

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU
(CRIMINAL JURISDICTION)**

CRIMINAL CASE NO. 10 OF 2013

PUBLIC PROSECUTOR

V

ARU DAVID

Coram: Justice Mary Sey

Counsel: Damien Boe for the Public Prosecutor
Brian Livo and Stephen Carlo (PSO) for the Defendant

Date of Decision: 20 February 2015

SENTENCE

1. **Aru David** you appear today for sentencing having been convicted on 18th February 2015 upon your own guilty plea to one count of Cultivation of Cannabis contrary to section 4 of the Dangerous Drugs Act [CAP 12].
2. No dispute is taken with the summary of the facts presented by the prosecutor. Towards the end of the year 2012, some police officers had received information that you had cultivated a number of cannabis plants at your premises at Tauru village. On 4th January 2013, police officers were shown the exact location where the cannabis plants were being cultivated and they found and uprooted 17 stems of plants from the soil. You were arrested and charged with the offence.
3. I have read the submissions from prosecution and defence counsel. I note that you are from the Eastern part of Ambae at Qirutaro village, Lugana, on Ambae. You have no previous convictions.



4. Sentencing guidelines for cannabis cultivation offending can be found in the case of **Columbus Wetul v Public Prosecutor** [2013] VUCA 26 where the Court of Appeal adopted the three broad categories which were applied by the Court of Appeal of New Zealand in **The Queen v Maria Dallas Terewi** [1999] 3 NZLR 62.
5. In the **Wetul** case, the Court of Appeal considered it appropriate to divide cannabis cultivation offending into three categories:

"Category 1 consists of the growing of a small number of cannabis plants for personal use by the offender without any sale to another party occurring or being intended. Offending in this category is almost invariably dealt with by a fine or other non-custodial measure. Where there have been supplies to others on a non-commercial basis the monetary penalty will be greater and in more serious cases or for persistent offending a term of community work and supervision or even a short custody term may be merited. (It is to be noted in this connection that there is no separate offence in relation to section 4 offence of cultivation for supplying or possession for supply, as opposed to importation, sale, supply or possession (s.2).

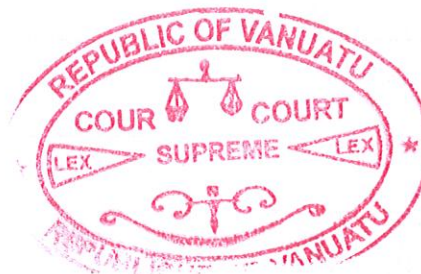
Category 2 encompasses small-scale cultivation of cannabis plants for a commercial purpose, i.e. with the object of deriving profit. The starting point for sentencing is generally between two and four years but where sales are infrequent and of very limited extent a lower starting point may be justified.

Category 3 is the most serious class of such offending. It involves large-scale commercial growing, usually with a considerable degree of sophistication and organization. The starting point will generally be four years or more.

The Court went on to state that: "It is to be understood that the border-line between each category may in specific cases be indistinct and sometimes incapable of exact demarcation. The numbers and sizes of plants are relevant factors for each category depending on the circumstance of each case.

However, although relevant, they may not be an adequate guide where intensive cultivation methods are being employed with a view to enhancing the yield of usable cannabis for example by producing plants with higher narcotic levels."

6. **Aru David**, in sentencing you it is necessary for the Court to hold you accountable for your actions. The fundamental requirement is that the sentence



imposed should act as a deterrent to other persons minded to engage in a similar activity.

7. With respect to this offending, the aggravating factor is that you were growing 17 stems of cannabis and that is a substantial number. There are mitigating factors which your defence counsel has submitted as follows:

The defendant:

Pleaded guilty at the first available opportunity and this is a sign of remorse and contrition. The defendant's early guilty plea would allow the Court to deduct 1/3 of any sentence to be imposed on him;

The Defendant pleaded guilty which saves Court's time;

Is 39 years of age and is a first time offender which means he has no previous convictions;

Is remorseful and sorry for his action;

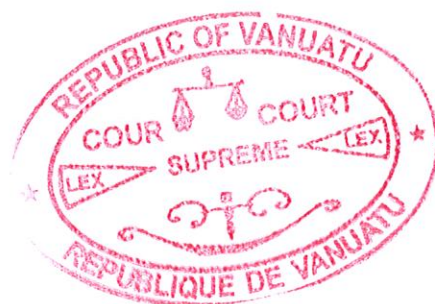
Cooperated well with the Police when he was approached regarding the offence he committed;

The 17 Cannabis plants have been removed and in police custody;

Promised not to commit the same offence and any other offences;

Defendant is the sole bread winner of his family. He is married and his wife is unemployed. He is also unemployed but engages in gardening and other small farming to sustain his family.

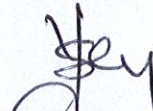
8. I have taken all these mitigating factors into consideration. However, the cultivation and growth of cannabis in Vanuatu needs to be denounced. This is a serious charge that carries a maximum term of imprisonment of 20 years.
9. I am therefore sentencing you to 12 months imprisonment suspended for a period of 2 years. In addition, you are sentenced to 50 hours community work and 6 months supervision.



10. The Court also orders that the cannabis found in possession of the defendant be condemned in accordance with section 18 (1) (b) of the Dangerous Drugs Act [Cap 12].
11. You have 14 days within which to file a notice of appeal against this sentence if you do not like it.

Dated at Lakatoro, Malekula this 20th day of February, 2015.

BY THE COURT


M.M. SEY
Judge

