

BETWEEN: Public Prosecutor

AND: Len Tovu
Defendant

Date of Sentence: 20 September 2019
Before: Justice G.A. Andrée Wiltens
Counsel: Mr K. Massing for the Public Prosecutor (absent)
Mr L. Moli for the Defendant

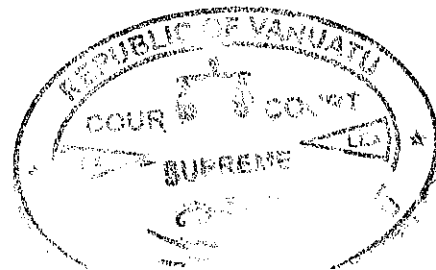
SENTENCE

A. Introduction

1. Mr Tovu has pleaded guilty to a charge of domestic violence - the maximum sentence for that offence is a term of 5 years imprisonment. He has also pleaded guilty to a charge of sale of cannabis - the maximum sentence for that offence is 20 years imprisonment.

B. Facts

2. On 23 May 2019, a search warrant was executed at the home of Mr Tovu's parents, where he resides. In his bedroom, and elsewhere, the police located and seized 439 gms of cannabis. The cannabis was in a total of 87 different packages, many suitable for sale to end-purchasers. Mr Tovu says some was for his own consumption and some was for sale.
3. Over a 2 or more year period, since 2017 Mr Tovu has tormented his family at their home residence. This has included an assault on his father with a rubber hose, the chasing away from their home of his parents and siblings for a 2-week period, and forthright abuse on a regular basis towards his parents including threats.



C. Aggravating Factors of the Offending

4. There are a number of aggravating factors to the offending. Firstly, there is the fact that there are two separate criminal acts involved. The sheer quantity of cannabis is aggravating, as well as their mode of packaging making it more readily available for sale – and the fact that it was kept concealed at his parents' home. The length of the domestic violence offending is also aggravating.

D. Mitigating Factors of the Offending

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

E. Start Point

6. The start point for this offending, as required to be identified by *PP v Andy* [2011] 14, is set at 2 years 10 months imprisonment, on a totality basis taking both offences into account. This figure is arrived at on the basis that each form of offending warrants a sentence start point of 20 months imprisonment. The sentences must be served cumulatively as they are quite unrelated, but they must be reduced when looking at the totality of Mr Tovu's offending.

F. Personal Factors

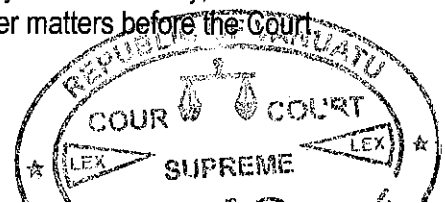
7. Mr Tovu is still young, at his present age of 21 years. He has no previous convictions, he is remorseful and he has engaged in a custom reconciliation meeting. These factors enable a reduction of Mr Tovu's sentence by 10 months imprisonment.
8. The final matter of mitigation is Mr Tovu's pleas. These were promptly entered at the first available opportunity. Accordingly a one-third discount is available to Mr Tovu for his pleas.

G. End Sentence

9. Taking all of those matters into account, the end sentence that must be imposed is one of 16 months imprisonment. I impose that on both charges concurrently.

H. Suspension

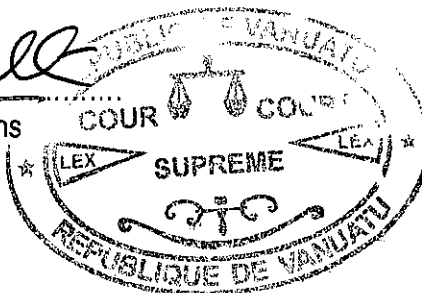
10. Section 57(1) of the Penal Code requires the Court to consider whether the end sentence should be imposed immediately or suspended. The Court has jurisdiction to suspend the sentence if immediate incarceration is inappropriate in view of the circumstances, in particular the nature of the crime, and the character of the offender.
11. Suspending Mr Tovu's sentence is within my discretion. I take into account his youth and lack of previous convictions, plus his prompt pleas. He has attended a custom reconciliation ceremony with his family. He has been forgiven by his father and has excellent rehabilitation prospects with members of his community willing to assist in that regard. In the circumstances it is appropriate to suspend the end sentences for 2 years.
12. Accordingly, the sentences of 16 months imprisonment are suspended for 2 years. Mr Tovu needs to understand that he needs to remain offence free for 2 years from today, or he will be incarcerated for 2 years irrespective of his sentence for the further matters before the Court.



13. Suspending a sentence is often accompanied by a direction that the offender be subject to a period of supervision by the Probation service, to ensure that re-offending risks are minimised. I am satisfied that is required in this instance.
14. Accordingly 18 months supervision is also imposed on Mr Tovu, with the conditions that he be assessed for, and if found suitable, to attend and complete courses dealing with the consumption of drugs and anger management.
15. Mr Tovu has 14 days to appeal this sentence if he disagrees with it.
16. The drugs seized are to be destroyed. The VT 50 that was the proceeds of criminal activity is forfeited to the State.

**Dated at Port Vila this 23rd day of September 2019
BY THE COURT**

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



The seal of the Supreme Court of Vanuatu is circular. It features a central emblem of a scale of justice. The text 'REPUBLIC OF VANUATU' is written along the top inner edge, and 'REPUBLIQUE DE VANUATU' along the bottom inner edge. The words 'COUR SUPREME' are prominently displayed in the center, with 'COUR' on either side of the scale. The word 'LEX' is written on two banners flanking the central text. Small stars are positioned on the left and right sides of the seal.