

PUBLIC PROSECUTOR

v

**TOM ABAL also known as
MARKWIN ALI and MAQUIN AILLE**

Date: 13 September 2023
Before: Justice V.M. Trief
In Attendance: Public Prosecutor – Ms S. Langon
Defendant – Ms F. Kalsakau

SENTENCE

1. On 30 April 2023 at 4pm at Pango area, the Police found Mr Abal in possession of wrapped up foils containing dried marijuana leaves that testing confirmed to be cannabis with a net weight of 140 grams. These were in Mr Abal's woven island basket that had been hanging off his shoulder but that he threw into a small bush in his yard when he saw the Police.
2. The maximum penalty for the offence of possession of cannabis is 20 years imprisonment and/or a fine of up to VT100 million.
3. The aggravating factor of this offending is the quantity of cannabis. There are no mitigating factors to this offending.
4. Mr Abal informed the pre-sentence report writer that he uses cannabis daily due to cultural reasons. I do not consider that is an aggravating or a mitigating factor of the offending.
5. The appropriate sentence start point is 12 months imprisonment.
6. The information from the Department of Correctional Services supplied with the pre-sentence report suggested that Mr Abal had prior convictions under another name, Markwin Ali, and was also known as Maquin Aille. This was accepted in the Defendant's sentencing submissions.
7. Mr Abal (under the name, "Markwin Ali") has a previous conviction for possession of cannabis. In 2007, he was sentenced to 24 months imprisonment: *Public Prosecutor v Ali* [2007] VUSC 59. It does not reflect well on Mr Abal that he attempted to hide the existence of this prior conviction by using a different name in respect of the offending in this matter. However, he has been rehabilitated by lapse of time – 7 years – since the expiry of that

sentence in June 2009 by operation of subs. 58ZG(1) and paras 58ZH(1)(b) and (2)(b) of the *Penal Code* which provide as follows:

58ZG. (1) *Rehabilitation by lapse of time omits a conviction for any criminal offence.*

...

58ZH. (1) *An offender who has not received any further sentence of imprisonment for any criminal offence shall be as of right, rehabilitated by the expiry of the following periods:*

...

(b) *a single sentence of imprisonment for up to 2 years – 7 years;*

...

(2) *The periods subscribed in subsection (1) are in force:*

...

(b) *in any case of imprisonment - from the date of expiry of the sentence.*

8. Accordingly, Mr Abal is deemed pursuant to subs. 58ZG(1) and paras 58ZH(1)(b) and (2)(b) of the *Penal Code* to have a prior clean record and there is no prior conviction to take into account.
9. Mr Abal is in a *de facto* relationship and has 4 sons and a daughter. He is their sole provider. He makes his living from gardening and carpentry. He has spent 48 hours in custody prior to being sentenced. For his personal factors, I reduce the sentence start point by 4 months.
10. Mr Abal entered his guilty plea promptly but he really had no option but to plead guilty as he was caught red-handed therefore I reduce the sentence start point by a further 2 months.
11. The end sentence imposed is 6 months imprisonment.
12. This offending is at the lower end of Category 1 as set out in the Court of Appeal judgment in *Wetul v Public Prosecutor* [2013] VUCA 26. I also take into account Mr Abal's prior clean record and being sole provider for his family. Accordingly, I consider that it is not appropriate to impose an immediate custodial sentence and exercise my discretion under s. 57 of the *Penal Code* to suspend the sentence for 18 months. Mr Abal therefore needs to remain offence-free for 18 months in order to be able to remain in the community.
13. Mr Abal is also to serve 80 hours of community work.
14. Mr Abal has 14 days to appeal the sentence.
15. The drugs are to be destroyed.

DATED at Port Vila this 13th day of September 2023

BY THE COURT

VM Trief
Justice Viran Molisa Trief

