

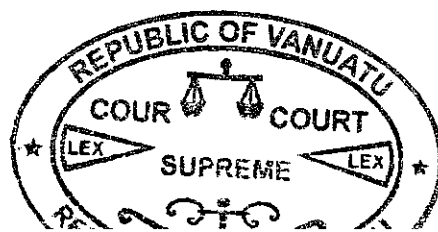
PUBLIC PROSECUTOR
V
GUENTIN PANIEL
(Defendant)

Before: *Hon Chief Justice Vincent Lunabek*

In Attendance: *Ms Mathilda Kalang Stephen, Probation Officer*
Defendant – Guentín Paniel in person

**Cancellation of Community Work and Re-Sentence
of Defendant Guentín Paniel**

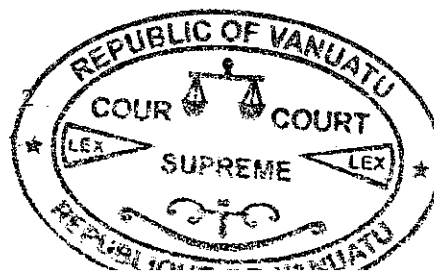
1. An application for cancellation of community work and re-sentence of Defendant Guentín Paniel was filed with an Affidavit in Support on the 1st of October 2024.
2. The application was filed by Probation Officer, Mathildah Kalang Stephen under Section 58X of the Penal Code (the "Act").
3. In her Affidavit in support of the application Mathildah K. Stephen deposes to this effect:
 - (a) That Guentín Paniel was sentenced to 60 hours community work following conviction of Possession of cannabis and Domestic Violence, in the Supreme Court of Vanuatu at Port Vila on the 9th October 2023 (Exhibit A – Community Work Order);
 - (b) That Guentín Paniel was inducted to his community work sentence and signed the Induction checklist on 11 April 2024 (Exhibit B – Induction checklist Form);
 - (c) That on 11 April 2024, Guentín Paniel signed a community work agreement to do his hours of work at the Port Vila cemetery area. It was agreed for him to commence the work immediately until hours are completed.
 - (d) (Exhibit C – attached is a copy of the Community Work Agreement);



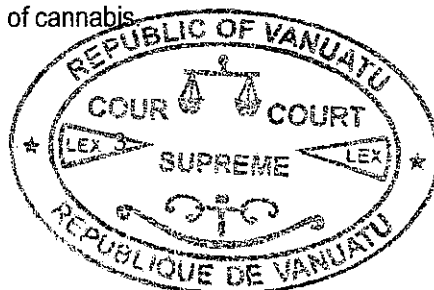
- (e) That Guentin Paniel never started his community work hours from then until to date. He fails to report to the Probation Officer every Thursday as directed by the Probation Officer. He breached section 58Q(b);
 - (f) Due to his non-compliance, home visits were made to his residence and his reasons were purely that he forgot. A verbal warning and final warning have been served but he has not made attempt to do his hours of work (Exhibit D – Verbal & Final Warning Letter);
 - (g) That Guentin's parents have written a complaint letter to the Probation Services of Mr Guentin Paniel's aggressive attitudes and behaviour at home due to his continuous consumption of cannabis (Exhibit E);
 - (h) That it is no longer seen in the best interest of the community for Mr Guentin Paniel to be subjected to a community work sentence for not complying at all. Consequently, it is respectfully requested pursuant to Section 58X(3) (c) that the Community Work Sentence to be cancelled and substituted for another sentence to be imposed such as an imprisonment sentence or any other sentence the Court sees fit. We would like 6 months imprisonment as it was previously imposed by the Court.
4. Guentin Paniel informed the Court the reason he did not comply with his community work agreement at the Port Vila Cemetery area was because he did not have lunch. He also said he was sick and stayed at home. He did little work at home. He helped his father building a small house at home.
5. This application is made under Section 58X (2) and (3) of the Act. Section 58X provides:

58X VARIATION OR CANCELLATION OF SENTENCE OF COMMUNITY WORK

- (1) *An offender who is subject to a sentence of community work, or a probation officer, may apply in accordance with section 58ZA for an order under subsection (3) of this section on the grounds that:-*
- (a) *there has been a change of circumstances since the sentence was imposed that would justify the variation or cancellation of the sentence; or*
 - (b) *having regard to any change in circumstances since the sentence was imposed and to the manner in which the offender has responded to the sentence, the continuation of the sentence is no longer necessary in the interests of the community or the offender.*
- (2) *A probation officer may apply in accordance with section 58ZA for an order under subsection (3):*




- (a) *if an offender who is subject to a sentence of community work is convicted of an offence punishable by imprisonment; or*
 - (b) *on the grounds that the offender has behaved in a manner described in any of paragraphs 58Z(1)(a) to (j).*
- (3) *On an application under subsection (1) or subsection (2), the court may, if it is satisfied that the grounds on which the application is based have been established:*
- (a) *vary the sentence by reducing the number of hours of work to be done; or*
 - (b) *cancel the sentence; or*
 - (c) *cancel the sentence and substitute any other sentence (including another sentence of community work) that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.*
- (4) *In determining another sentence under paragraph (3)(c), the court must take into account the portion of the original sentence that the offender has not served at the time of the order.*
- (5) *If the court cancels the sentence, the sentence expires on the date that the order is made or on any other date that the court may specify.*
- (6) *If, after an offender is sentenced to community work, the offender is subsequently sentenced on another charge to a term of imprisonment, the sentence of community work must be cancelled from the date that the offender commences his or her sentence of imprisonment.*
6. Defendant Guentin Paniel had pleaded guilty to, convicted and sentenced on 9th October 2023 to 8 months imprisonment suspended for a period of 2 years and in addition, he was ordered to perform 60 hours of community work on one count of unlawful possession of cannabis, contrary to Section 2(62) of the Dangerous Drugs Act [CAP. 12] and one count of Domestic Violence, contrary to Sections 10(1) and 4(1)(f) of the Family Protection Act.
7. The Affidavit of the Probation Officer, Mathildah K. Stephen established that Defendant Guentin Paniel did not comply with his community work agreement. The Affidavit also shows that Guentin Paniel's parents wrote a complaint letter to the Probation Services of Defendant's aggressive attitudes and behavior at home due to his continuous consumption of cannabis.



8. The Court is satisfied that the grounds on which the application is based have been established.
9. The Court noted and considered subsections (3)(c), (4), (5) and (6) of the Act above.
10. The Court decided and cancelled the sentence of 60 hours of community work; the Court also cancelled the period of 2 years suspension of 8 months imprisonment sentence.
11. The Court re-sentenced Defendant Guentín Paniel with an imprisonment sentence of 8 months with immediate effect. Defendant Guentín Paniel, this is your new sentence.
12. You have 14 days to appeal your substituted sentence of 8 months imprisonment if you are unsatisfied with it.

DATED at Port Vila, this 8th day of October, 2024.

BY THE COURT


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Hon. Chief Justice Vincent Lunabek

