

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

Criminal
Case No. 19/2340 C/CRML

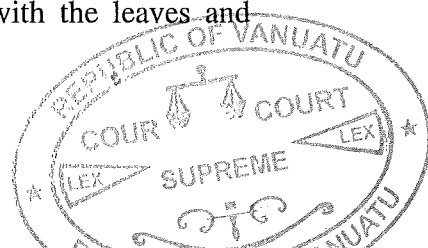
BETWEEN: Public Prosecutor

AND: Silas Mahit
Defendant

Date of Plea: 1st October 2019
Date of Sentence: 1st November 2019
Before: Justice Oliver Saksak
In Attendance: Laura Lunabek for Public Prosecutor
Linda Bakokoto for Defendant

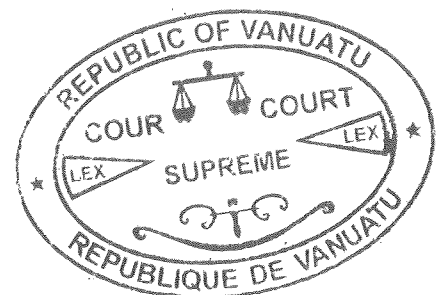
SENTENCE

1. Silas Mahit on 1st October 2019 you pleaded guilty to one charge of possession of cannabis. And you are here for sentence today for having done so.
2. Section 2 (62) of the Dangerous Drugs Act CAP.12 makes it an offence for a person to possess cannabis on their person. And the maximum penalty for this offence is either a fine of up to VT 100 million or imprisonment of not exceeding 20 years or to both. These heavy penalties indicates that possession of cannabis is a very serious offence.
3. On 6th December 2014 you were caught by the Police at the Seafront area. Upon searching your person the police found leaves of Marijuana or cannabis plants on you. You had then wrapped in aluminium paper foil. In your statement of admission to the police on 7 December 2014 you explained that you had found a small plant of cannabis growing by the fence of your employer at the house near the Shefa Provincial Council Headquarters. You then removed the plant and transplanted in a black plastic bag. That was in August 2014. You harvested the leaves on 1st December 2014 and uprooted the plant. You rolled the leaves up in the aluminium foil and carried it around in your bag. You went over to the seafront on the night of 6th December 2014. It was then and there the Police caught you with the leaves and

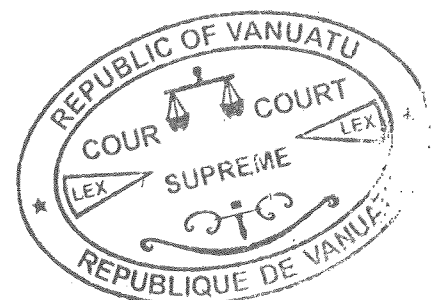


arrested you. The quantity of the leaves was 24.82 grams as the net weight. The gross weight was 31.29 grams and not 10.35grams as stated by your lawyer.

4. On your admission, I therefore convict you of the charge of possession of cannabis.
5. In assessing your sentence I consider what the Court of Appeal said in the case of Naio.v.PP [1998] VUCA 1 about taking particular circumstances into account.
6. I note also the Table of Comparative cases submitted by the Prosecutor. The cases are PP.v. Jimmy [2012] VUSC 142, PP.v. Tining [2014] VUSC 7, PP.v. George [2017] VUSC 183, PP.v. Nambong [2015] VUSC 10 and PP.v. Waha [2015] VUSC 50. The sentences in those cases range from 6 months imprisonment to 15 months. The quantities of substances were 1.37 g, 12.13g, 57.15g, 22.81g and 51 g.
7. The cases cited by your lawyer are different and do not apply to your case.
8. Your case falls almost within the quantity found on Nambong's case in 2015 where the quantity of cannabis was 22.81g. Yours was 24.82grams. The Court in Nambong gave Nambong a 6 months supervision sentence on standard conditions. This was because he was a student and was diagnosed with a weak heart. He was 21 years old at the time.
9. From your pre-sentence report you were 22 years old in 2014 when you offended. You are now 26 years old. You have not offended before and have not re-offended since. You are still a single person.
10. You knew very well what the plant was. You cultivated it by transplanting it in a plastic bag and you kept it hidden in the yard where you worked and cared for it for a period of 5 months. You carried it in your bag with some intent to either sell them or supply them to your friends. I consider these to be the aggravating features of your offending.



11. I consider that the appropriate sentence consistent with the other case authorities in this Court and the Court of Appeal, shall be a custodial sentence with suspension, and with an order for community work.
12. I therefore sentence you to a starting point of 16 months imprisonment. There shall be no uplift.
13. In mitigation I take into consideration (a) the delay of 5 years in prosecuting your case, (b) the custom ceremony you performed showing remorse, (c) your clean past and (d) your cooperation with the police. I deduct 4 months out of your 16 months sentence. The balance shall be 12 months imprisonment.
14. I reduce the sentence by a further 1/3 for guilty plea at first opportunity (albeit late). Your end sentence therefore shall be 8 months imprisonment. These are however suspended for a period of 2 years from the date of this sentence. This means you do not have to go to prison today. You will remain in the community but on condition that you do not commit this offence again or any other offence for which you would be charged and convicted. If you do, you will go to prison then to serve your sentence of 8 months.
15. I consider that I should impose an additional sentence of community work under sections 58N and 58P of the Penal Code Act. You are therefore ordered to do community service or work for a period of 40 hours.
16. Pursuant to section 58T of the Act I direct that you perform your 40 hours of community work within 12 months from today by clearing the bushes currently growing on the old Supreme Court Building site burned down in June 2007. You will do this under the Supervision of the Probation and Correctional service.
17. I condemn the substance held in police custody to destruction within 7 days from the date hereof.



DATED at Port Vila this 1st day of November 2019

BY THE COURT


OLIVER.A.SAKSAK

Judge

