

**PUBLIC PROSECUTOR**  
**V**  
**JOSEPH MALON**  
**BEN SAKIAS**

Coram: *Hon. Chief Justice Vincent Lunabek*

Counsel: *K Massing for the State*  
*MP Vire for the Defendants*

Date of Plea: *22 April 2024*

Date of Sentence: *26 April 2024*

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**SENTENCE**

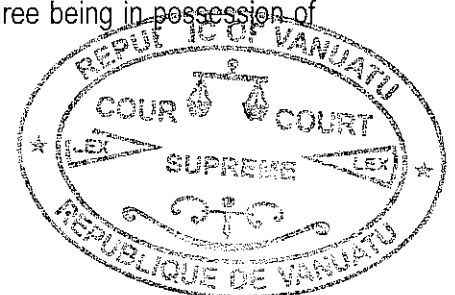
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**I. Introduction**

1. Mr Joseph Malon and Mr Ben Sakias, you both appear today for sentence on one charge of prohibited possession of cannabis substances.
2. On 22<sup>nd</sup> April, 2024, you both pleaded guilty to that charge where Mr Joseph Malon, you admitted you had in your possession dried cannabis leaves weighed 5.3 grams; and Mr Ben Sakias, you admitted you had in your possession dried cannabis substances weighed 152.1 grams.

**II. Facts**

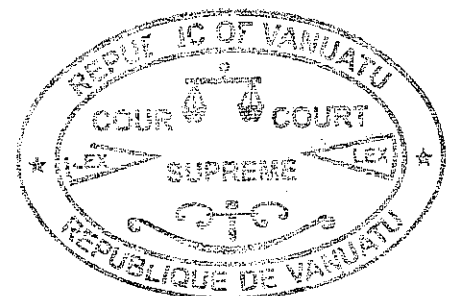
3. The brief facts is as follow:
  - (a) A formal complaint was made against you both for the offences of prohibition of possession of cannabis dried plants;
  - (b) You were together at the time of the alleged offending. On the 30<sup>th</sup> of December 2023, at Wilco Hardware in Luganville, Santo, police officers at CID saw Mr Joseph Malon, Mr Ben Sakias and Mr Koro Kency and got suspicious about you three being in possession of



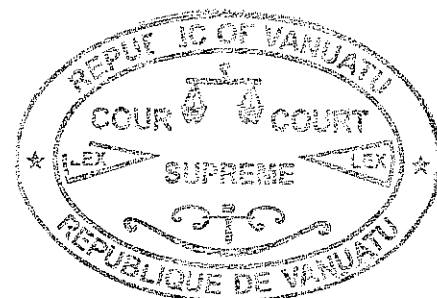
cannabis. Because of their suspicion they asked the three of you to follow them to the criminal investigation department. At the CID, you three were searched.

- (c) The police officers searched you Mr Joseph Malon and found inside the pocket of your green jacket dried cannabis leaves covered in foil. The police confiscated it and kept it safe for cannabis presumptive test. The dried cannabis leaves were weighed and tested by the police. The net weight of the dried cannabis leaves was 5.3 grams. The presumptive test result shows that the cannabis turned positive. Mr Joseph Malon, you were interviewed where you admitted the allegations made against you.
  - (d) The police officers searched you, Mr Ben Sakias, and found inside the pocket of your trousers dried cannabis leaves covered in foil. Also, they found dried cannabis leaves inside your handbag. The police confiscated it and kept it safe for cannabis presumptive test. The dried cannabis leaves were weighed and tested by the police. The net weight of the dried cannabis leaves was 152.1 grams. The presumptive test results show that the cannabis turned to be positive of cannabis.
  - (e) Mr Ben Sakias, you were arrested, cautioned and interviewed, where you admitted the allegations made against you.
4. The maximum sentence available for this offending is a fine not exceeding VT100 million or to a term of imprisonment not exceeding 20 years or to both such fine and imprisonment.
  5. I remind myself of the Court of Appeal judgment in the case of Naio v Public Prosecutor [1998] VUCA 1 where the court stated the following:

*“... drugs offences are serious matters and the law must provide stern measures to discourage such offence ... the courts must reflect the seriousness which the law places on drug offence through the sentences they imposed on people who commit such offences ... however, the courts must always bear in mind the particular circumstances of a given case before it, as each case must be considered in the light of its own facts. Sentences which courts impose must be appropriate according to the circumstances of the particular case”.*
  6. I refer now to the Court of Appeal judgment in the case of Wetul v Public Prosecutor [2013] VUCA 26, where the Court of Appeal set out the guidelines for sentencing of cultivations of cannabis into three broad categories. The circumstances of the present case, place this present case under category 1 of Wetul case.
  7. I now deal with Mr Joseph Malon's situations. You possessed 5.3 grams of cannabis substances on 30 December 2023. The amount of cannabis substances is an aggravation to your offending.




8. The Same Day Report reveals that you are not a first-time offender. But you have previous convictions dated 10 March 2011 where you served an imprisonment term of 6 months on one count of possession of cannabis. You were released on Parole on 9 June 2011. You completed Parole on 9 June 2012. I take the latest factors as your personal factors leading up to this offending and add weight to your sentence start point.
9. I consider whether community work sentence is not the better sentencing option as you are not going to hide behind the Correctional Centre walls if you are in custody, instead, you will face with the people of your community and do community work in the general interest of the community; I bear in mind of Sections 37 and 58N of the Penal Code (Amendment) Act No. 25 of 2006.
10. Mr Joseph Malon, you are not a first-time offender. You are 34 years old.
11. You are a single father of 3 children and you live between Solway and Pepsi in Luganville, Santo. You are employed by the Daming Store in Luganville.
12. The Same Day Report shows that after 2011 imprisonment, you continued to have in your possession cannabis substances, the same very thing, you were imprisoned for. You need more time to re-evaluate your actions to be a better person for your children. I note these commentaries.
13. You are sentenced to 60 hours of community work.
14. I now deal with the situation of Mr Ben Sakias. Mr Ben Sakias, you possessed 152.1 grams of cannabis substances on 30 December 2023. This amount of cannabis substances is an aggravating factor to your offending. It is serious to have this amount in your possession. It is a complete disregard to the law. You must be punished for your offending.
15. I consider a custodial sentence as a sentence start point. But again, I reflect on the wisdom of the community type sentence. I sense that if you are sent to custody, you will be hidden behind the walls of the Correctional Centre – no body will look, observe you, comment on your actions as opposed to you serving a community sentence order.
16. In addition, you are a first-time offender. You have no previous conviction. You were remanded on the 30 December 2023 and released on bail on 11 January 2024 awaiting for your sentence on 26 April 2024. You admitted your offending by apologizing and mentioned that you knew you were wrong and guilty, you promised that smoking and selling cannabis substances have to stop. You told the writer of the Same Day Report that you were aware that your actions are illegal. You realized your mistakes and regretted your actions. I take all that into account on your behalf in your sentencing considerations.



17. I take note of the prosecution submissions with the case of Public Prosecutor v Abai [2023] as a comparable case where the defendant possessed 140 grams of cannabis substances within Wetul category 1. The court, there, sentenced the defendant to 6 months imprisonment suspended for 18 months. I decide not to use a custodial sentence to begin with as a sentence start point. I leave it for the future, and I begin with a new community sentencing order.
18. You are sentenced to 90 hours of community work.
19. Mr Joseph Malon and Mr Ben Sakias, you have each a right to appeal your respective sentences if you are unsatisfied with it within 14 days. The 14 days starts at the date of this sentence.
20. The court ordered that the cannabis substances of 5.3 grams and 152.1 grams seized by the police in this case must be destroyed.

DATED at Luganville, Santo, this 26<sup>th</sup> April, 2024.

BY THE COURT



Hon. Chief Justice Vincent LUNABEK

