

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

Criminal
Case No. 25/998 SC/CRML

PUBLIC PROSECUTOR

v

DEEJAY MALCOLM

Date of Plea: 3 June 2025
Before: Justice M A MacKenzie
In Attendance: Public Prosecutor – Ms M Silememea
Defendant – Mr H Vira

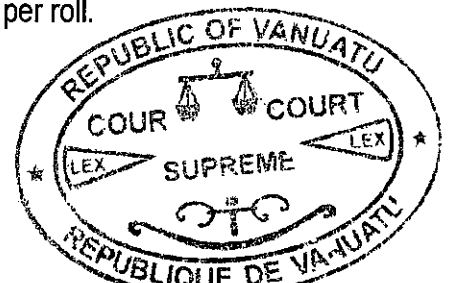
SENTENCE

Introduction

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

The Facts

2. In March 2025, you came to the attention of police in relation to suspected involvement in prohibited drugs. On 24 March 2025, police searched your garden at Teouma. 184 cannabis plants were uprooted from your garden. The plants were presumptively tested 5 days later and were confirmed to be cannabis. The plants had a total net weight of 83.82 kg.
3. Under caution you admitted cultivating cannabis and told Police that you started cultivating cannabis in 2024. You told police that you planted the cannabis both for personal use and to sell. You admitted selling cannabis in the Teouma area since July 2024, and were selling up to 5 rolls of cannabis per day for VT 100 per roll.



Sentencing purposes/principles

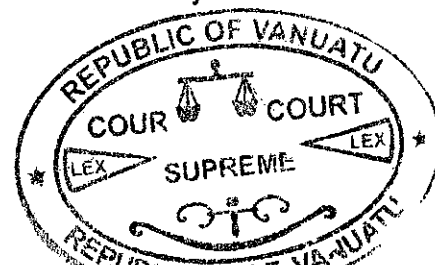
4. The sentence I impose must hold you accountable and must denounce and deter your conduct given that you were cultivating and selling cannabis, which causes social harm. The sentence should ensure you take responsibility for your actions and help you to rehabilitate. It must also be generally consistent.

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 with reference to the aggravating and mitigating features of the offending and the maximum penalty for the offences.
7. The aggravating factors here are:
 - a. you deliberately cultivated the cannabis, and one of the reasons for doing so was to sell it to others.
 - b. the quantity is significant, being 184 plants with a net weight of 83.82 kg.
 - c. You not only cultivated the cannabis, but actually sold it.
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. You admitted cultivating the cannabis, and one of the purposes was to sell it. You did actually sell cannabis. Therefore, there was commerciality. The offending here then falls at the higher end of category 2 of *Wetul*. I do not think it falls within category 3 because there is no evidence of sophistication and organisation, which are hallmarks of category 3 offending.
10. Both counsel made submissions as to the appropriate starting point. The prosecutor submits that the appropriate starting point is more than 3 years imprisonment. Defence counsel submits that the appropriate starting point is 2 - 3 years imprisonment.
11. Recent sentencing patterns in the Supreme Court would indicate a hardening in the approach to sentencing for cultivation of cannabis. I refer to *Public Prosecutor v Leo* [2024] VUSC 91, *Public Prosecutor v Lulu* [2024] VUSC 103 and *Public Prosecutor v Medias* [2024] VUSC 98. In each of these cases the starting point set was 3 years

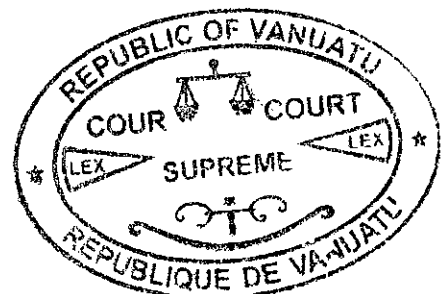


imprisonment for cultivation of cannabis. In *Leo*, there were 41 plants with a net weight of 5.90 kg. In *Lulu*, there were 67 plants, with a net weight of 5.30 kg. In *Medias*, there were 198 plants, with a net weight of 8.50 kg. The circumstances of those three cases are less serious than the present case, given the net weight of the cannabis here.

12. Your counsel attributes the significant weight of the cannabis in the present case to the fact that it was freshly harvested cannabis, rather than dried cannabis. That is one possible explanation, but the submission ignores the fact that a factor contributing to the net weight will likely also be the size and maturity of the cannabis plants. For example, in *Public Prosecutor v Medias*, there were 198 cannabis plants, with a net weight of 8.50 kg. There was no suggestion that the plants were dried. There was also an additional amount of dried cannabis, the subject of a charge of possession of cannabis.
13. I have considered the cases counsel have cited in their written submissions. None of the cases are squarely on point and involve lesser quantities of cannabis than the present case. In one of the cases, *Public Prosecutor v Tabi* [2024] VUSC 63, a starting point of 3 years imprisonment was set, based on *Public Prosecutor v lakei* [2014] VUSC 182. In *Tabi*, the defendant cultivated 975 cannabis plants with a net weight of 14.05 kg. *lakei* is relevant because the defendant pleaded guilty to cultivating 535 cannabis plants located by police with a total weight of 95 Kilograms which he had cultivated in his garden. There was no actual evidence of sales. The Court considered that the offending fell within Category 2 of *Wetul* and set a starting point of 3 years imprisonment.
14. I consider that role is relevant to setting a starting point, in addition to quantity. This was your drug operation. You appear to be a "street dealer", involved in both growing and selling cannabis. Given the quantity of cannabis, and the commerciality involved, I consider that a starting point above 3 years imprisonment is warranted. The quantity of cannabis meant that you had a steady supply of cannabis to harvest and sell, and you could have expected to derive a lot of money from this. A factor relevant to setting the starting point is that, as observed already, there seems to have been a hardening of approach recently in sentencing for cultivation of cannabis. As such, I bear in mind that the sentence imposed in *lakei* was 11 years ago. Taking account of the matters just discussed, and the cases I have referred to, I adopt a global starting point which reflects both charges of 3 and a half years imprisonment.

Guilty plea and personal factors

15. The sentence is reduced by 25 % for your guilty plea. The case against you was overwhelming. You had no option but to plead guilty. This reduces the sentence by 10 ½ months.

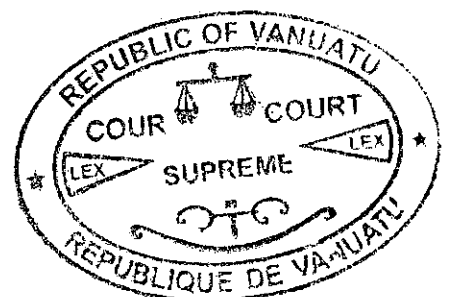


16. You are aged 20 years and a first offender. You are relatively young. You cooperated fully with police. You live with your partner and have 3 children. Your partner is pregnant. You have limited education, which perhaps explains (but does not excuse) your naivety regarding the illegal nature of cannabis, which is referred to in the presentence report. You are well regarded by your family and your community.
17. For these personal factors, particularly your prior good character, relative youth, and the impact of a sentence on your children, I reduce starting point by 6 ½ months, which equates to a sentence reduction of 15 percent.
18. You have been remanded in custody since 27 March 2025. I acknowledge that presentence detention needs to be taken into account at sentence. I will address that issue shortly.

End Sentence

19. The end sentence is 2 years 1 month imprisonment.
20. Your counsel asks that the sentence be suspended pursuant to s 57 of the Penal Code. The prosecutor submits that the sentence should not be suspended. Pursuant to s 57, I must take into account the circumstances, the nature of the offending and your character. When exercising the discretion under s 57, the Court of Appeal in *Public Prosecutor v Garae* [2025] VUCA 37¹ recently affirmed the approach to the exercise of the discretion. A sentencing Judge is to take into account all aggravating and mitigating factors relevant to the discretion. This requires a balancing exercise of the factors against, and the factors, for, suspension.
21. There are factors which point away from suspension. Firstly, there is the fact that you deliberately cultivated cannabis over a period of months, and one of the purposes was to sell cannabis. Secondly, you did actually sell cannabis. I have characterised this as street dealing as you sold small quantities of cannabis. Thirdly, the net weight of the cannabis was significant, and cannot only be explained by the fact that it was freshly harvested cannabis in my view. The quantity is a clear indicator of commerciality. Both growing and then selling cannabis puts people at risk. There are factors which point towards suspending the sentence. You are a first offender, are relatively young, accept responsibility and have a family, and a baby on the way.
22. It is a matter of weighing and balancing the factors both for and against suspension. The need for accountability, deterrence and denunciation are relevant to the balancing exercise, as is the need for consistency in sentencing. Suspending the sentence will not meet the need for accountability, deterrence and denunciation. It would send a

¹ At paragraph 28. See also *Malau v Public Prosecutor* [2021] VUCA 48.



wrong message to the community if the sentence was suspended, given the quantity of cannabis involved here, and that you were selling it. In this case, the factors against suspension weigh heavily in the balance. Therefore, weighing and balancing the factors, both for and against suspension of the sentence, I decline to suspend the sentence in whole or in part. The sentencing needs can only be met this this case by a fulltime custodial sentence.

23. The sentence is to commence immediately, and is backdated to commence on 27 March 2025, the date you were remanded in custody. That takes presentence detention into account.
24. The cannabis material is to be destroyed.
25. You have 14 days to appeal.

**DATED at Port Vila this 4th day of September 2025
BY THE COURT**

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Justice M A MacKenzie

