

Educational Disadvantage

Case Summaries

[*Bugmy v the Queen* \(2013\) 249 CLR 571 \[2013\] HCA 37](#) (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ)

Cause grievous bodily harm with intent – educational disadvantage part of disadvantaged background

[12] The appellant is an Aboriginal man who was raised in Wilcannia, a town in far-western New South Wales. He is one of a number of siblings. He grew up in a household in which alcohol abuse and violence were commonplace. He has had little formal education and is unable to read or write. ...

[*BS-X* \[2021\] ACTSC 160](#) (Loukas-Karlsson J)

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 Report – application of Bugmy principles

- 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 individual rehabilitation to both individual and community protection: **at [81]-[85]**
- Reference to comment in *Hoskins* [2021] NSWCCA 165 that childhood deprivation does not need to be profound **at [81]-[85]**
- Application of *Bugmy* principles

[*Firth v R* \[2018\] NSWCCA 144](#) (Wilson J, Simpson AJA and Bellew J agreeing)

Break, enter and steal offences – deprived childhood included disrupted education and subsequent limited vocational history

- Offender’s deprived childhood detailed in forensic psychologist report – sexual and physical violence – mother’s drug addiction and neglect of family – offender required at times to steal food and necessities – disrupted education, learning difficulties and subsequent limited vocational history – transient accommodation including time on streets – early drug abuse – serious mental health issues: **at [20]-[43]**

[42] (Psychologist) concluded that the applicant’s:

“learning, social and emotional vulnerabilities has seemingly coloured much of his life including having negatively impacted his general world-view and mental health, and directly contributed to his early involvement in substance abuse, criminal behaviours and persistent antisociality thereafter”

- After finding sentence manifestly excessive Court found childhood and mental health moderated both moral culpability and relevance of general deterrence ‘by no small degree’ on re-sentence: **at [90]**

[R v Zanker \(No.2\) \[2017\] NSWSC 1254](#) (Fagan J)

Accessory before the fact to murder – unstable childhood including frequent moves under foster care – impact on education, social development and behaviour – reduced moral culpability

- Sentencing judge accepted offender’s ‘early years were extremely unsettled, chaotic, disruptive and adverse’ – born to 16 year old mother who abused drugs and alcohol during pregnancy - lived with mother until 8 years moving around the State – physically assaulted by step-father – ward of State for 6 years moving around towns and foster carers – lived 3 years with Aunt then refuges: **at [51]-[54]**

[55] These circumstances denied the offender any chance of learning or developing socially or mentally at school. Unsurprisingly this resulted in behavioural problems

- Background taken into account as mitigating factor on sentence:

[57] I take into account as relevant to the severity of the sentence I should impose his very disadvantageous background from birth. This appears to have led him into a criminal milieu and limited his exposure to moral guidance and example. I regard his moral culpability as to some extent reduced by this consideration. It also supports my view that he has reasonable prospects of rehabilitation.

[R v Johnson \(No.5\) \[2017\] NSWSC 1169](#) (Button J)

Manslaughter – background included racism at school – consequences of tragic elements of childhood – reflected in sentence

- Difficult childhood for aboriginal offender – father suffered from poor mental health culminating in suicide – frequent moves disrupted schooling – suffered racial abuse at school responding with anger and fists – sexual abuse – combination of these factors led to mental health problems and long term substance abuse – also resulted in ‘ young man who responded to racism forcefully becoming a chronically violent adult’: **at [29], [30]**
- Sentence to reflect the ‘adverse aspects of the life of this Aboriginal offender ... without for a moment diminishing the value to be accorded by the criminal justice system to the life of the similarly disadvantaged Aboriginal man’: **at [62], [63]**

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 disrupted education – 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 – offender reported many of those who support him have history of engaging in antisocial and/or criminal activities **at [34]-[40]**

[50] In Ms Hare's opinion the respondent's disrupted schooling through truancy, suspension, expulsion and periods of detention impacted upon the development of his verbal and literacy skills. She was unable to offer any definitive view as to the impact of the respondent's sustained use of cannabis on his cognitive function, finding it difficult to disentangle its impact from the interplay of other socio-cultural factors. She did express the view, however, that the respondent's cannabis use was likely to be superseded by his exposure to the negative influences in his childhood and early adolescence, including abuse and neglect, poor education and his generally delinquent lifestyle.

- 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

R v Booth [2014] NSWCCA 156 (Hamill J, Hoeben CJ at CL and Beech-Jones J agreeing)

Aggravated break and enter offences and robbery – childhood included poor school attendance – deprived background combined with low intellectual functioning justified leniency in individual sentences

- Extensive description of background described as ‘marginalisation of rural and outback aboriginal communities’ and ‘a national disgrace’: **at [4]** – offender’s childhood likely impacted by grandparents being part of ‘stolen generation’ – early years spent on mission surrounded by widespread alcohol abuse – victim and witness to family violence – left unsupervised – became State Ward at 10 years and endured multiple foster homes in different towns – separated from sisters – sexual abuse – due to parents’ violence and abuse did not attend school on regular basis - poor education meant illiterate – early substance abuse as a result of an environment that ‘normalised substance abuse’ – early contact with criminal justice system – deaf in one ear: **at [15]**
- Childhood experiences combined with low intellectual functioning meant poor coping skills and continued substance abuse: **at [15 – para 23-25]** – also easily led by negative peers: **at [15 – para 28]**
- On Crown appeal concluded subjective circumstances justified application of *Bugmy* principles and leniency of individual sentences – sentences ‘tempered with considerable compassion and ... structured in such a way as to foster his rehabilitation’: **at [18]** – total sentence, however, manifestly inadequate and degree of accumulation increased.

R v Sharpley [2014] NSWDC 253 (Yehia SC DCJ)

Aggravated break, enter and steal offence - sentencing of offender from disadvantaged rural Aboriginal community – evidence of socio-economic conditions of community – relevance to understanding moral culpability of offender – background of deprivation reduced moral culpability

- Young male from rural Aboriginal community – parents separated when offender young due to domestic violence – continued exposure to father’s alcohol abuse and violence – learning difficulty and barely literate – little employment: **at [26]-[31]**
- Evidence of social-economic conditions of community provided by Aboriginal Legal Service field officer— referred also to findings of the Walgett Gamilaroi Working Community in 2005 – issues include: widespread violence and alcohol abuse – severe deprivation – racism and stereotyping – inequalities and lack of opportunity – lack of resources and living conditions – welfare mentality – difficulty accessing services – low levels of literacy and numeracy – low student retention and high truancy rates – high levels of criminal and anti-social activity - unemployment: **at [22]-[23]**
- Evidence of extreme deprivation, substance abuse and violence within community relevant and essential to understanding and assessing moral culpability of offender:

[25] The level of substance abuse and violence coupled with the lack of opportunity gives rise to a sense of hopelessness and disempowerment amongst some members of the local community that cannot be ignored when assessing the moral culpability in the individual’s case. This offender’s history of deprivation and exposure to alcohol abuse, violence and the lack of opportunity to thrive in such an environment is intrinsically connected to his current predicament. ...

[40] The uncontested evidence before me is that the community from which the offender comes and in which he has been raised has experienced an appalling degree of deprivation over a long period of time. This offender is a product of that community and it is therefore necessary for me to assess his moral culpability, bearing in mind the particular socio-economic factors that exist in his community that have inevitably had an impact upon him. Failure to do so would be a failure to fulfil the principle of individualised justice. ...

...

[49] Prolonged and widespread social disadvantage has produced a community so demoralised and alienated that many within it, like this offender, have succumbed to alcohol abuse, criminal misconduct and a sense of hopelessness. That background of disadvantage and of deprivation may impact upon the individual so deeply and so broadly that it serves to shed light on matters such as, for example, the offender’s recidivism.

...

[52] This offender has grown up with alcohol abuse being a normal part of his home life and also a devastating and entrenched problem in his peer group and his community. He committed these offences whilst affected by alcohol. The offender’s self-induced intoxication is not normally to be taken into account as a mitigating factor. However, the evidence before me demonstrates that he has experienced a deprived upbringing, including exposure to significant alcohol abuse and domestic violence resulting in a dysfunctional family environment and a significant degree of disadvantage. I am satisfied that his background of deprivation operates to reduce his moral culpability and thereby mitigate the sentence.