

Criminal Defense Update



WHY COMMUNITY SERVICE WORKS

BY

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In 2011, NCIA published a *Criminal Defense Update* highlighting the re-emergence of community service as a viable alternative sentence. We detailed cases where the Courts decided to impose a non-incarcerative sentence and relied on community service as the appropriate sanction. These cases were examples of a growing trend of Courts to apply 18 U.S.C. §3553(a) factors to individualize sentences and, consistent with the then recent Sentencing Commission initiatives, reflected a growing trend in the use of alternatives to incarceration.

Since that time, widespread support for community service has continued. With NCIA's assistance in helping defense attorneys prepare and submit client background information, including substantial community service recommendations, we are witnessing an ever-increasing support of sentences that include court-ordered community service sanctions.

Title 18 U.S.C. §3553(a)(4) mandates the Court to consider "the kinds of sentences available." This statute allows a community service order to satisfy the goals of sentencing. In fact, there has been a long-time endorsement of community service by both federal and state courts because the individual judges recognize that it "...is a burdensome penalty that meets with widespread public approval, is inexpensive to administer...produces public value...and can to a significant extent be scaled to the seriousness of crimes."¹ This acknowledgment is illustrated by three recent examples of how community service has not only served the goals of sentencing, but has been an incredible benefit to the community.

In the first case, on January 14, 2014 the Honorable Judge Charles Kocoras, U.S. District Judge for the Northern Division of Illinois, sentenced a defendant in an off-shore tax case to a two-year term of probation conditioned upon 500 hours of community service. Despite an advisory sentencing range of 46-57 months imprisonment, Judge Kocoras found that imprisonment simply was not a just and proper sentence for this defendant. Recognizing that incarceration would do more harm to society than good, Judge Kocoras sentenced this defendant to community service where he would use his expertise to benefit the community. His community service program was tailored to his background and he has assisted an inner-city Chicago high school in supervising, teaching, and mentoring the students and staff in developing a curriculum that addresses careers in business.

In the second case, a defendant who pled guilty to a \$2.5 million tax evasion charge was sentenced to a term of probation and home confinement whereby he was able to volunteer a significant amount of his time to give back to a worthy organization. Specifically, he began volunteering at the Sunshine Camp in Rochester, New York, assisting in the building of a sensory room for autistic students. His background in construction and property development was used to address a major need at this camp.

¹*Intermediate Sanctions in Sentencing Guidelines*, National Institute of Justice, May 1997.

In the third case, a defendant was charged with Conspiracy to Violate the Federal Election Campaign Act and was facing a sentencing advisory range of 57 to 71 months imprisonment. The Honorable I. Leo Glasser, Senior U.S. District Judge for the Eastern District of New York, described the case as an extraordinary one, in which the defendant's conduct was an isolated event in an otherwise flawless life dedicated to serving others and with added challenging family circumstances. Judge Glasser granted the defendant a variance, sentencing him to 36 months probation and 1,000 hours of community service with Friends of Island Academy, an organization that provides support and programs for young men and women who have been caught up in the criminal justice system. Judge Glasser justified his decision, stating that he was "not cheating justice by being merciful, but was trying to be, and hopefully am, as objective and fair and reasonable as this case requires."

The imposition of community service as a sanction allowed the communities served by these three defendants to benefit from their time and expertise. Community service works because our clients' professional skills are paired with community organizations that benefit from these skills but are not in a financial position to secure the services of these talented individuals.

Community service as an alternative sentence can sufficiently recognize the grave seriousness of white-collar crimes and involve a punitive restriction, but moreover it can utilize the time, skills and expertise of individuals who can be a substantial benefit to communities in need. Alternatives to incarceration exist that can carry both the community and the court's condemnation of their conduct, but channel it in a way that is more constructive and beneficial. As an executive director of one of the organizations NCIA has worked with said: "We could never pay a salary that someone of [his] business caliber and expertise could earn. Our organization just doesn't have those resources, but the work we do helps so many individuals and families; that is worth something so much more than money." Community service placements give those organizations the resources that they could not otherwise afford to significantly and substantially change the lives of the people they serve.

To help determine if your client is an appropriate candidate for community service, please call or write.



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