

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

**Criminal
Case No. 24/1657 SC/CRML**

PUBLIC PROSECUTOR

v

JIMMY TATAO

Date of Plea: 17 June 2024
Date of Sentence: 8 October 2024
Before: Hon. Justice M A MacKenzie
In Attendance: Public Prosecutor – Mr L Young
Defendant – Ms A Yeeon

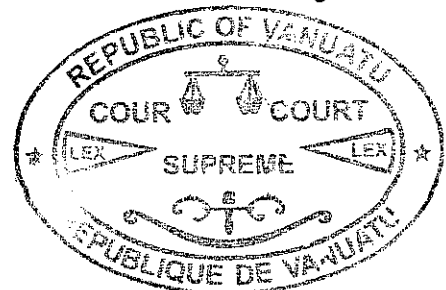
SENTENCE

Introduction

1. Mr Jimmy Tatao, 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 19 April 2024, your father reported you to police for cultivating and supplying cannabis.
3. Police went to your gardens at Melbulbul area on Malo. They found two gardens where you were cultivating cannabis. There was a small garden near the kitchen with 4 cannabis plants, ranging in height from 90 mm to 65 cm. There was another garden further into some bushes. There were 316 plants in that location, ranging in height from 20mm to 2.58 m. Testing confirmed the plants were cannabis and had a total net weight of 13.693 kg.



4. Under caution you admitted cultivating cannabis and told Police that you started cultivating cannabis in 2008. You told police also that you planted cannabis on Malo in 2022 for supply and sale.

Sentencing purposes/principles

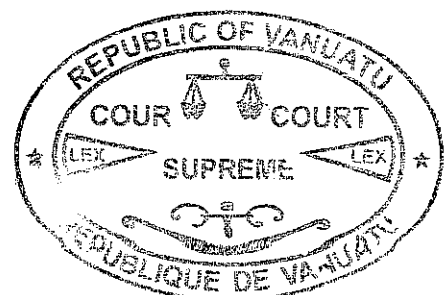
5. The sentence I impose must hold you accountable and must denounce and deter your conduct given that you were cultivating cannabis, which causes social harm. The sentence should ensure you take responsibility for your actions and help you to rehabilitate. It must also be generally consistent.

Approach to sentence

6. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

Starting point

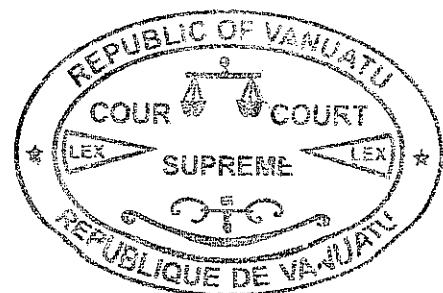
7. The first step is to set a starting point with reference to the aggravating and mitigating features of the offending and the maximum penalty for the offence.
8. The aggravating factors here are;
 - a. you deliberately cultivated the cannabis to sell or supply to others.
 - b. the quantity is significant, being 13.693 kg.
 - c. The different heights of the plants indicate ongoing grow cycles. That is because there were both young and mature plants in the gardens, as evidenced by the heights of the plants.
9. There are no mitigating features of the offending itself.
10. There is a guideline case for cannabis cultivation, *Wetul v Public Prosecutor* [2013] VUCA 26. You admitted cultivating the cannabis to either on supply or sell it. The offending here then falls at the top 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.



11. Both counsel made submissions as to the appropriate starting point. The prosecutor submits that the appropriate starting point is 3 years 4 months imprisonment. Ms Yeeon submits that the appropriate starting point is 1 years imprisonment.
12. 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.
13. The circumstances of those three cases are less serious than the present case, given the greater number of plants and the net weight of the cannabis here. 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”.
14. Given the quantity of cannabis, the clear commerciality involved and the 3 cases discussed above, I adopt a starting point of 3 and a half years imprisonment.

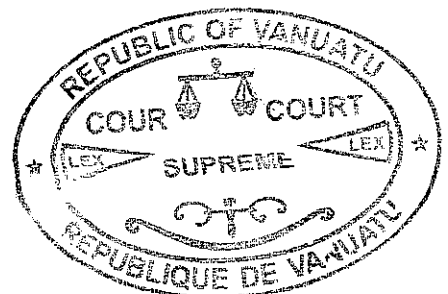
Guilty plea and personal factors

15. The sentence is reduced by 25 % for your guilty plea. I agree with Mr Young that the case against you was overwhelming. You had no option but to plead guilty. That equates to a discount of 10.5 months from the starting point.
16. You are aged 38 years and a first offender, although the fact that you admitted cultivation and supply since 2022 limits the discount available. You cooperated fully with police. You live with your partner and two children. Your partner is working overseas for seasonal work. You are a gardener. You hold a designate role as a chief. You have paid a fine to your father, which was facilitated by the Counsel of Chiefs. I treat this a custom compensation, which I must take into account. You say you have now made changes.
17. For these personal factors, I give you a further discount from the starting point of 4 months, which is 10 percent.
18. You were remanded in custody for a period of 29 days, between 26 April 2024 and 24 May 2024, an effective sentence of 2 months imprisonment. So, I reduce the sentence further by 2 months.



End Sentence

19. The end sentence is 2 years 1 month and 2 weeks imprisonment.
20. Your counsel asks that the sentence be suspended pursuant to s 57 of the Penal Code. This is opposed by the prosecutor. I gave your counsel the opportunity of filing additional submissions because the prosecutor did not initially oppose suspension of the sentence. No further submissions have been filed.
21. Under s 57, I must take into account the circumstances, the nature of the offending and your character. You are a first offender, accept responsibility and indicate a willingness to change. Your partner is working overseas so you will have responsibilities to your children. Those factors point towards suspending the sentence. The net weight of the cannabis was significant, and you admitted growing the cannabis for supply and sale since 2022. Further, you admitted cultivating cannabis since 2008. These factors point away from suspension, when the sentencing needs are taken into account. A key plank of the prosecutor's position is your admission to police under caution that you started cultivating cannabis in 2008. The issue of whether such admissions, without charges, can be taken into account was recently considered by the Court of Appeal in *Massing v Public Prosecutor* [2024] VUCA 40. The Court of Appeal said it would send the wrong message to the community if admitted long-term cannabis suppliers had their sentences suspended. Here, the admissions to police did not go as far as you admitting that you supplied cannabis since 2008. What it does say though is that you have been engaged in long term cannabis cultivation. Perhaps more relevantly, you admitted growing the cannabis over a two year period since 2022 to supply and sell it. This is clearly evidenced by the different heights of the plants, indicating as already noted, ongoing growth cycles. In short, you are well entrenched in the business of cultivating cannabis and the quantity is significant.
22. Even putting to one side the long-term cultivation, the significant quantity of cannabis alone suggests a busy cannabis dealing operation of at least two years duration. This puts people at risk, and you have clearly benefited from the sale and supply of cannabis. The need for accountability, deterrence and denunciation must come to the fore. Suspending the sentence will not meet the need for accountability, deterrence and denunciation. It would send a wrong message to the community if a long term cannabis cultivator had their sentence suspended, particularly given the quantity of cannabis involved here. It shows determined efforts to grow cannabis. I note that today I received correspondence from the Ambrym Community Chief's Council asking that you be "freed" on the basis that the Chief's Council will take responsibility for your re-education. Given the nature of the offending that would be a totally inadequate response to your offending.
23. Therefore, taking into account all relevant factors, I decline to suspend the sentence



24. The sentence is to commence immediately. S 50 of the Penal Code is not available to you, given that you were held in custody prior to being granted bail; *Jack v Public Prosecutor* [2024] VUCA 39.
25. The cannabis material is to be destroyed.
26. You have 14 days to appeal.

**DATED at Port Vila this 8th day of October 2024
BY THE COURT**

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Hon. Justice M A MacKenzie

