

PUBLIC PROSECUTOR
v
ALSEN ISNO

Coram: *Hon. Chief Justice V. Lunabek*

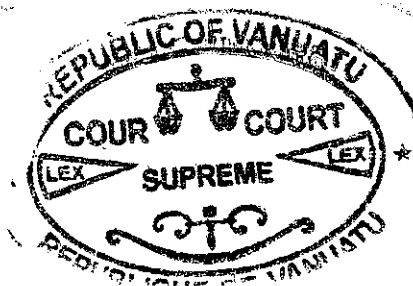
Counsel: *Mr K Massing for the State*
Ms B Taleo for the Defendant

Date of Pleas: *22 April 2024*

Date of Sentence: *23 May 2024*

SENTENCE

1. Mr Alsen Isno ("*Mr Isno*"), you appear for sentence today having being pleaded guilty to one charge of cultivation of cannabis plants, contrary to Section 4(1) of the Dangerous Drugs Act [CAP. 12].
2. A formal complaint was made against you, Mr Isno, for the offence of cultivation of cannabis plants (marijuana plants) which are prohibited by the laws of the Republic of Vanuatu.
3. The offending took place sometimes in September 2023 in Lorlow Village on the South West part of the Island of Malekula.
4. The police received information that you were involved in cultivating cannabis plants. Upon that information, the police did an investigation. During investigation it was revealed that you cultivated 538 plants of cannabis plants.
5. The cannabis plants seized by the police were then sealed and kept in their custody for presumptive test. The weight was 19 kilograms. The presumptive test result showed that the cannabis plants seized by the police were turned to positive of cannabis.
6. You were arrested, cautioned and interviewed by the police where you admitted the allegations made against you.



7. The maximum sentence available for this current offending is a fine not exceeding 100 million vatu or a term of imprisonment not exceeding 20 years or to both such fine and imprisonment.
8. In this case, there is no mitigating factor leading to offending, but the following aggravating factors exist:
 - (a) Mr Isno, you had a knowledge intention of the nature of the substance plants in your possession as opposed to being reckless in possessing and cultivating it;
 - (b) You cultivated a total of 538 cannabis plants and the net weight of the cannabis plants was 19 kilograms which is substantial.
9. I bear in mind of the case of *Wetul v Public Prosecutor* [2013] VUCA 26 as leading case authority setting the guideline of cannabis cultivation into three broad categories where the Court stated:

"We consider appropriate to divide cannabis cultivation offending into three broad categories:

Category 1 consists of the growing of a small number of cannabis plants for personal use by the offender without any sale to another party occurring or being intended. Offending in this category is almost invariably dealt with by a fine or other non-custodial measure. Where there have been supplies to others on a non-commercial basis the monetary penalty will be greater and in more serious cases or for persistent offending a term of community work and supervision or even a short custody term may be merited. (It is to be noted in this connection that there is no separate offence in relation to a section 4 offence of cultivation for supplying or possession for supply, as opposed to importation, sale, supply or possession.(s.2).

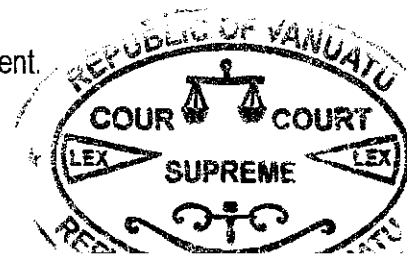
Category 2 encompasses small-scale cultivation of cannabis plants for a commercial purpose, i.e. with the object of deriving profit. The starting point for sentencing is generally between two and four years but where sales are infrequent and of very limited extent a lower starting point may be justified.

Category 3 is the most serious class of such offending. It involves large-scale commercial growing, usually with a considerable degree of sophistication and organisation. The starting point will generally be four years or more.

*...
The division between the categories is merely a means to give a guide to penalty in relation to a particular position on the scale of offending.*

We stress also that these indicators relate to the starting point before aggravating features (like previous drug offending) or mitigating features (like guilty plea)."


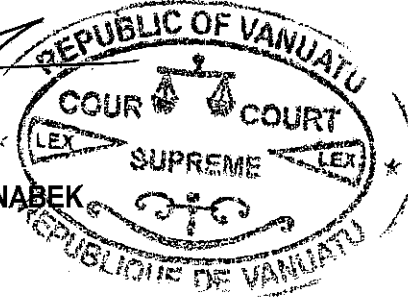
10. The present case lies under category 2 of the *Wetul* guidelines as it involved the cultivation of cannabis at a larger-scale.
11. The sentence start point for the present case is 3 years and 5 months imprisonment.



12. In mitigation, you are from Lorlow Village, South West Malekula, Vanuatu. You are 20 years old. You are a first-time offender with no criminal history. You are single with no children. You are unemployed and dependent on your family for support. You also try to make a living for your own =. You live with your aunty and grand-mother. You make a living to help your family through farming, planting and selling food crops and kava. You cooperated well with the police and made early admissions which have saved the State resources in bringing this matter to a finality. You have a good relationship with your community and family.
13. I give you a reduction of 3 months to reflect your mitigating factors.
14. I give you a further reduction of 33% for your early guilty plea.
15. The remaining balance of your sentence is 26 months i.e., 2 years and 2 months imprisonment.
16. You are remanded in custody from 22 November 2023 and released on bail on 19 March 2024. You have already spent a total of 3 months and 28 days in pre-custodial period. The time spent shall be deducted from your sentence.
17. The remaining balance of your sentence is 22 months and 2 days. Your end sentence is 22 months i.e., 1 year and 10 months imprisonment. I consider the nature and circumstances of your offending and your character as an offender, I decline to suspend this term of imprisonment.
18. You are ordered to serve 1 year and 10 months imprisonment with immediate effect. Imprisonment is necessary as the offence of cultivation of cannabis plants is a very serious offence, taken the local environmental conditions that it is easy to grow.
19. You have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days starts on the date of this sentence.

DATED at Luganville, Santo, this 23rd day of May, 2024.

BY THE COURT

Hon. Chief Justice Vincent LUNABEK