

PUBLIC PROSECUTOR
V
BILL TABI

Coram: Hon. Chief Justice Vincent Lunabek

Counsel: K Massing for the State
J Vohor for the Defendant

Date of Plea: 22 April 2024

Date of Sentence: 26 April 2024

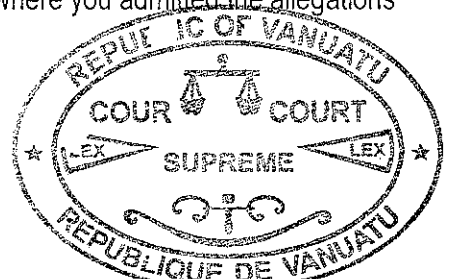
SENTENCE

I. Introduction

1. Mr Bill Tabi ("*Mr Tabi*"), you appear today for sentence on one (1) charge of Prohibition of cultivation of cannabis contrary to Section 4(1) of the Dangerous Drugs Act [CAP. 12].

II. Facts

2. On 22nd April 2024, you pleaded guilty to that charge of prohibition of cultivation of cannabis, and you admitted the following brief of facts.
3. A formal complaint was made against you for the offence of cultivation of cannabis plants (marijuana plants) which are prohibited by the laws of the Republic of Vanuatu.
4. The offending took place sometimes in December 2023 at Logal village, Central Pentecost. The police had information that you were involved in the cultivation of cannabis plants. Therefore, an investigation was carried out by the police. During investigation it was revealed that you planted 975 cannabis plants. The 975 plants (marijuana) were seized by the police, then sealed and kept in their custody for presumptive test. The net weight was 14.05 kilograms. The plants were tested and the presumptive test result shows that the marijuana plants seized by the police were turned to be positive of cannabis.
5. You were arrested, cautioned and interviewed by the police where you admitted the allegations made against you.



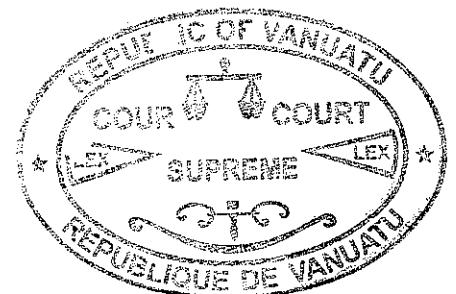
III. Sentence Start Point

6. The sentence start point is determined by referring first to the maximum sentence (penalty) set by Parliament, then I need to consider the aggravating and mitigating factors of the current offending, I need finally to have regard to any case authority on the type of offending and in particular comparable cases (if any) for consistency purposes [Philip v Public Prosecutor [2020] VUCA 40].
7. In the present case, the maximum sentence available for prohibited cultivation of cannabis is a fine not exceeding VT100 million or a term of imprisonment not exceeding 20 years or both.
8. I note that you cultivated a total of 975 cannabis plants at Lorlou village, Central Pentecost and with a net weight of 14.05 kilograms. The total number of plants (975) and the net weight of 14.05 kilograms (KG) reflected your state of mind and knowledge and thus, your culpability of your offending. The numbers of 975 cannabis planted and weight of 14.05Kg reflected on the seriousness and aggravating aspects of your offending.
9. There is no mitigating factors to the offending in this case.
10. The prosecution relies on the leading authority on the sentencing guideline for offences involving cannabis in Wetul v Public Prosecutor [2013] VUCA 26.
11. The Wetul sentencing guideline categorized cannabis cultivation into three (3) broad categories. The relevant part of the Wetul Judgment is as follows:

"Category 1 consists of the growing of a small number of cannabis plants for personal use by the offender without any sale to another party occurring or being intended. Offending in this category is almost invariably dealt with by a fine or other non-custodial measure. Where there have been supplies to others on a non-commercial basis the monetary penalty will be greater and in more serious cases or for persistent offending a term of community work and supervision or even a short custody term may be merited. (It is to be noted in this connection that there is no separate offence in relation to a section 4 offence of cultivation for supplying or possession for supply, as opposed to importation, sale, supply or possession.(s.2).

Category 2 encompasses small-scale cultivation of cannabis plants for a commercial purpose, i.e. with the object of deriving profit. The starting point for sentencing is generally between two and four years but where sales are infrequent and of very limited extent a lower starting point may be justified.

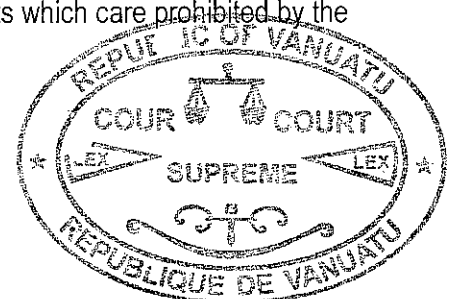
Category 3 is the most serious class of such offending. It involves large-scale commercial growing, usually with a considerable degree of sophistication and organisation. The starting point will generally be four years or more."



12. The prosecution submitted that this current case lied under category 2 of the Wetul guidelines as it involves the cultivation of cannabis at a larger scale.
13. The prosecution refers the Court to the case of Public Prosecutor v lakei [2014] VUSC 182 as a comparable case to the present case. This is a case where on 7 May 2012, a police officer found cannabis inside the defendant's bag. The defendant was arrested and interviewed. Thereafter, the police located a total of 535 cannabis plants which has a net weight of 95 Kilograms at his garden. The defendant was charged with unlawful possession of cannabis substances and unlawful cultivation of cannabis plants. The defendant was sentenced with a sentence start point of 3 years imprisonment and after appropriate deductions the defendant received an end sentence of 2 years imprisonment suspended for a period of 2 years 80 hours community work and 6 months of supervision.
14. The prosecution relies on Public Prosecutor v lakei [2013] as it involves cultivation of cannabis on a large scale, it is relevant to the present case and both lakei case and the current case are comparable cases under category 2 of the Wetul guideline.
15. I take all that into account and, on a global assessment, I set the seriousness and culpability of the current offending under category 2 of the Wetul guideline. A small-scale cultivation of cannabis plants for a commercial purpose, i.e. with the object of deriving profit. The total numbers of 975 planted cannabis and 14.05 kilograms are well beyond the level at which it could be said that this was for personal use.
16. I assess the sentence start point to the current offending at 3 years imprisonment based on Public Prosecutor v lakei.

IV. Personal and Mitigating Factors to the Defendant

17. Mr Tabi, you are 34 years old and you came from Logal village, Central Pentecost. You live there as a farmer and gardener. You do farming and gardening for both commercial and subsistence use to support your family.
18. You are married with 2 sons, one in class 5 and the younger son starts in the kindergarten school this year 2024.
19. You have good relationship with your family and community.
20. You said you planted 50 plants cannabis but not 975 plants as alleged. I reject that as not true and contrary to his own admission of the facts on the pleas on 22 April 2024.
21. I sense from the same day report, you planted cannabis for medical reasons. I take it that it is not relevant here. The offence is that you planted cannabis plants which care prohibited by the law.



22. I do not sense any remorse or contrition from your offending.
23. I reduce your sentence of 3 years and 6 months by 1 month. The remaining balance is 3 years and 5 months imprisonment.
24. You pleaded guilty at the first-time opportunity given to you by the court. I further reduce your sentence by 33% to reflect your earlier guilty plea. Your remaining balance after this deduction is 24 months i.e. 2 years imprisonment.

V. **The End Sentence**

25. Your end sentence is 2 years imprisonment.
26. You have already spent 17 days in pre-custody period from 24 December 2023 to 9 January 2024. This period of 17 days already spent will be deducted in your favour.
27. Your remaining sentence now is 23 months and 13 days imprisonment.
28. I consider whether I should suspend your imprisonment term of 23 months and 13 days imprisonment. Here, I decline to suspend that imprisonment sentence. The nature and seriousness of your offending justify an imprisonment term. This imprisonment is necessary to stop you from cultivating cannabis plants. The courts must be firmed when sentencing on cultivation of cannabis plants as a means to deal with the root cause of this offending.
29. The 975 cannabis plants seized by the police must be destroyed.
30. You have 14 days to appeal this sentence if your unsatisfied with it.
31. The 14 days appeal starts at the date of this sentence.

DATED at Luganville, Santo, this 26th April, 2024.

BY THE COURT


Hon. Chief Justice Vincent LUNABEK

