

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

Criminal  
Case No. 19/3298 SC/CRML

**BETWEEN:** Public Prosecutor

**AND:** Julio Talis Malkon  
Defendant

*Date of Sentence:* 5 February 2020  
*Before:* Justice G.A. Andrée Wiltens  
*Counsel:* Ms G. Kanegai for the Public Prosecutor  
Mr M. Malantugan for the Defendant

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**SENTENCE**

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A. Introduction

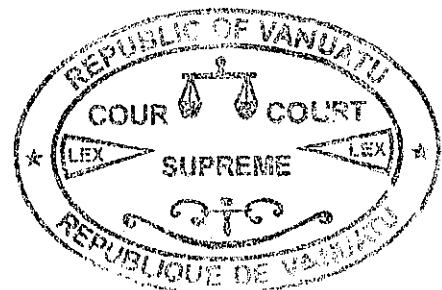
1. Mr Malkon has pleaded guilty and accepted the summary of facts relating to 3 charges of possession of cannabis and one charge of supplying cannabis. The maximum sentence for those offences is a term of 20 years imprisonment and/or a fine of up to VT 100 million.

B. Facts

2. Mr Malkon's home was searched on 10 October 2019. Various amounts of cannabis were found in parts of the home. The total quantity of cannabis seized was 155gms.
3. Mr Malkon has admitted to the police that he has been consuming cannabis for 16 or so years. His wife advised the police that Mr Malkon has been selling cannabis to others for over 5 years; and even more seriously, that he involved their 9-year old son in the sale of cannabis to others when he was incapacitated.

C. Aggravating Factors of the Offending

4. There are aggravating factors to the offending:



- The consumption of cannabis over such an extended period;
- The sale of cannabis to others for over 5 years; and
- The involvement of his 9-year old son in the supply of cannabis to others.

D. Mitigating Factors of the Offending

5. There are none.

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 imprisonment. I regard that as very reasonable, given the aggravating factors. However, the quantity of drugs seized is not enormous, and the finding of VT 53,500 indicates the commerciality of the enterprise was but moderate.

F. Personal Factors

7. Mr Malkon is 31 years of age. He is married with 4 young children, the latest having just recently been born. He is un-employed and works on a part-time basis as and when he can. His wife works at Au Bon Marche. Mr Malkon co-operated with the police at the time of his apprehension and claims to now be remorseful. Mr Malkon has no previous convictions.

8. A custom reconciliation ceremony has not been undertaken, but Mr Malkon has indicated willingness. That willingness is too little, too late to have any real impact on the sentence that must be imposed. I also see no substance in Mr Malkon's purported remorse – he has been deliberately flouting the law for 16 years, and in serious ways. He may regret his apprehension, but that does not amount to remorse.

9. For Mr Malkon's personal factors I reduce the start point of his sentence by 6 months imprisonment.

10. The final matter of mitigation is Mr Malkon's pleas. They were promptly entered at the first available opportunity. Accordingly a one-third discount is available to Mr Malkon for his pleas.

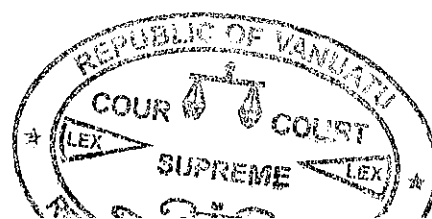
G. End Sentence

11. Taking all of those matters into account, the end sentence that must be imposed is one of 12 months imprisonment.

12. The drugs and the VT 53,500 are to be confiscated.

H. Suspension

13. It would be entirely wrong to suspend this sentence in whole or in part. There is nothing exceptional in this case to justify suspension. Indeed the opposite is the case – there are very good reasons to impose actual incarceration. The aggravating factors adverted to earlier make



it plain that suspension would be inappropriate - it would undermine the deterrent effect this sentence is intended to have to ensure no further similar offending occurs.

I. Other

14. Mr Malkon has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 5th day of February 2020

BY THE COURT

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Justice G.A. Andrée Wiltens

