



2. The agreed facts are that on 22 December 2022, Mr. Willacey was driving a Buick Regal four-door car on the George Price Highway at night. He overtook another vehicle without keeping a proper look-out for oncoming traffic and collided with Mr. James Muschamp's motorcycle. The car's front left hand side hit the left side of Mr. Muschamp's motorcycle, causing him to run off the road, flip three times and land in a swamp. Mr. Muschamp suffered serious injuries to his left leg and side, and was in severe pain. He was assisted at the scene and a tourniquet applied to his left leg, which was bleeding heavily. At the hospital, Mr. Muschamp was observed to have a fractured left wrist and his left foot had suffered almost complete amputation. The entire left lower limb was traumatized, swollen, with poor vitality and a weak popliteal pulse. As a result, an above-knee amputation was performed. It is accepted that Mr. Willacey's negligent driving was the cause of this permanent injury and debility to Mr. Muschamp.
  
3. On 6 June 2022, Mr. Willacey was indicted on a single count of negligent grievous harm contrary to Section 94 of the Criminal Code. He was arraigned before the Supreme Court on 4 July 2022, indicating a wish to accept responsibility at his arraignment. He formally entered a plea of guilty to this charge on 11 July 2022. A sentencing hearing took place on 18 July 2022, where Mr. Muschamp was called as a witness by the Crown in relation to victim impact, while Mr. Willacey, who is self-represented, called a character witness and made submissions in mitigation.

ii. Legal Framework

4. Section 94 of the Belize Criminal Code provides that “[e]very person who negligently and unlawfully causes a wound or grievous harm to any person shall be liable to imprisonment for two years”.
  
5. The offence under Section 94 thus attracts a maximum custodial sentence of two years imprisonment. In this respect, it is akin to the custodial sentence applicable to the offence of causing death by careless conduct under Section 108(2) of the Criminal Code, which has been adjudicated far more frequently before this court.<sup>2</sup> Although the courts have on occasion awarded a custodial sentence in relation to the offence of causing death by careless conduct, more usually, any such sentence is awarded in default of payment.<sup>3</sup> It follows that a custodial sentence would also be the exception rather than the norm when the resultant harm is wounding or grievous harm rather than death.

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<sup>2</sup> *Director of Public Prosecutions v. Ravell Gonzalez*, Criminal Application for Leave to Appeal No. 2 of 2015 (“*DPP v. Gonzalez*”), at para. 14. See also *R. v. Joel Westby*, C23/2019, Supreme Court of Belize, 11 April 2022, at paras 4-5 and footnotes 4-9 and *R. v. Francisco Torres*, C31/2022, Supreme Court of Belize, 30 May 2022, at paras 5-8.

<sup>3</sup> S. 108(2) of the Criminal Code provides that “[e]very person who causes the death of another by any careless conduct not amounting to negligence ... shall be guilty of an offence and liable to imprisonment for two years.” In *Victor Cuevas v. The Queen* (Criminal Application for Leave to Appeal No. 17 pf 2007), the court imposed a one year custodial sentence in view of the Accused's unexplained aggressive driving and excess blood alcohol level at the time of the incident. However, in *Cardinal Smith v. The Queen* (Criminal Appeal No. 35 of 2005, 14 July 2006 (“*Cardinal Smith v. The Queen*”)), it declined to impose a custodial sentence in the light of mitigating factors present in that case.

6. Section 164 of the Indictable Procedure Act confers a general discretion to impose a fine *in lieu* of any other sentence, and Section 168 of the same Act provides that when a person is convicted of any crime, the court may issue either or both of the following orders:
  - (a) Payment of the prosecution costs, in whole or in part; and/or
  - (b) Payment of a sum by way of compensation to any person injured by the crime in question.
7. Cases decided under Section 108(2) of the Criminal Code have, depending on the circumstances, imposed fines in the range of \$2,000.00 to \$9,000.00, with the quantum typically being in the range of \$2,500 and \$4,500.00 in incidents involving a single death.<sup>4</sup> Fines reflect the culpability of the offender. Compensation to complainants has also been awarded under Section 108(2). Compensation payments in this respect comprise a criminal penalty and are not intended to place a monetary value on human life or injury. The quantum of compensation, when awarded at all under this provision, reflects considerations such as any payments previously made by the Accused to the deceased's family, prior or anticipated future insurance payments to the deceased's family, pending civil claims, and the financial means of the Accused.<sup>5</sup> Compensation payments awarded to date have ranged from zero to \$10,000.00, with a range of \$3,500.00 to \$5,000.00 being the norm.<sup>6</sup>
8. In the absence of previous decisions to provide guidance on the quantum of compensation awarded under Section 94 of the Criminal Code, I have taken as a starting-point a compensation range of half that awarded in cases where death has resulted, namely a fine of between zero and \$5,000, with \$1,000.00 and \$3,000.00 being the typical range.
9. In addition, the Penal System Reform (Alternative Sentences) Act 2011<sup>7</sup> provides for further sentencing options, and in particular, community sentences. Section 12 of this Act empowers courts to issue orders that an offender render service for the benefit of the community or any section of the community, for the number of hours specified in the order. Community service orders may be imposed in addition to any other sentence, and are subject to a number of important conditions, including the consent of the Accused.

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<sup>4</sup> See *DPP v. Gonzalez*, at para. 2 (noting the impact of Section 151(2) of the Indictable Procedure Act where more than one person killed and requiring the payment of a single fine of \$8,000 and a sum of \$10,000 by way of compensation to the family of one of the deceased (*id.*, at paras. 18-20)) and *Revolorio, Sixto Martinez, Jose Dominguez, and Luis Tzul* (imposing fines between \$2,500.00 and \$3,500.00).

<sup>5</sup> See e.g. N9/2014 *R. v. Donaldo Omar Can* (2015), N24/2018 *R. v. Abram Freisen* (2019) and N21/2017 *R. v. Jomar Hercules* (2019) (no compensation awarded but leave granted to reapply to the Supreme Court should insurance company not compensate deceased's family); N14/2018 *R. v. Norman Slusher* and N4/2018 *R. v. Jessy Garcia* (2018) (no compensation ordered as compensation already paid by insurance company); C42/2016 *R. v. Boyd Lopez* (2016) (no compensation payable due to pending civil claim); and C28/2018 *R. v. Ismael Garcia* (no compensation awarded following substantial insurance pay-out and the Accused's previous assistance to the deceased family with funeral expenses and having built the deceased's mother a house).

<sup>6</sup> See e.g. C24/2019 *R. v. Jessica Miller*; N4/2014 *R. v. Cesar Revolorio* (2014); S12/2013 *R. v. Josue Tello* (2014); N2/2015 *R. v. Hector Bobadilla* (2016) and *DPP v. Gonzalez*, at paras. 18-20.

<sup>7</sup> Penal System Reform (Alternative Sentences) Act 2011, Chapter 102 of the Substantive Laws of Belize (Revised Edition, 2011) ("Alternative Sentences Act").

iii. Sentencing considerations

10. Having regard to this sentencing framework and my duty to arrive at an individualized sentence which reflects the circumstances of the case, I have considered the grave and permanent consequences of this incident for Mr. Muschamp, and thus the profound and enduring impact of it upon Mr. Muschamp and his family. I have also weighed a number of significant mitigating factors in Mr. Willacey's favour.

*a. Aggravating factors*

11. The principal aggravating circumstance in this case is the extremely serious harm that this offence has caused to Mr. Muschamp and his family.
12. As a result of this incident, Mr. Muschamp suffered life-changing injuries, and permanent disfigurement. Mr. Muschamp testified to the formidable psychological, practical and financial burden of coming to terms with the loss of his limb and debility of his left hand. Before this incident, Mr. Muschamp was an active sportsman, and served the community as a first responder. He considers that his ability to continue this role and participate in his hobbies has been significantly lost. Being a provider for his family was also a considerable part of his personal identity and he has struggled to come to terms with now having a higher degree of dependence on others.
13. Mr. Muschamp has found adjustment to restricted movement, chronic pain and altered family and inter-personal relationships profoundly challenging. Mr. Muschamp is left-hand dominant, but now has a limited range of motion and flexibility in that hand. He has a child who is hearing impaired, and the limited mobility in his hand impairs his ability to communicate with her by sign language. Learning how to transfer his weight and to develop the necessary upper body strength to walk with the aid of a prosthetic limb has required significant physical therapy and he continues to experience the occasional fall, and ongoing restrictions on his movement.
14. Even with significant rehabilitation efforts, he has struggled to return to work as a certified welder and mechanic, as he cannot grasp implements with his left hand. This has had a significant financial impact. Mr. Muschamp's prosthetic limb cost in the region of \$30,000.00. Additional recommended medical visits to the United States are estimated to require a further \$14,000.00, which Mr. Muschamp cannot meet. Remodelling of the bathroom in his home would alleviate his circumstances, as his wheelchair cannot currently be used in his bathroom. However, the estimated cost (\$11,000.00) required for the remodel is presently beyond his financial means.
15. A document provided to the court from the insurers of the 2014 Buick Regal car driven by Mr. Willacey on the night of the incident, dated 1 July 2022, indicates that Mr. Muschamp has to date received payment for injuries and medical expenses in the total of \$30,653.02. Atlantic Insurance further conducted an in-depth inspection of Mr. Muschamp's motorcycle and provided a settlement in the amount of \$4,000.00 on 23 March 2021, which

Mr. Muschamp declined. Mr. Muschamp acknowledged in his evidence on 18 July 2022 that he has received an insurance payout, but that it was limited in relation to the financial losses he has incurred. He also spoke of a number of frustrations in accessing social insurance and workplace compensation, or similar State benefits. Resolution of these issues is outside the competence of the criminal courts.

16. Mr. Muschamp has indicated that he bears no ill-will toward Mr. Willacey but given the profound impact of the incident, looks to the court to provide a modicum of accountability. He acknowledges the limited role which the criminal courts can play in this respect, and the regrettably irreversible nature of his injuries. Mr. Muschamp has indicated that he is not averse to future contact with Mr. Willacey, but that he has not to date given close thought to what, if any, non-pecuniary assistance Mr. Willacey may be able to provide to alleviate Mr. Muschamp's current circumstances.
17. While the harm caused by this offence is extremely serious, Mr. Willacey's culpability is moderate. Mr. Willacey's driving is acknowledged to be negligent and to have posed a danger to Mr. Muschamp and other road users. However, here are no additional aggravating circumstances, such as an unlawful blood/alcohol concentration or clearly excessive speed. It is neither alleged, nor an ingredient of the offence to which Mr. Willacey has plead guilty, that he intended any harm to Mr. Muschamp. However, and while Mr. Willacey may not have intended the result, the consequences of his actions for Mr. Muschamp and his family are profound and enduring.

*b. Mitigating factors*

18. Mitigating factors in the present case include Mr. Willacey's guilty plea and acceptance of responsibility, co-operation with the authorities, genuine remorse and willingness to provide restitution and to render assistance to Mr. Muschamp and his family.
19. Shortly after the incident, Mr. Willacey gave a statement to the police, showing willingness to cooperate with the authorities. Mr. Willacey's guilty plea avoids both the need for a trial, thus saving the court time and resources. It also avoids undue prolongation of these proceedings for Mr. Muschamp and his family, and spares witnesses the anxiety of having to give evidence. By pleading guilty to this offence, Mr. Willacey has also acknowledged his wrongdoing and taken responsibility for his conduct. He indicated a wish to plead guilty at the earliest opportunity before the Supreme Court.
20. At the 18 July 2022 sentencing hearing, Mr. Willacey expressed genuine remorse for this incident. He apologized to Mr. Muschamp and sought to reassure him that this was an accident, and that he had not intended him any harm. Mr. Willacey indicated that he sought to reach out to Mr. Muschamp to express his remorse on two occasions shortly after the incident. There is some conflict in the evidence regarding this. I consider it likely that these efforts were made, but that these were understandably misunderstood or not welcomed by Mr. Muschamp at the time, given the seriousness of his medical condition. I

also consider that the spectre of pending criminal charges may also have hampered Mr. Willacey's efforts in this regard.

21. At the sentencing hearing, Mr. Willacey stated that he was willing to assist the family both financially and otherwise, and voluntarily provided documentation to the court that has assisted it in determining a quantum of compensation that may be realistic for Mr. Willacey to meet given his financial resources.
22. Mr. Willacey is 37 years of age, and gainfully employed. At the sentencing hearing, Mr. Willacey's fiancée provided character evidence on his behalf. She described him as empathetic, caring and always willing to lend a hand to others. He is family-oriented and has two sons who look up to him. Tragically, he had been *en route* to assist a friend with a task at the time of this incident. She stated that he was distraught following the incident and that he still suffers from flashbacks and nightmares. He wishes that he could turn back time, and he is genuinely remorseful.
23. The court accepts that Mr. Willacey is of good character and a law-abiding citizen. His Defendant History shows that at the time of this offending, he had not previously come before the courts, save for minor vehicle registration offences. Mr. Willacey sought to call a further witness in mitigation, who was an eye witness at the scene, and who would attest to the fact that Mr. Willacey sought to render assistance to Mr. Muschamp at the scene. As it is undisputed that Mr. Willacey remained at the scene following the incident and endeavoured to assist, the court has not viewed it necessary to hear this evidence.

iv. Determination of sentence

24. In light of the above, I consider the following sentence to be appropriate in all the circumstances:
  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.
25. Given Mr. Muschamp's difficult financial and personal circumstances, Mr. Willacey's genuine remorse, willingness to accept responsibility and offer to mitigate the harm caused to Mr. Muschamp to the extent he is able, I find that no positive purpose would be served by imposing a term of imprisonment. However a sentence of three (3) months imprisonment shall be imposed in default of payment.
26. During the sentencing hearing, both parties indicated an openness to exploring non-pecuniary or alternative sentencing measures. The contours of this were not fully explored at this hearing. I would be willing to impose a community services order of up to 50 hours of community service over the course of one year, under the conditions laid down within the Alternative Sentences Act, including the consent of Mr. Willacey. On this basis, Mr.

Muschamp may approach the court and a hearing for this purpose will be convened so as to particularize the conditions of any such order. If no such request is forthcoming from Mr. Muschamp within two months of the date of this judgment, this order shall lapse.

Dated this 29<sup>th</sup> day of July 2022

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Susan Lamb  
Justice of the Supreme Court