

Homelessness

Case Summaries

The following cases include references to substandard living conditions, transient accommodation and homelessness.

[Artiel \[2020\] NSWDC 106](#) (Hatzistergos DCJ)

Armed robbery – opportunistic offence – difficult childhood – homeless at time of offending – Bugmy principles applied

- Accepted evidence established link between homelessness caused by brother’s mental health, consequent exposure to violence while on the streets and anxiety and moral culpability: **at [14]-[20]**

[19] I have borne in mind the difficult circumstances of the Offender’s upbringing outlined in the evidence including the Offender’s abandonment by his father, the conflict which arose at home as a consequence of his brother’s mental health issues, his leaving home at an early age and subsequent experiences of homelessness and isolation which led him to be associated with a criminal milieu. I accept that these factors compromised the Offender’s capacity to mature and learn from experience and amounted to social disadvantage my view do engage the principles in *R v Bugmy*.

- In view of subjective mitigating factors, including youth, deprived upbringing, emotional immaturity, remorse, plea and remarkable rehabilitation imposed Intensive Correction Order: **at [55], [58]**

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

Break, enter and steal offences – deprived childhood included transient accommodation and homelessness

- 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 old 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 refugees: 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... (mental health issues and drug abuse)

- 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.

Nicholson [2017] VSCA 238 (Priest, Kaye and Coghlan JJA)

Burglary, theft and proceeds of crime offences – deprived childhood included transient lifestyle to escape family violence – lack of permanence in residence a significant factor in ongoing impact of childhood trauma

- Evidence of deprived childhood – exposed to physical and sexual abuse – sent to live with other family members to escape violence – left home at 16 years and never had stable, independent accommodation – significant learning disability and low intelligence – drug use commenced at early age: at [26]-[36]
- Continuing impact of childhood described by sentencing judge as a life ‘bedevilled by matters of great personal crises, drug and alcohol addiction and homelessness’: at [38]
- Significance of ongoing impact of deprived childhood accepted on appeal – included lack of stability and permanence in residence:

[53] In the present case, the materials, put to the Court, on the plea, in relation to the appellant’s background and circumstances, were quite scant. Nevertheless, they were sufficient to demonstrate that the appellant had suffered a most deprived and traumatic upbringing, marked by physical and sexual abuse and violence, which had resulted in ongoing and unresolved psychological issues that have affected his conduct throughout his adult life. As a consequence of that upbringing, he had lived a life marked by significant lack of stability in terms of his residence, his employment, and his personal relationships. Those problems had been exacerbated by long standing and unresolved abuse by the appellant of alcohol and drugs. As properly accepted by the respondent in this case, the sentencing judge was correct to accept that the principles stated by the High Court in the passage from *Bugmy*, to which we have referred, applied to the sentences to be imposed on the appellant.

...

[57] ... Most importantly, it was correctly accepted that the principles stated in *Bugmy* applied to the appellant, in light of his appalling background characterised by deprivation and trauma during his childhood, which had an ongoing and recurrent effect on him during his life. As a consequence of that trauma, he has suffered depression and sexual abuse trauma. He has a significant verbal learning disorder which inhibits his ability to overcome his deprived background. Those circumstances necessarily explain the unstable, if not chaotic, nature of his life since leaving home at the age of 16, characterised by the lack of any permanence in his residence, stability in his relationships, or consistency in his employment record. It also explains, at least substantially, his resort to alcohol and drug abuse. Clearly those matters need to be addressed. Taken together, they constitute strong mitigating circumstances which no doubt explain the lenient sentences imposed in respect of each charge.

- Despite strength of mitigating factors sentence not manifestly excessive in view of nature and gravity of offending and appellant's criminal record: **at [58]**

[R v Birch \[2016\] NSWSC 816](#) (Rothman J)

Murder of female partner in spontaneous assault – history of foster care, institutions and homelessness as a teenager

- Offender's difficult childhood detailed in psychologist report – abuse and violence – environment of alcohol abuse – deprivation from infancy – care provided by mother, grandmother, foster carers and institutions – homeless as a teenager – lived as victim in refuges – impact on education and subsequent employment – abuse of drugs and alcohol to block out early trauma – fits *Bugmy* / *Fernando* criteria: **at [21]-[24]**
- Dysfunctional childhood fundamental to assessing combination of objective and subjective features – person with dysfunctional childhood does not bear equal moral responsibility: **at [30]-[32]**
- Quoted *Millwood* [2012] NSWCCA 2 at [69]

Common sense and common humanity dictate that such a person will have fewer emotional resources to guide his (or her) behavioural decisions ... That his background is a relevant consideration affording some (although limited) mitigation is entirely consistent with the approach taken by Wood J (as he then was) in *R v Fernando* (1992) 76 A Crim R 58, a decision which has repeatedly been followed in this Court.

[R v Hines \(No.3\) \[2014\] NSWSC 1273](#) (Hamill J)

Murder – extremely poor living conditions – transient accommodation

- Details of offender's itinerant background given through family members – moved around from town to town under care of different family members – at times lived in extremely poor living conditions causing Sentencing Judge to '... pause to note that the housing conditions that I am describing existed in a first world country in the late 1970s and early 1980s' – exposed to alcohol and physical abuse – background resulted in early drug abuse, lack of education and limited employment – 'goes a very long way to explaining how it is that the offender came to spend a large amount of his late adolescence appearing before the Children's Court': **at [55]-[61]**
- Background gave rise to application of *Bugmy* and *Munda* in 'stark and distressing way': **at [62]**

[64] I accept that the offender's personal history of social deprivation and early exposure to alcohol and violence explains to a significant degree his criminal history and the unfortunate path that his life has taken. The public, fully apprised of the circumstances, would understand that he is not an ideal vehicle through whom to send messages of general deterrence.

- Quoted *Munda v Western Australia* [2013] HCA 38; (2013) 249 CLR 600 at [55]
It may be argued that general deterrence has little rational claim upon the sentencing discretion in relation to crimes which are not premeditated. That argument has special force where prolonged and widespread social disadvantage has produced communities so demoralised or alienated that it is unreasonable to expect the conduct of individuals within those communities to be controlled by rational calculation of the consequences of misconduct. In such cases it may be said that heavy sentences are likely to be of little utility in reducing the general incidence of crimes, especially crimes of passion.
- Subjective mitigating factors balanced with consideration of dangerousness of offender and protection of community in view of criminal record for murder and violent offences: **at [66]**

***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.