

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

Criminal
Case No. 25/1941 SC/CRML

PUBLIC PROSECUTOR

v

JAMES WOLUL

Date of Plea: 14 July 2025
Before: Justice M A MacKenzie
In Attendance: Public Prosecutor – Ms J Tete
Defendant – Mr JS Garae

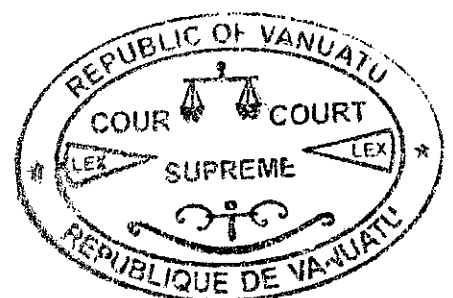
SENTENCE

Introduction

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

The Facts

2. On 3 June 2025, a complaint was made to police about cannabis being grown in your garden. Police went to your garden and uprooted 198 suspected cannabis plants. Testing was conducted. Testing confirmed the plants were cannabis with a net weight of 27.070 kg.
3. Under caution, you admitted cultivating the cannabis plants.



Sentencing purposes/principles

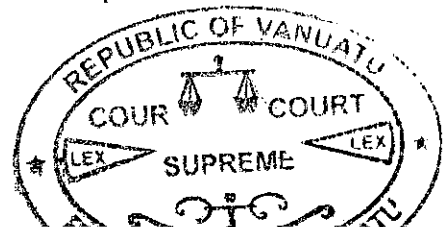
4. The sentence I impose must hold you accountable and must denounce and deter your conduct given that you were cultivating cannabis, which causes social harm. The sentence should ensure you take responsibility for your actions and help you to rehabilitate. It must also be generally consistent.

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 maximum penalty for the offence and the aggravating and mitigating factors.
7. The aggravating factors here are that you deliberately cultivated 198 cannabis plants and the quantity is significant, being 27.070 kg. Given the number of plants, and the weight of the cannabis, I infer that you grew the cannabis for a commercial purpose. While I accept that there is no evidence of actual sales, the quantity of cannabis cultivated is much greater than for personal use.
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. There is no direct evidence of cultivation for a commercial purpose, but I infer that you must have cultivated the plants to make money, given the large quantity of cannabis involved. The offending here falls within category 2 of *Wetul*.
10. Both counsel have cited cases to assist with setting the appropriate starting point, and in particular *Public Prosecutor v Wea* [2024] VUSC 160. Mr Wea pleaded guilty to a charge of cultivation of cannabis. He cultivated 4 plants with a net weight of 30.8kg. He did not plant the cannabis. His role was to look after the plants. Given the quantity of cannabis, a commercial purpose was inferred because the quantity was beyond mere personal use. The starting point adopted was 2 ½ years imprisonment, taking into account both Mr Wea's limited role and the quantity of cannabis.
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*, *Public Prosecutor v Lulu* and *Public Prosecutor v Medias*. In each of these cases, the starting point set was 3 years imprisonment, for cultivation of plants weighing less than the cannabis plant material in the present case. 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.

12. I consider that both your role in the cultivation, and the weight of the cannabis is relevant to setting a starting point. Unlike *Wea*, I do not consider your role to be limited. The cannabis was cultivated in your garden and there were a large number of plants, from which a profit could be derived. A factor relevant to the starting point in *Wea* was Mr Wea's limited role of looking after the cannabis plants. There is nothing to suggest that is the case here, and therefore I consider the starting point should be higher than 2 ½ years imprisonment.
13. Given the quantity of cannabis here, both in terms of the number of plants and weight, I infer a commercial purpose. Further, having regard to the cases I have discussed above, I adopt a starting point of 3 years imprisonment.

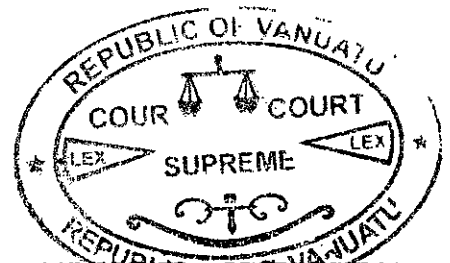
Guilty plea and personal factors

14. The sentence is to be reduced by 25 percent for your guilty plea. The case against you was overwhelming so you had little option but to plead guilty. That reduces the sentence by 9 months.
15. You are aged 29 years and a first offender. You co-operated with police. You come from Ambrym, and currently live on Malo Island. You have a child and have recently separated from your partner. You are a gardener. You are remorseful and promise you will not plant cannabis anymore. For these personal factors, the sentence is reduced by 3 months, which is a reduction of approximately 10 percent.
16. You have been remanded in custody since 4 June 2025, a period of 3 months. This equates to a sentence of 6 months imprisonment. The sentence is therefore reduced by 6 months for that factor.

End Sentence

17. The end sentence is 18 months imprisonment.
18. Your counsel asks that the sentence be suspended pursuant to s 57 of the Penal Code. The prosecutor does not appear to oppose suspension of the sentence. 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

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



factors relevant to the discretion. This requires a balancing exercise of the factors against, and the factors, for, suspension.

19. There are factors which point away from suspension. Firstly, there is the fact that you deliberately cultivated 198 cannabis plants. Secondly, the net weight of the cannabis was very high. The quantity is an indicator of commerciality. Growing cannabis puts people at risk and causes social harm. There are factors which point towards suspending the sentence. You are a first offender, are aged 29 years, co-operated with police, accept responsibility, and say you will not grow cannabis again. I assess there are good prospects of rehabilitation, if you use your gardening skills for a prosocial purpose.
20. 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. The decision as to whether to suspend the sentence is finely balanced, given the quantity of cannabis. But I do note there is no actual evidence that you were selling cannabis. By a narrow margin, I have decided to suspend the sentence, because of the positive personal factors, and the fact that you have already served part of a custodial sentence given the time you have spent in custody to date. However, the suspension will need to be for a lengthy period to ensure that you are held accountable and are deterred from growing cannabis. Suspending the sentence for a lengthy period will meet the need for accountability, deterrence and denunciation.
21. The sentence is to be suspended for a period of 2 years. If you offend again in the next 2 years, you will need to serve the sentence of imprisonment in addition to any other penalty that may be imposed for the further offending.
22. In addition, to ensure that the sentence is proportionate, you are ordered to complete 70 hours of community work and 6 months supervision. Such a combination of sentences will meet the sentencing needs, including accountability, and reflect the quantity of cannabis involved.
23. The cannabis material is to be destroyed.
24. You have 14 days to appeal.

DATED at Port Vila this 5th day of September 2025

BY THE COURT

name
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Justice M A MacKenzie

