

PUBLIC PROSECUTOR
v
KENERY ROBERT

Coram: *Hon. Chief Justice Vincent Lunabek*

Counsel: *K Massing for the State*
B Taleo for the Defendant

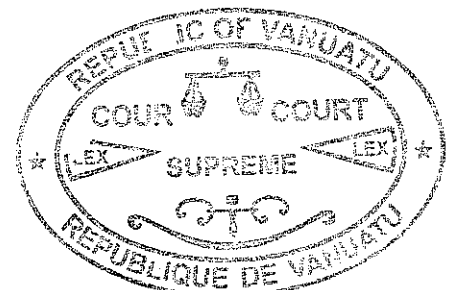
Date of Plea: *22 April 2024*

Date of Sentence: *26 April 2024*

SENTENCE

I. Introduction

1. Mr Kenery Robert ("*Mr Kenery*"), you appear today for sentence on one charge of unlawful possession of cannabis substances, contrary to Section 2(62) of the Dangerous Drugs Act [CAP. 12].
2. On 22nd April 2024, you pleaded guilty to the charge and you admitted to the relevant corresponding facts:
 - (a) A complaint was made against you for the offence of possession of marijuana (cannabis) materials;
 - (b) You were reported by employees of LCM store in Luganville Santo for a theft of solar light to police in Luganville, Santo. The security of LCM store took you to the police station. At the police station, the police questioned you. It was during the questioning, that the police searched you and found a roll of marijuana covered in foiled paper. They confiscated it and kept it safe for presumptive test results.
 - (c) The suspect drugs were tested. The test result shows that the suspected drugs (marijuana) were turned positive of cannabis. The net weight was 1.216 grams.



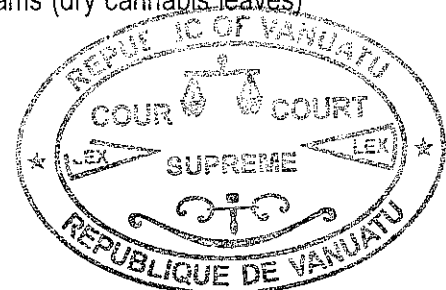
- (d) You were cautioned and interviewed by the police where you admitted the allegations made against you.
3. Possession of cannabis substance is against the law. The law prohibits the possession of cannabis substances and punished any person who acts contrary to this law.
 4. The maximum sentence available is payment of a fine not exceeding VT100 million or to a term of imprisonment not exceeding 20 years or to both such fine and imprisonment (sections 2(62) and 17 of the Dangerous Drugs Act [CAP. 12]).
 5. In the present case, you have in your possession cannabis substances of a total weight of 1.216 grams which is an aggravating factor to your offending. There is no mitigating factor to the offending.
 6. I am reminded of the case of *Wetul v Public Prosecutor* [2013] VUCA 26, where the Court of Appeal set out the guidelines for sentencing of cannabis into three broad categories. The relevant part of that judgment is as followed:-

"Category 1 consists of the growing of a small number of cannabis plants for personal use by the offender without any sale to another party occurring or being intended. Offending in this category is almost invariably dealt with by a fine or other non-custodial measure. Where there have been supplies to others on a non-commercial basis the monetary penalty will be greater and in more serious cases or for persistent offending a term of community work and supervision or even a short custody term may be merited. (It is to be noted in this connection that there is no separate offence in relation to a section 4 offence of cultivation for supplying or possession for supply, as opposed to importation, sale, supply or possession.(s.2).

Category 2 encompasses small-scale cultivation of cannabis plants for a commercial purpose, i.e. with the object of deriving profit. The starting point for sentencing is generally between two and four years but where sales are infrequent and of very limited extent a lower starting point may be justified."

Category 3 is the most serious class of such offending. It involves large-scale commercial growing, usually with a considerable degree of sophistication and organisation. The starting point will generally be four years or more.

7. I accept the defence submissions that the guideline for categorizing the offence of cannabis cultivation can also be applied to possession of cannabis as the offences are all in contravention to Section 2(62) of the Dangerous Drugs Act with the same maximum penalty.
8. The circumstance of the present case, put this case under category 1 of *Wetul's* case. So, you had unlawfully in your possession cannabis substances of 1.216 grams (dry cannabis leaves)

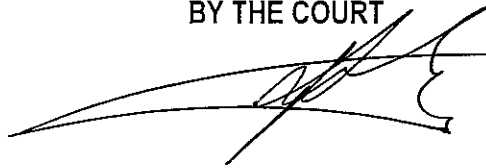


for your personal use, to smoke. There was no evidence of your intention to supply or sell to others.

9. Both the prosecution and the defence counsel submitted for other non-custodial measures.
10. The offending in the present case is serious. I take note that Mr Kenery was in possession of small amount of cannabis with a total net weight of 1.216 grams. You are a first-time offender. Your family are dependent on you for support as you are the sole bread winner.
11. Mr Kenery, you have also already spent over 16 weeks (4 months) which is enough time served as a punishment for this offending.
12. I decide not to impose any more sentence than release you from custody. It is so ordered.
13. The court ordered that the cannabis substances of 1.216 grams seized by the police and at the custody of the police shall be destroyed.

DATED at Luganville, Santo, this 26th day of April, 2024.

BY THE COURT



Hon. Chief Justice Vincent LUNABEK

