

PUBLIC PROSECUTOR

v

MANAS MASSING

Date of Sentence: 27 January 2025
Before: Justice M A Mackenzie
Counsel: Public Prosecutor – Ms J Tete
Defendant – Mr J Garae

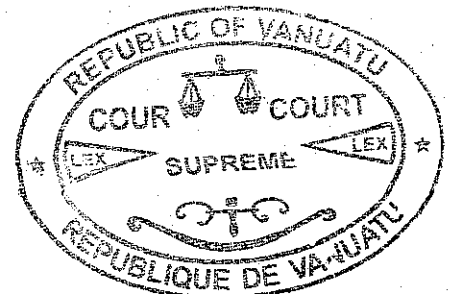
SENTENCE

Introduction

1. Mr Manas Massing, you appear for sentence having pleaded guilty to one charge of cultivation of cannabis, and one charge of escaping custody.
2. The maximum penalties for the offences are:
 - a. Cultivation of cannabis - 20 years imprisonment, or a fine not exceeding VT 100 million or both.
 - b. Escaping custody- 5 years imprisonment.

The Facts

3. On 6 July 2024, your father walked through your gardens and found cannabis plants. He harvested the plants and took them to the police station. Testing confirmed the plants were cannabis, with a total net weight of 4.934 grams.
4. On 6 June 2024, you were remanded in custody on an unrelated matter. On 8 June 2024, you were taken out of your cell for lunch. You then fled from police. Police were not able to locate you. You were later arrested at your home village and taken back into custody.



5. You were cautioned and admitted the allegations.

Sentencing purposes/principles

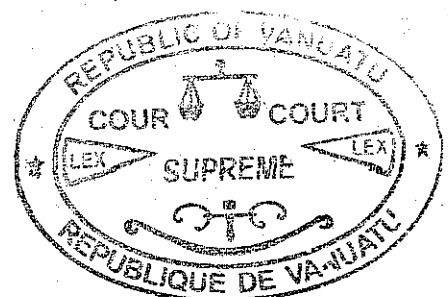
6. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions and help you to rehabilitate. It must also be generally consistent.

Approach to sentence

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

Starting point

8. The first step is to set a starting point taking into account the aggravating and mitigating factors of the offending itself and the maximum penalty for the offences.
9. For cultivation of cannabis, the aggravating factors here are that you deliberately cultivated the cannabis, and that the cannabis plants had a net weight of 4.93 g. For the escaping custody, you made a deliberate decision to escape from police custody.
10. There are no mitigating features of the offending itself.
11. There is a guideline case for cannabis cultivation, *Wetul v Public Prosecutor* [2013] VUCA 26. Here, the cultivation involved a small quantity of cannabis. There is nothing to suggest cultivation for a commercial purpose. 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.
12. 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 in relation to the cultivation of cannabis charge. In *Kaiding*, there were 5 plants with a net weight of 15.5 g. The offending was within Category 1 of *Wetul*. The starting point was 16 months imprisonment. As *Kaiding* involved a greater quantity of cannabis than the present case, I adopt a starting point of 6 months imprisonment.
13. In terms of the escaping custody charge, it is different in nature and time. Therefore, a cumulative sentencing approach is appropriate, bearing in mind totality. Counsel have both referred to cases to assist with setting a starting point. In *Public Prosecutor v Moli* [2022] VUSC 136, an end sentence of 12 months imprisonment was imposed for a charge of escaping custody, although a global starting point was set, as there were other charges. Similar to the present case, Mr Moli escaped from police after he had



been taken into custody. Therefore, I adopt a starting point of 14 months imprisonment for escaping from custody charge.

14. A totality adjustment is required to ensure that the sentence is not out of proportion to the overall gravity of the offending. Therefore, I adopt a global starting point for both offences of 18 months imprisonment.

Guilty plea and personal factors

15. 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. That equates to a discount of 4 ½ months from the starting point.
16. You are a first offender with no previous convictions. You acknowledge that your actions were wrong and admitted the offending to police. You are remorseful and say that you have learnt your lesson. Given these factors, there is to be a discount from the starting point of 2 months, which equates to approximately 10 %.

End Sentence

17. The end sentence is 11 ½ months imprisonment.
18. You were remanded in custody between 6-8 June 2024, and then again between 11 June 2024 – 27 January 2025, a period of approximately 7 ½ months. That equates to an effective sentence of approximately 15 months imprisonment. What that means is that you have served more than the otherwise appropriate sentence. In such circumstances, I do not intend to impose any additional sentence. While I acknowledge that suspending the sentence under s 57 of the Penal Code, supervision and community work would meet the sentencing needs, such sentences are unnecessary. All the relevant sentencing purposes and principles, including deterrence, denunciation and accountability have been met given the period of time spent in custody.
19. You are to be released immediately.
20. The cannabis material is to be destroyed.
21. You have 14 days to appeal.

**DATED at Port Vila this 27th day of January 2025
BY THE COURT**

Mackenzie
Justice M A Mackenzie

