

**PUBLIC PROSECUTOR**

**v**

**SECK ALEXIS**

*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

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**SENTENCE**

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1. Mr Seck Alexis, 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**

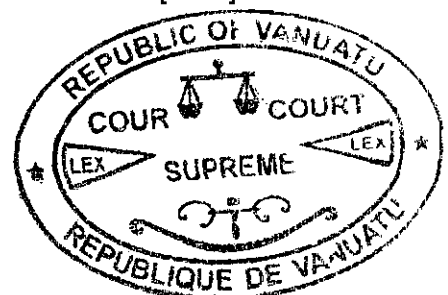
2. On 12 March 2024, cannabis was found in a red container in your trouser pocket. Testing confirmed it was cannabis, with a net weight of 2.7 g.
3. You admitted to police that you were in possession of cannabis on 12 March and that you smoke cannabis.

**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. 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.

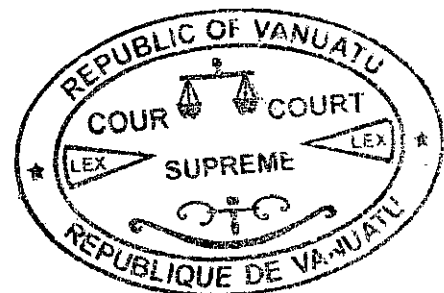


### **Starting point**

6. The first step is to set a starting point.
7. The offending involved a very small quantity of cannabis.
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. I have taken them into account. The cases of most relevance here are *Public Prosecutor v Shem* [2022] VUSC 174, and *Public Prosecutor v Robert* [2024] VUSC 61, as they involve very small quantities of cannabis. They demonstrate that a bespoke sentence is appropriate. Shem involved 1.5 g of cannabis. The sentence imposed was 7 months imprisonment suspended for 2 years, and 50 hours community work. Robert involved 1.216 g of cannabis. The court said that because Mr Robert had spent 4 months in custody prior to sentence, that was a sufficient penalty. No further sentence was imposed in the circumstances.
11. Here, the offending involves a small amount of cannabis for personal use. There is no evidence of commerciality at all.
12. Therefore, it falls within Category 1 of *Wetul*. So, the usual sentencing outcome would be a fine or other community-based sentence. A short term of imprisonment could be warranted in some circumstances.
13. I would impose a community-based sentence given the small amount of cannabis, and that it was for personal use. If a term of imprisonment was warranted, then a starting point would be no more than 6 months imprisonment.

### **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 *Public Prosecutor v Raptick* [2023] VUSC 226.
15. You are aged 19 years. You are from Malekula.
16. You are a first offender with no criminal history.



17. You were co-operative with police.
18. The Probation report notes that you are remorseful. I accept your remorse is genuine. You have learnt your lesson.
19. For your youth, prior good character, co-operation, and remorse, I would reduce a notional starting point by 15%.

**End Sentence**

20. The provisional end sentence is a community-based sentence, for the reasons already discussed.
21. You have been remanded 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.
22. This means you have been in custody for longer that you should have been, as I deem a community-based sentence to be the least restrictive outcome. This accords with Category 1 of Wetul. Even if the end sentence was a sentence of imprisonment, you would have been in custody for longer than necessary.
23. Your time in custody means that the need for accountability, deterrence and denunciation has been met. No further sentence is to be imposed given the small amount of cannabis and the length of time you have been in custody already.
24. The cannabis material is to be destroyed.
25. You have 14 days to appeal.

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

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Justice M A Mackenzie

