



**IN THE DISTRICT COURT OF NAURU  
AT YAREN  
CRIMINAL JURISDICTION**

Criminal Case No. 17 of 2024

**BETWEEN: THE REPUBLIC OF NAURU**

**PROSECUTION**

**AND: LUKESON SCOTTY**

**1<sup>st</sup> DEFENDANT**

**DIONG GADEANANG**

**2<sup>nd</sup> DEFENDANT**

**BEFORE: Resident Magistrate Mr. Vinay Sharma**

**DATE OF HEARING: 9 August 2024**

**DATE OF RULING: 14 August 2024**

**APPEARANCE:**

**PROSECUTION:** K Itsimeara

**DEFENDANTS:** T Tannang

## **SENTENCE**

### **BACKGROUND**

1. The defendants are to be sentenced for the offence of unlawful cultivation of cannabis in contravention of section 6(a) of the *Illicit Drugs Control Act 2004* (“the Act”).
2. The defendants are charged as follows:

#### **Statement of Offence**

**UNLAWFUL CULTIVATION OF AN ILLICIT DRUG:** *Contrary to Section 6(a) of the Illicit Drugs Control Act 2004.*

#### **Particulars of Offence**

**LUKESON SCOTTY AND DIONG GADEANANG** on the 10<sup>th</sup> of May 2024, at Anetan District in Nauru, without lawful authority were found to have cultivated 4 plants of cannabis with a total weight of 0.940kg.

3. On 31 May 2024 the defendants pleaded guilty to the charge laid against them.
4. On 11 June 2024 the Chief Probation Officer submitted the Pre-Sentence Report for the defendants.
5. On 5 August 2024 the Republic filed the Summary of Facts. The contents of the Summary of Facts were read out on the same date, and it was agreed to by the defendants.
6. On 5 August 2024 the Republic filed its Sentencing Submissions.
7. On 9 August 2024 the defendants’ counsel Mitigation and Sentencing Submissions.
8. On 9 August 2024 the parties were heard on their sentencing and mitigation submissions.
9. I have considered the sentencing and mitigation submissions and proceed with the

sentencing.

## **FACTS SURROUNDING THE CIRCUMSTANCES OF THE OFFENCE**

10. The following are the facts surrounding the offence as provided in the Summary of Facts:

- i. *On the 10<sup>th</sup> of May 2024, a search warrant was obtained from the District Court by Senior Constable Bronski Deiranauw upon suspicion of activities of cultivating cannabis in the house of Mr Boxer Scotty in Anetan District.*
- ii. *On the 10<sup>th</sup> of May 2024, at around 4:30pm the raiding officers were dispatched and went to execute the search warrant at Mr Boxer Scotty's residence in Anetan District.*
- iii. *Upon executing a search warrant, PW-2 Senior Constable Bronski Deiranauw presented the search warrant to the 1<sup>st</sup> Accused, Lukeson Scotty and explained the search warrant to him and why they were there.*
- iv. *PW-1 Sergeant Luke Agege and PW-2 Senior Constable Bronski Deiranauw entered a room in the house and saw the Accused Persons with another person namely Andrian Notte. PW-1 saw the mattress and noticed that it has a big lump in the middle and lifted the mattress and found 4 fresh cannabis plants hidden beneath the mattress, he asked to whom they belonged and the 1<sup>st</sup> Accused spoke up stating that those were his.*
- v. *PW-2 noticed that the room they entered had a partition that led to the backyard with only 1 door access which was to the room they were in. In the backyard, PW-1 and PW-2 saw that there was a large open area sealed with a roofing tim with a shaded net above and inside there were 4 empty pot plants with freshly disturbed soil.*
- vi. *PW-1 informed PW-3 Sergeant Jamieson Laan about the plants found inside the room and PW-3 took over in seizing the plants and placed them in a bag before transporting them to the police station for a test.*
- vii. *PW-4 Constable Rachel Notte, approached the 3 suspects and asked for their names which are, Lukeson Scotty, Diong Gadeanang and Andrian Notte. PW-4 asked them whom the plants belonged to and the 1<sup>st</sup> [defendant] admitted that it was his, PW-3 asked again who else was involved and the 2<sup>nd</sup> [defendant] admitted that the plants were theirs.*
- viii. *PW-5 Constable Gianni Kameatu also asked the 2<sup>nd</sup> Accused to whom the plants belonged and he admitted to PW-5 that they were his and the 1<sup>st</sup> [defendnat's].*

- ix. *PW-1 informed the [defendants] of their allegations and rights before they were arrested. PW-6 took the 4 plants with him to the police station in the exhibition room for a test.*
- x. *On the 10<sup>th</sup> of May 2024, PW-6 Acting Superintendent Iyo Adam, a Gazetted Drug Analyst performed a NIK Test on the 4 plants found and all were positive for cannabis. The cannabis plants were weighed at 0.940kg...*

#### **PERSONAL CIRCUMSTANCES OF THE DEFENDANTS**

11. The following are the relevant personal circumstances of the defendants which is gathered from the document filed by the defendants in relation to the sentencing and the Pre-sentence Report:

##### **1<sup>st</sup> Defendant**

- i. The 1<sup>st</sup> defendant is 20 years old.
- ii. The 1<sup>st</sup> defendant supports his family by fishing.
- iii. The 1<sup>st</sup> defendant is unemployed and depends on his parents for support.
- iv. The 1<sup>st</sup> defendant lives with his parents and has 5 siblings. He is the third eldest child.
- v. The 1<sup>st</sup> defendant dropped out of Nauru Kayser Collage when he was 12 years old.
- vi. The 1<sup>st</sup> defendant has quit smoking. He participates in church devotion and bible reading regularly at the Correction Centre.
- vii. The 1<sup>st</sup> defendant does not have any prior criminal record.

##### **2<sup>nd</sup> Defendant**

- i. The 2<sup>nd</sup> defendant is 20 years old.
- ii. The 2<sup>nd</sup> defendant resides with his mother and four siblings. He is the eldest child and depends on his mother for financial support.
- iii. The 2<sup>nd</sup> defendant is unemployed.
- iv. The 2<sup>nd</sup> defendant dropped out of Nauru Kayser Collage when he was 6 years old.
- v. The 2<sup>nd</sup> defendant has also quit smoking. He also participates in church

devotion and bible reading regularly at the Correction Centre.

- vi. The 2<sup>nd</sup> defendant also does not have any prior criminal record.

### **AGGRAVATING FACTORS**

12. The following are the aggravating factors that apply to the defendants:
- i. The defendants tried to conceal the cannabis plants.
  - ii. The defendants exploited the 1<sup>st</sup> Defendant's parents by cultivating cannabis on their property who turned a blind-eye to the offending.
  - iii. The defendants exposed the 1<sup>st</sup> Defendant's family members, including both adults and juveniles, to the offending.

### **MITIGATING FACTORS**

13. The court finds the following mitigating factors in favor of the defendants:
- i. As per the Pre-sentencing Report for the defendants, they have demonstrated contrition which indicates that there is a high chance that he will rehabilitate.
  - ii. The defendants are is remorseful.
  - iii. The defendants don't have any previous convictions.
  - iv. The defendants are 20 years old and lack maturity.
  - v. The defendants have low educational attainment.

### **OBJECTIVE SERIOUSNESS OF THE OFFENDING**

12. The maximum penalty under Section 6(a) of the Act is a term of imprisonment for 10 years and a fine not exceeding \$50,000.
13. In *The Republic of Nauru v Perndergast*<sup>1</sup> the District Court made very useful observations with regard to the classification of illicit drugs and the seriousness of the different types of offending under section 6(a) of the Act. I adopt the same method of classification. This method of classification is provided in the Misuse of Drugs Act 1971 (UK).
14. The UK Sentencing Council provides in its sentencing guidelines for drug offences different offence categories depending on the offender's culpability and the harm

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<sup>1</sup> [2018] NRDC 11; Criminal Case 85 of 2017 (27 September 2018) at [19]-[29]

caused. The guideline requires a two-step approach to determining an appropriate sentence for an offender for drug related offences. The first step is to identify the offence category and the second is to identify a starting point from a corresponding category range. I adopt the same sentencing guidelines with minor adjustments to suit the circumstances in Nauru. The following is an extract of the sentencing guidelines of the UK Sentencing Council for the offence of production of controlled drug and cultivation of cannabis in relation to the first step:

### ***Step 1 – Determine the offence category***

*The court should determine the offender's culpability (role) and the harm caused (output or potential output) with reference to the tables below.*

*In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories, or where the level of the offender's role is affected by the scale of the operation, the court should balance these characteristics to reach a fair assessment of the offender's culpability.*

#### ***Culpability demonstrated by the offender's role***

*One or more of these characteristics may demonstrate the offender's role*

#### ***Leading role:***

- *Directing or organising production/cultivation on a commercial scale*
- *Substantial links to, and influence on, others in a chain*
- *Close links to original source*
- *Expectation of substantial financial or other advantage*
- *Uses business as cover*
- *Abuses a position of trust or responsibility*

#### ***Significant role:***

- *Operational or management function within a chain*
- *Involves others in the operation whether by pressure, influence, intimidation or reward*
- *Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender's own habit), whether or not operating alone*
- *Some awareness and understanding of scale of operation*

#### ***Lesser role:***

- *Performs a limited function under direction*
- *Engaged by pressure, coercion, intimidation, grooming and/ or control*
- *Involvement through naivety, immaturity or exploitation*
- *No influence on those above in a chain*
- *Very little, if any, awareness or understanding of the scale of operation*

- *If own operation, solely for own use (considering reasonableness of account in all the circumstances)*
- *Expectation of limited, if any, financial advantage, (including meeting the offender's own habit)*

### **Harm**

*In assessing harm, output or potential output are determined by the weight of the product or number of plants/scale of operation. Indicative output or potential output, upon which the starting point is to be based, is given in the table below. Where a drug (such as fentanyl or its agonists) is not listed in the table below, sentencers should expect to be provided with expert evidence to assist in determining the potency of the particular drug and in equating the quantity in the case with the quantities set out in the guidelines in terms of the harm caused. There will often be no precise calculation possible, but courts are reminded that in cases of particularly potent drugs, even very small quantities may be held to be*

### **Category 1**

- *Heroin, cocaine – 5kg*
- *Ecstasy – 7,000 tablets\**
- *MDMA – 5kg*
- *LSD – 250,000 squares*
- *Amphetamine – 20kg*
- *Cannabis – operation capable of producing industrial quantities for commercial use*
- *Ketamine – 5kg*
- *Synthetic cannabinoid receptor agonists (for example 'spice') – very large quantity indicative of an industrial scale operation*

### **Category 2**

- *Heroin, cocaine – 1kg*
- *Ecstasy – 1,300 tablets\**
- *MDMA – 1kg*
- *LSD – 25,000 squares*
- *Amphetamine – 4kg*
- *Cannabis – operation capable of producing significant quantities for commercial use*
- *Ketamine – 1kg*
- *Synthetic cannabinoid receptor agonists (for example 'spice') – large quantity indicative of a commercial operation*

### **Category 3**

- *Heroin, cocaine – 150g*
- *Ecstasy – 200 tablets (see note below)*
- *MDMA – 150g*
- *LSD – 2,500 squares*

- Amphetamine – 750g
- Cannabis – 20 plants\*\*
- Ketamine – 150g
- Synthetic cannabinoid receptor agonists (for example 'spice') – smaller quantity between categories 2 and 4

#### Category 4

- Heroin, cocaine – 5g
- Ecstasy – 13 tablets\*
- MDMA – 5g
- LSD – 170 squares
- Amphetamine – 20g
- Cannabis – 7 plants\*\*
- Ketamine – 5g
- Synthetic cannabinoid receptor agonists (for example 'spice') – very small quantity

\*Ecstasy tablet quantities based on a typical quantity of 150mg MDMA per tablet<sup>[1]</sup>

\*\*with an assumed yield of 55g per plant<sup>2</sup>

15. The circumstances in Nauru are different from the circumstances in UK. The cultivation of cannabis in Nauru will have a more determinant effect on the people of Nauru. Therefore, I find that cultivation of 4 cannabis plant will be a category 3 offence.
16. The defendants played a leading role in the cultivation of the 4 cannabis plants, therefore, their moral culpability is high. In light of their personal circumstances, aggravating and mitigating circumstances, and their moral culpability, the court finds that the objective seriousness of the current offending is at the mid to high range of the level of seriousness.

#### RANGE OF SENTENCES

17. Section 277 of the *Crimes Act 2016* provides for the types of sentences that this court can impose on a person found guilty of an offence:

##### *277 Kinds of sentences*

*Where a court finds a person guilty of an offence, it may, subject to any particular provision relating to the offence and subject to this Act, do any of the*

<sup>2</sup> UK Sentencing Council. Magistrates' Court. *Production of a controlled drug/ Cultivation of cannabis plant*. <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/production-of-a-controlled-drug-cultivation-of-cannabis-plant-2/> (Accessed: 13 August 2024).



following:

- (a) record a conviction and order that the offender serve a term of imprisonment;
- (b) with or without recording a conviction, order the offender to pay a fine;
- (c) record a conviction and order the discharge of the offender;
- (d) without recording a conviction, order the dismissal of the charge for the offence; or
- (e) impose any other sentence or make any order that is authorised by this or any other written law of Nauru.

18. In the UK the maximum penalty for the cultivation of cannabis is 14 years custody and the sentencing range is a Band B fine to a 10 years custody. The following is an extract of the sentencing guidelines of the UK Sentencing Council for the offence of production of controlled drug and cultivation of cannabis in relation to the second step of identifying a starting point and sentencing range:

***Step 2 – Starting point and category range***

*Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.*

*Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the offender's role.*

***Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that a higher proportion of Asian and Other ethnicity offenders receive an immediate custodial sentence than Black and White offenders. There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 152 to 167 of the [Equal Treatment Bench Book](#).<sup>3</sup>***

19. The following table is an extract for the starting point and sentencing range, which I adopt with minor adjusts to suit the circumstances in Nauru and the Act which has a lower maximum term of sentencing<sup>4</sup>:

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<sup>3</sup> n2

<sup>4</sup> n2 & n3

<b>CLASS A</b>	<b>LEADING ROLE</b>	<b>SIGNIFICANT ROLE</b>	<b>LESSER ROLE</b>
<b>Category 1</b>	<b>Starting point</b> 14 years' custody	<b>Starting point</b> 10 years' custody	<b>Starting point</b> 7 years' custody
	<b>Category range</b> 12 – 16 years' custody	<b>Category range</b> 9 – 12 years' custody	<b>Category range</b> 6 – 9 years' custody
<b>Category 2</b>	<b>Starting point</b> 11 years' custody	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 5 years' custody
	<b>Category range</b> 9 – 13 years' custody	<b>Category range</b> 6 years 6 months' – 10 years' custody	<b>Category range</b> 3 years 6 months' – 7 years' custody
<b>Category 3</b>	<b>Starting point</b> 8 years 6 months' custody	<b>Starting point</b> 4 years 6 months' custody	<b>Starting point</b> 3 years' custody
	<b>Category range</b> 6 years 6 months' – 10 years' custody	<b>Category range</b> 3 years 6 months' – 7 years' custody	<b>Category range</b> 2 – 4 years 6 months' custody
<b>Category 4</b>	<b>Starting point</b> 5 years 6 months' custody	<b>Starting point</b> 3 years 6 months' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 4 years 6 months' – 7 years 6 months' custody	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> High level community order – 3 years' custody

<b>CLASS B</b>	<b>LEADING ROLE</b>	<b>SIGNIFICANT ROLE</b>	<b>LESSER ROLE</b>
<b>Category 1</b>	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 5 years 6 months' custody	<b>Starting point</b> 3 years' custody
	<b>Category range</b> 7 – 10 years' custody	<b>Category range</b> 5 – 7 years' custody	<b>Category range</b> 2 years 6 months' – 5 years' custody
<b>Category 2</b>	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 4 years 6 months' – 8 years' custody	<b>Category range</b> 2 years 6 months' – 5 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody

<b>Category 3</b>	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order
	<b>Category range</b> 2 years 6 months' – 5 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody	<b>Category range</b> Low level community order – 26 weeks' custody
<b>Category 4</b>	<b>Starting point</b> 18 months' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order
	<b>Category range</b> 26 weeks' – 3 years' custody	<b>Category range</b> Medium level community order – 26 weeks' custody	<b>Category range</b> Band B fine – Medium level community order

<b>CLASS C</b>	<b>LEADING ROLE</b>	<b>SIGNIFICANT ROLE</b>	<b>LESSER ROLE</b>
<b>Category 1</b>	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 4 – 8 years' custody	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 1 – 3 years' custody
<b>Category 2</b>	<b>Starting point</b> 3 years 6 months' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 1 – 3 years' custody	<b>Category range</b> 12 weeks' – 18 months' custody
<b>Category 3</b>	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> High level community order
	<b>Category range</b> 1 – 3 years' custody	<b>Category range</b> 12 weeks' – 18 months' custody	<b>Category range</b> Low level community order – 12 weeks' custody
<b>Category 4</b>	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order
	<b>Category range</b> High level community order – 18 months' custody	<b>Category range</b> Low level community order – 12 weeks' custody	<b>Category range</b> Band A fine – Medium level community order

20. Cannabis is a Class B drug. Having considered the circumstances in Nauru, I adjust the sentencing range and starting point. The sentencing range in the District Court for a Class B Category 3 offence where the defendant played the leading role in the cultivation of cannabis shall be 3 years to 5 years imprisonment. Nauru is a small island nation and if the misuse of and addiction to illicit drugs is not control at an early stage then the people of Nauru will suffer immensely. Further, I also take into consideration the increase in the number of illicit drug cases in the District Court. In light of the circumstances in Nauru the starting point shall be 3 years 6 months.

## SENTENCING APPROACH AND PRINCIPLES

21. Section 278 of the *Crimes Act 2016* provides the following purposes for sentencing an offender:

### *278 Purposes of sentencing*

*The purposes for which a court may impose a sentence on an offender are as follows:*

- (a) to ensure that the offender is adequately punished for the offence;*
- (b) to prevent crime by deterring the offender and other people from committing similar offences;*
- (c) to protect the community from the offender;*
- (d) to promote the rehabilitation of the offender;*
- (e) to make the offender accountable for the offender's actions;*
- (f) to denounce the conduct of the offender; and*
- (g) to recognise the harm done to the victim and the community.*

22. Section 279 of the *Crimes Act 2016* outlines the considerations that the court must take into account when sentencing a person found guilty of an offence. The considerations under this section stems from Section 278 of the *Crimes Act 2016*.
23. Section 280 of the *Crimes Act 2016* provides the sentencing considerations that must be taken into account when deciding whether a term of imprisonment is appropriate.
24. Section 281 of the *Crimes Act 2016* provides the considerations that the court must take into consideration as a far possible when deciding to impose a fine on a person found guilty of an offence.
25. Hunt CJ at CL in the Court of Criminal Appeal of NSW in *R v MacDonell*<sup>5</sup> stated that:

*The sentencing procedures in the criminal justice system depend upon sentencers making findings as to what the relevant facts are, accepting the principles of law laid down by the Legislature and by the courts, and exercising*

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<sup>5</sup> (unrep, 8/12/95, NSWCCA) at [1]

*a discretion as to what sentence should be imposed by applying those principles to the facts found.*

26. Section 278 of the **Crimes Act 2016** adopts the common law principles of sentencing as was found in *Veen v The Queen (No 2)*<sup>6</sup> with reference to a similar sentencing provision in Australia. In that case Mason CJ, Brennan, Dawson and Toohey JJ in their judgment in the High Court of Australia made useful observations with regard to the interaction between the different sentencing purposes:

*... sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions.<sup>7</sup>*

27. Further, the High Court of Australia in *Muldrock v The Queen*<sup>8</sup> reconfirmed the common law heritage of the relevant provision:

*The purposes there stated [in s 3A] are the familiar, overlapping and, at times, conflicting, purposes of criminal punishment under the common law [Veen v The Queen (No 2) at 476–477]. There is no attempt to rank them in order of priority and nothing in the Sentencing Act to indicate that the court is to depart from the principles explained in Veen v The Queen (No 2) [at 476] in applying them. [Relevant footnote references included in square brackets.]*

28. Having referred to the cases above on the application of the purposes for sentencing, I now emphasize on how the principle of proportionality as a fundamental sentencing principle guides and binds the balancing exercise of a sentencer with regard to the various purposes of sentencing referred to in Section 278(b)(c)(d)(e)(f) & (g) of the **Crimes Act 2016**. In this regard Howie J, with whom Grove and Barr JJ agreed, made the following observations in the Court of Criminal Appeal of NSW in *R v Scott*<sup>9</sup>:

*There is a fundamental and immutable principle of sentencing that the sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed and the circumstances of the crime committed. This principle arose*

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<sup>6</sup> (1988) 164 CLR 465

<sup>7</sup> *Veen v The Queen (No 2)* (1988) 164 CLR 465

<sup>8</sup> (2011) 244 CLR 120 at [20]

<sup>9</sup> [2005] NSWCCA 152 at [15]

*under the common law: R v Geddes (1936) SR (NSW) 554 and R v Dodd (1991) 57 A Crim R 349. It now finds statutory expression in the acknowledgment in s 3A of the Crimes (Sentencing Procedure) Act that one of the purposes of punishment is "to ensure that an offender is adequately punished". The section also recognises that a further purpose of punishment is "to denounce the conduct of the offender".*

29. An example of how the principle of proportionality operates is also found in *Veen v The Queen (No 2)*, *supra* where the High Court of Australia held that a sentence should not be increased merely to protect the community from further offending by the offender if the result of which would be a disproportionate sentence. In that case Mason CJ, Brennan, Dawson and Toohey JJ made the following useful observations at [473]:

*It is one thing to say that the principle of proportionality precludes the imposition of a sentence extended beyond what is appropriate to the crime merely to protect society; it is another thing to say that the protection of society is not a material factor in fixing an appropriate sentence. The distinction in principle is clear between an extension merely by way of preventive detention, which is impermissible, and an exercise of the sentencing discretion having regard to the protection of society among other factors, which is permissible.*

30. Lamer CJ in the Canadian Supreme Court in *The Queen v CAM*<sup>10</sup> found that retribution in sentencing represents:

*...an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct.*

31. Howie J in the Court of Criminal Appeal of NSW in *R v Zamagias*<sup>11</sup> made the following useful observations on the interaction of the various sentencing purposes and how the advancement of one purpose may achieve the goal of another:

*It is perhaps trite to observe that, although the purpose of punishment is the protection of the community, that purpose can be achieved in an appropriate case by a sentence designed to assist in the rehabilitation of the offender at the expense of deterrence, retribution and denunciation...*

32. In light of the above, I find that all of the purposes of sentencing would need to be considered and balanced against each other to reach a sentence which conforms with the fundamental sentencing principle of proportionality. No one purpose has priority

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<sup>10</sup> [1996] 1 SCR 500 at [80]

<sup>11</sup> [2002] NSWCCA 17 at [32]

over the other. The amount of weight that would be given to each purpose would depend on the circumstances of the offending, mitigating and aggravating factors, and the personal circumstances of the offender.

### CONVICTED AS CHARGED?

33. Section 190(4) of the Criminal Procedure Act 1972 provides as follows:

*Where the Court has recorded a finding under this Section that an accused is guilty of the offence charged, it shall, after hearing him or her, or his or her legal practitioner if any, as to any mitigating circumstances and any evidence thereof which may be advanced, either convict him or her and pass sentence on, or make an order against, him or her in accordance with the law or, if authorised by any written law to do so, discharge him or her without proceeding to conviction.*

34. The defendants pleaded guilty to the offence of unlawful cultivation of 4 plants of cannabis weighing 0.940kg. Therefore, they are found guilty as charged.
35. In the current circumstances, there are no facts that would justify discharging the defendants without proceeding to conviction. Therefore, the defendants are convicted as charged.

### CONSIDERATION

36. Having considered the various sentencing principles, I will now consider the applicable factors and circumstances of this case, and apply them to the sentencing principles. In doing so I have taken account of Section 279 of the *Crimes Act 2016*.
37. The offending did not involve any violence. However, cultivation of cannabis poses significant harm to the people of Nauru. Therefore, pursuant to Section 280 of the *Crimes Act 2016*, I find that a term of imprisonment is the appropriate sentence in this case. A custodial sentence is necessary to deter the members of the public from cultivating cannabis. Further, it will also ensure that those sentenced to a custodial sentence would learn from their punishment.
38. Both the defendants are unemployment and dependent on their parents for financial support. Both are abled bodied. I have also considered other factors when determining the means of the defendants, such as, payment of fees by the defendants' parents: see *St Clare v. Wilson* (1994) S.L.T. 564.
39. Both the defendants do not have any prior criminal record. There is no need for specific or personal deterrence in relation to them.

40. In light of the objective seriousness of the offending in the case, I have considered the appropriate sentence range and starting point for this matter at [20] of this ruling. Further, I have considered the personal circumstances of the defendants. I have also considered the aggravating and mitigating factors in relation to the defendants' offending.
41. Both the defendants plead guilty at the earliest possible time. As a result of their early guilty plea they are entitled to a 1/3 reduction from their term of imprisonment.
42. I have considered the defendants plea that if a custodial sentence is imposed on them, then it be suspended. The defendants are young offenders, lack maturity and have low educational attainment. The defendants have no prior criminal record. A lengthy term of imprisonment may affect their future prospects. Suspended sentences are custodial sentences founded upon the sentencing principle of deterrence and rehabilitation: see *Dinsdale v The Queen* (2000) 202 CLR 321. I find that in the current circumstances a partial suspension of the term of imprisonment would be appropriate.

## SENTENCE

43. In applying the proportionality test, the court has considered the local circumstances in Nauru. It is an undeniable fact that addiction to illicit drugs causes a lot of social and psychological issues, this court does not need to name them. Unlike countries like the United Kingdom, Australia, New Zealand and even Fiji, Nauru does not have the same level of resources and facilities to deal with the social and psychological issues caused by addiction to illicit drugs. This court finds that when determining what would be a proportionate sentence in a case involving unlawful cultivation of cannabis, it must take this fact into consideration, which in turn would require a sentence that would effectively provide general deterrence while at the same time not being excessively disproportionate.
44. I strongly denounce the unlawful cultivation of cannabis. The offence of unlawful cultivation of cannabis will not be taken lightly. Persons charged for it must expect custodial sentences.
45. The starting point for a term of imprisonment for Category 3 "lead role" unlawful cultivation of 4 plants of cannabis weighing 0.940kg is 3 years and 6 months. Upon consideration of the aggravating factors, mitigating factors and the personal circumstances of the defendants the term of imprisonment is reduced to 3 years. The defendants entered an early guilty plea and are entitled to a 1-year reduction. Therefore, the defendants shall be sentenced to a term of imprisoned for 2 years.
46. In light of the two significant considerations of deterrence and rehabilitation, part of the defendants' sentence shall be suspended. Therefore, the defendants shall serve a period of 3 months imprisonment from their sentence of 2 years. The remaining 1 year and 9 months shall be suspended for a period of 3 years. During the suspension period the



defendants are to be on good behavior and shall maintain the peace. If the defendants would be sentenced for any other crime during the suspension period, then the remaining term of imprisonment for 1 year and 9 months shall be reactivated against the defendants and it shall be served consecutively to any sentence imposed in the subsequent offending.

47. Section 6(a) of the Act requires that a fine be imposed together with a term of imprisonment. Therefore, the defendants are fined a sum of \$1500 which is to be paid within 28 days from the date of sentence.

## **RECORD OF CONVICTION**

48. The court has considered Section 277(a) & (b) of the *Crimes Act 2016*. The defendants have not raised any grounds or facts upon which this court is able to exercise its discretion not to enter a record of conviction against the defendants. Therefore, this court enters a record of conviction against the defendants accordingly.

## **ORDERS**

49. The following are the orders of this court:

### **1<sup>st</sup> defendant**

1. That a conviction is recorded against the 1<sup>st</sup> defendant, namely, Lukeson Scotty.
2. That the 1<sup>st</sup> defendant is to pay a fine of \$1500 within 28 days from 16 August 2024. If the 1<sup>st</sup> defendant fails to pay the fine within 28 days then he shall be committed to a term of imprisonment for 6 months.
3. That the 1<sup>st</sup> defendant is imposed a term of imprisonment for 2 years. Out of the 2 years, he shall serve 3 months imprisonment with immediate effect. The remaining 1 year and 9 months of the term of imprisonment shall be suspended for a period of 3 years.
4. That the 1<sup>st</sup> defendant is to be of good behavior and shall maintain the peace for the duration of the suspended sentence. If the defendant commits another offence during the period of the suspended sentence, then the suspended sentence is to be reactivated and served consecutively to any sentence imposed as a result of the subsequent offending.

### **2<sup>nd</sup> defendant**

5. That a conviction is recorded against the 2<sup>nd</sup> defendant, namely, Diong Gadeanang.
6. That the 2<sup>nd</sup> defendant is to pay a fine of \$1500 within 28 days from 16 August 2024. If the 2<sup>nd</sup> defendant fails to pay the fine within 28 days then he shall be

committed to a term of imprisonment for 6 months

7. That the 2<sup>nd</sup> defendant is imposed a term of imprisonment for 2 years. Out of the 2 years, he shall serve 3 months imprisonment with immediate effect. The remaining 1 year and 9 months of the term of imprisonment shall be suspended for a period of 3 years.
8. That the 2<sup>nd</sup> defendant is to be of good behavior and shall maintain the peace for the duration of the suspended sentence. If the defendant commits another offence during the period of the suspended sentence, then the suspended sentence is to be reactivated and served consecutively to any sentence imposed as a result of the subsequent offending.
9. That the parties are at liberty to appeal the 1<sup>st</sup> and 2<sup>nd</sup> defendant's sentence within 21 days from 16 August 2024.

Dated this 16 day of August 2024.

