IN THE COURT OF APPEAL OF THE REPUBLIC OF VANUATU
(Criminal Appellate Jurisdiction)

CRIMINAL APPEAL CASE No.16/1777

BETWEEN: SIMSON TAVITI
Appellant

AND: PUBLIC PROSECUTOR
Respondent

Coram: *Hon. Chief Justice Vincent Lunabek*
Hon. Justice Bruce Robertson
Hon. Justice Daniel Fatiaki
Hon. Justice John Mansfield
Hon. Justice Dudley Aru
Hon. Justice David Chetwynd
Hon. Justice Paul Geoghegan

Counsel: *Ms Jane Tari for Appellant*
Mr Simcha Blessing for Respondent

Date of Hearing: *12 July 2016*
Date of Oral Decision: *12 July 2016*
Date of Reasons: *22 July 2016*

REASONS FOR JUDGMENT

INTRODUCTION

1. On 13 May 2016, the Appellant pleaded guilty to one count of unlawful possession of cannabis substances and to one count of sale of cannabis substances, contrary to section 2(62) of the Dangerous Drugs Act [Cap 12].

2. The total weight of cannabis substances was 145 grams.

3. On 20 May 2016, he was sentenced to 2 years and 8 months imprisonment by the Supreme Court.

4. The maximum penalty for this offence is 20 years imprisonment and/or up to Vatu 100 million fine.

5. The Appellant appeals against his sentence of 2 years and 8 months.

6. He advances three (3) grounds against his sentence:

   a) The starting point was manifestly excessive.

   b) The Learned Judge erred by failing to properly consider the discount for a guilty plea.

   c) Any imprisonment sentence should have been suspended.

7. We deal with the three grounds in turn.

Ground 1: That the sentence is manifestly excessive.

8.. It is submitted for the Appellant that the 4 years starting point is excessive as the offending was placed at the top end of the category 2 of the Wetul guideline, which states:

> *"Category 2 encompasses small scale cultivation of cannabis plants for commercial purposes, i.e with the object of deriving profit. The starting point for sentencing is generally between two and four years but where sales are infrequent and of very limited extent a lower starting point may be justified." (Wetul v. Public Prosecutor [2013] VUCA 13).*

9. We agree with and accept the Appellant's submissions that the Wetul guideline related to cultivation offences. A person who cultivates cannabis for a commercial purpose is usually at a higher level of offending than a low level "street seller" which is the situation in the present case.

10. We agree with and accept the Appellant's submissions that a lower starting point should have been used in this case. The quantity was only 145 grams. We are of the view that a starting point sentence of 2 years imprisonment is appropriate in the case.

11. This position was not disputed by the State.

Ground 2: That the learned Judge erred by failing to properly consider the discount for a guilty plea.

12. It was submitted for the Appellant that the learned sentencing Judge fell into error at paragraphs 3 and 4 of the remarks on sentence:

> *"3. You admitted possessing them and selling them to customers on a commercial basis for yourself and for your boss or employer. You have not named who your boss o employer is. It is important that you should have done so in order for the police to investigate and lay charges where and if possible against who that person is, so that they are equally dealt with by the law...*
> *4.I have expressed my views in an earlier case of PP v. John Ure Criminal Case 1416/2016 that for drugs offences there should not be any allowances for guilty pleas at first opportunity where there is no disclosure of names of persons of suppliers, sellers, cultivators of cannabis. That should extend to include employers or bosses of accused persons. I reiterate my views here because you have not disclosed the names of your "boss".*

13. We agree with and accept the submissions of the Appellant that the sentencing Judge erred by failing to consider the discount for a guilty plea.

14. We need to emphasise that it has always been the law in Vanuatu well before the Andy case, that a reduction of sentence discount of one third is allowed as a matter of sentencing principle when a person pleads guilty at the first opportunity given to him or her by the Courts (see: Public Prosecutor v. Scott [2002] VUCA 29 and other cases). We accept the submissions of the Appellant that the guideline case on Sentencing in *PP – v- Andy* (2011) VUCA 14 emphasised this point when the Court stated:

"The third step of the sentencing process is the deduction for a guilty plea:

The trial judge will then consider what discount from the second stage end sentence should be applied for a guilty plea. The greatest discount under this head will be a discount of one third where the guilty plea has been entered at the first available opportunity. A late guilty plea will result in a smaller discount. No discount is available under this head if the charges have been defended through a trial."

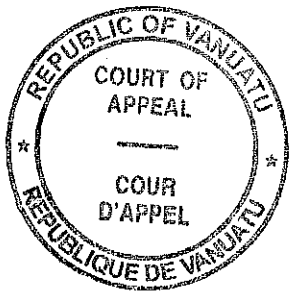
15. We also accept the Appellant's submissions that the proper method for encouraging offenders to provide the names of other offenders is to give an extra discount for assisting authorities, over and above the standard discount for a guilty plea.

16. A guilty plea discount is important as a criminal sentencing principle and it justifies a reduction in an otherwise appropriate sentence for three reasons: First, it relieves victims and witnesses of the trauma, stress, and inconvenience that is caused by a delay in resolving the case and by the trial itself, particularly the need to give evidence. Secondly, it avoids the need for a trial, with the attendant advantages of a reduction in Court delays and costs savings. Thirdly, it generally indicates a degree of remorse. At the very least, it represents an acceptance of responsibility for the offending. (The Queen –v- Hessell [2009] NZCA 450).

17. Mr. Simcha Blessing, on behalf of the Public Prosecution agreed with the submissions of the Appellant that the sentencing Judge erred by failing to properly consider a discount for a guilty plea.

18. In the present case, we take one third discount allowance for the guilty plea of the Appellant. We allow a further 4 months discount for other mitigating factors. We take into account the 2 month pre-sentence custodial period so the effective sentence is 1 year.

19. This ground of appeal must succeed.



Ground 3: That the learned Judge erred by not suspending the sentence.

20. It is further submitted that the Court should have considered and suspended the sentence based on similar cases before and after the Wetul case decision.

21. We also agree with and accept the Appellant's submissions on this point. It is important for a sentencing Judge to always have in mind the consistency of sentencing in similar type circumstance of offending.

22. The Prosecution agreed with the submissions made on behalf of the Appellant on this point also.

23. In this case, we are of the view that the sentence of 1 year imprisonment is to be suspended and we suspend it for a period of 2 years.

24. These are the reasons of the oral decision we have made on 12 July 2016 when we re-sentenced the Appellant and released him from custody.

25. We wish to express our gratitude to both counsel of the Appellant and the Respondent for the quality of their submissions and professional attitude in the hearing and conduct of this appeal.

DATED at Port-Vila this 22nd day of July, 2016

BY THE COURT

Vincent LUNABEK
Chief Justice

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL REPUBLIQUE DE VANUATU