

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

**Criminal
Case No. 20/908 SC/CRML**

BETWEEN: Public Prosecutor

AND: Jean Pierre Malkorkor

Date: 21 August 2020
By: Justice G.A. Andrée Wiltens
Counsel: Mr P. Sarai for the Public Prosecutor
Ms K. Karu for Mr Malkorkor

SENTENCE

A. Introduction

1. Mr Malkorkor pleaded guilty to the supply of dangerous drugs.

B. Facts

2. On 6 November 2016, Mr Jayden Takaro (aged 12 years of age) was sent by some "friends" to Mr Malkorkor's address at Number 2 Lagoon area to purchase marijuana. The friends gave Jayden VT 200 which he used to purchase 2 joints from Mr Malkorkor. Mr Malkorkor maintains that he did not accept any cash; that he simply gave the 2 joints to Jayden. He is to be sentenced on the basis that no cash changed hands.
3. The matter came to the attention of the police due to Jayden's father had been told that Jayden was involved with cannabis. He took both Jayden and Mr Malkorkor to the Police Station and reported them.
4. Mr Malkorkor was searched by the police and 58 rolled joints of cannabis were found secreted in Mr Malkorkor's underwear. The cannabis was found to weigh 13.66 gms. Mr Malkorkor was originally charged with possession of those joints, but the charge was dismissed following the prosecution offering a *nolle prosequi*. Regardless, his possession of that cannabis is a relevant factor in relation to the charge of supply.



C. Sentence

5. The sentence start point is arrived at by looking at (i) the maximum sentence prescribed by law and (ii) then considering the aggravating and mitigating features of the offending. That is step one.
6. Once the start point has been determined, then step two requires the factors personal to Mr Malkorkor be taken into account in arriving at the end sentence.

D. The Sentence Start Point

(a) Maximum Sentence

7. The maximum sentence for the supply of dangerous drugs is 20 years imprisonment and/or a fine of up to VT 100 million. In terms of criminal culpability, it is trite that possession of dangerous drugs is the least culpable, followed by the cultivation of dangerous drugs. The most culpable offending of this type is the supply of dangerous drugs to others. On the other hand, of the dangerous drugs commonly traded, cannabis is considered to be the least addictive and cognitively altering.

(b) Aggravating Factors of the Offending

8. There are two aggravating factors that need to be taken into account in setting the sentence start point. Firstly, it is seriously aggravating that Mr Malkorkor supplied cannabis to a 12 year old. The Courts are required to protect society's innocent and youthful.
9. Secondly, it is aggravating that, even accepting that Jayden did not pay VT 200 for the cannabis supplied, Mr Malkorkor was obviously supplying dangerous drugs to others. That inference flows from the fact that he had secreted in his underwear a further 58 rolled up joints. Had the cannabis not been for supply, it would not have been so secreted. Had the cannabis been for personal consumption, it would not have been in the form of the multitude of rolled up joints. I note further from the PSR that Mr Malkorkor accepts he supplied cannabis to others, and his mother confirms this.

(c) Mitigating Factors of the Offending

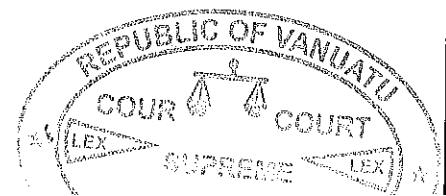
10. There are no mitigating aspects to this offending.

(d) Sentence Start Point

11. I set the appropriate sentence start point at 3 years imprisonment.

(e) Personal Factors

12. Mr Malkorkor did not plead guilty at the first available opportunity. He only pleaded guilty on the day of his trial. His sentence is accordingly reduced by 15% for this factor.



13. Mr Malkorkor is aged 24 years, still residing with his parents in the Club Hippique area. His attendance at school was cut short with the suggestion being that was due to his mental issues. Although Mr Malkorkor refers to that in the PSR attributing his "cursed" state to result from witchcraft. He has been seen by a psychiatrist and the evaluation made was that he does not suffer from any mental issues. He does however suffer from Hepatitis B negative – although the report indicates he is stable and not in need of any follow-up presently.
14. Mr Malkorkor has no qualifications or special abilities or experience in terms of employment. The PSR records he has some skills in gardening.
15. Mr Malkorkor is said to have co-operated with the police following his arrest. There has however been no custom reconciliation ceremony.
16. There is no explanation why this matter has taken from November 2016 to May 2020, a period of some 3 years 6 months, to reach the Supreme Court. The delay is a mitigating factor, but not an especially significant one.
17. For Mr Malkorkor's personal factors I reduce the sentence start point by a further 3 months.
18. Mr Malkorkor has been previously convicted as follows:
 - On 17 April 2014, he and others perpetrated a gang-rape. He was sentenced to a term of 4 years 4 months imprisonment, suspended for 3 years as from 16 October 2015;
 - In January and February 2017, he committed the acts of malicious damage and arson. He was sentenced to 100 Hours community service and 12 months supervision concurrently on 23 May 2018. This sentence took into account that he had already served 7 months in custody prior to sentencing;
 - On 31 July 2018 he committed intentional assault and theft. The theft was actually a robbery of a young female by Mr Malkorkor and another at 2am in the morning taking away her wallet and a cell phone. He was sentenced on 3 April 2019 to 12 months imprisonment, to be served consecutively to the similar term imposed the day before (see below); and
 - On 22 December 2018 he cultivated dangerous drugs (22 young seedlings) and perpetrated domestic violence. He was sentenced to 12 months imprisonment concurrently on both charges on 2 April 2019.
19. Mr Sarai has informed the Court that Mr Malkorkor's suspended sentence was activated in the sense that he was automatically recalled to serve the jail term following his second conviction. Accordingly I do not need to activate that sentence pursuant to section 57(1)(c) of the Penal Code.
20. However, Mr Malkorkor's previous convictions require to be reflected by an uplift, not to further punish but to take into account that he has been given opportunities to rehabilitate and knows



better than others what the consequences of re-offending are, yet he continues to offend. That aggravates his offending. As well, this offending occurred while Mr Malkorkor was subject to a suspended sentence, which is a further aggravating factor. The sentence uplift will be for an additional term of 6 months.

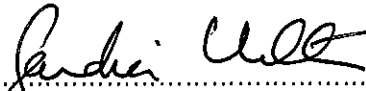
(f) End Sentence

21. Mr Malkorkor is convicted and sentenced to 2 years 9 months imprisonment.
22. There will be no suspension of the sentence. Experience has already demonstrated that Mr Malkorkor does not deserve such lenience.

(g) Other

23. Mr Malkorkor has 14 days to appeal this sentence if he disagrees with it.
24. The drugs and all associated paraphernalia are to be destroyed.

**Dated at Port Vila this 21st day of August 2020
BY THE COURT**


.....
Justice G.A. Andrée Wiltens

