

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

Criminal
Case No. 18/2725 SC/CRML

BETWEEN: Public Prosecutor

AND: Noel Naia
Defendant

Date: 21 December 2018
Before: Justice G.A. Andrée Wiltens
In Attendance: Ms M. Tasso for the Public Prosecutor
Mr L. Moli for the Defendant

SENTENCE

A. Introduction

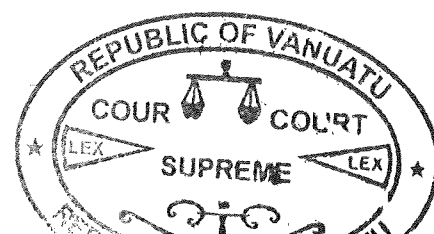
1. Mr Noel Naia pleaded guilty to a charge of possession of dangerous drugs and a charge of selling dangerous drugs. The maximum penalty for these offences is 20 years imprisonment and/or a fine of VT 100 million.

B. Facts

2. On 16 August 2018 the police acted on some information to stop and search Mr Naia at the Inter-Provincial Sports games held at Isangel, Tanna Island. Mr Naia gave an inconclusive answer when asked if he was selling cannabis. He was searched and in his back pack the officers found 36 large rolls of cannabis, 36 medium rolls of cannabis and 32 small rolls of cannabis – they respectively sell for VT 500 each, VT 200 each and VT 100 each. There was also some other cannabis, not yet packaged. The total weight of cannabis was 467 grammes.
3. Mr Naia admitted the allegations when questioned by the police.

C. Aggravating Factors of the Offending

4. The quantity of drugs is an aggravating factor. Further, selling any drug is a different and more serious offence than to simply possess drugs for one's own use.



D. Mitigating Factors of the Offending

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

E. Start Point

6. I reject the prosecution submissions that Mr Naia's offences be dealt with concurrently, with possession simpliciter being the lead offence.

7. The start point for this offending, as required to be identified by *PP v Andy* [2011] 14, must reflect two criminal charges and the 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. In this case Mr Naia had almost half a kilogram of packaged cannabis for sale in a very conducive setting. This was a commercial operation for him. The start point for the charge of selling that quantity of cannabis is 3 years imprisonment. The start point for his possession of that quantity of cannabis is 2 years imprisonment. The 2 charges should obviously be dealt with concurrently, and on a totality basis I set the start point for Mr Naia's sentence at 3.5 years imprisonment.

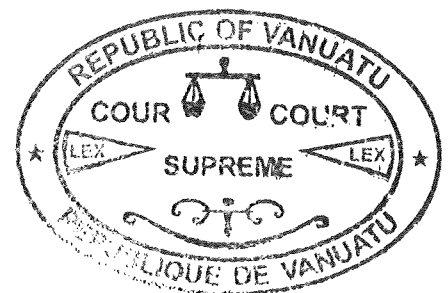
F. Personal Factors

11. Mr Naia is only 19 years of age, single, and is from Tanna. He has no previous convictions. He is said to be remorseful and a solid contributing member of his family. He was remanded in custody for almost 2 months before being granted bail. For those mitigating personal factors, I reduce Mr Naia's sentence by 9 months imprisonment.

12. The final matter of mitigation is the defendant's prompt pleas. For his pleas, I allow 33.3% reduction from the end sentence.

G. End Sentence

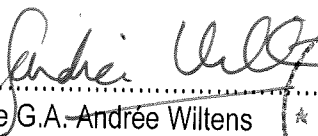
13. Taking all of those matters into account, the end sentence that is imposed for Mr Naia is one of 1 years 10 months imprisonment. I impose that on the selling cannabis charge, and concurrently impose 8 months imprisonment on the possession of cannabis charge.



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 crimes precludes my exercising my discretion to suspend the sentences.
16. The defendant has 14 days to appeal the sentence if he disagrees with it.

**Dated at Port Vila this 21st day of December 2018
BY THE COURT**


Justice G.A. Andree Wiltens

