

PUBLIC PROSECUTOR

V

JOSEPH IATIKA

Coram: Justice Mary Sey

Counsel: Ms. Marie Taiki for Public Prosecutor
Mr. Andrew Bal for the Defendant

Date of Decision: 20 September 2016

SENTENCE

1. **Joseph Iatika**, you pleaded guilty on 9 August 2016 to a charge of Cultivation of Cannabis contrary to section 4 of the Dangerous Drugs Act [Cap 12] which provides as follows:

4. Prohibition of cultivation of cannabis plant

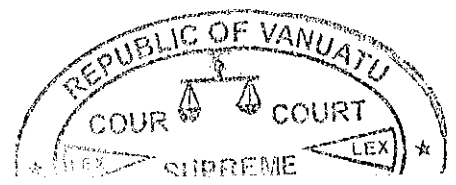
The cultivation of any plant of the genus Cannabis shall be prohibited.

Section 17 of the Dangerous Drugs Act [Cap 12] provides:

17. Penalties for contravention of Act

Every contravention of this Act shall constitute an offence punishable by a fine not exceeding VT 100 million or to a term of imprisonment not exceeding 20 years or to both such fine and imprisonment."

2. You were convicted accordingly and you appear today for sentence. No dispute is taken with the summary of the facts presented by the prosecutor. On the 25 March 2009, the complainant, S/Sgt Uriel Leo received information from the Acting Officer in Charge of the Criminal Investigation Department that the Vanuatu Mobile Force patrol officers had located several gardens of marijuana plants at the end of Bauerfield Airport (Tanna Community). S/Sgt Uriel Leo with the Tactical Response Group patrol team, along with officers acting on the information, went to the place of the alleged offence. Upon arrival they found out that the first garden, which belonged to you, contained 26 stems of marijuana plants. The officers seized and removed the plants. The Cannabis Presumptive Test which was carried out by Cpl. Atis Yosef proved positive with a net weight of 118.34g.



3. 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. The Court considered it appropriate to divide cannabis cultivation offending into three categories as follows:

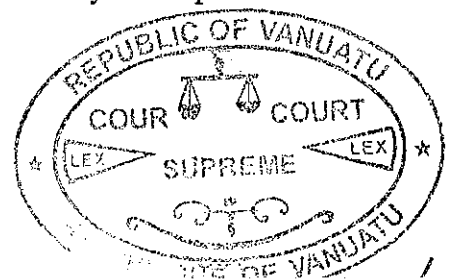
"Category 1 consists of the growing of a small number of cannabis plants for personal use by the offender without any sale to another party occurring or being intended. Offending in this category is almost invariably dealt with by a fine or other non-custodial measure. Where there have been supplies 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."

4. In arriving at your sentence, I have been greatly assisted by the prosecution and defence submissions and also by the pre-sentence report. There are mitigating factors which your defence counsel has submitted should be taken into consideration, in particular, that you are a first time offender with no previous conviction and that you cooperated well with the Police and admitted your actions. Moreover, that you pleaded guilty at the first available opportunity and this is a sign of remorse and contrition. This early guilty plea would allow the Court to deduct 1/3 of any sentence to be imposed on you. See *PP v Gideon* [2002] VUCA 7.
5. The detailed pre-sentence report shows that you are 51 years of age and you are from White Sands village, Tanna, and you are married with four children. When questioned on how you felt about your offending, you stated that you felt remorse over what you had done and you went on to tell the Probation Officer that if you had known that it was Cannabis you would not have cultivated it. You stated that you had acquired a piece of land which was first occupied by a man from Tongoa. You went on to say that during the process of cultivation of the land you noticed a plant growing amidst your crops and that



the plant started to produce flowers and later on seeds. You said you found the plant interesting as it attracted rats which ate the flowers and fruits at night. You told the Probation Officer that one morning you were surprised to find some dead rats under the plants and that gave you an idea that your new plant was a good medicine to kill rats. You admitted that in all you had planted 26 Cannabis plants around your garden. You also said that somehow you were reported to the Police who raided your garden and up rooted the stems of the plant and that was when you realized that the cultivation of the plant was illegal.

6. I have taken into consideration your explanation for your offending which is that you had planted the cannabis to use it as a form of rat poison. However, what you failed to realise is that cultivation of cannabis is a serious offence indeed and it warrants a fine not exceeding VT 100 million or a term of imprisonment not exceeding 20 years or to both such fine and imprisonment. However, you have demonstrated remorse for your offending and you do not have any previous convictions. I note that you have a healthy relationship with your family members and the community and that after the death of your father, your community nominated you to take over his responsibility as a small Chief of their Nakamal or Nasara.
7. **Joseph Iatika**, I also note that there has been an inordinate delay in processing this matter since 2009. Nonetheless, notwithstanding the time that has passed since this offending occurred, it is still necessary to mark the offending in a clear and significant way. The reality is that cannabis is an illegal substance in Vanuatu and a sentence to mark the seriousness of the offending and to deter both you and others from involvement with cannabis is required. As a starting point, you are hereby sentenced to 24 months imprisonment which is reduced by $\frac{1}{3}$ for your guilty plea. I further reduce your sentence by 4 months to reflect your remorsefulness and other mitigating factors. This brings your end sentence to 12 months suspended for a period of 2 years. That means that if you keep out of trouble for the next 2 years then you will not go to prison but if you commit an offence during that 2-year period you will be required to serve the 12 months prison sentence as well as the sentence for the further offending.
8. You have 14 days to appeal against this sentence if you do not agree with it.

DATED at Port Vila, this 20th day of September, 2016.

BY THE COURT


M. M. SEY
Judge

