

Incarceration of Parents and Caregivers; Exposure to Criminal Activity

Case Summaries

[Primmer \[2020\] NSWCCA 50](#) (Hamill J, Leeming JA and Harrison J agreeing)

Specially aggravated break and enter - Crown appeal – childhood trauma caused PTSD – Bugmy and Millwood applied at first instance – Crown appeal dismissed in exercise of residual discretion

- Difficult childhood – both parents heroin addicts - exposure to drug abuse including driving with father to source drugs – parental incarceration – exposure to family violence – transient accommodation with father – early drug abuse and self-harm – diagnosis of PTSD: **at [25]-[27]**
- Accepted psychologist opinion as to impact of PTSD on offending – risky, reckless and self-destructive behaviour – inability to self-regulate – aggression, substance use and deficits in impulse control – developmental trauma: **at [28]**
- Applied Bugmy and Millwood [2012] NSWCCA 2 at [69]- justified sentence well below range: **at [37]**

[R v Coats \[2020\] NSWSC 1236](#) (Campbell J)

Inflict GBH with intent – born to mother in custody – impact of subsequent feeling of abandonment on behavioural choices – relevant to Bugmy principles

- Disadvantaged upbringing – born to mother while in custody – adopted by aunt but reacted poorly to revelation of adoption at 12 years – developed belief abandoned by mother who was still in prison at time – contributed to poor behaviour, early drug use and disrupted education: **at [19]-[23]**
- Taken into account under Bugmy principles – principles of general and specific deterrence attenuated – balanced with community protection and importance of rehabilitation: **at [32], [38]**

[Hardes \[2020\] NSWDC 191](#) (O'Brien AM DCJ)

Multiple offences of violence and a supply prohibited drug – link between incarceration of mother, trauma during foster care and subsequent mental health – Bugmy principles applied

- Mother jailed when offender 4 years old resulting in being placed in foster care until 15 years – separated from siblings - physical and sexual abused – multiple placements – compromised education – limited employment: **at [44]**

- Diagnosed with schizophrenia at 15 years – opinion of psychologist that offender predisposed to developing schizophrenia due to genetic vulnerabilities and early environmental stressors including domestic violence and sexual abuse – exacerbated by substance abuse, isolation and incarceration: **at [48]**
- Mental health and socially impoverished, disadvantaged and deprived background impacted assessment of moral culpability: **at [49]**

[Burns v R \[2019\] NSWCCA 24](#) (Wright J, RA Hulme J and Fagan J agreeing)

Assault and firearms offences – deprived childhood included incarceration and suicide of mother – Bugmy principles applied

- Indigenous offender with childhood of severe deprivation – sexually assaulted – mother suicided while in custody – another good friend also suicided – early substance abuse – extensive juvenile history: **at [51]-[56]**
- Re-sentenced on appeal after error as to maximum penalty conceded - background combined with mental health reduced moral culpability and mitigated emphasis on specific and general deterrence: **at [60]**

[R v Chandler \(No.2\) \[2017\] NSWSC 1758](#) (Johnson J)

Manslaughter – upbringing almost entirely devoid of developmental support – impact of childhood deprivation on offender - Bugmy considerations reduce moral culpability

- Offender suffered upbringing almost entirely devoid of developmental support – both parents drug addicts – father an armed robber - after father left family re-established contact when both in prison – family violence – step-father a violent and abusive criminal – constant moves around state disrupted education – mother unable to properly care for children – offender commenced substance abuse and developed mental health issues at early age: **at [54]-[65]**
- Psychologist report described impact of background:

[61] His early formative experiences led him to believe that unemployment, uncontrolled substance use, violence and crime were a normal part of life. This is an accurate summary of the Offender's family life. With the exception of his grandmother, he has had no nexus to conventional and responsible social groups in the community.

[123] His background is of extreme deprivation and disadvantage in childhood, undermining his ability for suitable personality formation, emotional-regulation, stable attachment and socialisation. Severe behavioural disturbance emerged in childhood and despite external (medication and counselling) intervention, his domestic milieu was so damaging that his adjustment only worsened into adolescence, further aggravated by polysubstance use disorder and then the sudden loss of his mother when aged 16 years. He has engaged in a nihilistic lifestyle involving criminality in adolescence and early adulthood, with no understanding of how to go about navigating community life in a positive way, learning to manage his own unstable affect with substance use. In this way he has followed the sad example set for him in his childhood environment. He acknowledges the index offence in a way that suggests that he appreciates the terrible gravity of the loss, but is at this stage unable to withstand the psychological burden."

- On sentence *Bugmy* principles applied to reduce moral culpability while balancing with protection of community: **at [121], [145]-[146]**

[R v Jennar \[2014\] NSWCCA 331](#) (RA Hulme J, Leeming JA and McCallum J agreeing)

Armed robbery offence - background included parental heroin abuse and incarceration – inevitability of life path - reduction in moral culpability

- Both parents heroin addicts – father in and out of gaol – mother also imprisoned – largely left to own devices from a very early age due to parents’ drug addiction – ‘deprived of parental guidance and suffered emotional neglect’: **at [37]-[38]**
- Psychologist described the respondent as ‘having lived the "life script" he had been given, namely drug addiction and criminal activities to fund it.’: **at [39]** and having a "life path ... largely predetermined, raised in a household where both parents were heroin-dependent": **at [49]**
- Sentencing Judge accepted ‘respondent's moral culpability was less than the culpability of an offender whose formative years had not been marred by having been raised in a household in which both parents were heroin dependent and, for significant periods, incarcerated as a result’: **at [50]**
- Crown Appeal dismissed

[R v YS \[2014\] NSWCCA 226](#) (Fullerton J, Gleeson JA and McCallum J agreeing)

Multiple offences including aggravated sexual assault – risk factors of re-offending related to childhood deprivation – included exposure to poor role models – balancing reduction in moral culpability with community protection

- Young offender with aboriginal heritage – exposed to substance abuse and family violence - removed from parents at early age due to abuse and neglect – unstable childhood with multiple placements in foster care, with different family members, juvenile detention centre and children’s refuge – returned to live with mother for short period until her incarceration - moved to live with father – interrupted schooling - two brothers serving periods of imprisonment for armed robbery, reportedly related to their alcoholism – offender reported many of those who support him have history of engaging in antisocial and/or criminal activities **at [34]-[40]**
- Background of violence and substance abuse, neglect, poor role models and disrupted education identified as risk factors to future offending – required balancing of community protection with reduction in moral culpability: **at [52], [103]-[107]**
- Crown appeal dismissed