

**PUBLIC PROSECUTOR – VS – TOM JOHNNY**

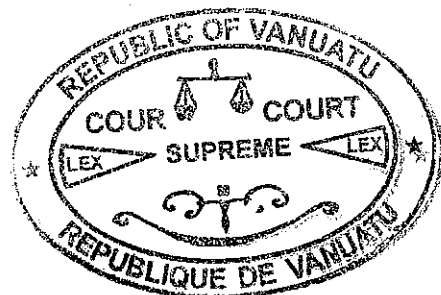
**Coram:** *Mr. Justice Oliver A. Saksak*

**Counsel:** *Ms. Kayleen Tavoia, Public Prosecutor for the State  
Ms. Jane Tari for the Defendant*

**Date:** *9<sup>th</sup> October 2013*

**SENTENCE**

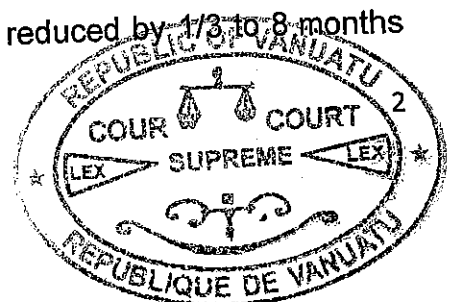
1. Tom Johnny you pleaded guilty to one Count of Unlawful Cultivation of Cannabis contrary to Section 4 of the Dangerous Drugs Act [Cap. 12].
2. Parliament has placed the maximum penalty for this offence at 20 years imprisonment and a fine not exceeding VT100 Million. These high penalties the serious view Parliament has taken towards cultivation of cannabis.
3. The facts are simple. You planted 18 plants of cannabis in your vegetable garden at Eken Area in November 2012. The Police were notified and went to visit your garden. They found the plants and removed them for testing which proved positive to be cannabis. When weighed the net weight was 1.4 grams.
4. You have admitted and accepted those facts. Your pre-sentence report indicates that your are addicted to cannabis and that you planted the plants because you were tired of buying it and receiving it from peers. The report also indicates your clear intention to sell the substance for income and for personal use.
5. In considering and assessing appropriate penalty, I have also considered the written submissions filed by both the Public Prosecutor and defence counsel. I heard both of them in relation to those submissions this morning.



6. The Public Prosecutor submits the appropriate sentence should be a community-based sentence or a suspended sentence.
7. Ms. Tari submits that a non-custodial sentence would be appropriate and concedes that a community-based sentence would act as a deterrence to both you and others mindful of committing the same offence. Counsel relied also on the recent Court of Appeal Case of Wetul v. Public Prosecutor [2013] VUCA 26 Criminal Appeal Case No. 4 of 2013. She also submits that according to the Court of Appeal ruling in that case your offending falls within category 2 which states –

"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." (My underlining for emphasis).

8. I accept and agree with Ms. Tari's submissions that your offending falls within category 2. And I accept that a suspended sentence is the appropriate penalty to be imposed. During part of the period of suspension, the offender will undergo supervision. In addition, you will do community service. This is to ensure that not only should you be deterred along with others who are unlawful to do the same, but that you be given a chance as a young man of 19 years old to rehabilitate so you would not reoffend and come back to the Court in future.
9. Your offending is however more serious than Wetul's because the number of plants you planted were 18 compared with Wetul who planted only 9. And you had a clear intention to sell and make an income whereas Wetul did not have that intention.
10. For these, I consider the appropriate starting point for you should be 12 months but with no further uplift. For your guilty plea this is reduced by 1/3 to 8 months




imprisonment. For other mitigating factors such as being a young offender of 19 years, cooperation with the Police and clean record, your sentence of 8 months imprisonment will be suspended for a period of 2 years from the date of sentence. During the period of 1 year of suspension you will be under supervision by the Probation Service to assist to rehabilitate.

11. You are therefore convicted and sentenced to 8 months imprisonment but suspended for a period of 2 years with supervision for 1 year only. In addition, you will do community work for 25 hours.

12. That is the Sentence of the Court for you. If you do not agree with the Sentence, you may appeal within 14 days from today.

**DATED at Luganville this 9<sup>th</sup> day of October 2013.**

**BY THE COURT**

  
OLIVER A. SAKSAK  
Judge

