

PUBLIC PROSECUTOR

v

HYPOLITE TAMROCK

Date of Plea: 17 June 2024
Date of Sentence: 10 July 2024
Before: Justice M A MacKenzie
Counsel: Mr. C. Shem for the Public Prosecutor
Ms. B. Taleo for the Defendant- via zoom link, Santo Courthouse
Defendant- via zoom link, Santo Courthouse

SENTENCE

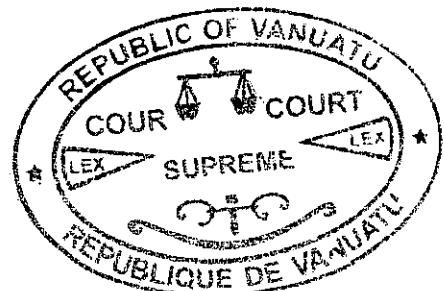
1. Mr Hypolite Tamrock, you appear for sentence having pleaded guilty to one charge of possession of cannabis. The maximum penalty is 20 years imprisonment, or a fine not exceeding VT 100 million or both.

The Facts

2. At some point in February 2024, your father found cannabis in your island bag. He handed it over to police. Testing confirmed it was cannabis, with a net weight of 14.223 g.
3. You admitted to police that you had cannabis in your island bag.

Sentencing purposes/principles

4. The sentence I impose must hold you accountable and must denounce and deter your conduct given that you were in possession of cannabis. Cannabis is an illegal drug which causes social harm. The sentence should ensure you take responsibility for your actions, and help you to rehabilitate. It must also be generally consistent.



Approach to sentence

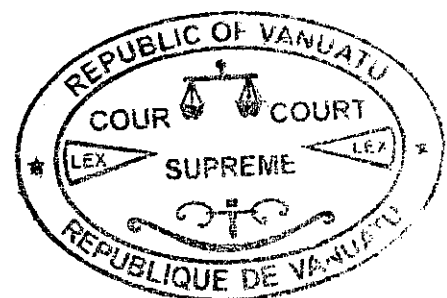
5. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

Starting point

6. The first step is to set a starting point.
7. The one aggravating factor is the quantity of cannabis, being 14.223 g.
8. There are no mitigating features of the offending itself.
9. There is a guideline case for cannabis cultivation, *Wetul v Public Prosecutor* [2013] VUCA 26. It also applies to possession of cannabis.
10. Both counsel have filed written submissions as to the appropriate starting point, and referred the court to cases to assist in selecting the appropriate starting point.
11. The most factually similar case is *Public Prosecutor v Wilson* [2024] VUSC 59. The defendant was in possession of 8.447 g of cannabis and the offending fell into Category 1 of *Wetul*, with a starting point of 12 months imprisonment.
12. Here, the offending involves a relatively modest amount of cannabis for personal use. There is no evidence of commerciality at all.
13. Therefore, it falls within Category 1 of *Wetul*. So, the usual sentencing outcome would be a fine or other community-based sentence, or a short custodial sentence.
14. Consistent with *Wilson*, I adopt a starting point of 12 months imprisonment.

Guilty plea and personal factors

15. While you pleaded guilty at an early opportunity, I agree that the discount should be limited to 25%. That is because the case against you is overwhelming. This is consistent with *Public Prosecutor v Raptick* [2023] VUSC 226. That equates to a discount of approximately 3 months from the starting point.
16. You are aged 26 years. You are from Santo.
17. You are a first offender with no criminal history.



18. You were co-operative with police.
19. The Probation report notes that you are remorseful. I accept your remorse is genuine. You have learnt your lesson.
20. You have a young child and your wife is pregnant.
21. For your prior good character, co-operation, remorse and family circumstances, I reduce the starting point by 1.5 months imprisonment, which equates to approximately 10 %.
22. You have been remanded in custody since 1 May 2024. You have been in custody for 2 months and 10 days, which approximately equates to an effective sentence of 4.5 months imprisonment. This is how the calculation was recently undertaken by Trief J in *Public Prosecutor v Saly* [2024] VUSC 112. Accordingly, I deduct 4.5 months from the sentence start point.

End Sentence

23. The provisional end sentence is 3 months imprisonment.
24. I consider that the need for accountability, deterrence and denunciation can be met by a community-based sentence as this fall within Category 1 of Wetul, and involves a modest amount of cannabis for personal use.
25. Accordingly, I impose a sentence of 50 hours community work. I assess that to be the least restrictive outcome appropriate in the circumstances.
26. I acknowledge that this is a different end sentence than was imposed on Mr Floflo who I have also sentenced today. Mr Floflo's offending involved a very similar amount of cannabis. While parity is important, the differences in sentence lie in the fact that Mr Floflo was remanded in custody for a longer period of time than Mr Tamrock and so had effectively completed his sentence.
27. The cannabis material is to be destroyed.
28. You have 14 days to appeal.

DATED at Port Vila this 10th day of JULY 2024
BY THE COURT

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Justice M A MacKenzie

