

PUBLIC PROSECUTOR

v

BEN NICHOLAS

Date: 7 August 2020
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms M. Taiki
Defendant – Ms L. Bakokoto

SENTENCE

A. Introduction

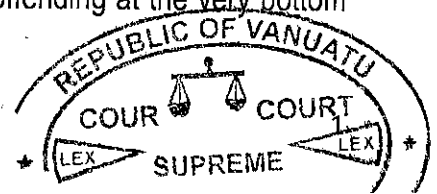
1. Mr Nicholas pleaded guilty to one charge each of making false declaration to Customs and possession of cannabis. The maximum sentence for false declaration to Customs is 6 months imprisonment or a fine not exceeding VT5 million, or both. The maximum sentence for possession of cannabis is 20 years imprisonment or a fine not exceeding VT100 million, or both.

B. Facts

2. On 27 April 2018, Mr Nicholas travelled from New Caledonia to Vanuatu. The Customs officer who checked his arrival card at Bauerfield Airport saw that he had ticked "No" to every question including the question asking if he had packed his own luggage.
3. Mr Nicholas was referred to other Customs officers who searched his luggage and then asked him to empty his pockets. Mr Nicholas had in his possession 25 cannabis seeds weighing 0.52 grams. He had falsely declared on his arrival card that he was not carrying prohibited goods.
4. Mr Nicholas made full admissions to the police.

C. Discussion

5. The sole aggravating factor of the offending is the biosecurity risk from bringing in undeclared plant material. The amount of drugs places the offending at the very bottom of the criminal scale in terms of seriousness.



6. Mr Nicholas is 22 years old. He has no previous convictions. He pleaded guilty at the very earliest opportunity. There is no explanation why it has taken over 2 years for this matter to be listed for plea.
7. The police detained Mr Nicholas for 24 hours. He stated that he learned from his experience of detention in cell no. 6 at the Port Vila Police Station and will not commit any further offence in the future. He has remained offence-free since 2018.
8. Mr Nicholas did not complete Year 11 at Rensarie College due to financial difficulties after his parents divorced in 2014. He later enrolled at and obtained a Safety Certificate from the Maritime College at Santo qualifying him to work as a sea man on local maritime vessels. He did such work before travelling to New Caledonia to help his sister who lives there. He has not been able to return to such work due to the restrictions imposed by his bail conditions.
9. Mr Nicholas is currently responsible to provide care and support to his ill father and his younger brother who is a person with disabilities. He does so by selling copra and cocoa. Additionally, Mr Nicholas has a 2 year old daughter and a de facto partner who he is responsible to care for. He would like to take up further studies at the Maritime College so that he can become a Captain one day like his father.

D. End Sentence

10. Taking the above matters into account, the end sentence that I impose on Mr Nicholas pursuant to section 56 of the *Penal Code* is to order Mr Nicholas to come up again before the Court for sentence if called upon within a period of 12 months. Accordingly, there is no sentence imposed for the offences at this stage – and indeed, if Mr Nicholas does not reoffend in any way in the next 12 months he will not be sentenced for this offending. However, if Mr Nicholas does re-offend in any manner, he will be called up to be sentenced for these offences – as well as any other sentence he may receive. I consider that this will serve as a warning to others and to deter Mr Nicholas and others from acting in this manner in future. That said, Mr Nicholas is a young man with excellent prospects of rehabilitation. I trust he will ensure that he is not dealt with again by a Court for a criminal offence.
11. I consider that keeping Mr Nicholas in the community is practicable and consistent with the safety of the community.
12. The drugs are to be destroyed.
13. Mr Nicholas has 14 days to appeal this sentence if he disagrees with it.

DATED at Lakatoro, Malekula this 7th day of August 2020
BY THE COURT

.....
UMTrief
Viran Molisa Trief
Judge

