

PUBLIC PROSECUTOR

v

WELLS AKIRO

Date of Plea: 17 June 2024
Date of Sentence: 10 July 2024
Before: Justice M A MacKenzie
Counsel: Mr. C. Shem for the Public Prosecutor
Ms. B. Taleo for the Defendant- via zoom link, Santo Courthouse
Defendant- via zoom link, Santo Courthouse

SENTENCE

Introduction

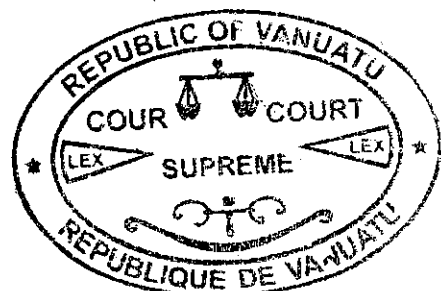
1. Mr Wells Akirio, you appear for sentence having pleaded guilty to one charge of cultivation of cannabis. The maximum penalty is 20 years imprisonment, or a fine not exceeding VT 100 million or both.

The Facts

2. On 8 November 2023, 6 cannabis plants were uprooted from your garden in South Santo. Testing confirmed the plants were cannabis, with a total net weight of 0.75 kg.
3. You admitted planting the cannabis plants sometime in July 2023.

Sentencing purposes/principles

4. 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

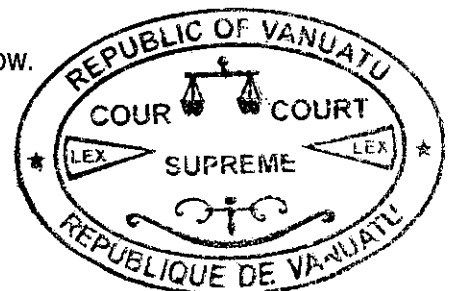
5. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

Starting point

6. The first step is to set a starting point.
7. The aggravating factors here are that you deliberately cultivated the cannabis, and the cannabis plants had a net weight of .75 kg.
8. There are no mitigating features of the offending itself.
9. There is a guideline case for cannabis cultivation, *Wetul v Public Prosecutor* [2013] VUCA 26. Here, the cultivation involved 6 plants for personal use. There is nothing to suggest cultivation for a commercial purpose. While the net weight of the plants is moderately serious, the offending here falls within category 1 of *Wetul*. So, the usual sentencing outcome would be a fine or other community-based sentence, or a short custodial sentence.
10. Both counsel have filed written submissions as to the appropriate starting point. The recent sentencing decision of *Public Prosecutor v Kaiding* [2024] VUSC 93 provides some assistance. There were 5 plants with a net weight of 15.5g, and the Chief Justice considered that it was within Category 1 of *Wetul*. The starting point was 16 months imprisonment. The net weight of the cannabis in the present case is higher than in *Kaiding*, so a slightly higher starting point is warranted.
11. I adopt a starting point of 18 months imprisonment.

Guilty plea and personal factors

12. While you did plead guilty at an early stage, I agree that the discount for plea should be limited to 25 %. That is because the case against you is overwhelming. This is consistent with *Public Prosecutor v Raptick* [2023] VUSC 226. That equates to a discount of 4.5 months from the starting point.
13. You are aged 20 years and a first offender with no previous convictions.
14. You acknowledge that your actions were wrong.
15. The Probation report considers your risk of re offending to be low.



16. There are good prospects of rehabilitation as you are now going to cease using and growing cannabis.
17. Given your youth, previous good character and prospects of rehabilitation, there is to be a discount from the starting point of 3 months, which equates to approximately 15 %.

End Sentence

18. The end sentence provisionally is 10.5 months imprisonment.
19. You have been remanded in custody since 8 November 2023. This is a period of 8 months, which equates to an effective sentence of 16 months imprisonment. This is how the calculation was recently undertaken by Trief J in *Public Prosecutor v Saly* [2024] VUSC 112. As per Saly, the discount to reflect time spent in custody is applied prior to arriving at an end sentence. That approach is problematic here, as you have effectively been in custody longer than any term of imprisonment I could impose today.
20. Given that you have effectively served a sentence, your time in custody means that the need for accountability, deterrence and denunciation has been met.
21. Therefore, I decline to impose a sentence of imprisonment and suspend it under s57 of the Penal Code, as sought. To do so, would be to impose a disproportionate sentence. The punitive aspect of sentencing has been met. But for the time already spent in custody, I would have imposed a sentence of imprisonment and suspended the sentence for 2 years.
22. Instead, I sentence you to 6-month supervision, to assist you in your rehabilitation. It is well recognised that younger people have a greater capacity for rehabilitation than older offenders. Such a sentence will meet the all the relevant sentencing needs.
23. The cannabis material is to be destroyed.
24. You have 14 days to appeal.

DATED at Port Vila this 10th day of July 2024
BY THE COURT

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Justice M A Mackenzie

