Mr Bex Wea, you appear for sentence having pleaded guilty to one charge of cultivation of cannabis. The maximum penalty is 20 years imprisonment, or a fine not exceeding VT 100 million or both.

The Facts

2. On 31 January 2024, police received information that you were cultivating cannabis in a garden behind you house in the Bukura Area. When Police arrived, they located 4 chopped cannabis plants. Testing confirmed the plants were cannabis and had a total net weight of 30.8 kg.
3. You told Police that you did not plant the cannabis plants; rather a relative did. You also said that the seeds may have fallen off the cannabis plants your relative had. Your involvement was to look after the plants. You chopped the plants because you were aware that the Police had been called.
4. You apologised for looking after the plants until they got bigger.



Sentencing purposes/principles

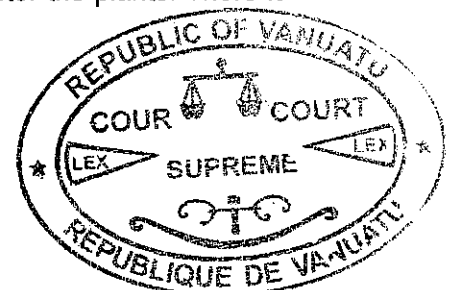
5. The sentence I impose must hold you accountable and must denounce and deter your conduct given that you were cultivating cannabis, which causes social harm. The sentence should ensure you take responsibility for your actions, and help you to rehabilitate. It must also be generally consistent.

Approach to sentence

6. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

Starting point

7. The first step is to set a starting point.
8. The aggravating factors here are you deliberately cultivated the cannabis by looking after it. Also, the quantity is significant, being 30.8 kg. While it involved a modest number of plants, they must have been mature given the net quantity of cannabis.
9. There are no mitigating features of the offending itself.
10. There is a guideline case for cannabis cultivation, *Wetul v Public Prosecutor* [2013] VUCA 26. There is no direct evidence of cultivation for a commercial purpose, but I infer that you must have been looking after the plants to make money, given the large quantity of cannabis involved. The offending here falls within category 2 of *Wetul*.
11. Both counsel have made written submissions as to the appropriate starting point, and referred the court to a number of cases. I do not intend to refer to them in detail. That is because very recent sentencing patterns in the Supreme Court would indicate a hardening in the approach to sentencing for cultivation of cannabis. I refer to *Public Prosecutor v Leo*, *Public Prosecutor v Lulu* and *Public Prosecutor v Medias*. In each of these cases the starting point set was 3 years imprisonment, for cultivation of a greater number of plants, but weighing less than the cannabis plant material in the present case. In *Leo*, there were 41 plants with a net weight of 5.90 kg. In *Lulu*, there were 67 plants, with a net weight of 5.30 kg. In *Medias*, there were 198 plants, with a net weight of 8.50 kg.
12. Here, the number of plants is much less than the 3 cases I have referred to, but the net weight of the plants is much higher. I consider that role is relevant to setting a starting point, in addition to quantity. Your role was limited to looking after the plants. There is



no suggestion you planted them but you did make a conscious decision to look after them, knowing they were cannabis and as said, the quantity is beyond mere personal use by anyone.

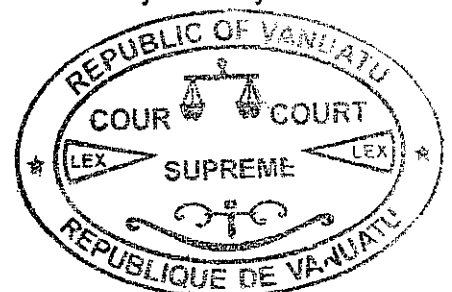
13. Given that I assess your role to be limited, and more limited than the defendants in the 3 cases discussed above, I adopt a starting point of 2 and a half years imprisonment.

Guilty plea and personal factors

14. You are entitled to a one-third discount for your guilty plea. That equates to a discount of 10 months from the starting point.
15. You are aged 33 years and a first offender. You are described as a respectful and responsible person in the community.
16. The Probation report notes that you are remorseful. I accept it is genuine.
17. You have good support in the community and have goals to help your daughters have a good education and to build them a house.
18. For these personal factors, I give you a further discount from the starting point of 3 months, which equates to 10 %.

End Sentence

19. The end sentence is 17 months imprisonment.
20. You were remanded in custody for a period of 2 weeks, between 5 February and 19 February 2024, an effective sentence of one month's imprisonment. This was the calculation applied recently by Trief J in *Public Prosecutor v Saly* [2024] VUSC 112. So, I reduce the sentence by a further month.
21. The sentence is adjusted to 16 months imprisonment.
22. Your counsel asks that the sentence be suspended pursuant to s 57 of the Penal Code. Taking into account the circumstances, the nature of the offending and your character, I have decided to suspend the sentence. The net weight of the cannabis was significant, but you are a first offender, your role was limited, you are remorseful, accept responsibility and have good community support. Your prospects of rehabilitation are good in all the circumstances. Therefore, I suspend the sentence for 2 years. If you



offend again in the next 2 years, you will need to serve the sentence of imprisonment in addition to any other penalty that may be imposed for the further offending.

23. In addition, you are ordered to complete 80 hours of community work and 6-month supervision. Such a combination of sentences will meet the sentencing needs, including accountability, and reflect the quantity of cannabis involved.
24. The cannabis material is to be destroyed.
25. You have 14 days to appeal.

**DATED at Port Vila this 9th day of July
BY THE COURT**

Mackenzie
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Justice M A MacKenzie

