

**IN THE SUPREME COURT OF THE
REPUBLIC OF VANUATU – Port Vila**
(Criminal Jurisdiction)

Criminal Case No. 25/1389 SC/CRML

BETWEEN: PUBLIC PROSECUTOR
Port Vila

State

AND: TOM PHILIP JASON JOHN
Port Vila

Defendant

Date of plea: 20 May 2025
Before: Justice B. Kanas Joshua
Counsels: Ms S. Langon (holding papers for M. Kalwatong), for the State
Ms P. Malites, for the defendant

SENTENCE

Introduction

1. Mr Tom Philip Jason John, you appear today for sentence for the following charges, you pleaded guilty to, on 20 May 2025:
 - a. Count 1 – Unlawful possession of cannabis, contrary to Section 2(62) of the Dangerous Drugs Act (CAP 12); and
 - b. Count 2 – Attempt unlawful sale of cannabis, contrary to Section 28(1) of the Penal Code Act (CAP 135) and Section 2(62) and Section 17 of the Dangerous Drugs Act (CAP 12).

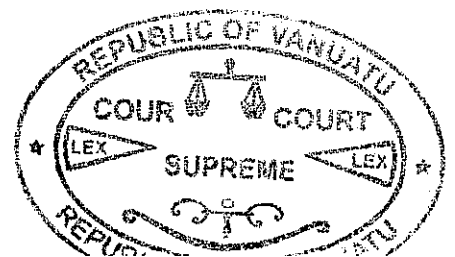
Facts

2. You were cautioned on 22 March 2025, and admitted to the following facts:
 - a. On 21 March 2025, between 19:00hrs at Fresh Water 1 Clinic Road, you were arrested after a body search was conducted on you during the Drugs Operation Street Hunt 2025. A clear plastic bag used for coins was found with 32 round balls of aluminium foil that contained plant materials. Forensics test confirmed that the plant materials were cannabis, weighing at 6g.
 - b. You admitted that you were selling the "balls" of cannabis for VT100 each.

Sentencing purposes/principles

3. You must be held responsible for your actions so others, who also behave this way, can see that this is against the law which has serious consequences, and stop their actions, as it causes social harm. This sentence should help you to rehabilitate, and must be generally consistent.

Approach to sentence



4. The approach taken in this sentence is in two steps, as in *Jimmy Philip v. Public Prosecutor*¹, which applied *Moses v. R*².
5. The sentencing approach in *Public Prosecutor v. Andy*³, submitted by defence, is no longer applicable.

Step 1

6. The first step is to set a starting point. The maximum sentence for the possession of cannabis is 20 years imprisonment or a fine not exceeding VT100 million, or both.
7. Reference is made to the aggravating and mitigating factors of the offending and the maximum penalty of the offence. The aggravating factors here are:
 - a. The quantity of cannabis (6 grams); and
 - b. Attempt to sell the cannabis.
8. There are no mitigating factors of the offending.
9. The guideline case for cannabis cultivation is *Wetul v. PP*⁴, which categorized cannabis cultivation into 3 broad categories. Defence also cited, the case of *PP v. Jason Boe*⁵ in addition to the guideline case above. The categorization also applies to possession of cannabis. The offending in the current case involves a small amount of cannabis which the defendant admits to selling. This falls within category 1 but at the higher end and would attract a fine or community-based sentence. In some circumstances, it can warrant a short term of imprisonment.
10. Prosecutions cited two helpful cases regarding the starting point. The first case was *PP v. Shem*⁶, where the end sentence was 7 months imprisonment, suspended for 2 years. In addition, the defendant was ordered to do 50 hours of community work and must attend the Niufala Rod Program. In this case, a police officer was on patrol around Namburu area and approached the defendant whom he suspected of possessing cannabis. He searched the defendant and found cannabis in his trousers. The cannabis was weighed to be 1.5g. The second case was *PP v. Malon*⁷, where the court gave an end sentence of 60 hours of community work. This case involved two defendants who were arrested by police officers in Luganville, Santo, for being in possession of cannabis. The dried cannabis leaves weighed 5.3g.
11. Prosecutions submitted that a starting point of 10-14 months imprisonment is sufficient.

¹ [2020] VUCA 40.

² [2020] NZCA 296.

³ [2011] VUCA 14.

⁴ [2013] VUCA 26.

⁵ [2013] VUSC 63.

⁶ [2022] VUSC 174.

⁷ [2024] VUSC 58.

12. Defence counsel referred to the case of *PP v. Robert*⁸, as their guide to a starting point. The first defendant was sentenced to 8 months imprisonment for possession of cannabis and 4 months for attempted supply, to run concurrently. The sentence was suspended for 2 years, and the defendant placed under 12 months supervision. Sentence imposed on the second defendant was disregarded⁹ as it was made pursuant to Section 42 of the Penal Code Act CAP 135¹⁰ which was amended in 2006¹¹. This case involved two defendants who attempted to airfreight a carton of cannabis in a gym bag, to Santo. This activity was intercepted by the police who arrested the men and seized the carton. Contained in the carton and the gym bag were a total of 488g of cannabis.
13. Defence acknowledged that although the amount of cannabis in *Robert* was significantly greater, than in the current case, the starting point was 8 and 4 months. Thus, the sentence in the current matter should be less due to the small amount of cannabis. They then submitted a starting point of 12 months.
14. I adopt a starting point of 12 months imprisonment.

Step 2

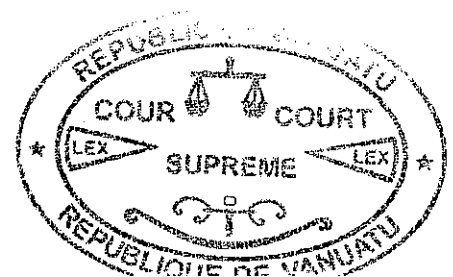
15. The second step is to make the appropriate deductions for personal factors. In aggravating factors, none were identified by prosecutions. In mitigating factors, prosecutions submitted that they will respond orally to any matters raised by the defendant.
16. In mitigation, defence submitted that:
- The defendant entered a guilty plea at first available opportunity (a 30% reduction is sufficient given the strength of prosecution's case);
 - The defendant cooperated with the police during investigation and made admissions when cautioned;
 - The defendant is a first-time offender;
 - He is remorseful for his actions and promised not to do them again. In the pre-sentence report it was recorded that he apologized to the people of his community, family and Vanuatu for his wrongful actions;
 - The defendant is employed by a Chinese construction company;
 - The defendant's brother and chief gave positive assessments of his character and behavior, indicating strong prospects for rehabilitation and reintegration into the community.
17. Prosecutions acknowledged the guilty plea entered at the earliest reasonable opportunity. Reduction for guilty plea submitted by defence ranged between 30-33%. The defendant admitted to the allegation when cautioned and pleaded guilty at the first available opportunity. For this, I give a 33% reduction on your sentence, bringing it to 8 months imprisonment.

⁸ [2020] VUSC 51.

⁹ Defence Sentencing Submission, filed on 1 July 2025, paragraph 4.1.5.

¹⁰ *PP v. Robert* [2020] VUSC 51, at [31].

¹¹ Penal Code (Amendment) Act No. 25 of 2006, commenced 1 March 2007.



18. You are 30 years old, a first-time offender and cooperated with the police. You are described by your chief as a well committed person but he does not elaborate on what commitments you have made to your community. Your elder brother also describes you to be well-respected and a hardworking person. He does not elaborate on this. He adds that your behavior is heavily influenced by your peers and believes that if you settle down your behavior will change. You are remorseful and you understand why you are in court, resulting in your verbal apology to your family, community and Vanuatu. You have learnt your lesson and you have good support in the community to assist with your rehabilitation.
19. Given the above, I make a further reduction of 1½ months or 6 weeks.

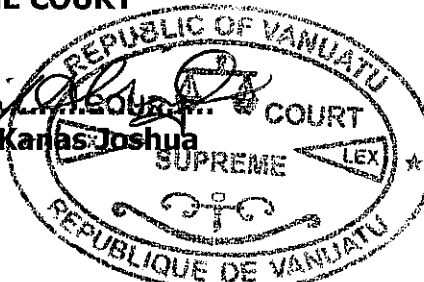
End sentence

20. The end sentence is 6 months 2 week's imprisonment.
21. As a 30-year-old man you are in your prime years. You are employed, you have aspirations for a better life, and you are a first-time offender. Your involvement with cannabis is greatly influenced by your peers, as once you are removed from them you showed understanding of your wrongful behavior and cooperated with the police. You have learnt your lesson, and have apologized for your actions. For these reasons, I am suspending your sentence for 12 months, using my discretion in Section 57 of the Penal Code CAP 135. Suspending your sentence will help towards your rehabilitation. If you offend within the 12 months, you will be arrested and this sentence will be activated, in addition to any other penalty imposed for the further offending.
22. To assist with your rehabilitation, I order 50 hours of community work and you must attend the Niufala Rod Program or equivalent, to help you be accountable for your actions.
23. The cannabis must be destroyed.
24. You have 14 days to appeal, if you are unsatisfied.

Dated at Port Vila on this 2nd day of July 2025

BY THE COURT

Justice B. Karas Joshua
Justice B. Karas Joshua



The seal of the Supreme Court of the Republic of Vanuatu is circular. It features a central emblem with a scale of justice and a book. The text 'REPUBLIC OF VANUATU' is written in an arc at the top, and 'REPUBLIQUE DE VANUATU' is written in an arc at the bottom. In the center, the words 'COURT SUPREME' and 'LEX' are visible, along with a small star on the right side.