

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

Criminal
Case No. 20/462 SC/CRML

PUBLIC PROSECUTOR

v

**DANNY ROBERT
KALO AUGUST**

Date: 17 April 2020
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr P. Toaliu
Defendants – Mrs P. Malites

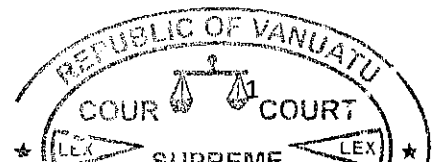
SENTENCE

A. Introduction

1. Mr Robert and Mr August pleaded guilty on 3 March 2020 to two charges and one charge respectively of possession of dangerous drugs, and one charge of attempted supply of dangerous drugs.
2. The maximum sentence for these offences is a fine not exceeding VT100 million or 20 years imprisonment, or both.

B. Facts

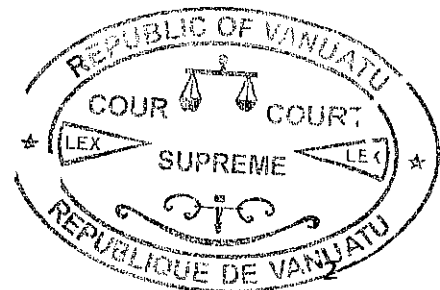
3. In February 2020, the police received a phone call that two men were attempting to air freight a carton containing cannabis to Santo. Mr Robert was noted on the Air Vanuatu airway bill for the carton as the shipper (sender) of the carton. The carton was addressed to a consignee on Santo.
4. The police went to the airport and arrested Mr Robert and Mr August just outside the airport premises under a banyan tree. They had with them a black gym bag belonging to Mr Robert. The police seized both the carton and gym bag.



5. The carton contained two silver foil packages. These contained rolled cannabis with a combined net weight of 309 grams. The gym bag contained a white container with cannabis inside and 7 rolls of cannabis wrapped inside foil and one A4 sized piece of paper. The net weight of the cannabis in the gym bag was 179 grams.
6. Mr Robert elected to remain silent.
7. Mr August stated in his police interview that Mr Robert called him to follow him to the airport to air freight the carton. At first he did not know what was in the carton. As they were waiting to catch a bus to the airport, Mr Robert told him that he was going to air freight the carton to Santo and that it contained marijuana. Mr August made admissions to regularly using marijuana.
8. Mr Robert has pleaded guilty to possession of cannabis totalling 488 grams. Mr August pleaded guilty to possession of 309 grams of cannabis.

C. Aggravating/Mitigating Factors of the Offending

9. The aggravating factors to the offending are that this was deliberate on both defendants' part and was for the purpose of supply of the drugs to another.
10. Mr Robert is the more culpable of the defendants. He had possession of the larger amount of cannabis. He packed the carton and gym bag with the cannabis. He was the mastermind for the attempted supply of cannabis. This offending took some degree of planning on his part. The pre-sentence report writer reports that Mr Robert told her that it was part of a commercial transaction as he had received VT10,000 from the intended consignee via Western Union. In exchange, he would send cannabis to him on Santo.
11. Mr August foolishly agreed to follow Mr Robert to the airport even after being told that the carton contained cannabis and they were going to the airport to air freight it to Santo.
12. There are no mitigating factors relating to the offending.
13. I take the possession of cannabis as the lead offences. Mr Robert must have the higher start point for sentence as the larger amount of cannabis was found in his possession, and as he led the offending which Mr August foolishly agreed to and took part in. On that basis, I consider that the appropriate sentence start point for Mr Robert is 12 months imprisonment.
14. Given the lesser culpability for his part in the offending, I am minded to impose a non-imprisonment sentence for Mr August.



D. Personal Factors

Mr Robert

15. Mr Robert is 21 years old and a member of the Seventh Day Adventist Church. He told the pre-sentence report writer that he has been selling marijuana and earning money from it for a while before being caught. He has skills in construction work and joinery. Mr Robert is currently employed by CWR Construction as a construction worker. He has no previous convictions.
16. His pre-sentence report writer notes that Mr Robert showed remorse for his offending and that he has learnt a lesson. He is willing to perform a custom ceremony to his Chief.
17. For Mr Robert's personal factors I reduce the start point of his sentence by 2 months.

Mr August

18. Mr August is 20 years old and a member of the Seventh Day Adventist Church. He is an Agriculture and Social Science teacher at Etas Seventh Day Adventist School. He is also a student at the University of the South Pacific, Emalus Campus. He has no previous convictions.
19. His pre-sentence report writer notes that Mr August showed and expressed remorse for his offending. He said that he had learnt a big lesson in life. He said that he is related to Mr Robert as father, who told him to follow him to the airport. He only knew the reason for their going on their way to the airport. He is willing to perform a custom ceremony to his Chief.

E. Deduction for Guilty Plea

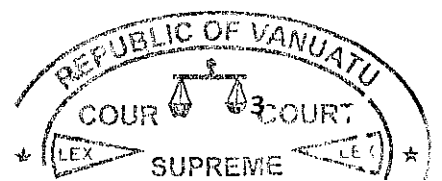
20. The guilty pleas were entered at the first opportunity. Prosecution had a strong case against both defendants. I consider the remorse now expressed by Mr Robert is more for getting caught than for the offending which he earned money from. I consider a 20% deduction is warranted.

F. Conviction – Mr Robert

21. I convict Mr Robert on his plea and the summary of facts.

G. End Sentence – Mr Robert

22. Taking all of the above matters into account, the end sentence imposed on the possession charges for Mr Robert is 8 months imprisonment.
23. The end sentence for the attempted supply charge for Mr Robert is 4 months imprisonment.



24. The sentences are to run concurrently.

H. Suspension – Mr Robert

25. I have the ability, in certain circumstances, to suspend an imprisonment sentence in part or entirely. In view of the following factors:

- a. Mr Robert's lack of previous convictions;
- b. Mr Robert's youth; and
- c. Mr Robert's current employment in CWR Construction,

I consider he has prospects for reformation and rehabilitation, and therefore it is not appropriate to make him suffer immediate imprisonment. I order the suspension of the execution of the imprisonment sentence on the condition that Mr Robert commits no further offence within the next 2 years.

26. I consider that keeping Mr Robert in the community is practicable and consistent with the safety of the community.

27. Although Mr Robert will not have to go into Correctional Services' custody today, I warn him that if he commits an offence in the next 2 years and is convicted, that he will be required to serve these sentences of imprisonment in addition to any other penalty that may be imposed on him for the further offending.

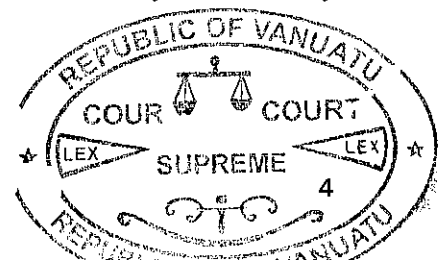
I. Other – Mr Robert

28. In addition, I impose a 12 months supervision order subject to the standard conditions set out in the *Penal Code*.

29. One of these conditions is that Mr Robert must take part in a rehabilitative and reintegrative needs assessment and/or programme if and when directed to do so by a probation officer. I hope Mr Robert will make full use of this opportunity to address his use of cannabis so that he never again appear in a court for criminal offending.

J. End Sentence – Mr August

30. Given Mr August's lesser culpability for the offending, his youth, his employment as a teacher and engagement in university studies, he has prospects for reformation and rehabilitation. He made a foolish decision to accompany Mr Robert and participate in the offending and I would hope he has learnt a lesson to not commit any future offence. The intervention of the law, at this stage, should be such as to assist Mr Robert as much as possible to reform and rehabilitate. To that end I see no merit in entering convictions, and those convictions remaining as part of his persona for the next several years until they are expunged from his record.



31. Taking all the above considerations into account, the end sentence that I impose on Mr August is pursuant to section 42 of the *Penal Code* to order Mr August to come up again before the Court for sentence if called upon within a period of 2 years. Accordingly, there is no sentence imposed for these offences at this stage – and indeed, if Mr August does not reoffend in any way in the next 2 years he will not be sentenced for this offending. However, if Mr August does re-offend in any manner, he will be called up to be sentenced for these offences – as well as any other sentence he may receive.
32. I deal with these current offences in this way on condition that Mr August undertakes and satisfactorily completes 12 months of supervision subject to the standard conditions set out in the *Penal Code*.
33. One of these conditions is that Mr August must take part in a rehabilitative and reintegrative needs assessment and/or programme if and when directed to do so by a probation officer. I hope Mr August will make full use of the opportunity given him today by the Court to address his use of marijuana so that he can fulfil his potential and never again appear in a court for criminal offending.
- K. Other
34. The cannabis seized by the Police is to be destroyed.
35. Mr Robert and Mr August have 14 days to appeal their sentence if they disagree with it.

**DATED at Port Vila this 17th day of April 2020
BY THE COURT**

V.M. Trief

V.M. Trief
Judge

