Incarceration of Parents and Caregivers; Exposure to Criminal Activity

Case Summaries

***Jones v DPP* [2025] NSWSC 810** (Hamill J)

Bail application – separation of applicant from newborn child – reference to Bugmy Bar Book chapter on incarceration of parent

- Release application for bail in relation to very serious violence offences – requirement to 'show cause'
- Applicant gave birth to child while in remand – unsuitable for programs permitting newborns to remain with mothers while in custody due to nature of charges
- Reference to material in **Bugmy Bar Book** on incarceration of parents and caregivers – separation of mother and child creates extreme trauma for both and interferes with important bonding during infancy of newborn: **at [11]**

> [15] Taking into account the delay in the case, the separation between Ms Jones and her baby, particularly as that would impact on the infant, the applicant's lack of a record for violent offending, and the likelihood that she will be in custody well into next year, I am satisfied she has shown cause. A number of those matters are also relevant to an assessment of risk.

***R v Wilkie* [2025] NSWDC 299** (Haesler SC DCJ)

Sentence for assault causing death – impact of incarceration of offender on child as mitigating factor on sentence

- Sole carer for young son who had been neglected under mother's care – referred to reports highlighting impact of incarceration of parent on child.

> [46] There are risks to children because disruption to the family unit at critical times can cause lasting trauma and impact on a child's future emotional and cognitive processes. So much is revealed by the reports now before the Court individually and by considered academic writing and reports of enquiries and Royal Commissions: Commonwealth of Australia, Australian Human Rights Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997); Parliament of Victoria, Legislative Council: Legal and Social Issues Committee, *Inquiry into Children Affected by Parental Incarceration* (August 2022); V Edwidge and P Gray, *"Significance of Culture to Wellbeing, Healing and Rehabilitation"* (2021) The Bugmy Bar Book Project 50; Commonwealth of Australia, Australian Law Reform Commission, Report 103 *Same Crime, Same Time: Sentencing of Federal Offenders*, (April 2006) at 6.124; A Symonds, "Children of prisoners" (2009) 21(3) *Judicial Officers Bulletin* 24.

- Law flexible enough permit Sentencing Judge to take into account as mitigating factor impact of imprisonment of offender on his child: **at [49]**

***R v Cooke* [2025] NSWDC 308** (Haesler SC DCJ)

Cause grievous bodily harm – impact of incarceration of offender on child as mitigating factor on sentence

- 21 year Aboriginal female with difficult childhood including physical and sexual abuse and incarceration of parent – justified application of *Bugmy* principles in reduction of moral culpability: **at [44]-[46]**
- Mother and sole carer of young child – limited family support – child likely to be placed in care if offender incarcerated – successfully engaged in Aboriginal Family Preservation Service and receiving ongoing support from Tharawal Aboriginal Corporation
- Considered research and report material detailing impact of incarceration of parent on child including findings of Law and Social Issues Committee of the Victorian Parliament: Parliament of Victoria, Legislative Council: Legal and Social Issues Committee, *Inquiry into Children Affected by Parental Incarceration* (August 2022): **at [51]-[57]**

> (1) Parental incarceration is an adverse childhood experience due to its traumatic nature. Like other adverse childhood experiences, parental incarceration can interrupt childhood development and have detrimental impacts on emotional and social wellbeing.
>
> (2) Children exposed to parental incarceration have a greater risk of experiencing adverse mental and physical health outcomes due to trauma, a lack of appropriate healthcare, or both.
>
> (3) Carers supporting children of incarcerated parents are often left with minimal guidance or emotional and financial support.
>
> (4) Separating Aboriginal children and parents due to incarceration can disrupt connection to culture, land and family. Removal of children from communities into out of home care, particularly into non-Aboriginal care placements, can perpetuate the impacts of historic trauma.
>
> (5) Incarceration can be intergenerational when families and children do not receive timely and appropriate support. Cycles of trauma and disadvantage typically contribute to intergenerational incarceration.

***Re Males* [2024] VSC 802** (Incerti J)

Bail application – reference to Bugmy Bar Book chapters on impact of imprisonment

- Application for bail by Aboriginal woman charged with drug offences
- In considering whether exceptional circumstances justified bail took into account impact of incarceration of applicant on her children - referred to two chapters from **Bugmy Bar Book**: 'Impacts of Imprisonment and Remand in Custody' and 'Incarceration of a Parent or Caregiver'.

> [45] What is equally clear is that incarceration has a lasting impact on the families and children of the offender. The incarceration of a parent may impact negatively on the physical and mental health of the children of an offender, their development, education and

> employment outcomes. I reject the submission that Ms Males' children are doing fine while their mother is on remand. The children of incarcerated persons are the 'invisible victims' of the criminal justice system. The parenting duties and the objective of keeping families together is a significant factor in any application. When I consider the historic separation of Aboriginal families, along with Ms Males' own difficult family upbringing, I see no good reason to contribute to her continued incarceration at this stage. I therefore consider that there are exceptional circumstances justifying the grant of bail.

***DPP v Druett* [2024] ACTSC 56** (Loukas-Karlsson J)

Driving offences - Bugmy Bar Book referred to on sentence – considered impact of offender's incarceration on children

- Took into account on sentence offender's significant childhood disadvantage.
- Further took into account impact of offender's incarceration on his relationship to his children

> [64] I further note it was a choice of the offender not to expose his young children to a custodial setting through visits and knowledge that he is in prison. Consequently he has not seen his children for a number of months. I note the negative effects of parental incarceration identified in the Bugmy Bar Book:
>
> > Parental incarceration may interfere with the attachment relationship between a child and their parent or caregiver, cause financial hardship, disrupt care and living arrangements, and subject children to stigmatisation and shame. This may impact upon a child's emotional, behavioural, and psychological development, educational performance, delinquency and risk of offending.

***Etheredge v Freeman* [2022] ACTMC 11** (Special Magistrate Hopkins)

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

- 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: **at [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: **at [39]**
- Suspended sentence imposed as recommended by elders – reference to Yeddung Mura: Aboriginal corporation delivering services to First Nations People in ACT: **at [63]**

***BS-X* [2021] ACTSC 160** (Loukas-Karlsson J)

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

- 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: **at [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: **at [81]-[85]**
- Reference to comment in ***Hoskins*** **[2021] NSWCCA 165** that childhood deprivation does not need to be profound**: at [91]**
- Application of *Bugmy* principles

Hoskins **[2021] NSWCCA 169** (Brereton JA, Basten JA and Beech-Jones J agreeing)

Violence offences – no need to find profound deprivation – causative link not required – impact of change from stable to unstable family environment and exposure to criminal milieu and alcohol use during formative adolescent period – continued dislocation exhibited in Indigenous communities resulting from foreign invasion, disruption of culture and minority racial status.

- Indigenous offender raised by aunt in stable environment until returned to biological mother's care at 13y – unaware aunt was not real mother and no understanding why not raised by biological parents – struggled with feelings of abandonment – life became destabilised and chaotic in permissive environment under mother – biological family relationships characterised by violence, exposure to alcohol and criminal conduct normalised
- Not necessary to characterise an offender's childhood as one of "profound deprivation" before *Bugmy* principles apply: **at [57]**
- Causative link not required citing *Dungay* [2020] NSWCCA 209: **at [57]-[58]**
- *Bugmy* principles apply here especially in view of exposure to criminal milieu during formative adolescence period – exacerbated by momentous discovery in relation to his biological parents and subsequent identity issues and introduction to use of alcohol – sentencing judge erred in finding no evidence supporting application of *Bugmy* considerations : **at [61]-[64]**

Per Basten JA, agreeing

> [1] I agree with Brereton JA that the sentencing judge, in an otherwise thorough and careful judgment, failed to apply the principles articulated by the High Court in *Bugmy v The Queen*. Although those principles can apply generally to offenders brought up in circumstances of social disadvantage, they have particular application and are commonly invoked in relation to members of Indigenous communities. That is because, as has been documented by numerous inquiries and research studies, those communities continue to exhibit the dislocation resulting from foreign invasion, disruption of culture and minority racial status.[2] However, they are also the principal victims of alcohol driven violence of the kind exhibited by the applicant, Douglas Hoskins. To downplay the principle of protection of the community, identified as a purpose of sentencing in s 3A(c) of the Crimes (Sentencing Procedure) Act 1999 (NSW), is to diminish both the appearance and perhaps the fact of equal protection of those Indigenous communities. On the other hand, it must be recognised that incarceration has not proved an effective deterrent of anti-social behaviour in these circumstances; its deterrent effect being compromised by lack of insight which is itself a common feature of the circumstances which lessen moral culpability.
>
> [2] These conflicting considerations place a sentencing judge in a difficult position; their acknowledgement provides little practical assistance in determining an appropriate sentence. The solution to the social problems does not lie in the criminal courts, whose best course may be to err on the side of leniency.
>
> > [2] See, eg, *Kentwell v R (No 2)* [2015] NSWCCA 96 at [89]-[92] (Rothman J; McCallum J agreeing) referring to *R v Lewis* [2014] NSWSC 1127 at [37]-[38] (Rothman J); *Royal Commission into Aboriginal Deaths in Custody, National Report* Volume 1 (AGPS, 1991) at Chs 1.4-1.5

***Levvell* [2021] NSWDC 518** (Haesler SC DCJ)

Detain for advantage –reference to Significance of Culture to Wellbeing, Healing and Rehabilitation Report - impact of incarceration of offender on impending birth of child

- Aboriginal offender removed from mother's care at 11 months – *Bugmy* principles applied to reduce moral culpability – no causal connection required: **at [68]-[70]**
- Referred to ***Significance of Culture to Wellbeing, Healing and Rehabilitation*** **report** in considering impact of incarceration of offender in view of impending birth of child:

  > [71] If Levvell 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.
  >
  > [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: *Significance of Culture to Wellbeing, Healing and Rehabilitation*; V Edwidge and P Gray, Bugmy Bar Book Project, 2021 at [50]. Levvell 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.

- One of several factors taken into account in imposing Intensive Correction Order: **at [82]**

***Primmer* [2020] NSWCCA 50** (Hamill J, Leeming JA and Harrison J agreeing)

Specially aggravated break and enter - Crown appeal – childhood trauma caused PTSD – Bugmy and Millwood applied at first instance – Crown appeal dismissed in exercise of residual discretion

- Difficult childhood – both parents heroin addicts - exposure to drug abuse including driving with father to source drugs – parental incarceration – exposure to family violence – transient accommodation with father – early drug abuse and self-harm – diagnosis of PTSD: **at [25]-[27]**
- Accepted psychologist opinion as to impact of PTSD on offending – risky, reckless and self-destructive behaviour – inability to self-regulate – aggression, substance use and deficits in impulse control – developmental trauma: **at [28]**
- Applied *Bugmy* and *Millwood* [2012] NSWCCA 2 at [69]- justified sentence well below range: **at [37]**

***R v Coats* [2020] NSWSC 1236** (Campbell J)

Inflict GBH with intent – born to mother in custody – impact of subsequent feeling of abandonment on behavioural choices – relevant to Bugmy principles

- Disadvantaged upbringing – born to mother while in custody – adopted by aunt but reacted poorly to revelation of adoption at 12 years – developed belief abandoned by mother who was still in prison at time – contributed to poor behaviour, early drug use and disrupted education: **at [19]-[23]**
- Taken into account under *Bugmy* principles – principles of general and specific deterrence attenuated – balanced with community protection and importance of rehabilitation: at **[32], [38]**

***Hardes* [2020] NSWDC 191** (O'Brien AM DCJ)

Multiple offences of violence and a supply prohibited drug – link between incarceration of mother, trauma during foster care and subsequent mental health – Bugmy principles applied

- Mother jailed when offender 4 years old resulting in being placed in foster care until 15 years – separated from siblings - physical and sexual abused – multiple placements – compromised education – limited employment: **at [44]**
- Diagnosed with schizophrenia at 15 years – opinion of psychologist that offender predisposed to developing schizophrenia due to genetic vulnerabilities and early environmental stressors including domestic violence and sexual abuse – exacerbated by substance abuse, isolation and incarceration: **at [48]**
- Mental health and socially impoverished, disadvantaged and deprived background impacted assessment of moral culpability: **at [49]**

***Burns v R* [2019] NSWCCA 24** (Wright J, RA Hulme J and Fagan J agreeing)

Assault and firearms offences – deprived childhood included incarceration and suicide of mother – Bugmy principles applied

- Indigenous offender with childhood of severe deprivation – sexually assaulted – mother suicided while in custody – another good friend also suicided – early substance abuse – extensive juvenile history: **at [51]-[56]**
- Re-sentenced on appeal after error as to maximum penalty conceded - background combined with mental health reduced moral culpability and mitigated emphasis on specific and general deterrence: **at [60]**

***R v Chandler (No.2)* [2017] NSWSC 1758** (Johnson J)

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

- Offender suffered upbringing almost entirely devoid of developmental support – both parents drug addicts – father an armed robber - after father left family re-established contact when both in prison – family violence – step-father 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 [54]-[65]**
- Psychologist report described impact of background:

> [61] His early formative experiences led him to believe that unemployment, uncontrolled substance use, violence and crime were a normal part of life. This is an accurate summary of the Offender's family life. With the exception of his grandmother, he has had no nexus to conventional and responsible social groups in the community.
>
> [123] His background is of extreme deprivation and disadvantage in childhood, undermining his ability for suitable personality formation, emotional-regulation, stable attachment and socialisation. Severe behavioural disturbance emerged in childhood and despite external (medication and counselling) intervention, his domestic milieu was so damaging that his adjustment only worsened into adolescence, further aggravated by polysubstance use disorder and then the sudden loss of his mother when aged 16 years. He has engaged in a nihilistic lifestyle involving criminality in adolescence and early adulthood, with no understanding of how to go about navigating community life in a positive way, learning to manage his own unstable affect with substance use. In this way he has followed the sad example set for him in his childhood environment. He acknowledges the index offence in a way that suggests that he appreciates the terrible gravity of the loss, but is at this stage unable to withstand the psychological burden."

- On sentence *Bugmy* principles applied to reduce moral culpability while balancing with protection of community: **at [121], [145]-[146]**

***R v Jennar* [2014] NSWCCA 331** (RA Hulme J, Leeming JA and McCallum J agreeing)

Armed robbery offence - background included parental heroin abuse and incarceration – inevitability of life path - reduction in moral culpability

- Both parents heroin addicts – father in and out of gaol – mother also imprisoned – largely left to own devices from a very early age due to parents' drug addiction – 'deprived of parental guidance and suffered emotional neglect': **at [37]-[38]**
- Psychologist described the respondent as 'having lived the "life script" he had been given, namely drug addiction and criminal activities to fund it.': **at [39]** and having a "life path … largely predetermined, raised in a household where both parents were heroin-dependent": **at [49]**
- Sentencing Judge accepted 'respondent's moral culpability was less than the culpability of an offender whose formative years had not been marred by having been raised in a household in which both parents were heroin dependent and, for significant periods, incarcerated as a result': **at [50]**
- Crown Appeal dismissed

***R v YS* [2014] NSWCCA 226** (Fullerton J, Gleeson JA and McCallum J agreeing)

Multiple offences including aggravated sexual assault – risk factors of re-offending related to childhood deprivation – included exposure to poor role models – balancing reduction in moral culpability with community protection

- Young offender with aboriginal heritage – exposed to substance abuse and family violence - removed from parents at early age due to abuse and neglect – unstable childhood with multiple placements in foster care, with different family members, juvenile detention centre and children's refuge – returned to live with mother for short period until her incarceration - moved to live with father – interrupted schooling - two brothers serving periods of imprisonment for armed robbery, reportedly related to their alcoholism – offender reported many of those who support him have history of engaging in antisocial and/or criminal activities **at [34]-[40]**
- Background of violence and substance abuse, neglect, poor role models and disrupted education identified as risk factors to future offending – required balancing of community protection with reduction in moral culpability: **at [52], [103]-[107]**
- Crown appeal dismissed