

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

**Criminal
Case No. 24/934 SC/CRML**

BETWEEN: Public Prosecutor

**AND: Obed Massing
Philip Massing
Defendants**

**Coram: Justice Aru
Counsel: Mr. C. Shem for the Public Prosecutor
Mrs. P. Malites for the Defendants**

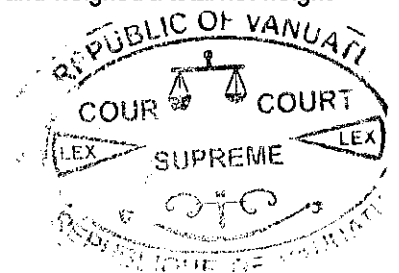
SENTENCE

Introduction

1. The defendants pleaded guilty to one count of unlawful possession of cannabis and one count of attempted sale and supply of cannabis.

The Facts

2. On 1 March 2024 around 10.00am the Police executed a search warrant at the residence of the defendants at Ohlen Fres Wind in Vila. Both defendants were at home at that time and were served with the warrants before the search.
3. When searching the defendants' bedroom the Police uncovered the following items:
 - 2 big rolls of dried leaf like substance covered in aluminium foil;
 - 1 package of leaf substance covered in paper;
 - 1 bottle containing small ball of leaf substances covered also in aluminium foil;
 - 1 box of smarties containing dried leaf substances; and
 - 1 plastic containing leaf like substances.
4. Police witnesses confirmed seeing the defendants selling the substance to youths in the area in small balls at VT100 each. The defendants were arrested and cautioned after which they admitted having knowledge of the existence of cannabis seized by the Police. Phillip Massing admitted selling cannabis since 2008 at VT100 per ball. Obed Massing admitted selling cannabis since 2006.
5. A presumptive test was conducted on the substances seized by the Police on 7 March 2024. The test revealed that the substances tested positive as cannabis and weighed a total net weight of 157.5 grams.



Sentence start point

6. The maximum sentence available for unlawful possession of cannabis is a fine not exceeding VT 100 million or a term of imprisonment not exceeding 20 years. Attempted sale or supply of cannabis is punishable with the same penalty. The offending is aggravated by the fact that the quantity of cannabis was found to 157.5 grams and was intended for sale. The defendants were making a living out of the sale of cannabis. There are no mitigating factors of the offending.
7. The Prosecution submits that the offending in this case is at the lower end of the scale as set out in **Wetul v Public Prosecutor** [2013] VCA 26. I was also referred to **Public Prosecutor v Naia [2018]** VUSC 272 and **Public Prosecutor v Kalo [2017]** VUSC 116. The facts of these two cases are distinguished from the current case but the principles applied are the same.
8. I adopt a starting point of 3years imprisonment for the attempted sale and supply of cannabis. For the offence of possession of cannabis, I set the starting point of sentence at 1 year and 7 months imprisonment. The total concurrent starting point of sentence is 3 years imprisonment.

Mitigating factors

9. No submissions were filed by the defendants as directed. Pre-Sentence Reports were filed for each defendant.

Obed Massing

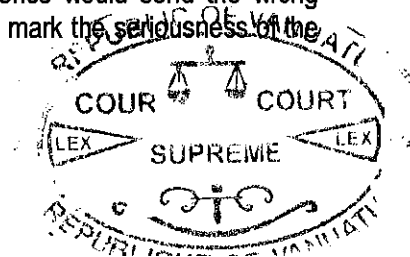
10. He is 32 years old and is a first-time offender. He also lives with his parents and brother, Philip Massing at Ohlen Fres Wind. He left school at year 10 due to financial difficulties. He lives in a de facto relationship and has a young daughter currently in year 5 at Hill Valley Primary School. He is self employed and has a kava business through which he earns his living. Taking these factors into account I reduce his sentence start point by 5 months. A further 1 month is deducted to reflect time spent in custody. For his guilty plea, the sentence start point is discounted by 27%.

Philip Massing

11. He is 29 years old and is a first-time offender. He lives at Ohlen FresWind with his parents. He left school at year 9 at Tebakor College in 2009 due to financial difficulties. He lives in a de facto relationship and has a son. He has skills in carpentry and earns his living by farming. Taking these factors into account I reduce the sentence start point by 8 months. A further deduction of 1 month is allowed to reflect the time spent in custody. For the guilty plea the sentence start point is further discounted by 27%.

End sentence

12. **Obed Massing** is sentenced to an end sentence rounded off to 20 months imprisonment. **Philip Massing** is sentenced to an end sentence rounded off to 18 months imprisonment.
13. Considering the circumstances of this case and the fact that the defendants have been selling cannabis since 2006 and 2008 respectively, a suspended sentence would send the wrong message to the community. A custodial sentence is warranted to mark the seriousness of the

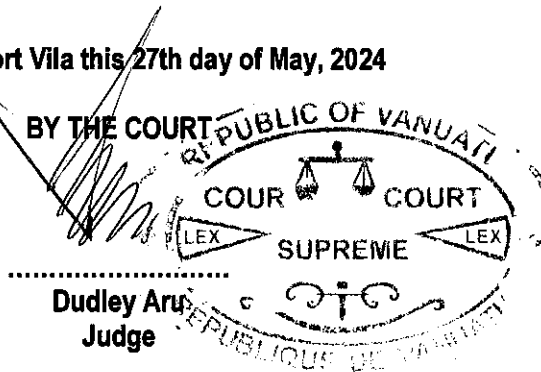


offending and to protect the community. It will also serve as a deterrence to the defendants and the public at large from such offending.

14. As Philip Massing is presently on remand, his sentence is **effective from 3 May 2024** when he was remanded again.
15. As for Obed Massing who is on bail, unless he elects to begin serving his sentence immediately, he must present himself to the Centre Manager of the Correctional Centre to begin serving his sentence **by no later than 10 June 2024**. Should he fail to do so, an application will be made to have him arrested and presented to the Correctional Centre.
16. I also condemn the confiscated cannabis and order that it be destroyed immediately.
17. The defendants have 14 days to appeal if they are dissatisfied with the decision.

DATED at Port Vila this 27th day of May, 2024

BY THE COURT



Dudley Aru
Judge