

Summary of Judgments Referring to the Significance of Culture to Wellbeing, Healing and Rehabilitation Report (2021)

Last updated: Oct 2024

NSW Supreme Court	
<p>GW [2023] NSWSC 664</p> <p>(Yehia J)</p> <p><i>Application for bail – juvenile offender – importance of comprehensive bail support plan to address multiple and complex needs in community – policy of Youth Justice where no guilty plea – reference to research and reports including Wellbeing, Healing and Rehabilitation Report from Bugmy Bar Book</i></p>	<ul style="list-style-type: none">• Application for bail by 11 year old Aboriginal male with 59 outstanding charges – multiple and complex needs – previously declined to engage with support programs – remanded to Youth Justice Centre when previously refused bail• Consideration of Youth Justice policy to provide voluntary bail support not mandatory bail supervision where no guilty plea – policy designed to reduce criminalisation of non-compliance with supervision – importance of ensuring bail support still comprehensive and coordinated: at [30]-[42]• Emphasis on importance of providing children who have multiplicity of complex needs with support, supervision, and guidance in the community as opposed to detaining them in custody – referred to supporting research material <p>[43] Ensuring that the community is protected against antisocial and criminal behaviour requires more than simply locking up an 11-year-old. What is required is an intensive and coordinated approach. In the case of an Indigenous child, it requires referral to culturally appropriate programs, ideally managed and staffed by Indigenous caseworkers. The significance of culture to well-being, healing and rehabilitation, has been recognised and there is little doubt that “conceptualisations of wellbeing, and therefore efforts for healing and rehabilitation, are intrinsically tied to culture, with Indigenous perspectives of well-being and healing reflecting holistic worldviews that consider connections between physical, social and emotional well-being, individual and collective wellbeing, and the impact of social political and historical factors”. [1]</p> <p>[44] The findings of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory [2] indicted that incarcerated children and young people are more likely to have experienced poor physical and mental health and disproportionately higher levels of disadvantage than the general population. Accordingly, their health needs may be greater than those of children and young people in noncustodial settings. The report also noted that children and young people in detention are a particularly vulnerable group. They have varying and complex needs and behaviours. Many have come from crisis situations or a background of disadvantage, have experienced trauma or have a range of health issues. Detention itself may give rise to trauma, which may compound already highly complex behaviours and needs. To address the needs of these children and young people effectively, underlying issues need to be recognised and properly addressed and treated. Research shows that threatening and punitive interactions,</p>

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	<p>incarceration, and punishment escalate the aggressive behaviour of troubled youth. [3]</p> <ol style="list-style-type: none"> 1. Vanessa Edwidge and Dr Paul Gray, Significance of Culture to Wellbeing, Healing and Rehabilitation (June 2021) at 5. 2. Final Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (17 November 2017). 3. A Safer Northern Territory through Correctional Interventions: Summary Report of the Review of the Northern Territory Department of Correctional Services (31 July 2016). <ul style="list-style-type: none"> • In this case satisfied “bail support” plan sufficiently comprehensive and ameliorates risks – release application granted: at [46], [54]
<p>Knight [2023] NSWSC 321 (Yehia J)</p> <p><i>Murder – sentencing for single stabbing of female partner – reference to Bugmy Bar Book chapter and Wellbeing, Healing and Rehabilitation Report</i></p>	<ul style="list-style-type: none"> • Evidence established offender’s childhood marked by deprivation and dysfunction – violence, poverty and exposure to substance abuse: at [58]-[74] • Although no requirement for causal connection, unchallenged evidence established offender’s background of disadvantage and deprivation directly contributed to offence: at [84] • Reference to 2021 Report, ‘Significance of Culture to Rehabilitation and Wellbeing’ by Ms Edwidge and Dr Gray on importance of culturally appropriate rehabilitation programs for indigenous offenders: at [82]-[83] – also reference to executive summary of Bugmy Bar Book Chapter on ‘Impacts of Imprisonment on Remand in Custody’: at [104] • Finding of special circumstances based on real risk offender will become institutionalised, first time he will serve term of full-time imprisonment, risk at some point during imprisonment he may develop major depression and requirement of lengthy period on parole to assist with readjusting to life in community and accessing culturally appropriate rehabilitation programs: at [103]-[107]

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<p>DPP v Coulter [2024] ACTSC 262 (Taylor J)</p> <p><i>Driving offences - reference to Bugmy Bar Book chapters and Wellbeing, Healing and Rehabilitation Report</i></p>	<ul style="list-style-type: none"> • Psychologist report referred to Bugmy Bar Book, Childhood Exposure to Domestic and Family Violence (November 2019) and Bugmy Bar Book, Impacts of Imprisonment and Remand in Custody (November 2022) : at [54], [81] • Referred to Wellbeing Report in noting importance of culture, kin, community and country: <ul style="list-style-type: none"> [82] Ms Edwidge recorded what I know to be true and that is the inextricable link for Aboriginal people between our overall wellbeing and our sense of self experienced through our expression of cultural identity and our connectedness to kin, community, and country. For the offender, as a Yuin man, this factor could be a significant source of strength if he is given the opportunity to access services that promote his healing at the same time as reinforcing the strength to be found in his connectedness to our culture. (see Significance of Culture to Wellbeing, Healing and Rehabilitation, Dr Paul Gray and Vanessa Edwidge, June 2021).

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	<ul style="list-style-type: none"> • <i>Bugmy</i> factors given full weight: at [70]
<p>DPP v Hogan [2024] ACTSC 245 (Hopkins AJ) <i>Serious family violence offences - reference to Wellbeing, Healing and Rehabilitation Report</i></p>	<ul style="list-style-type: none"> • Observed importance of connection to community and culture to offender's long-term healing and rehabilitation citing Vanessa Edwige and Paul Gray, Significance of Culture to Wellbeing, Healing and Rehabilitation (Report commissioned by the Bugmy Bar Book Committee, June 2021): at [73]
<p>DPP v Welsh (No.3) [2024] ACTSC 179 (Baker J) <i>Burglary and motor vehicle offences – successful engagement in rehabilitation program – reference to Significance of Culture to Wellbeing Healing and Rehabilitation Report</i></p>	<ul style="list-style-type: none"> • Evidence of successful engagement in formal rehabilitation program justified suspended sentence for serious offences [65] The role of the Glen program in assisting Mr Welsh must also be acknowledged. Culturally sensitive programs such as the Glen can be of immense importance: see Vanessa Edwige and Dr Paul Gray, Significance of Culture to Wellbeing Healing and Rehabilitation (Report, Public Defenders (NSW), The Bugmy Bar Book Project, June 2021), 19 – 40. As that report notes, “strong cultural supports and programs in communities that help facilitate the building of healthy communities ‘will facilitate the successful reintegration of Indigenous offenders once they leave custody, while also reducing the likelihood of Indigenous people commencing a criminal trajectory’” (at 32 [130]). As Mr Welsh explained, it was “the whole experience” of the Glen program which has been so critical to his rehabilitation. (see earlier related judgment below)
<p>DPP v Hudson [2024] ACTSC 159 (Hopkins AJ) <i>Sentencing for family violence offences – reference to Significance of Culture to Wellbeing, Healing and Rehabilitation Report and Bugmy Bar Book chapters</i></p>	<ul style="list-style-type: none"> • Sentencing of Aboriginal man for family violence offences [60] I do not know whether connection to culture is important to you. If it is important to you, then you should know that strengthening this connection may be beneficial to your wellbeing, healing, and rehabilitation: Vanessa Edwige and Paul Gray, Significance of Culture to Wellbeing, Healing and Rehabilitation (Report, June 2021). • Significantly disadvantaged childhood including exposure to heroin abuse of mother: [61] ... Research establishes “that children in families with parental or carer substance abuse are at greater risk of a range of adverse developmental outcomes”. It “may increase the likelihood of children being substance misusers themselves and being involved in the juvenile justice system”: Bugmy Bar Book Project Committee (eds), ‘Early Exposure to Alcohol and Other Drug Abuse’ Bugmy Bar Book (November 2019). • Disrupted schooling is significant disadvantage: Bugmy Bar Book Project Committee (eds), ‘Interrupted School Attendance and Suspension’ Bugmy Bar Book (October 2023) • Drug and Alcohol Treatment Order imposed

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<p><u>DPP v Smith [2024] ACTSC 146</u></p> <p>Hopkins AJ</p> <p><i>Robbery and assault offences – traumatic childhood and complex mental health issues – importance of culture and community for rehabilitation – reference to Significance of Culture to Wellbeing, Healing and Rehabilitation Report</i></p>	<ul style="list-style-type: none"> • Re-sentencing of Aboriginal man for robbery and assault offences – traumatic childhood including exposure to violence and substance abuse – complex mental health and substance abuse issues • Noted working with Aboriginal Liaison Officer at prison to establish culturally appropriate support in community <ul style="list-style-type: none"> [83] Strengthening your connection to community and culture through working with these services may well be central to your long-term healing and rehabilitation: see Vanessa Edwige and Paul Gray, Significance of Culture to Wellbeing, Healing and Rehabilitation (Report commissioned by the Bugmy Bar Book Committee, June 2021). • Sentence of imprisonment with non-parole period imposed to ensure release plans in place and appropriate conditions for supervision and support established.
<p><u>DPP v Welsh (No.2) [2023] ACTSC 347</u></p> <p>Baker J</p> <p><i>Burglary and motor vehicle offences – order made to permit continued engagement in rehabilitation program – importance of connection to culture - reference to Significance of Culture to Wellbeing, Healing and Rehabilitation Report</i></p>	<ul style="list-style-type: none"> • Griffith remand to permit offender to continue in rehabilitation program prior to final sentence in light of positive engagement <ul style="list-style-type: none"> [10] The material from the Glen is very positive. The letter of 23 October 2023 addresses the offender’s Indigenous heritage, and notes that the offender has spent time with therapists and completed “cultural healing courses” which have “allowed him to reconnect back with his spirit and culture.” As Vanessa Edwige and Dr Paul Gray report in Significance of Culture to Wellbeing, Healing and Rehabilitation (Report commissioned by the Bugmy Bar Book Committee, Public Defenders New South Wales, 2021), connection to culture is a powerful protective factor that promotes resilience, self-esteem, self-worth and ultimately, rehabilitation (see especially at [212] – [214]). See similarly <i>HA (a pseudonym) v the Queen</i> [2021] VSCA 64 at [58] – [59], where the Court noted that “[r]econnection of an Aboriginal offender with culture and Country can constitute a pivotal factor diverting such a person from entrenched offending behaviour”. • See final judgment above
<p><u>BS-X [2021] ACTSC 160</u></p> <p>(Loukas-Karlsson J)</p> <p><i>Motor vehicle and burglary offences – juvenile Aboriginal offender with severe childhood trauma – individual report supported by references to Bugmy Bar Book chapters and Significance of Culture to Wellbeing, Healing and Rehabilitation</i></p>	<ul style="list-style-type: none"> • Psychological report described 15y old Wiradjuri man with complex developmental trauma – born to drug addicted 15y mother and removed into non-indigenous foster care at 12 months – exposed to mother’s drug use throughout life – experienced younger brother’s removal from mother’s care and placement with different carer due to mother’s drug use – early substance abuse – difficult schooling period – disconnection with cultural identity - multiple significant losses and grief – externalised grief, loss and anger through maladaptive techniques – profound trauma resulting in mental health and behavioural issues • Psychological report supported by references to multiple Bugmy Bar Book chapters: at [56], [58], [62], [63] • Further reference to Significance of Culture to Wellbeing, Healing and Rehabilitation Report with emphasis on importance of culturally appropriate treatment to facilitate rehabilitation – importance of

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<p><i>Report – application of Bugmy principles</i></p>	<p>individual rehabilitation to both individual and community protection: [81]-[85]</p> <ul style="list-style-type: none"> • Reference to comment in <i>Hoskins [2021] NSWCCA 165</i> that childhood deprivation does not need to be profound [81]-[85] • Application of <i>Bugmy</i> principles

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<p>Bennett [2022] NSWDC 321 (Beckett DCJ) <i>Sentencing for property offences – consideration of Wellbeing Report on importance of indigenous controlled organisations for rehabilitation – referenced chapter from Bugmy Bar Book on hearing impairment</i></p>	<ul style="list-style-type: none"> • Aboriginal offender with significantly disadvantaged upbringing • Referred to <i>Significance of Culture to Wellbeing, Healing and Rehabilitation report</i> and importance of culturally appropriate services in rehabilitation of indigenous offenders: <p>[34] What is of particular significance is that the offender has apparently only recently had the dual support of two Indigenous controlled organisations, apparently working closely in cooperation with Community Corrections. He has clear motivation to not reoffend or return to drugs for the purposes of maintaining a positive relationship with his daughter, with the assistance of Kari Corporation. Recently, <i>The Significance of Culture to Wellbeing, Healing and Rehabilitation Report</i>, commissioned by the Bugmy Bar Book, has established the important role to be played by culturally appropriate services in the exercise of rehabilitating Indigenous offenders. The Report presents expert opinions, collates the findings of major reports, and draws from leading Indigenous scholarship to demonstrate the significance of culture for Aboriginal and Torres Strait Islander people in promoting healing and rehabilitation. With respect to sentencing proceedings in criminal matters, the Report outlines the significant benefits of culturally appropriate treatment and care that provides for a connection to culture, family and community, in achieving those outcomes. The report relevantly states as follows [emphasis added]:</p> <p>[E]xisting data regarding the ongoing over-incarceration of Aboriginal and Torres Strait children and adults clearly demonstrates that ... current approaches are not adequate ... There are long-standing community concerns regarding ... [the] disproportionate impact on Aboriginal and Torres Strait Islander peoples and communities, including deaths in custody. The current evidence demonstrates that the 'status quo' approach is not effective or sustainable. ... this report highlights the significance of culture to Aboriginal and Torres Strait Islander peoples, and the importance of connecting to culture and culturally appropriate treatments to facilitate healing, including in a criminal justice setting. It highlights the importance of the social and emotional wellbeing framework for Aboriginal and Torres Strait Islander people, the need to understand this holistic world view and the need to take into account both individual and social factors in how healing is promoted. Finally, the report identifies culture as a strength that builds capacity in Aboriginal and Torres Strait Islander people, which is seen as a protective factor.</p> <p>[35] The Report recognises that approaches to rehabilitation which address systemic issues and disadvantage have far better outcomes for Aboriginal and Torres Strait Islander people and communities and keep communities together. This includes discussion of intersections affecting people with disability, and families involved with child protection systems. In practical terms, rehabilitation for Aboriginal and Torres Strait Islander people is</p>

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	<p>enhanced by services that support individuals to build core capabilities within a culturally safe environment, including learning to recognise destructive behaviours, building coping skills, and forming supportive and pro-social relationships. These are all recognised as protective factors against re-offending. In <i>R v BS-X</i>, Justice Loukas-Karlsson made extensive reference to this report, noting its relevance to the evidence in that case in the application of principles of <i>Bugmy v The Queen</i>. (<i>citations omitted</i>)</p> <ul style="list-style-type: none"> • Found offender’s prospects of rehabilitation not unfavourable in light of significant culturally appropriate supports available on his release: [36] • Referred to material in Hearing Impairment chapter of Bugmy Bar Book: [39]-[42] • Concluded deprived childhood relevant to reduction of moral culpability – hearing impairment will make custodial conditions more difficult: <p>[44] As a result of this finding, the role to be played by general deterrence on sentence is diminished to a degree, as is the weight to be given to other purposes of sentencing, particularly as to denunciation. With his repeat offending, specific deterrence continues to have a role to play, but conversely, rehabilitation must be given substantial weight, particularly at this critical time when he is motivated to change and has all of the appropriate supports in place. As observed above, his chances of rehabilitation at present are perhaps better than they have ever been, particularly if Tharawal, can assist the offender to seek treatment for his hearing impairment, or at least provide him with access to hearing aids.</p>
<p>Levell [2021] NSWDC 518 (Haesler SC DCJ)</p> <p><i>Detain for advantage – no causal connection required in most cases – reference to <u>Significance of Culture to Wellbeing, Healing and Rehabilitation Report</u> in considering impact of incarceration of offender on impending birth of child</i></p>	<ul style="list-style-type: none"> • Aboriginal offender removed from mother’s care at 11 months – <i>Bugmy</i> principles applied to reduce moral culpability – no causal connection required <p>[68] ... In most case a causal connection between the crime and factors that reduce moral culpability is not required. That principle stems from the <i>recognition</i> that in sentencing decisions; immaturity, social disadvantage, a childhood deprivation (such as exposure to violence and alcohol abuse), trauma (including as a victim of crime) and mental or intellectual incapacity (often in combination) frequently precedes the commission of crime: <i>Kennedy</i> [2010] NSWCCA 260 at [53]; <i>Millwood</i> [2012] NSWCCA 2 at [69]; <i>Muldrock</i> (2011) 244 CLR 120; [2011] HCA 39 at [54] & [58]; <i>Bugmy</i> (2013) 249 CLR 571; [2013] HCA 37 at [40] and [45]; <i>AWF</i> (2000) 2 VR 1; [2000] VSCA 172; <i>Nasrallah</i> [2021] NSWCCA 207 at [12]; <i>KT</i>; <i>Clarke-Jeffries</i>.</p> <ul style="list-style-type: none"> • Relied upon Significance of Culture to Wellbeing, Healing and Rehabilitation report in considering impact of incarceration of offender in view of impending birth of child – ICO imposed <p>[71] If Levell is returned to gaol he will miss the birth of his child and not be there to support his partner and care for the bay in its first years. There is nothing so exceptional in this simple fact that of itself requires a non-custodial option: <i>Edwards</i> (1996) 90 A Crim R 510 at 515; <i>Hoskins</i> [2016] NSWCCA 157 at [63]. That said, any impact of a custodial sentence must be synthesised along with all other factors.</p> <p>[72] When a parent is gaoled, there is often a significant disruption in the family and an increased risk to any children. Disruption to a family at a critical time can cause lasting trauma and impact on a child’s future emotional and cognitive processes. Positive experiences as a child can enrich lives. Adverse childhood experiences can have lifelong negative impacts: Significance of</p>

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	<p><i>Culture to Wellbeing, Healing and Rehabilitation; V Edwidge and P Gray, Bugmy Bar Book Project, 2021 at [50]</i>. Levvell was negatively impacted by his removal from his mother as a baby; any prolonged separation from his soon to be born child risks continuing that cycle.</p>

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<p><u><i>Police v Kinnara Connors [2022] ACTMC 6</i></u> (Special Magistrate Hopkins) <i>Assault offences – decision of Galambany Circle sentencing Court – reference to chapters and Report from Bugmy Bar Book Project</i></p>	<ul style="list-style-type: none"> • 20 year old indigenous offender sentenced for assault offences • Reference to the Significance of Culture to Wellbeing, Healing and Rehabilitation Report commissioned by the <i>Bugmy Bar Book</i> Committee and importance of offender's growing connection to Country and culture for long-term healing and rehabilitation: at [4] • Considered profound and emotional impact of childhood trauma with reference to chapters in Bugmy Bar Book on 'Childhood Exposure to Domestic and Family Violence' (November 2019); 'Early Exposure to Alcohol and Other Drug Abuse' (November 2019), 'Out-of-Home Care', (September 2021) and 'Interrupted School Attendance and Suspension' (December 2019): at [50]-[52] • Accepted evidence of positive engagement with Worldview Foundation program providing holistic life management programs and employment opportunities for Aboriginal and Torres Strait Islander people facing disadvantage: at [55]-[59] • Reference to potential negative consequences of imprisonment for offender and community, referring to Bugmy Bar Book, 'Impacts of Imprisonment and Remand in Custody' (November 2022) - imposed Intensive Correction Order: at [63]-[67]
<p><u><i>Police v Tracey [2022] ACTMC 26</i></u> (Special Magistrate Hopkins) <i>Assault offences – decision of Galambany Circle sentencing Court – reference to chapters and Report from Bugmy Bar Book Project – finding of special circumstances</i></p>	<ul style="list-style-type: none"> • 50 year old Indigenous offender sentenced for assault offences committed while in lawful custody – separation from mother, family, culture and Country through adoption at 6 weeks of age led to lifetime of isolation, institutionalisation and deep depression: at [6] • Reference to the Significance of Culture to Wellbeing, Healing and Rehabilitation Report commissioned by the <i>Bugmy Bar Book</i> Committee and R v BS-X [81]-[82] - importance of offender's growing connection to family and culture for long-term healing and rehabilitation: at [6] • Accepted significant impact of abuse suffered while offender detained in two notorious institutions as a child and young person: <ul style="list-style-type: none"> [54] Your experiences as a child and young person within these state run institutions caused you enormous and ongoing harm. They were institutions of fear, not safety; of isolation, not connection. Your criminal history demonstrates that your experiences in these institutions did not support you to live a healthy life in the community. Indeed, there is little doubt that the harm done to you in these institutions is inextricably linked to your offending and ongoing incarceration. [55] As is recognised by the Australian Law Reform Commission in its Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Final Report (2017) 'child removal into out-of-home care and

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	<p>juvenile detention could be considered as key drivers of adult incarceration' (p 485). See also, Bugmy Bar Book, Out of Home Care (September 2021) pp 10-12; Bugmy Bar Book, Impacts of Imprisonment and Remand in Custody (November 2022).</p> <ul style="list-style-type: none"> • Impact of childhood trauma moderated moral culpability and established special circumstances permitting sentence to be imposed concurrent to existing sentence with period of parole – importance of supervision in community after release from custody: at [19]-[21]; [84]
<p><u>Etheredge v Freeman [2022] ACTMC 11</u> (Special Magistrate Hopkins)</p> <p><i>Sentencing for property damage – Galambany Court – reference to incarceration of caregivers chapter of Bugmy Bar Book and Significance of Culture to Wellbeing, Healing and Rehabilitation Report</i></p>	<ul style="list-style-type: none"> • Aboriginal offender with disadvantaged background including incarceration of father, early substance abuse and death of Grandmother • Referenced Incarceration of a Parent or Caregiver chapter from Bugmy Bar Book – research establishes negative and intergenerational impact of incarceration of parent on child's emotional, behavioural and psychological development: [21]-[22] • Referenced Vanessa Edwige and Dr Paul Gray, Significance of Culture to Wellbeing, Healing and Rehabilitation report – importance of strengthening connection to community and culture as central to long-term healing and rehabilitation of offender: [39] • Suspended sentence imposed as recommended by elders – reference to Yeddung Mura: Aboriginal corporation delivering services to First Nations People in ACT: [63]
<p><u>Jervis v Tian-Jarrah Denniss [2022] ACTMC 20</u> (Special Magistrate Hopkins)</p> <p><i>Sentencing for assault and property damage offences – Galambany Court – reference to chapter of Bugmy Bar Book and Significance of Culture to Wellbeing,</i></p>	<ul style="list-style-type: none"> • Sentencing of Aboriginal offender with profoundly traumatic childhood including physical and sexual abuse – offences committed while in custody <ul style="list-style-type: none"> [36] ... A 'robust body of research now clearly demonstrates the link between child sexual abuse and a spectrum of adverse mental health, social, sexual, interpersonal and behavioural as well as physical health consequences': Australian Institute of Family Studies, The Long-term Effects of Child Sexual Abuse (CFCA Paper No 11, 2013) 23 cited in Bugmy Bar Book, Child Sexual Abuse (November 2019) 1. • Referred to importance of structured culturally connected and engaged rehabilitation program on release: <ul style="list-style-type: none"> [48] Strengthening your connection to community and culture in this way may well be central to your long-term healing and rehabilitation: see Vanessa Edwige and Dr Paul Gray, Significance of Culture to Wellbeing, Healing and Rehabilitation (Report commissioned by the Bugmy Bar Book Committee, 2021); R v BS-X [81]-[82] • Found special circumstances permitting sentence to be imposed concurrent to existing sentence with period of parole – importance of potential for

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<i>Healing and Rehabilitation Report</i>	support and protection of community provided by supervised release: at [63]-[64]