

PUBLIC PROSECUTOR

v

JOSEPH BETSESAI

Date of Plea: 17 June 2024
Date of Sentence: 10 July 2024
Before: Justice M A MacKenzie
Counsel: Mr. C. Shem for the Public Prosecutor
Ms. B. Taleo for the Defendant- via zoom link, Santo Courthouse
Defendant- via zoom link, Santo Courthouse

SENTENCE

1. Mr Joseph Betsesai, you appear for sentence having pleaded guilty to one charge of possession of cannabis. The maximum penalty is 20 years imprisonment, or a fine not exceeding VT 100 million or both.

The Facts

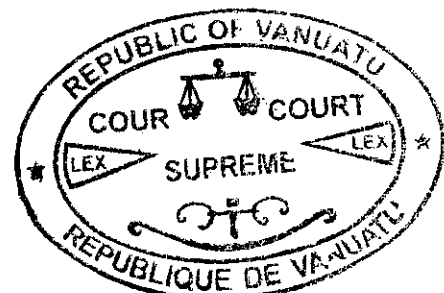
2. On 12 March 2024 you were in possession of cannabis. The cannabis was in your trouser pocket. Testing confirmed it was cannabis, with a net weight of 107.5g.
3. You admitted to police that the cannabis was yours, and that you smoke cannabis.

Sentencing purposes/principles

4. The sentence I impose must hold you accountable and must denounce and deter your conduct given that you were in possession of cannabis. Cannabis is an illegal drug which causes social harm. The sentence should ensure you take responsibility for your actions, and help you to rehabilitate. It must also be generally consistent.

Approach to sentence

5. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

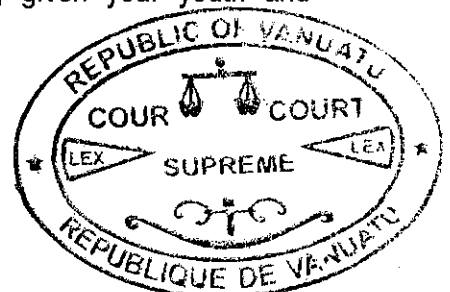


Starting point

6. The first step is to set a starting point.
7. The one aggravating factor is the quantity of cannabis, being 107.5 g.
8. There are no mitigating features of the offending itself.
9. There is a guideline case for cannabis cultivation, *Wetul v Public Prosecutor* [2013] VUCA 26. It also applies to possession of cannabis.
10. Both counsel have filed written submissions as to the appropriate starting point, and referred the court to cases to assist in selecting the appropriate starting point. One of the cases referred to is *Public Prosecutor v Raptick* [2023] VUSC 226. It is the most comparable case factually, as Mr Raptick had 8 packages of cannabis in his possession with a net weight of 102.65 g. The court considered that the offending fell into Category 1 of *Wetul*, with a starting point of 12 months imprisonment.
11. While the amount of cannabis in your possession is of concern, it was for personal use. There is no evidence of commerciality at all.
12. Therefore, it falls withing Category 1 of *Wetul*.
13. Consistent with *Raptick*, I adopt a starting point then of 12 months imprisonment, as the net weight of the cannabis in *Raptick* is similar to the quantity in the present case.

Guilty plea and personal factors

14. While you pleaded guilty at an early opportunity, I agree that the discount should be limited to 25%. That is because the case against you is overwhelming. This is consistent with *Raptick*. That equates to a discount of approximately 3 months from the starting point.
15. You are aged 19 years. You are a first offender with no criminal history.
16. You were co-operative with police.
17. The Probation report notes that you are remorseful. You plan to put things right with the Chiefs of your village. I accept your remorse is genuine.
18. I assess that you have good prospects of rehabilitation, given your youth and acceptance of responsibility.



19. For your youth, prior good character, co-operation and remorse, I give you a discount from the starting point of 2 months imprisonment, which equates to approximately 15 %.

End Sentence

20. The provisional end sentence is 7 months imprisonment.
21. You have been held in custody since 12 March 2024. You have been in custody for 4 months, which equates to an effective sentence of 8 months imprisonment. This is how the calculation was recently undertaken by Trief J in Public Prosecutor v Saly [2024] VUSC 112. As per Saly, the discount to reflect time spent in custody is applied prior to arriving at an end sentence. That approach is problematic here, as you have effectively been in custody longer than any term of imprisonment I could impose today.
22. Given that you have effectively served a sentence of imprisonment, your time in custody means that the need for accountability, deterrence and denunciation has been met.
23. Therefore, I decline to impose a sentence of imprisonment and suspend it under s 57 of the Penal Code, as sought. To do so, would be to impose a disproportionate sentence. The punitive aspect of sentencing has been met. But for the time already spent in custody, I would have imposed a sentence of imprisonment and suspended the sentence for 12 months.
24. Instead, I sentence you to 6-month supervision, to assist you in your rehabilitation, given the quantity of cannabis involved. It is well recognised that younger people have a greater capacity for rehabilitation than older offenders. Such a sentence will meet the all the relevant sentencing needs.
25. The cannabis material is to be destroyed.
26. You have 14 days to appeal.

DATED at Port Vila this 10th day of July 2024
BY THE COURT

Justice M A MacKenzie

