

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

Criminal
Case No. 24/3324 SC/CRML

PUBLIC PROSECUTOR

v

HAM VOSA

Date of Plea: 2 December 2024
Date of Sentence: 6 December 2024
Before: Justice M A MacKenzie
In Attendance: Public Prosecutor – Ms J Tete
Defendant – Ms B Taleo

SENTENCE

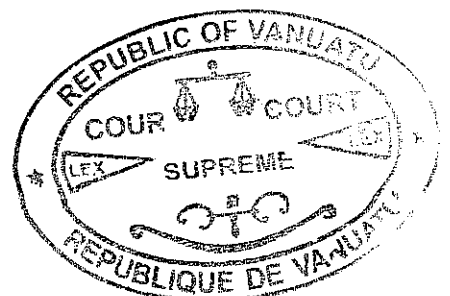
1. Mr Ham Vosa, you appear for sentence having pleaded guilty to one charge of possession of cannabis. The maximum penalty is 20 years imprisonment, or a fine not exceeding VT 100 million or both.

The Facts

2. On 29 April 2021, police were patrolling in the Sarakata area. They saw you and your 2 associates. Police believed you were acting suspiciously, so you were searched. As a result, a substance was found in your possession. Testing confirmed the substance was cannabis, with a net weight of 1.221 g.
3. You were cautioned and admitted the allegations to police.

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

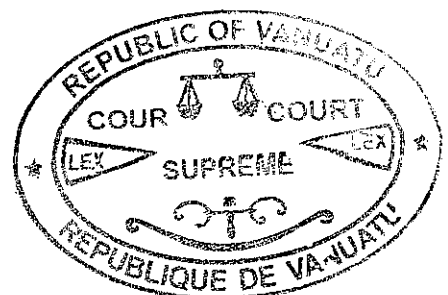
6. The first step is to set a starting point taking into account the aggravating and mitigating features of the offending itself and the maximum penalty for the offence.
7. The offending involved a very small quantity of cannabis.
8. There are no mitigating features of the offending itself.
9. There is a guideline case for cannabis cultivation, *Wetul v Public Prosecutor* [2013] VUCA 26. It also applies to possession of cannabis. Here, the offending involves a very small amount of cannabis for personal use. There is no evidence of commerciality at all. 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.
10. If a term of imprisonment was appropriate the starting point would be no more than 6 months imprisonment. See for example, *Public Prosecutor v Shem* [2022] VUSC 174 and *Public Prosecutor v Thuha* [2017] VUSC 53.

Guilty plea and personal factors

11. 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 1 ½ months.
12. You are aged 28 years, and you are from South Santo. You are a first offender and were co-operative with police. You are married and have 3 children. You are a farmer, planting and selling kava. Rather inexplicably, there was a 3 year delay in you being charged. You were also held in custody for 24 hours. The sentence is reduced by 1 ½ months for these factors.

End Sentence

13. The provisional end sentence is 3 months imprisonment. However, I agree with both counsel that a community-based sentence can be imposed, given the small quantity of cannabis and that you are a first offender. A suspended prison sentence is not required to meet the need for deterrence, denunciation and accountability. All the relevant sentencing needs, including rehabilitation can be met by a combined sentence of 6



months supervision and 60 hours community work. The supervision sentence is subject to a condition that that you are to attend a drug awareness and rehabilitation programme as directed by the Corrections Department.

14. The cannabis material is to be destroyed.
15. You have 14 days to appeal.

**DATED at Port Vila this 6th day of December 2024
BY THE COURT**

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Justice M A MacKenzie

