

Summary of Judgments Referring to the *Bugmy Bar Book*

Last updated: 2 March 2022

NSW Court of Criminal Appeal

[Dunn \[2023\]](#) [NSWCCA 1](#)

(Lonergan J, Beech-Jones CJ at CL and Price J agreeing)

Aggravated armed robbery – reference made to chapter of [Bugmy Bar Book](#) by Sentencing Judge – judicial notice taken of research

- Sole issue on appeal was parity
- Quoted extensively from judgment of Sentencing Judge including section headed ‘Background of Disadvantage’ – Sentencing Judge had ‘reference to the **Public Defender's *Bugmy Bar Book* chapter** on early exposure to alcohol and other drugs’ and took ‘judicial note that research shows that children in families with parental or carer substance abuse, are at greater risk of a range of adverse developmental outcomes.’: **at [23]**
- Sentencing judge further commented:

Living in a household where misuse of alcohol and drugs occur, may increase the likelihood of children being substance misusers themselves and being involved in the juvenile justice system. The direct effects of childhood exposure to alcohol and other drug abuse, may include emotional and physical abuse, maltreatment, modelling of poor drinking and substance abusing behaviours, inadequate supervision and separation from parents.

The placement of children into the care of other care givers or the placement with informal kinship care arrangements, or being placed in out of home care, protection and authorities can result Parental incarceration and/or experiences of out of home care, are themselves factors which may increase the likelihood of a person coming into contact with tile criminal justice system.

The relevant references to those studies can be found on the website just cited. The potential relevance of evidence of early exposure to alcohol and/or other drug abuse in sentencing proceedings includes an assessment of moral culpability, moderation of the weight to be given to general deterrence and determining the weight to be given to specific deterrence and protection of the community.

It is also relevant to a finding of special circumstances and the shaping of conditions to enhance prospects of rehabilitation. I accept that matters personal to the offender that are causally connected with or materially contributed to the commission of the offences, are relevant to the assessment of the objective criminality of the offending.

<p><u>Wood [2022]</u> <u>NSWCCA 84</u></p> <p>(Dhanji J, Macfarlan JA and Adamson J agreeing)</p>	<ul style="list-style-type: none"> The Court below received Bugmy Bar Book material in relation to the co-accused on sentence: <ul style="list-style-type: none"> [27] The defence ... also relied on two chapters of the Bugmy Bar Book prepared by the Bugmy Bar Book Committee, titled “Childhood Sexual Abuse” and “Early Exposure to Alcohol and Other Drug Abuse”, which outline the effects of these experiences in the context of the criminal justice system. The <i>Bugmy</i> principles were found to apply to both accused. The appeal was allowed on the basis of parity.
<p><u>Donovan [2021]</u> <u>NSWCCA 323</u></p> <p>(Ierace J, Simpson AJA and Rothman J agreeing)</p> <p><i>Recklessly inflict GBH – chapter from <u>Bugmy Bar Book</u> marked for identification on sentence – relevance of childhood exposure to violence and abuse to offences</i></p>	<ul style="list-style-type: none"> Aboriginal offender aged 19 years involved in sustained assault on two males in car park – detail of childhood trauma set out in psychologist report including violence, exposure to substance abuse and parental incarceration, homelessness and poor educational engagement – aggravated by mother’s mental health and sister’s serious illness – resulted in unresolved complex developmental trauma: at [33]-[42] Chapter of Bugmy Bar Book titled “Childhood Exposure to Domestic and Family Violence” tendered on sentence in the proceedings below and marked for identification: at [32] The sentencing Judge erred in rejecting <i>Bugmy</i> submissions on basis applicant’s prior good character and demonstrated ability to ‘rise above’ disadvantage – ignored evidence of psychologist report identifying link between applicant’s childhood exposure to violence, abuse and other childhood stresses and the offences: at [84]-[90] <ul style="list-style-type: none"> [88] Ms Edwige found a nexus between the applicant’s childhood trauma and his current mental health; his high anxiety level, emotional detachment, immaturity, his difficulties in interpersonal relating and his poor self-esteem. [90] I accept the expert opinion of Ms Edwige as to manner in which the applicant’s childhood trauma has affected his development, behaviour and capacity to relate interpersonally, which in turn informed his decision-making and reactions in his commission of the offences and his ingestion of drugs and alcohol beforehand. For those reasons, the applicant’s moral culpability is reduced, warranting a reduction to be made to the application of general deterrence.
<p><u>Harris [2021]</u> <u>NSWCCA 322</u></p> <p>(Dhanji J, Simpson AJA and Ierace J agreeing)</p>	<ul style="list-style-type: none"> The Court below received a Bugmy Bar Book chapter included in the defence tender bundle on sentence – referred to at [20]

NSW Supreme Court	
<p><u>Stanley (No.2) [2023] NSWSC 74</u></p> <p>(Loneragan J)</p> <p><i>Manslaughter – Adoption of remarks in <u>Tsingolas</u> on value of research on impact of childhood deprivation and exposure to violence</i></p>	<ul style="list-style-type: none"> • Sentence imposed for manslaughter – Crown identified relevant <u>Bugmy</u> considerations including exposure to violence and substance abuse: at [73] • Adopted observations by Yehia SC DCJ (as her Honour then was) in <u>Tsingolas [2022] NSWDC 34 at [87] to [90]</u> as to value, role and use of research on impact of childhood deprivation and exposure to violence: at [72] • Offender’s moral culpability reduced although balanced with element of general and specific deterrence: at [75]
<p><u>Vincent [2023] NSWSC 8</u></p> <p>(Yehia J)</p> <p><i>Bail application – Reference to <u>Bugmy Bar Book Chapter</u> dealing with Impact of Incarceration</i></p>	<ul style="list-style-type: none"> • Application for release by Aboriginal woman charged with stalking and intimidation and being armed with intent • Reliance placed on research from Bugmy Bar Book Chapter: ‘Impacts of Imprisonment and Remand in Custody’ to show negative impacts on the physical and mental health of incarcerated individuals which persist after release: at [16] • Negative impacts include loss of housing, barriers to employment, significant negative impacts on families and communities, loss of culture and disconnection from Country and community, increased risk of subsequent contact with the criminal justice system and increased risk of self harm and depression: at [16]-[21] • Research further shows impacts more pronounced for Aboriginal and/or Torres Strait Islander Peoples, particularly women: at [17] <p style="margin-left: 40px;">[22] The Bugmy Bar Book research is a useful resource which has assisted the Court in understanding the impact of remand in custody, even for short periods. The research lends context to the material that has been tendered on behalf of the applicant which relates directly to her individual circumstances and background. The impact of incarceration on First Nations Peoples, and, in particular, First Nations women should never be under-estimated.</p>
<p><u>AN; LM; WD [2022] NSWSC 1272</u></p> <p>(Walton J)</p> <p><i>Sentence for specially aggravated kidnapping – reference to extracts from <u>Bugmy Bar Book</u> – childhood relevant to moral culpability and importance of rehabilitation</i></p>	<ul style="list-style-type: none"> • Evidence of WD’s deprived and disadvantaged childhood accepted by Crown – included parental neglect, disrupted schooling, exposure to domestic violence, exposure to parental substance abuse, early introduction to substance abuse and serious parental and family mental illness: [256]-[259] • Court provided with summaries of research into impacts of childhood exposure to domestic and family violence; early exposure to alcohol and other drug use and interrupted school attendance derived from Bugmy Bar Book: [261] • Referred to cases where deprived background found to reduce moral culpability, or at least to significantly mitigate sentence, for offences involving planning: [264] • Offender’s childhood a crucial feature of his case and relevant to both assessment of moral culpability and need for rehabilitation: [265]-[267]

<p><u>Sultani, Munshizada, Baines and Danishyar [2021] NSWSC 1654</u></p> <p>(Fagan J)</p> <p><i>Sentence for murder of underworld figure – reliance on extracts from Bugmy Bar Book misconceived and irrelevant to legal process – rejected any link between disadvantaged background and offending</i></p>	<ul style="list-style-type: none"> • Sentence imposed for well-planned murder of underworld figure • Evidence tendered of disadvantaged childhood of offender Baines – indigenous offender – exposed to violence and substance abuse – low socio-economic status – incarceration of both parents • Rejected relevance of material from Bugmy Bar Book: [172]-[174] <p>[174] Viewed in the light of those statements of principle, the tender of the extracts from The Bar Book Project and The Bugmy Bar Book is misconceived. In order to sentence Baines justly according to law I will take into account his individual subjective circumstances, including the adversity of his upbringing, as recounted in his psychologist’s report and in the affidavits of his relatives. My conclusions about Baines’ individual adversities and disadvantage, relative to his culpability and otherwise to be taken into account in sentencing him, are not assisted by generalised historical or sociological information, important as that may be to the other branches of government, the legislature and the executive, in carrying out their responsibility to formulate and implement policies to promote the welfare of disadvantaged groups in society.</p> • Considered and rejected link between disadvantaged and violent background and involvement in commission of pre-mediated murder: at [178]-[181] <p>Note: The rejection of the Bugmy Bar Book in this case is not consistent with the approach taken in a number of first instance judgments of the NSW Supreme Court, ACT Supreme Court and NSW District Court: see <u>AN; LM; WD [2022] NSWSC 1272; BS-X [2021] ACTSC 160; Bennett [2022] NSWDC 321; Tomlinson [2022] NSWDC 220; Edwards [2022] NSWDC 110; Tsingolas [2022] NSWDC 34; Levvell [2021] NSWDC 518; Saunders [2021] NSWDC 508; Lin [2021] NSWDC 523; Sequera [2021] NSWDC 573; Jones [2021] NSWDC 713; Kirk [2021] NSWDC 389; Maher; Maher [2021] NSWDC 80; Dixon [2020] NSWDC 751; Pout [2020] NSWDC 751; KL [2020] NSWDC 409; GAM [2020] NSWDC 304; Sebbens [2020] NSWDC 213. The NSW Court of Criminal Appeal appears to have accepted reliance on Bugmy Bar Book material: <u>Donovan [2021] NSWCCA 323; Wood [2022] NSWCCA 84; Harris [2021] NSWCCA 322.</u></u></p>
<p><u>Macdonald; Edward Obeid; Moses Obeid [2021] NSWSC 1662</u></p> <p>(Wilson J)</p> <p><i>Application for bail pending appeal against conviction for conspiracy to commit misuse of public office – reliance on chapter from Bugmy Bar Book on effect of Covid-19 on custodial conditions</i></p>	<ul style="list-style-type: none"> • Kirby Institute Report and chapter from Bugmy Bar Book relied upon in documentary evidence: [60] <p>[60] A report from the Kirby Institute at the University of New South Wales dated 16 April 2020 discussed issues connected with the management of the condition in prisons, whilst an extract from the <i>Bugmy Bar Book</i> of 20 September 2021 considered the incidence of COVID-19 infection in the prison system, and the wider impact of the virus on prisoners.</p> • Kirby Institute report ‘largely unhelpful, dating as it does from April 2020. The COVID-19 situation is fluid and much has changed since that time, including the availability of vaccines to both the general and prison population.’: [127]

<p><u>Macdonald; Edward Obeid; Moses Obeid (No 18) [2021] NSWSC 1343</u> (Fullerton J)</p>	<ul style="list-style-type: none"> • Sentence for offence of conspiracy to commit misuse of public office – • Reliance upon Kirby Institute Report on COVID-19 and the Impact on New South Wales Prisoners (April 2020) and Bugmy Bar Book chapter titled ‘COVID-19: Risks and Impacts for Prisoners and Communities’: [116]-[121] • Further considered evidence from NSW Corrective Services as to current practices in relation to Covid-19 in correctional centres: at [122]-[132] • Concluded increased risk in view of offenders’ age and premorbid chronic health conditions relevant to finding of special circumstances: at [149]-[150]
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ACT Supreme Court	
<p><u>BS-X [2021] ACTSC 160</u> (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 Report – application of Bugmy principles</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: t [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: [81]-[85] • Application of Bugmy principles; reference to comment in Hoskins [2021] NSWCCA 165 that childhood deprivation does not need to be profound [81]-[85]

<p>Ruwhiu [2022] ACTSC 290 (Refshauge AJ)</p> <p><i>Sentencing for burglary and robbery – helpful excerpts from Bugmy Bar Book</i></p>	<ul style="list-style-type: none"> Offender Māori with disadvantaged childhood including family violence, exposure to alcohol abuse and disruption to education Counsel provided “very helpful excerpts from “The Bar Book Project” (Bugmy Bar Book Committee, ‘Early Exposure to Alcohol and Other Drug Abuse’ in The Bar Book Project (Sydney, NSW; The Public Defenders, 2019)) on the effects of early exposure to alcohol and other drug abuse and on the effects of childhood exposure to domestic and family violence, which have been helpful and taken into account”: at [73], [87]
<p>Horner [2023] ACTSC 23 (Baker J)</p> <p><i>Sentencing for Commonwealth child pornography offences – clear link established between childhood sexual abuse, mental illness and offending – reference to helpful excerpts from Bugmy Bar Book Childhood Sexual Abuse</i></p>	<ul style="list-style-type: none"> Offender from disadvantaged childhood including family violence, trauma and neglect, out of home care, sexual abuse and exposure to adult pornography Psychologist report clearly identified and explained link between offender’s Post Traumatic Stress Disorder resulting from childhood sexual abuse and the offences: at [25]-[28] <p>[28] There is now a “robust body of research evidence” that “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”: The Bugmy Bar Book Project, Childhood Sexual Abuse, at p. 1.</p> Moral culpability reduced to a moderate degree: at [29] - offender’s background of childhood sexual and physical abuse, including abuse while in an institution and mental illness part of exceptional circumstances permitting immediate release to recognisance without serving custodial sentence: at [46]

NSW District Court

<p>Copeland [2022] NSWDC 545 (Fitzsimmons SC DCJ)</p> <p><i>Assault offence – reference to research from Bugmy Bar Book chapters in expert report – use of Executive Summaries as exhibits</i></p>	<ul style="list-style-type: none"> Offender a Gamilaroi women with significant childhood disadvantage – expert report cited research from Bugmy Bar Book chapters to support connection between ‘offender’s exposure to adverse childhood experiences, psychological health issues and offending’: at [25]-[27] – offender relied upon Bugmy Bar Book Executive Summaries of Childhood Exposure to Domestic and Family Violence and Childhood Sexual Abuse as exhibits: at [32] Casual connection established and moral culpability reduced: at [53]
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[Bennett \[2022\]](#)
[NSWDC 321](#)

(Beckett DCJ)

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

- Aboriginal offender with significantly disadvantaged upbringing
- Referred to ***Significance of Culture to Wellbeing, Healing and Rehabilitation report*** and importance of culturally appropriate services in rehabilitation of indigenous offenders:

[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, *The Significance of Culture to Wellbeing, Healing and Rehabilitation report*, 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]:

[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.**

[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 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 *R v BS-X*, Justice Loukas-Karlsson made extensive reference to this report, noting its relevance to the evidence in that case in the application of principles of *Bugmy v The Queen*. (*citations omitted*)

- 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]

	<ul style="list-style-type: none"> 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>Tomlinson [2022] NSWDC 220 (Sutherland SC DCJ)</p>	<p>[101] The Defence Tender Bundle also included a number of summaries from the Bugmy Bar Book Project covering the topics of Exposure to Family Violence, Interrupted School Attendance and Multiple Suspensions, Unemployment, Homelessness, Social Exclusion, and COVID-19 Risks and Impacts for Prisoners and Communities. I should note, without detailing them that I have had regard to those summaries</p> <p>...</p> <p>[104] ... I do find that <i>Bugmy</i> principles have some role to play in the instinctive synthesis which leads to a consideration of an overall sentence, and the fixing of an appropriate non-parole period.</p>
<p>Edwards [2022] NSWDC 110 (Weinstein SC DCJ)</p> <p><i>Sentencing for aggravated carjacking – consideration of relevant Bugmy Bar Book chapters – an ‘invaluable resource’</i></p>	<ul style="list-style-type: none"> Aboriginal offender with disadvantaged background including sexual abuse, exposure to violence and substance abuse, interrupted school attendance and homelessness Accepted tender of four chapters from Bugmy Bar Book and referred to additional two chapters – described as ‘invaluable resource’. <p>[77] The Bar Book Project, known as the <i>Bugmy Bar Book</i>, contains research chapters freely available to practitioners derived from respected experts. It is found on the Public Defenders website: https://www.publicdefenders.nsw.gov.au/barbook, and provides an invaluable resource of evidence relating to sixteen (soon to be eighteen) indicia of disadvantage: see N Cowdery AO QC, J Hunter and R McMahon, “<i>Sentencing and disadvantage: The Use of Research to Inform the Court</i>” (2020) 32(5) JOB 43.</p> <p>[78] Indeed each chapter of the Bar Book has a subtitle as follows:-</p> <p style="padding-left: 40px;">The purpose of this document is to collate published research, the findings of government reports and inquiries, and academic commentary in relation to [name of relevant chapter] and the effects this may have on a person’s behaviour; development and social well-being; and links to contact with the criminal justice system.</p> <p>[79] The Bar Book provides additional expert material based on international research which may be used when sentencing an offender: see <i>R v Tsingolas</i> [2022] NSWDC 34 per Yehia SC DCJ. ...</p> <ul style="list-style-type: none"> Consideration and summary of research and findings of each relevant chapter from Bugmy Bar Book and application to this offender and the assessment of his moral culpability: [76]-[105]

[Tsingolas \[2022\] NSWDC 34](#)

(Yehia SC DCJ)

Reckless wounding – causal connection between childhood sexual abuse and offending – relevance of studies and research including Bugmy Bar Book Project

- Offender experienced a traumatic childhood including sexual and physical abuse in a boys home resulting in mental health issues including PTSD
- Causal link established between childhood abuse and offence – offender’s PTSD triggered by perceived threat of victim and response was unreasonable and excessive self-defence: **[76]-[80]**
- Studies and research on potential impact of childhood sexual abuse referred to by both Crown and defence counsel – included material contained in **Bugmy Bar Book** chapter on **Childhood Sexual Abuse** – should be seen as extension of subjective material in individual case: **at [81]-[92]**

[87] This material should be seen as an extension of the subjective material provided in the individual case – here, the expert reports and the evidence of the offender. To an extent greater than ever before, sentencing Judges are now assisted by a body of research into the impact of various forms of childhood disadvantage, deprivation and trauma that may have an ongoing and profound impact upon the individual.

[88] Sentencing Judges in the 21st Century have the benefit of that assistance. The material provided is expert research and study that allows for a better understanding of the potentially profound impact of an individual’s childhood experiences upon, amongst other things, their capacity to mature, control impulse and self-regulate. The research complements the psychological, psychiatric and other evidence relied upon in the individual case, and can be of substantial assistance in explaining the offending conduct, assessing moral culpability and/or informing the appropriate penalty.

[89] This approach has been recognised and utilised in a number of cases in the Court of Criminal Appeal.

[The Court went on to discuss *Kentwell V R* (No 2) [2015] NSWCCA; *Perkins v R* [2018] NSWCCA 62 (Fullerton J); *Bugmy v The Queen* [2013] HCA 37; [2013] 249 CLR 571]

[92] I am required to determine whether the offender’s adversities and disadvantage (primarily amongst them his childhood experience of sexual abuse) reduces his moral culpability. The material filed on his behalf is complemented by the expert opinions expressed in the body of research to which I have been referred. That research not only contextualises the material directly relevant to this offender’s subjective case, but also assists me in having a broader understanding (based on expert material rather than my own inexpert understanding of human affairs) of the ongoing and profound impact of childhood sexual abuse.

<p>Levell [2021] NSWDC 518</p> <p>(Haesler SC DCJ)</p> <p><i>Detain for advantage – no causal connection required in most cases – reference to Significance of Culture to Wellbeing, Healing and Rehabilitation Report 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 – Bugmy 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: Kennedy [2010] NSWCCA 260 at [53]; Millwood [2012] NSWCCA 2 at [69]; Muldrock (2011) 244 CLR 120; [2011] HCA 39 at [54] & [58]; Bugmy (2013) 249 CLR 571; [2013] HCA 37 at [40] and [45]; AWF (2000) 2 VR 1; [2000] VSCA 172; Nasrallah [2021] NSWCCA 207 at [12]; KT; Clarke-Jeffries.</p> <ul style="list-style-type: none"> Relied upon <i>Significance of Culture to Wellbeing, Healing and Rehabilitation report</i> 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: Edwards (1996) 90 A Crim R 510 at 515; Hoskins [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: <i>Significance of Culture to Wellbeing, Healing and Rehabilitation; V Edwidge and P Gray, Bugmy Bar Book Project, 2021 at [50]</i>. Levell 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>
<p>Saunders [2021] NSWDC 508</p> <p>(Mahoney SC DCJ)</p>	<ul style="list-style-type: none"> <i>Bugmy Bar Book</i> chapters provided with relevant principles and paragraphs referred to in written submissions – Exposure to Domestic and Family Violence, Interrupted School Attendance and Early Exposure to Alcohol and Other Drug Abuse: [48]-[50]
<p>Lin [2021] NSWDC 523</p> <p>(Mahoney SC DCJ)</p>	<ul style="list-style-type: none"> <i>Bugmy Bar Book</i> executive summaries for chapters on child sexual abuse, childhood exposure to domestic and family violence and low socioeconomic status provided, with relevant principles and paragraphs referred to at [24]
<p>Sequera [2021] NSWDC 573</p> <p>(Mahoney SC DCJ)</p>	<ul style="list-style-type: none"> Relevant entries from the <i>Bugmy Bar Book</i> referred to in submissions, acknowledged at [79]

<p><u>Jones [2021] NSWDC 713</u></p> <p>(M L Williams SC DCJ)</p> <p><i>Sentence for offence of use carriage service to procure child for sexual activity – reference to Bugmy Bar Book chapter on effect of Covid-19 on custodial conditions</i></p>	<p>[28] I take into account those conditions both in custody and on bail as well as the significant evidence presented by Mr Bickford, without challenge and the summaries in the extract from the Bugmy Bar Book dealing with COVID-19 and the risks and impacts for prisoners and communities which are becoming well known to judges of this Court in light of the evidence that we hear on an almost daily basis as to the restrictions upon prisoners during the period of the COVID pandemic. These restrictions include a lack of visits, restrictions on phone calls and the ever-present anxiety as to the possibility of contacting the COVID virus while in a custodial environment.</p> <p>[29] I accept that his term in custody, along with other prisoners at that time, was more arduous than would be for the case for prisoners who had served sentences outside of the COVID pandemic and it is an important factor to be synthesised, along with the other sentencing principles in this case.</p>
<p><u>Kirk [2021] NSWDC 389</u></p> <p>(Beckett DCJ)</p>	<ul style="list-style-type: none"> • Referred to Bar Book Project chapters on Childhood Sexual Abuse and Childhood Exposure to Domestic and Family Violence, considering the impact of these factors and relevance to assessment of offender’s moral culpability: [54]-[55] • Referred to research into the importance of indigenous and culturally appropriate rehabilitation programs <p>[49] ... I accept that recent research and expert opinion indicates that rehabilitation services provided by Indigenous and culturally appropriate organisations, who understand and acknowledge the trauma suffered by Indigenous communities as a result of general removal, segregation and discrimination, together with the support of her close family and community, provide the offender with the best chance of being rehabilitated. These facilities, with oversight by Community Corrections offer a protective measure both for the individual but also the community.</p>
<p><u>Maher; Maher [2021] NSWDC 80</u></p> <p>(Yehia SC DCJ)</p> <p><i>Inflict GBH – causal link between disadvantaged background and offending – reference to Bugmy Bar Book chapters on stolen generations and exposure to family and domestic violence</i></p>	<ul style="list-style-type: none"> • Evidence established offenders were Aboriginal brothers with deprived and disadvantaged childhood – intergeneration trauma resulting from mother’s removal from family as a child – exposure to family and domestic violence and alcohol abuse – introduction to substance abuse at early age - unstable educational history resulting in learning and behavioural difficulties: [54]-[67] • Mother removed from family as a child and suffered abuse in out of home care – alcoholic by nineteen with ongoing alcohol addiction problems – impact of trauma of this removal on childhood of offenders - described Aboriginal and Torres Strait Islander Stolen Generations and Descendants chapter in Bugmy Bar Book as research summary that ‘helpfully collates recent findings from numerous sources documenting the adverse consequences experienced by both members of Stolen Generations and their descendants’: <p>[61] ...compared with Aboriginal and Torres Strait Islander people who were not removed or who did not have family members removed, descendants of members of Stolen Generations have been found to experience higher rates of incarceration, interaction with police and arrest; poorer physical and mental health outcomes; higher rates of violence; and have a lower level of trust in the general community.</p>

	<ul style="list-style-type: none"> Both offenders exposed to violence and alcoholism throughout childhood – reference made to <i>Childhood Exposure to Domestic and Family Violence</i> chapter of Bugmy Bar Book: <p>[70] Irrespective of the age of a child, it is ongoing exposure to violence which has been associated with the highest likelihood of behavioural difficulties. Indeed, research shows that prolonged exposure to violence may cause children to experience trauma and post-traumatic stress disorders which have lasting effects on the child’s development, behaviour and well-being. These symptoms include low self-esteem, poor coping mechanisms and substance abuse, as well as complex disturbances such as an inability to regulate emotion, and cognitive and behavioural developmental delays.</p> <p>[71] The offenders’ history of deprivation and disadvantage is relevant to reducing their moral culpability. Growing up experiencing or witnessing anger and/or violence and being exposed to such violence in families and communities can lead to individuals responding with anger and violence ‘almost automatically’ in response to other people’s behaviour of perceived provocation, and a reduced capacity to access other ways of dealing with these triggers.</p> <p>[72] This history of deprivation, and the research material tendered in the proceedings relating to the potential impact of such a background upon individuals exposed to such disadvantage in their childhood, is directly relevant to the way in which the offenders (in particular, Trevor) reacted on this occasion. His capacity to self-regulate and contain his anger was impaired. This is not to excuse his conduct in any way. The victim suffered serious injury that has resulted in ongoing impairment. Although the victim was the initial aggressor, he did not deserve the beating he received at the hands of the offenders (either directly or by way of joint criminal enterprise). That history is, however, relevant to an assessment of moral culpability and the weight to be given to some of the purposes of sentencing.</p> Background of disadvantage and deprivation reduced moral culpability but balanced with protection of the community: [74]
<p>Dixon [2020] NSWDC 751 (Norrish QC DCJ)</p> <p><i>Robbery offence – sentencing judge familiar with Bar Book project and read through relevant chapters</i></p>	<p>[67] I have material from the Bar Book project. Chapters from that source of information with which I am familiar, dealing with the effect upon individuals of childhood sexual abuse and early exposure to alcohol and other drug abuse. I have again read through those chapters. I have been to some presentations on the Bar Book project.</p>
<p>Pout [2020] NSWDC 751 (Lerve DCJ)</p> <p><i>Sexual offences – extracts from Bugmy Bar Book Project annexed to submissions</i></p>	<p>[71] Mr King on behalf of the offender annexed to his written submissions (MF1 3 on sentence) extracts from the New South Wales Public Defenders Bugmy Bar Book Project. Clearly, given the material from Professor Greenberg, the principles enunciated by the High Court in <i>Bugmy v The Queen</i> [2013] HCA 37 are enlivened reducing the offender’s moral culpability</p>

<p>KL [2020] NSWDC 409</p> <p>(Weinstein SC DCJ)</p> <p><i>Child sexual offences – Bugmy Bar Book Project an invaluable resource of evidence relating to disadvantage</i></p>	<ul style="list-style-type: none"> 14-year-old female offender committed offences on 5-year-old brother - dysfunctional background including sexual and physical abuse – complex mental health issues with ASD, anxiety and PTSD – limited cognitive ability – inability of mother to provide appropriate support <p>[60] As Fullerton J said in <i>Perkins v R</i> [2018] NSWCCA 62 at 99:</p> <p>The insidious effects of exposure to family and domestic violence on children in their formative years, and the potential for that exposure to play out in unforeseen ways as a young child develops from adolescence into adulthood, are well researched and documented.</p> <p>[61] Indeed, the Bar Book Project, found on the Public Defenders website: https://www.publicdefenders.nsw.gov.au/barbook, provides an invaluable resource of evidence relating to disadvantage. For example, as to childhood sexual abuse, it cites research that sexual abuse is a 'substantial risk factor for the development of subsequent mental health problems'. As to childhood exposure to domestic and family violence, the Bar Book cites research that "there is mounting empirical evidence of the effects of exposure to domestic and family violence on children's development, and a growing recognition of the ways these harms can manifest in intergenerational cycles of trauma, violence and disadvantage." See also N Cowdery AO QC, J Hunter and R McMahon, "Sentencing and disadvantage: The Use of Research to Inform the Court" (2020) 32(5) JOB 43.</p> <ul style="list-style-type: none"> Full weight given to <i>Bugmy</i> principles and moral culpability substantially diminished: [62]-[65]
<p>GAM [2020] NSWDC 304</p> <p>(Priestly SC DCJ)</p> <p><i>Child sexual offences – history of sexual abuse as a child – helpfully referred to Bugmy Bar Book Project</i></p>	<ul style="list-style-type: none"> Offender subjected to sexual abuse as a child – link to subsequent alcohol abuse, mental health and offending: at [24]-[31] <p>[41] I was helpfully referred to the "Bugmy Bar Book", a resource found on the Public Defenders website and linked to the Judicial Commission website. Reference is there made to research showing that survivors of childhood sexual abuse maybe at greater risk of engaging in risky sexual behaviours, a comment based on the Australian Institute of Family Studies report "The long-term effects of Child Sexual Abuse", CFCA paper no. 11 2013, at 8.</p> <ul style="list-style-type: none"> Background justified reduction of moral culpability: [40]-[44]
<p>Sebbens [2020] NSWDC 213</p> <p>(M L Williams SC DCJ)</p> <p><i>Robbery offences – reference to extracts from Bugmy Bar Book Project</i></p>	<ul style="list-style-type: none"> Offender described as having 'a wretched start to life' with the 'full constellation of <i>Bugmy</i> type features: [1] Refers to extracts from new Bugmy Bar Book Project being helpfully included in defence counsel submissions: [16]

Queensland District Court	
<p><u>Pamtoonda v Commissioner of Police [2021] QDC 207</u> (Fantin DCJ)</p>	<p>[66] Other than the submissions identified, no other submissions were made and no material was placed before the Magistrate about the appellant’s personal circumstances, background, and any physical or mental health condition. An Aboriginal offender who can be shown to have suffered systemic disadvantage in a way that explains or contributes to an understanding of the offending is entitled to have that taken into account as a mitigating factor. Although the appellant was an Aboriginal man raised in Aurukun, no submissions were made to the learned Magistrate about early exposure to alcohol abuse or violence, deprived background, social disadvantage, or trauma.[20] This meant that there was no material for the learned Magistrate to act upon in that respect. It is incumbent on the advocate appearing on sentence to place relevant material in mitigation before the court. The court cannot act in a vacuum.</p> <p style="text-align: center;">Footnote [20]: See <i>Bugmy</i> [2013] HCA 37; [2013] 249 CLR 571; <i>Fernando</i> (1992) 76 A Crim R 58. See also the resources available to assist practitioners appearing for Aboriginal offenders such as the New South Wales Public Defender’s Office Bugmy Bar Book at https://www.publicdefenders.nsw.gov.au/barbook</p>

ACT Magistrates Court	
<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]