

IN THE SUPREME COURT OF BELIZE, A.D. 2022

CRIMINAL JURISDICTION

Central District

Indictment No C70/2022

THE KING

v.

DWAYNE WILLACEY

BEFORE: **The Honourable Justice Susan Lamb**

APPEARANCES: **Ms. Romey Wade for the Crown**
Accused unrepresented

DATES: **04 July 2022, 11 July 2022, 18 July 2022 and 29 July 2022.**

PARTIAL VACATION OF SENTENCE

1. On 29 July 2022, Mr. Dwayne Willacey was convicted, following a plea of guilty, of negligent wounding pursuant to Section 94 of the Belize Criminal Code (“Sentencing Judgment”).¹ Paragraph 24 of the Sentencing Judgment imposed the following penalties:

¹ *R. v. Dwayne Willacey*, Sentencing Judgment, 29 July 2022; Section 94, Belize Criminal Code, Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020 (“Criminal Code”).

1. A fine of \$1,000.00, payable within twelve (12) months of the date of this judgment;
 2. A sum of compensation of \$3,000.00, payable within twelve (12) months of the date of this judgment, to Mr. James Muschamp.
2. A sentence of three (3) months imprisonment was imposed in default of payment.²
 3. As both parties during the sentencing hearing indicated an openness to exploring non-pecuniary or alternative sentencing measures, a community services order of up to 50 hours of community service was also imposed.³
 4. The contours of the community services order were not particularized in the Sentencing Judgment. Instead, paragraph 26 of the Sentencing Judgment indicated that Mr. Muschamp may, within two months of the date of the judgment, request a hearing so as to particularize the work to be performed under any such order. This paragraph of the Sentencing Judgment further stated that no such request was forthcoming from Mr. Muschamp within two months of the date of the judgment, this order shall lapse.
 5. On 16 September 2022, the Crown, in a communication submitted to the court through the Registrar, contended that the court lacked the competence to impose a community service order pursuant to the Penal Reform (Alternative Sentences) Act 2011.⁴ The Crown submits that pursuant to Section 12(3)(d) of that Act, a court shall not make a community services order against an offender unless the offence falls within the category of offences specified in Schedule 1 of the Act. The offence for which Mr. Willacey pleaded guilty, negligent grievous harm, is not contained within this schedule.⁵
 6. Appended to this communication is also a letter from Mr. Muschamp, dated 29 August 2022. In this letter, Mr. Muschamp requests that the amount of community service hours be revisited and increased to 100 hours, being the amount of community service that children must allegedly perform in Belize when graduating from High School.

² Sentencing Judgment, paragraph 25.

³ Sentencing Judgment, paragraph 26.

⁴ Penal System Reform (Alternative Sentences) Act 2011, Chapter 102 of the Substantive Laws of Belize (Revised Edition, 2011) (“Alternative Sentences Act”).

⁵ The Alternative Sentences Act, which established the Community Rehabilitation Department, is heavily focused on young offenders. The First Schedule to this Act lists the following offences as within the scope of this Act: common assault by a first offender; theft by a first offender not exceeding five hundred dollars; failure to pay maintenance money pursuant to the Families and Children [Act]; provocation to fight; any offence committed by a first offender for which the maximum penalty as fixed by law is not more than one hundred dollars or six months imprisonment, or both; any petty misdemeanor or petty offence specified in Part II of the Summary Jurisdiction (Offences) Act, Cap. 98, committed by a first offender; any abetment of, or attempt to commit, the crimes listed in this Schedule; or a first offence for possession of cannabis or any other controlled drug of a quantity less than that specified under the Misuse of Drugs Act, Cap. 103, as the minimum quantity the possession of which is deemed to be possession for the purpose of supplying another person or for drug trafficking; or a first offence involving smoking or otherwise using prepared cocaine, or cannabis.

7. The Sentencing Judgment did not envisage variation of the quantum of community service to be performed. It had however sought the input of Mr. Muschamp as to possible forms of this community service so as to ensure that the content of the order is in some way personally meaningful to Mr. Muschamp. No such particularization is provided.
8. In light of the foregoing, the community services order contained in paragraph 26 of the Sentencing Judgment is vacated. Any hearing envisaged in the same paragraph is accordingly also moot.
9. The Sentencing Judgment requires Mr. Willacey to pay both pecuniary penalties imposed within a calendar year; that is, by 28 July 2023. Mr. Willacey has since clarified to the court that he intends to make a lump sum payment of the total of four thousand dollars (\$4,000.00) closer to this date, due to unexpected medical expenses that have recently affected his family, both financially and emotionally.
10. The Registry is directed to ensure that Mr. Muschamp is paid the sum of three thousand dollars (\$3,000.00) as soon as practicable after the receipt of these funds.

Dated this 28th day of October 2022

Susan Lamb
Justice of the Supreme Court