

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

Criminal
Case No. 24/1661SC/CRML

PUBLIC PROSECUTOR

v

BATICK OVA

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

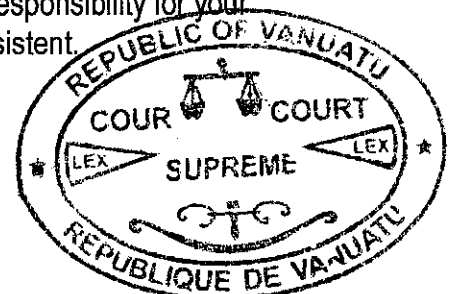
1. Mr Batick Ova, you appear for sentence having pleaded guilty to one charge of possession of cannabis. The maximum penalty is 20 years imprisonment, or a fine not exceeding VT 100 million or both.

The Facts

2. On 14 April 2024 you were found smoking cannabis in your village. You were arrested on 2 May 2024 . Police seized dried cannabis leaf from your home at Narango, Santo. Testing confirmed it was cannabis, with a net weight of 31.219 g.
3. You admitted to police that you smoke cannabis and that you had cannabis in your possession.

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

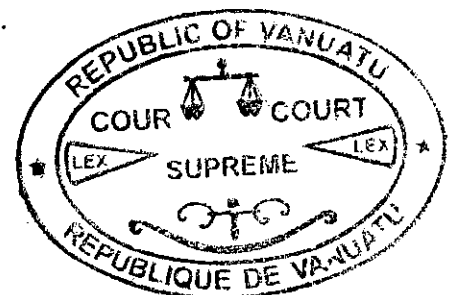
5. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

Starting point

6. The first step is to set a starting point.
7. The one aggravating factor is the quantity of cannabis, being 31.219 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.
11. The offending in the present case falls somewhere between *Public Prosecutor v Raptick* [2023] VUSC 226 and *Public Prosecutor v Wilson* [2024] VUSC 59. In *Raptick*, there was cannabis with a net weight of 102.65 g. In *Wilson*, the defendant was in possession of 8.447 g of cannabis. In both cases, the offending fell within Category 1 of *Wetul*, with a starting point of 12 months imprisonment.
12. The offending here involves a moderate amount of cannabis for personal use. There is no evidence of commerciality at all.
13. Therefore, it falls within Category 1 of *Wetul*. So, the usual sentencing outcome would be a fine or other community-based sentence, or a short custodial sentence.
14. I adopt a starting point of 12 months imprisonment, in line with both *Raptick* and *Wilson*.

Guilty plea and personal factors

15. 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.
16. You are aged 28 years and are from Narango village in Santo.
17. You are a first offender with no criminal history.



18. You were co-operative with police.
19. The Probation report notes that you are remorseful. I accept your remorse is genuine. You have learnt your lesson.
20. For your prior good character, cooperation and remorse, I reduce the starting point by 1.5 month's imprisonment, which equates to approximately 10 %.
21. You have been remanded in custody since 3 May 2024. You have been in custody for 2 months and 1 week, which equates to an effective sentence of 4.5 months imprisonment. This is how the calculation was recently undertaken by Trief J in Public Prosecutor v Saly [2024] VUSC 112. Accordingly, 4.5 months is deducted from the sentence start point.

End Sentence

22. The end sentence is 3 months imprisonment.
23. Taking into account the circumstances, the nature of the offending and your character, I have decided to suspend the sentence pursuant to s57 of the Penal Code for 12 months. First, this is because you were in possession of a moderate amount of cannabis for personal use and there is no suggestion of commercial use. Second, you are a first offender, you are remorseful, and have learnt your lesson. In those circumstances, suspending the sentence will meet the need for accountability, deterrence and denunciation and will promote in you a sense of responsibility. If you offend again in the next 12 months, you will need to serve the sentence of imprisonment in addition to any other penalty that may be imposed for the further offending.
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

