

# Childhood Sexual Abuse

## Case Summaries

### New South Wales:

#### **CSA and *Bugmy v The Queen* (2013) 249 CLR 47**

CSA has been taken into account as part of an offender's background of profound childhood deprivation.

CSA is also relevant to offenders as contextualising substance addiction which may have led to offending; or as leading to a psychiatric or mental condition.

#### **[Bethune v R \[2021\] NSWCCA 115](#)** (Adamson J; Harrison and Bellew JJ)

*Aggravated break, enter – male, aged 47 – CSA, violence – Appeal allowed*

- CSA aged 11 by family “friend”. Expert reports noted that CSA is strongly correlated with mental disorders, such as depression, anxiety, substance abuse, low self-esteem and personality disorders: **at [6]-[7]**.
- Moral culpability is reduced by reason of tumultuous upbringing and formative years. The judge's failure to assess moral culpability may have led to failing to appreciate moral culpability and may explain the manifestly excessive sentence: **at [18], [22]; *Bugmy v The Queen* (2013) 249 CLR 571**.
- On re-sentence, Court accepted experts' opinions as to connection between offending and childhood trauma, which included CSA, and that the applicant's upbringing disposed him to substance abuse: **at [24]-[28]**.

#### **[Dungay v R \[2020\] NSWCCA 209](#)** (N Adams J; Bell P and Davies J)

*Further material presented on appeal that offender had suffered CSA - male, Aboriginal, aged 25 - aggravated break, enter; rob in company - Appeal allowed (on unrelated ground).*

- N Adams J noted that, although not put in these terms, the CSA “might explain not only his recourse to drugs at a young age but also his attempted suicide aged 12”. The applicant had a childhood of profound deprivation: **at [153]-[154]; *Bugmy v The Queen* (2013) 249 CLR 571**.

#### **[R v Hutchison \[2019\] NSWSC 25](#)** (Hamill J)

*Manslaughter / substantial impairment - considerations in cases of CSA similar to sentencing principles where offender suffered significant deprivation – female, aged 36.*

- Psychiatric illnesses resulted from horrendous childhood abuse including CSA by stepfather.

Familiar outcomes in cases of serious ongoing CSA are drug use and long-standing substance abuse disorder; and being forced into refuges and onto the streets: **at [17], [36]**.

“[37] The considerations that arise when an offender’s life has fallen apart because they were the victim of CSA are similar to the sentencing principles that apply when the offender was the victim of domestic violence (*R v TP* [2018] NSWSC 369) or when their early life was marred by significant social deprivation and exposure to alcoholism and violence (*Bugmy v The Queen* (2013) 249 CLR 571).”

**[R v Irwin \[2019\] NSWCCA 133](#)** (Walton J; Simpson AJA and Adamson J)

*Proceeds of crime, firearms - male, aged 28 – Judge erred in declining to apply Bugmy principles – (however, Crown appeal allowed on ground of manifest inadequacy)*

- Background of significant deprivation - suffered CSA, mental and physical abuse, the impact of which manifested itself at a young age and contributed to diagnoses of psychological conditions: **at [110], [116]**. Expert evidence supported a causal connection between dysfunctional upbringing and offending or that it significantly contributed to offending. Dysfunctional upbringing, social deprivation and abuse represent a reasonably significant subjective feature: **at [121], [123]; *Bugmy v The Queen* (2013) 249 CLR 571**.

**[Linden v R \[2017\] NSWCCA 321](#)** (Wilson J; Simpson JA & RA Hulme J agreeing)

*Drug supply – female, aged 34 - CSA - Appeal allowed (on unrelated ground).*

- Powerful case in mitigation including using cannabis in teenage years to “cope with emotional distress” and “traumatic memories” including CSA aged 5-14 by stepfather; that the offending was significantly motivated by drug addiction where resort to drugs was related to childhood trauma: **at [4], [10]; [52]; *Bugmy v The Queen* (2013) 249 CLR 571**.

**[Edwards v R \[2017\] NSWCCA 160](#)** (Garling J; Hoeben CJ at CL and Fullerton J)

*Robbery – female, aged 43 - CSA – drug addiction, mental illness - Appeal allowed (on unrelated ground).*

- The offence was committed on the spur of the moment whilst affected by alcohol or drugs and suffering a degree of mental illness and was at lower end of objective seriousness: **at [51]**. A background of profound deprivation including CSA by uncle, domestic violence and later drug addiction: **at [8]-[10], [15]; *Bugmy v The Queen* (2013) 249 CLR 571**.

**[R v Henry & Ors \[1999\] NSWCCA 111](#)**; (1999) 106 A Crim R 149 (per Simpson J)

*Armed robbery.*

- Noting a submission that drug addiction was a causal factor in the offending, Simpson J said that sometimes “drug-taking stems from sexual assault or exploitation when the person is very young and precipitating events occurred many years before”; and that drug abuse may reflect socioeconomic circumstances and environment in which an offender has grown up: **at [335]-[342]; cf *R v Fernando* (1992) 76 A Crim R 58 at 62–63**.

## Judicial reference to research materials regarding impact of childhood sexual abuse – the Bugmy Bar Book.

### [R v Tsingolas \[2022\] NSWDC 34](#) (Yehia SC DCJ)

- “[84] .... Research now clearly demonstrates the link between child sexual abuse and a spectrum of adverse mental health, social, sexual and interpersonal consequences. Childhood sexual abuse is a substantial risk factor for the development of, amongst other things, increased risk of drug and alcohol dependence, aggressive behaviour and social anxiety. (Judy Cashmore and Rita Shackel, ‘The Long-Term Effects of Child Sexual Abuse’ (CFCA Paper No. 11, Australian Institute of Family Studies, January 2013) 23).

[85] Victims of child sexual abuse have also been found to be a greater risk of engaging in risky behaviours and of experiencing significant disruption to the development of emotional regulation, including a breakdown in the capacity to regulate internal states, including fear, anger and impulsivity. (Royal Commission into Institutional Responses to Child Sexual Abuse (Final Report , December 2017) vol 3, 25, as discussed in Public Defenders, ‘Childhood Sexual Abuse’ in The Bugmy Bar Book Project (November 2019)).”

See also [R v KL \[2020\] NSWDC 409](#) (Weinstein SC DCJ) at [61].

## Victoria:

### [DPP v Green \[2020\] VSCA 23](#) (Maxwell P, Priest and Kaye JJA)

*Armed robbery, attempt kidnapping - appalling physical and sexual abuse by custody officers while in youth custody - material causative role in offending – PTSD and substance abuse - male, age 37 - Crown appeal dismissed.*

- At age 13, suffered CSA by a friend’s mother. At age 15, in youth custody, suffered substantial physical and sexual abuse by correctional officers which had a profound and lasting effect: at [35]-[38]. Developed moderately severe post-traumatic stress disorder (‘PTSD’) with panic attacks and dissociative symptoms; and substance abuse: at [44]-[45].
- The CSA, humiliation and degradation, had a demonstrated causal relationship with the offending and drug addiction, which he sought to feed by resorting to offending. Those circumstances constituted substantial mitigating factors: at [80], [96].
- “In recent decades, courts have become all too familiar with the appallingly harmful and destructive effects of sexual and physical abuse perpetrated on minors and young people by persons who are in authority or in a position of power over them. The long-standing and detrimental effects of that abuse have been demonstrated to be profound and, in many cases, permanent”: at [81].
- The principles in *Bugmy v The Queen* at [43]-[44] apply. Subjective culpability could not be equated with a person who committed the same offences, but with the advantage of a normal, stable home environment, and who had not been subjected to sexual and physical abuse experienced by the respondent while in custody. Background constituted an important mitigating circumstance: at [83]; [DPP v Drake \[2019\] VSCA 293](#) at [32].
- The CSA and expert’s conclusions were relevant to an evaluation of the weight to be given to the respondent’s lengthy criminal history – explaining, at least in part, the repeat offending over two decades: at [84]-[87].

**[DPP v Drake \[2019\] VSCA 293](#)** (Maxwell P, Priest, Kaye, T Forrest and Emerton JJA)

*Aggravated burglary, rape, sexual assault on female adult complainant - Aboriginal offender, age 25 - Crown appeal dismissed.*

- CSA by two older males, left home aged 12 due to violence, abused substances; is afflicted by trauma-related disorder (PTSD) concerning his upbringing and his CSA: **at [10], [13], [30], [31]**. Profound dysfunction, disadvantage and abuse relevant to evaluation of moral culpability and played a significant role in shaping personality and responses. His subjective culpability could not be equated with a person who committed the same offence with the advantage of a normal, stable childhood home environment. Those factors constituted an important mitigating circumstance: **at [32]**; *Bugmy v The Queen (2013) 249 CLR 571*.

**[Walker v The Queen \[2019\] VSCA 137](#)** (Whelan, Kyrou and Kaye JJA)

*Armed robbery – male, age 29 – drugs use and later diagnosed with paranoid schizophrenia.*

- CSA by number of persons including a teacher, school principal and stepfather. As a result of his background, the offender used drugs and later diagnosed with paranoid schizophrenia. The sentencing judge, correctly, took into account the traumatic circumstances of the offender's early years and his resultant mental state as relevant to an assessment of his subjective culpability: **at [20], [39], [69]**; *Bugmy v The Queen (2013) 249 CLR 571*.