

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

CRIMINAL CASE NO.16/3744/SC/CRML

PUBLIC PROSECUTOR

V

YOAN ANDY

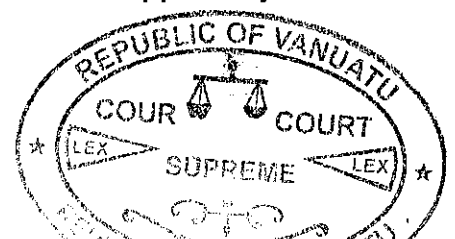
Coram: Justice Mary Sey

**Counsel: Mr. Lenry Young for Public Prosecutor
Mr. Harrison Rantes for the Defendant**

Date of Decision: 14 February 2017

SENTENCE

1. **Yoan Andy**, you pleaded guilty on 6 December 2016 to one count of possession of prohibited substance and materials contrary to section 2 (62) Dangerous Drugs Act [CAP 12] and one count of cultivation of cannabis. The maximum penalty of this offending is a fine not exceeding VT 100 million or 20 years imprisonment or 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.
3. On 30 August 2016, Police Constable Komoa Daniel made an official complaint against you in relation to cultivation and possession of cannabis plants. Police Officer Saling Pakoa said in his statement dated 30 August 2016 that he was part of the investigation team to Epi on 29 August 2016. He confirmed that he went inside the defendant's house and he discovered cannabis plant, cannabis leaves and cannabis seeds. Police officers Jack Kanas and Donald James said in their statements dated 30 August 2016 that they were also part of the investigation team on Epi Island regarding allegations of possession and cultivation of cannabis plants. They confirmed that they discovered cannabis plant, cannabis leaves and seeds inside the defendant's house.
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. The Court considered it appropriate to divide cannabis cultivation offending into three categories as follows:

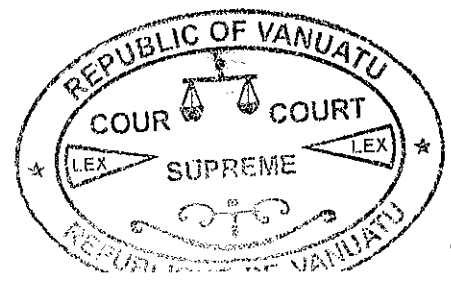
"Category 1 consists of the growing of a small number of cannabis plants for personal use by the offender without any sale to another party occurring or being intended. Offending in this category is almost invariably dealt with by a fine or other non-custodial measure. Where there have been supplies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

5. In this present case, Police Corporal Atis Yosef conducted the preliminary test of the alleged cannabis materials. He confirmed in his preliminary cannabis test result worksheet dated 10 October 2016 that the results reveal that the materials are positive for cannabis with a total net weight of 13.4 grams. In light of this, the State submits that this case falls under category 1 as outlined by the Court of Appeal in **Wetul** (supra). I agree.
6. 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 19 years old and a first time offender with no previous conviction and that you cooperated well with the Police and admitted your actions. I consider a starting point of 1 year imprisonment as appropriate for the single count of possession of cannabis and



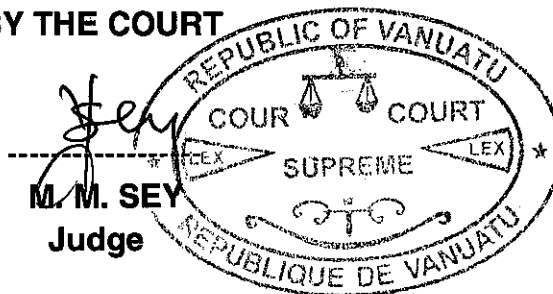
another 1 year imprisonment for the count of cultivation of cannabis plants. Both sentences are to run concurrently.

7. You pleaded guilty at the first available opportunity and this is a sign of remorse and contrition. This early guilty plea allows the Court to deduct 1/3 of your sentence. See **PP v Gideon** [2002] VUCA 7. Thus an end sentence of 4 months' imprisonment is appropriate in the circumstances. I note from the pre-sentence report that you were remanded in custody since 31/08/16. This should be taken into account in computation of your sentence.

You have 14 days to appeal against this sentence if you do not agree with it.

DATED at Port Vila, this 14th day of February, 2016.

BY THE COURT



M. M. SEY
Judge