

Child Abuse and Neglect

Case Summaries

[Hawkins \[2024\] NSWSC 80](#) (Hamill J)

Contract killing – significance of history of childhood dysfunction – reduction in moral culpability justified imposition of determinate sentence

- Execution killing of grandmother in her home on behalf of associate – nature of killing raised imposition of life sentence as available sentencing option: **at [94]**
- Accepted evidence of offender’s childhood of deprivation including exposure to physical and sexual abuse, substance abuse and early criminal offending – found such history a ‘significant matter in this case’ adopting relevant passages from [Bugmy](#) **at [43]** and [Millwood \[2012\] NSWCCA 2 at \[68\]-\[69\]](#)

[83] ... the history of childhood dysfunction and abuse is a very significant matter in this case. I am satisfied that it led to his history of relatively minor but repetitive offending, his resort to drugs, and ultimately to a form of institutionalisation and a loss of moral compass.

...

[86] I am satisfied that this offender’s case fits squarely within these principles and that his history of childhood deprivation, neglect, dysfunction and abuse reduces his moral culpability for this offence. In reaching that conclusion, I have taken into account the degree of planning involved, but I am not persuaded that this diminishes greatly the weight to be given to the impact of his history of trauma and dysfunction. He had the kind of childhood that “leaves its mark” and that has impacted on his decision-making and moral compass. This is a matter of some significance in assessing his moral culpability and in deciding the sentence that should be imposed.

- Found reduction in moral culpability justified determinate sentence: **at [94]-[95]**

[Robertson \[2024\] NSWCCA 22](#) (Ierace J, Harrison CJ at CL and Wilson J agreeing)

Commercial drug supply – error to find history of profound childhood deprivation cannot reduce moral culpability for planned offence – relevance of demonstrated capacity to live pro-social life

- Supply of cocaine on multiple occasions to undercover operative to repay drug debt
- Sentencing judge accepted evidence of profound childhood deprivation including emotional and physical neglect, extensive substance abuse by parents, parental incarceration, homelessness and involvement in criminal activity to support father’s addiction - caused longstanding psychological issues and substance abuse from early age: **at [25]-[35], [104]**
- In allowing appeal found Sentencing Judge erred in stating offender’s moral culpability cannot be reduced pursuant to an application of *Bugmy* principles if offence is pre-planned: **at [110]-[113]**

- Further found Sentencing Judge erred by using evidence of progress made by applicant in overcoming adversities as sufficiently successful to break any causative relationship, if there ever had been, between damage done to his moral compass by neglect he experienced in his childhood and his offending behaviour: **at [114]**

[Baines \[2023\] NSWCCA 302](#) (Simpson AJA, McNaughton J agreeing; Dhanji J agreeing on this point in separate judgment)

Appeal against sentence for murder of underworld figure – relevance of impact of deprived background on serious murder offence

- Appeal against sentence imposed for well-planned murder of underworld figure.
- Evidence tendered of offender’s disadvantaged childhood at first instance – indigenous offender – exposed to violence and substance abuse – low socio-economic status and neglect – incarceration of both parents – mother a member of Stolen Generation.
- Sentencing Judge erred in not applying principles in *Bugmy* to reduce appellant’s moral culpability - psychologist report clearly identified causal connection between disadvantaged background and offence, and nothing in *Bugmy* supports suggestion of Sentencing Judge that deprived background could not diminish moral culpability for serious offences of murder: **at [71]-[76]**

[Chandler v R \[2023\] NSWCCA 59](#) (N.Adams J, Hamill J agreeing; Beech-Jones CJ at CL dissenting)

Manslaughter – upbringing almost entirely devoid of developmental support – impact of childhood deprivation on offender – extent to which Bugmy considerations reduce moral culpability

- Offender suffered upbringing almost entirely devoid of developmental support – both parents drug addicts – father involved in armed robberies - father left family and re-established contact with offender when both in prison – family violence – stepfather a violent and abusive criminal – constant moves around state disrupted education – mother unable to properly care for children – offender commenced substance abuse and developed mental health issues at early age: **at [134]-[145]**
- Level of deprivation described as ‘severe’ with ‘uncontroversial causal connection between it and offending’: **at [150]**
- While specific reference of sentencing judge to **Bugmy** principles meant no patent error satisfied of latent error - not apparent reduction in moral culpability is reflected in starting point of sentence: **at [151]**

[161] First, I do not accept that the applicant’s moral culpability should only be modified “to an extent” given his childhood of profound deprivation. I would not limit the finding in that way.

[162] Secondly, I would depart from the sentencing judge’s finding that the applicant’s dysfunctional background only operated “to a degree” to compromise his capacity to mature

and learn from experience. Again, given the evidence, including from Mr Sheehan, I would not limit the finding in that way either.

[R v EE \[2023\] NSWSC 104](#) (Wright J)

Constructive murder – background included parental neglect and abuse – link to substance abuse, gang membership and offending

- 16 year old offender born in Liberia – moved from mother’s care when 6 years old – childhood of violent abuse at hands of father – significant difficulties at school – homelessness prior to offending – became involved in gang and substance abuse at 13 years: [54]-[70]
- **Bugmy** principles applied in view of background – reduced moral culpability and need for general and specific deterrence: at [94]-[97]

[94] In the circumstances of the present case, which I have already outlined, I accept that the principles in *Bugmy v The Queen* (2013) 249 CLR 571; [2013] HCA 37 apply because of the offender’s deprived upbringing involving, as it did, exposure to parental neglect, alcohol abuse and family violence and the significant cultural and social dislocation inherent in moving from West Africa to Australia. These factors, in my view, contributed to his educational difficulties, being bullied, illicit drug use and gang membership.

[95] Dr Collins described the situation in the following terms:

“36. [The offender] experienced a difficult upbringing where he was removed from caregivers with whom he had formed attachments and placed with his father, who was reportedly violent and abused alcohol. He experienced sadistic forms of physical abuse in that environment and was treated harshly as compared with his siblings. That abusive and inconsistent parenting propelled him towards older peers with whom he began to engage in drug abuse and crime. [His] engagement in school declined and he self-described as engaging in ongoing crime due to having no future prospects...

37. A cycle of offending with brief engagement in treatment in custody continued up to [the offender’s] arrest on the current charges.”

[96] The offender’s evidence was that he owed money to one of the co-offenders for drugs and took part in the intended robbery to pay off the debt he owed and to obtain some money for himself. As a result of his drug use and gang membership, he was led to engage in criminal activities, including crimes of the type in which he has been involved.

[R v AN; LM; WD \[2022\] NSWSC 1272](#) (Walton J)

Sentence for specially aggravated kidnapping – childhood of deprivation and disadvantage relevant to moral culpability and importance of rehabilitation

- 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]
- Found offender’s childhood relevant to both assessment of moral culpability and need for rehabilitation: [265]-[267]

[266] I agree with the submission of WD’s counsel that WD’s history of childhood abuse and neglect are crucial features of his case on sentence and that it was appropriate he receive a sentence well below the range that would ordinarily be expected for a case of this kind. In my view, these considerations concern WD’s moral responsibility of the offence, namely, that he does not bear equal responsibility for one that has a normal or advantaged upbringing.

[R v Burns \(No.2\) \[2022\] NSWSC 140](#) (McCallum JA)

Murder – impact of abuse and neglect in infancy

- Born to 15y mother unable to care for offender due to youth and substance addictions - not enough food in the home and offender not sent to preschool – Grandmother took over long-term care but offender exposed to cannabis use from early age – struggled with ongoing grief at death of Grandmother when offender 19 years old: **at [40]-[50]**

[50] I am satisfied on the strength of all of that evidence that Mr Burns experienced a childhood of profound deprivation. It is now well understood that the period of infancy is a significant formative period. It was during that period that Mr Burns suffered the most neglect. Although his experience living with his grandmother was obviously significantly better for him, it was during that period that he was introduced, too early, to the addictive behaviours for which he already had a biological propensity. Those challenges were compounded by the guilt and grief he experienced as a result of his grandmother's death in his presence. It is clear in my view that those factors contributed to his excessive consumption of drugs and alcohol and also impaired his capacity for calm, rational decision-making. I consider that his moral culpability for both offences is significantly reduced for those reasons.

[Donovan \[2021\] NSWCCA 323](#) (Ierace J, Simpson AJA and Rothman J agreeing)

Recklessly inflict GBH – relevance of childhood exposure to violence and abuse to offences

- 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]**
- The sentencing Judge erred in rejecting *Bugmy* 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]**

[86] As noted at [41] above, Ms Edwige did identify a link between the applicant’s childhood exposure to abuse and the offences, namely, that his poor decision-making and reaction to the situation in the McDonald’s car park resulted from learned behaviours from his childhood and adolescence.

[87] Ms Edwige explained how the violence that the applicant witnessed and experienced in his childhood home, the consequent emotional shutting-down of his mother and her post-traumatic stress disorder (“PTSD”) and his fears for her safety impacted on his development through his primary and high school years to the present and continuing, in spite of his current prosocial family support. As noted in the passages extracted at [34] above, she referred to the applicant’s father’s alcohol abuse and the applicant having witnessed him injecting methylamphetamine and using a gun to obtain drugs, and the applicant’s own his drug and significant alcohol abuse since the age of 15.

[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.

Conte v R [2018] NSWCCA 209 (Payne JA and Button J, Schmidt J dissenting)

Driving offences – parents’ substance abuse resulted in neglect – relationship between childhood neglect, substance abuse and offending

- Evidence established both parents drug addicts and unable to properly look after offender or provide proper role models – raised by sister who was only four years older – toxic environment of substance abuse and violence – poor school experience - developed longstanding dependence upon drugs as a result of background: **at [16]-[21]**
- On appeal referred to relationship between background, substance addiction and offences:

[21] In short, the applicant, a young man just two years past the age at which the criminal justice system regards one as an adult, had, by the time of the offences, developed a longstanding dependence upon prohibited drugs, no doubt largely as a consequence of his upbringing, and the psychological damage it inflicted upon him. And it was the effect of those drugs that played a central role in the offences: his gross intoxication was the aggravating feature of each of the two major counts; he claimed not to have slept for days, no doubt as a result of the ingestion of amphetamines; and that lack of sleep, combined with the direct effects of the drugs, surely played a role in his grossly dangerous mode of driving and its catastrophic consequences.

- Found sentence manifestly excessive: **at [24]**

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

Break, enter and steal offences - childhood included neglect – reduction of moral culpability

- 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 AS [2018] NSWSC 930 (Fullerton J)

Sentence imposed for death of young daughter at hands of violent partner – manslaughter - history of extreme childhood abuse resulting in severe psychiatric disorder – provided some explanation for offending - reduced but did not remove criminal responsibility – duress on sentence

- Sentenced for violent death of young child at hands of abusive partner – sustained assault over a week
- History of extreme childhood abuse – upon death of mother lived with father - subjected to physical and psychological abuse, neglect and systemic sexual abuse by father and step-mother – isolated from extended family: **at [54]-[56]**
- Abuse resulted in chronic and complex mental health and personality disorders - post-traumatic stress disorder with dissociative symptoms of depersonalisation – series of violently abusive relationships with male partners based on fear of abandonment: **at [51]-[61]**
- Provides some explanation for failure to protect or remove daughter from partner’s abuse and justified significant reduction in moral culpability although did not relieve her of criminal liability: **at [62]-[66]**

[61] Dr Ellis’s views coincided with Ms Lucas’s opinion that the dissociative nature of AS’s PTSD and associated learned helplessness, compounded by difficulties in problem solving and a perception of hopelessness, provides some psychological insight into why, despite an appreciation of the severity of the abuse her daughter was subjected to and its potential consequences, she failed to remove her daughter from the risk of harm. They considered it likely that her minimisation of the level of violence was a strategy to avoid further violence and fear, conditioned from her childhood where reactivity or a response to abuse resulted in further punishment at her father’s hand.

- Also permitted some reduction for non-exculpatory duress under **s.21A(3)(d) Crimes (Sentencing Procedure) Act 1999: at [70]**

IS v R [2017] NSWCCA 116 (Campbell J, Gleeson JA and Harrison J agreeing)

Aggravated robbery and intentionally destroying property with fire - juvenile offender – acceptance of relationship between childhood deprivation and offending – emphasis on reduction of moral culpability and rehabilitation over deterrence and protection of community

- Offender’s upbringing marked by “parental criminal activity, substance abuse, severe and chronic neglect and familial violence within the home”: **at [27]**
- On appeal Court found Sentencing Judge had failed to give any weight to reduction of offender’s moral culpability because of emphasis on general deterrence and community protection: **at [58]**
- Accepted offender’s resort to violence was wholly a product of his profound childhood deprivation and youth - emphasis on reduction of moral culpability and importance of rehabilitation should have been greater than on community protection and deterrence: **at [62], [65], [71]**