Low Socio-Economic Status

Case Summaries

Low Socio-Economic Status

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 – 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]**

***Grose* [2014] SASCFC 42; (2014) 240 A Crim R 409** (Gray J, Sulan and Nicholson JJ agreeing)

Criminal trespass and dishonesty offences – validity and purpose of Aboriginal Sentencing Conferences importance of identifying and exploring impact of offender's background – findings and recommendations of Royal Commission and other studies

- Sentencing judge declined to order Aboriginal sentencing conference under s 9C (SA) ***Criminal Law (Sentencing) Act 1988*** – on appeal Court found refusal an error in exercise of sentencing discretion and sentence manifestly excessive – matter remitted for sentencing conference
- In considering validity and purpose of sentencing conference Gray J referred to importance of using conference to identify and understand risk factors associated with criminal offending – referred to findings of Royal Commission into Aboriginal Deaths in Custody and other studies which showed such factors more prevalent in Aboriginal populations – importance of Courts being alert to possible relevance of factors including childhood separation from families, social marginalisation, intergenerational cycle of abuse and violence, lack of education and unemployment, poor health and alcohol abuse in relation to Aboriginal offenders and cultural dispossession: **at [41]–[51]**

> [49] There remains a high level of incarceration of Aboriginal people. In the 20 years following the Royal Commission report, the proportion of Aboriginal prisoners has almost doubled. As at 30 June 2013, there were 8,430 prisoners who identified as Aboriginal and Torres Strait Islander, representing just over one quarter, 27%, of the total prisoner population of 30,775[47]. It has been noted by the Indigenous Justice Clearinghouse that:[48]
>
> > … Indigenous offenders are particularly over-represented in acts intended to cause injury, public order offences, offences against justice and unlawful entry … Indigenous offenders are younger than non-Indigenous offenders, have their first contact with the justice system at a younger age, and are more likely to be repeat offenders. High risk alcohol consumption is a significant risk factor, as is socioeconomic disadvantage. Risk factors around dispossession, colonisation and child removal are more difficult to measure, but are thought to have contributed to social disorganisation and an intergenerational cycle of violence …
>
> [50] The overrepresentation of Aboriginal people in prison demonstrates an ongoing need for the criminal justice system to be alert to the factors that create a risk of offending. In 1997, the Human Rights and Equal Opportunity Commission[49] in its National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families: Bringing Them Home Report found that "[a]n entrenched pattern of disadvantage and dispossession continues to wreak havoc and destruction in Indigenous families and communities."[50] It noted the ongoing relevance of the removal of Aboriginal people from their family:[51]
>
> > Social justice measures taken by governments should have special regard to the inter-generational effects of past removals. Parenting skills and confidence, the capacity to convey Indigenous culture to children, parental mental health and the capacity to deal with institutions such as schools, police, health departments and welfare departments have all been damaged by earlier policies of removal.
> >
> > Unless these conditions are altered and living conditions improved, social and familial disruption will continue. Child welfare and juvenile justice law, policy and practice must recognise that structural disadvantage increases the likelihood of Indigenous children and young people having contact with welfare and justice agencies. They must address this situation.

> [51] More contemporary evidence also demonstrates that the risk factors which the Royal Commission identified as contributing to interaction with the legal system, such as poor health, limited education and unemployment, continue to be statistically more prevalent in Aboriginal communities.[52] It has been suggested that the risk factors for offending by Aboriginal people are largely similar to those for the wider population, but that the higher incidence of such factors may explain higher rates of offending.
>
> > Further, there exist risk factors specific to Aboriginal people, including forced removal, which have an intergenerational effect.[53] It has been suggested that:[54]
> >
> > > … Policies of child removal and institutionalisation have severely damaged the parenting capacity of many Indigenous people. Many parents are further incapacitated by their poor health, substance abuse and by imprisonment. Poor parenting is a very significant risk factor for offending …
> >
> > Of great concern is the identification of an intergenerational cycle of abuse and violence. Indigenous children frequently witness or experience violence, which is normalised and increases the risk that they themselves will use violence …

---

[49] Now known as the Australian Human Rights Commission.

[50] Human Rights and Equal Opportunity Commission, *Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families: Brining Them Home Report* (April 1997) 559.

[51] Human Rights and Equal Opportunity Commission, *Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families: Bringing Them Home Report* (April 1997) 557.

[52] See for example the findings of the Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011* (25 August 2011) Australian Government Productivity Commission http://www.pc.gov.au/__data/assets/pdf_file/0018/111609 /key-indicators-2011-report.pdf

[53] Dr Troy Allard, *Understanding and preventing Indigenous offending: Brief 9* (December 2010) Indigenous Justice Clearinghouse http://www.indigenousjustice.gov.au/briefs/brief009.pdf

[54] Dr Troy Allard, *Understanding and preventing Indigenous offending: Brief 9* (December 2010) Indigenous Justice Clearinghouse http://www.indigenousjustice.gov.au/briefs/brief009.pdf

***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.

***Bropho v Harrison* [2013] WASC 250** (Hall J)

Street offences – homeless, indigenous woman with chronic substance abuse – relevance of socio-economic disadvantage to assessment of objective seriousness of offences

- Homeless, indigenous woman with chronic substance abuse problem sentenced to imprisonment for breaching move on order and carrying article with intent to cause fear – long history of nuisance offences
- Held on appeal sentence manifestly excessive and failed to take into account offender's socio-economic disadvantage – referred to ***Neal*** (1982) 149 CLR 305; ***Fernando*** (1992) 76 A Crim R 58 and ***Churchill*** [2000] WASCA 230: **at [44]–[48]**

> [48] In the present case I accept that the appellant's offences were a consequence of her long-term issues of substance abuse which, in turn, are particular problems in the Aboriginal community of which she is a part. Her Aboriginality explains and throws light on the particular offences and her circumstances. The appellant's position of disadvantage and her addictions were factors that had to be taken into account in order to have a proper

> understanding of the seriousness of her offending. The magistrate erred by failing to take into account these factors. Accordingly, leave must be granted in respect of ground 2.

***Terrick* [2009] VSCA 220; (2009) 24 VR 457** (Maxwell P, Redlich JA and Robson AJA)

Causing serious injury offences – summary of general principles and observations – relevance of socio-economic disadvantage

- All three offenders raised in deprived circumstances, in an indigenous community where alcohol abuse and violence were commonplace: **at [42]**
- After reviewing relevant cases the Court summarised the principles relating to the relevance of childhood disadvantage: **at [46]** and made the following comments:

> [50] The prevalence of disadvantage within indigenous communities does not diminish its significance for the individual offender. On the contrary, membership of a community where disadvantage is widespread might compound the difficulties suffered by a particular individual. The social and economic disadvantages often found in indigenous communities are powerful considerations. The fact that disadvantage amongst members of an indigenous community is widespread must not be allowed to reduce the impact of disadvantage as a sentencing factor in a particular case.
>
> [51] In the present case, the sentencing judge appreciated that he had to assess the extent to which the circumstances of the upbringing of the respondents – social, environmental and cultural factors – assumed a significance in the application of sentencing principles. Their backgrounds might explain the presence or absence of motive; identify influences which had contributed to the commission of the offence; or reveal circumstances relevant to the nature of the sentence which should be imposed. But background will not necessarily be a mitigating circumstance. As Franklin J said in *R v E (a child)*:
>
> > Whilst the factors of Aboriginality, ethnic oppression, socio-economic deprivation, family environment and similar matters or any of them may have relevance in a particular case to the appropriate sentence to be imposed on an offender, none of them is self-executing in the sense that its mere existence necessarily requires a reduction of the penalty otherwise appropriate to the offence.
>
> [52] The deprived background of the respondents was relevant to an assessment of the weight to be given to both general and specific deterrence. As Derrington J said in *Yougie*:
>
> > Of highest importance is the deterrent effect for the protection of potential victims and the turning of the court's face against violence as a general proposition is justifiable. At the same time it would be wrong to fail to acknowledge the social difficulties faced by Aboriginals in this context where poor self image and other demoralising factors have placed heavy stresses on them leading to alcohol abuse and consequential violence. Its endemic presence in these communities, despite heavy prison sentences, is proof of the serious problem and, to some extent, the limited nature of deterrence in this social context.
>
> [53] The respondents' deprived upbringing was also relevant to a consideration of their alcohol abuse and its contribution to the commission of the offence. The sentencing judge was entitled to consider the extent to which, as a result of the respondents' backgrounds, their chronic alcohol abuse was the result of a diminished choice. As we have noted, the abuse of alcohol reflected the environment in which each respondent grew up. As Wood J said in *Fernando*, there needs to be:

> realistic recognition by the court of the endemic presence of alcohol within Aboriginal communities and the gross social difficulties faced by those communities where poor self-image, absence of education and work opportunity and other demoralising factors have placed heavy stresses on them, reinforcing their resort to alcohol and compounding its worst effects.

- Applying these principles to this case the court concluded the mitigatory effect of the offenders deprived and dysfunctional background could be given little weight in view of their criminal history, their chronic alcohol abuse and the circumstances of the offending: **at [61]**
- The Crown appeal was allowed and the sentences increased.

***R v E (a child)* (1993) 66 A Crim R 14** (Ipp J, Malcolm CJ and Franklyn J agreeing in separate judgments)

Attempted murder of six policemen – Crown appeal – relevance of oppressive socio-economic conditions in Aboriginal community contributing to attitude of perceived conflict with police officers – background provides some explanation but little mitigation in view of nature and seriousness of offences

- 16-year-old respondent attempted deliberate killings of six police officers during three separate car chases with co-offenders – Crown appeal against sentence of 23 months allowed and new sentence of 6 years imposed
- Aboriginal offender with deprived childhood – chaotic and unstructured living conditions – father had long history of alcohol abuse out of home care on multiple occasions – family moved frequently – commenced substance abuse at early age – close bonds to family meant exposure to anti-social and criminal attitudes: **at 29**
- Each judgment acknowledged impact of growing up in Aboriginal community experiencing socio-economic deprivation, ethnic discrimination, abuse, violence and alienation – environment of perceived conflict between community and police resulting in cultural and personal mistrust of authority, feelings of disillusionment, anger and sense of injustice: **at 17 per Malcolm CJ; at 19 per Franklyn J and at 29-30 per Ipp J**
- While such circumstances may provide some explanation for offending degree of mitigation depends upon circumstances of case – in this case no mitigation in view of nature and seriousness offences: **aa 17 per Malcolm CJ; at 19 per Franklyn J and at 30-32 per Ipp J**

> His background as an Aboriginal, brought up in an environment of perceived conflict between the urban Aboriginal community to which he belonged and police, and the deprived oppressive socio-economic conditions in which his family and other members of his ethnic group have suffered, assist in explaining to some degree how his attitudes to the police and the rest of the community have developed. The extent to which allowance should be made by way of mitigation on account of these circumstances must depend in any particular case to a very significant degree on the nature of the offence and the circumstances under which it is committed. (per Malcolm CJ at p.17)

Impact of Conviction on Future Employment Prospects

Newcombe [2004] SASC 26; (2004) 144 A Crim R 328 (Gray J)

Property damage – effect of conviction on employment prospects exacerbated for Aboriginal offender – no conviction recorded on appeal

- 19 year old Aboriginal offender kicked and broke shop windows while intoxicated and angry – appealed against decision of magistrate to record a conviction
- Crown accepted offender's youth, good record and undertaking of education and work programs justified no conviction being recorded: **at [14]**
- Court further accepted as relevant evidence on diminished employment prospects for Aboriginals: **at [17]–[20]**

> [17] By consent, further material was placed before this court concerning indigenous offenders and the situation of indigenous Australians in general. Two reports from the Australian Bureau of Statistics were tendered as well as a research paper from the Centre for Aboriginal Economic Policy Research. The research paper reached conclusions concerning indigenous employment levels:
>
> > … the key feature of Indigenous employment status is that it remains firmly below the national average at less than three-quarters of the level recorded for non-Indigenous adults.
>
> [18] It was submitted that the circumstances that relate to Mr Newcombe by reason of his ethnicity, including diminished employment prospects, are matters relevant to sentencing.
>
> [19] Counsel submitted to the court that the rate of unemployment among indigenous Australians was substantially higher than the unemployment rate for non-indigenous Australians. It was pointed out that Mr Newcombe lived in a rural area where opportunities for employment are commonly acknowledged to be less than that of an urban area. The recording of a conviction was likely to diminish Mr Newcombe's employment prospects. It was said that the court should consider particular difficulties that could arise were a conviction to be imposed.
>
> [20] In this case the effect that a conviction may have on Mr Newcombe's future employment prospects is a relevant sentencing consideration. In considering the penalty to be imposed on Mr Newcombe, the court should take into account the factors relevant to him through his particular ethnicity. (*footnotes removed*)

L [2004] SASC 33 (Gray J)

Assault – effect of conviction on employment prospects exacerbated for Aboriginal offender – offender released without conviction

- 17 year old female Aboriginal offender sentenced to suspended sentence of imprisonment for threatening nurse in hospital waiting room – intoxicated and angry after being assaulted by de facto partner earlier in evening
- Accepted on appeal offender's intoxication provided explanation of offence and factor of mitigation: **at [10]–[11]**

- On appeal sentence replaced with an obligation to be of good behaviour and no conviction recorded. Gray J referred to evidence of Indigenous employment status and accepted the impact of a conviction on the appellant's future employment prospects as a relevant factor in considering whether to record a conviction: **at [24], [25]**