

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

Criminal Case No. 3928 of 2016

PUBLIC PROSECUTOR

-v-

SYLVAIN PAKOA

*Before Justice David Chetwynd
Hearing 23rd February 2017
Mr Blessing for the Public Prosecutor
Mr Vira for the Defendant*

SENTENCE

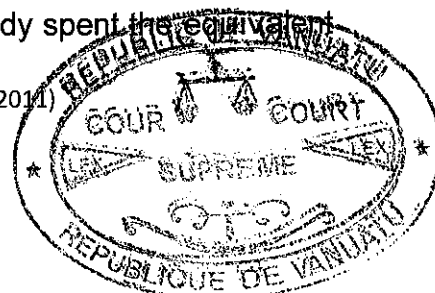
1. The defendant Sylvain Pakoa has entered pleas of guilty to two charges involving cannabis. He has said he is guilty of cultivating cannabis contrary to section 4 of the Dangerous Drugs Act [Cap 12] and he also accepts he was in possession of cannabis plants contrary to section 2(62) of the same act. The offences all took place at the defendant's residence at the Blacksands area on Efate. The evidence about weight is confusing as there seems to be photographs of a dozen or so substantial plants but the drug weight sheet talks of only 26.05 grams. There is no evidence of the sale of cannabis by the defendant.

2. When sentencing for drug offences of this type guidance can be had from the 2013 case of *Wetul v Public Prosecutor* [2013] VUCA 26; Criminal Appeal Case 04 of 2013 (26 July 2013). The Court of Appeal referred to 3 basic categories of offending, category 1 consisted of "of a small number of cannabis plants for personal use". Category 2 was small scale cultivation for commercial use. Category 3 involved large scale commercial cultivation. In this case there is no evidence of commercial use but the photographs show more than a "small number" of plants. This case seems to straddle the line between category 1 and category 2. This was more than a small number of plants for personal use but less than small scale commercial cultivation. The appropriate sentence is one of nine months.

3. There are no aggravating factors. So far as mitigation is concerned, the defendant is aged 29 years and is of previous good character although there is reference to breaches of bail. No detail is provided. The defendant has spent 3 months in custody, presumably following the breach of bail in November. He is spoken well of by his local Chief. All these factors, apart from time served are neutral factors.

4. Turning now to the third step in the sentencing process¹ the defendant entered his pleas of guilty at the first opportunity and he should be given full credit for that. He is entitled to a deduction of 3 months. The final sentences should be six months imprisonment to run concurrently but as he has already spent the equivalent

¹ *Public Prosecutor v Andy* [2011] VUCA 14; Criminal Appeal 09 of 2010 (8 April 2011)



of that time in custody he should be released immediately. As he will be released immediately there is no need to consider whether the sentence should be suspended or not.

5. I order the destruction of the plants and all implements, tools and materials used in the cultivation of them.

6. I remind the defendant that if he is dissatisfied with this sentence he has the right to appeal but he must do so within 14 days and he should take advice from his lawyer before making any decision.

Dated at Port Vila this 23rd day of February 2017

BY THE COURT

