

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

Criminal
Case No. 24/1154 SC/CRML

PUBLIC PROSECUTOR

v

PEREZ MARAE NORIXON

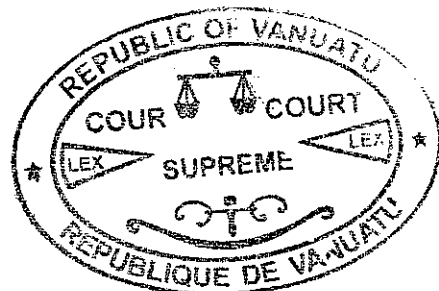
Date of Plea: 24 May 2024
Date of Sentence: 31 July 2024
Before: Justice M A MacKenzie
Counsel: Ms. L. Lunabek for the Public Prosecutor
Mrs. P. Malites for the Defendant

SENTENCE

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

The Facts

2. On 6 July 2022, Police executed a search warrant at an address where you were living. You were found to be rolling little rolls of cannabis into aluminium foil papers behind manioc plants. You wrapped the aluminium foils of cannabis into a newspaper. You were arrested. There was some cannabis in your pocket. Testing confirmed it was cannabis, with a net weight of 58.5 g.
3. You admitted possession of cannabis to police.



Sentencing purposes/principles

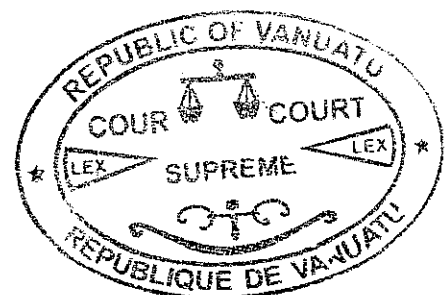
4. The sentence I impose must hold you accountable and must denounce and deter your conduct given that you were in possession of cannabis. Cannabis is an illegal drug which causes social harm. The sentence should ensure you take responsibility for your actions, and help you to rehabilitate. It must also 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, with reference to the maximum penalty and factors relating to the offending.
7. The one aggravating factor is the quantity of cannabis, being 58.5 g.
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. It also applies to possession of cannabis.
10. The Public Prosecutor has filed written submissions as to the appropriate starting point, and referred the court to cases to assist in selecting the appropriate starting point. The prosecutor submits that a starting point of between 15-20 months imprisonment is appropriate. Defence counsel did not file written submissions. Mrs Malites made oral submissions.
11. One of the cases referred to by the prosecutor is *Public Prosecutor v Maltok* [2023] VUSC 72. The amount of cannabis in Mr Maltok's possession was 34.84 g. The starting adopted was 20 months imprisonment. Then there is *Public Prosecutor v Raptick* [2023] VUSC 226. Mr Raptick had 8 packages of cannabis in his possession with a net weight of 102.65 g. The court considered that the offending fell into Category 1 of *Wetul*, with a starting point of 12 months imprisonment. It is not easy to reconcile the differing starting points in the 2 cases I have just cited.
12. Here, the offending involves a high amount of cannabis for personal use. There is no evidence of commerciality here though.



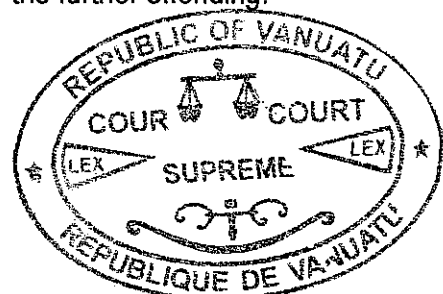
13. Therefore, it falls within Category 1 of *Wetul*. So, the usual sentencing outcome would be a fine or other community based sentence, or a short custodial sentence.
14. I adopt a starting point of 12 months imprisonment, as that was the starting point adopted in *Raptick*, which involved a greater quantity of cannabis.

Guilty plea and personal factors

15. You pleaded guilty at an early opportunity. The discount should be one third. That equates to a discount of approximately 4 months from the starting point.
16. You are aged 42 years. You are a first offender with no criminal history.
17. You were co-operative with police.
18. The Probation report notes that you are remorseful. I accept your remorse is genuine. You have learnt your lesson.
19. You are willing to rehabilitate yourself and you have a supportive partner.
20. For your prior good character, cooperation, remorse, and good prospects of rehabilitation, I reduce the starting point by 1 month imprisonment, which equates to approximately 8 %.
21. You were remanded in custody between 7 July and 29 July 2022, 22 days. That equates to an effective sentence of 6 weeks imprisonment. This is how the calculation was recently undertaken by Trief J in *Public Prosecutor v Saly* [2024] VUSC 112. The sentence is to be further reduced by 6 weeks imprisonment.

End Sentence

22. The end sentence is 5.5 months imprisonment
23. Taking into account the circumstances, the nature of the offending and your character, I have decided to suspend the sentence pursuant to s57 of the Penal Code for 12 months. First, this is because you were in possession of the cannabis for personal use. There is no suggestion of commercial use. Second, you are a first offender, you are remorseful, and have learnt your lesson. You have good prospects of rehabilitation. In those circumstances, suspending the sentence will meet the need for accountability, deterrence and denunciation and will promote in you a sense of responsibility. If you offend again in the next 12 months, you will need to serve the sentence of imprisonment in addition to any other penalty that may be imposed for the further offending.



24. In addition, I impose a sentence of 6 months supervision to assist you in your rehabilitation. The pre-sentence report indicates that you are willing to undertake rehabilitation and a particular programme is suggested in the report.
25. The cannabis material is to be destroyed.
26. You have 14 days to appeal.

DATED at Port Vila this 31st day of July 2024
BY THE COURT

