

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU

Criminal  
Case No. 18/2725 SC/CRML

**BETWEEN:** Public Prosecutor

**AND:** Noel Naia  
Jack Naiwa  
Defendants

*Date:* 20 December 2018  
*Before:* Justice G.A. Andrée Wiltens  
*In Attendance:* Ms L. Lunabek for the Public Prosecutor  
Mr L. Moli for the Defendants

---

**SENTENCE**

---

A. Introduction

1. Mr Jack Naiwa pleaded guilty to a charge of possession of dangerous drugs. The maximum penalty for this offence is 20 years imprisonment and/or a fine of VT 100 million.

B. Facts

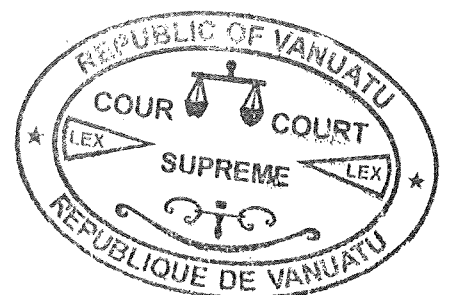
2. On 17 August 2018 the police arrested and searched Mr Naiwa. They found a number of rolls (36) of cannabis in his back pack. The total weight of cannabis was 2 kilograms.
3. Mr Naiwa admitted the offending when questioned by the police.

C. Aggravating Factors of the Offending

4. The quantity of drugs is an aggravating factor.

D. Mitigating Factors of the Offending

5. There are no mitigating factors relating to the offending.



E. Start Point

6. I reject defence counsel's submissions that a suspended sentence plus some community work meets the criminality of the situation.
7. The start point for this offending, as required to be identified by *PP v Andy* [2011] 14, must take into account the enormous quantity of cannabis involved.
8. I take note of *Wetul v PP* [2013] VUCA 26 where 3 bands were set in relation to cultivation of cannabis. However, I have been unable to find any Court of Appeal decision setting out sentencing guidelines for possession or sale, but it is difficult to imagine a start point for sentence of less than 2 years imprisonment for the offence of selling cannabis. I would start at that level of sentencing for the sale or cultivation of small quantities of drugs; and with a maximum of 20 years now set by Parliament for these types of offending, there is ample scope to recognise and appropriately sentence for more significant amounts and types of drugs.
9. The type of drugs is a significant relevant factor to be considered – the more pernicious warranting much higher sentences. I accept that cannabis is at the bottom of the scale, in terms of the dangerous drugs hierarchy.
10. The start point I adopt for Mr Naiwa is 3 years imprisonment. Had he pleaded guilty to selling that amount of cannabis, the start point for his sentence would have been 6 - 7 years imprisonment. He is fortunate the prosecution entered a *nolle prosequi* in respect of that charge.

F. Personal Factors

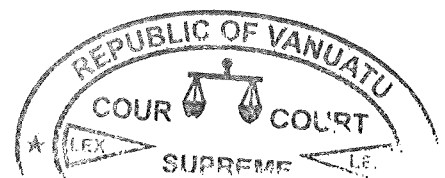
11. Mr Naiwa is 23 years of age, residing with a de facto partner, and is from Tanna. He has no previous convictions. He supports his parents. He was remanded in custody for just over 2 weeks prior to being granted bail. For his personal mitigating factors, I reduce Mr Naiwa's sentence by 6 months.
12. The final matter of mitigation is the defendant's prompt pleas. For his plea, I allow 33.3% reduction to the end sentence.

G. End Sentence

13. Taking all of those matters into account, the end sentence I impose on Mr Naiwa is a term of 1 year 8 months imprisonment.

H. Suspension

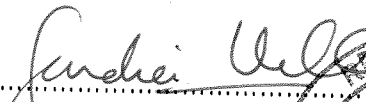
14. Section 57(1) of the Penal Code requires the Court to consider whether the end sentence should be imposed immediately or suspended. The Court has jurisdiction to suspend the sentence if immediate incarceration is inappropriate in view of the circumstances, in particular the nature of the crime, and the character of the offender.
15. The offending was very serious in terms of the quantities of cannabis involved. Parliament obviously regards this type of criminal activity as completely undesirable, and that requires the Courts to sentence accordingly. It cannot have been within Parliament's contemplation that



those who commit such serious offending would have the opportunity of remaining within the community while they serve their sentence. The nature of the crime precludes my exercising my discretion to suspend the sentences.

16. Mr Naiwa has 14 days to appeal the sentences if he disagrees with it.

Dated at Port Vila this 20th day of December 2018  
BY THE COURT

  
.....  
Justice G.A. Andrée Wiltens

