

Homelessness

Case Summaries

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

Re Campbell [2025] VSC 591 per (Incerti J)

Bail application – impact of homelessness

- Application for bail by Aboriginal male charged with arson, theft and bail offences
- Referred to research material on impact of homelessness, including **Bugmy Bar Book chapter** – noted those experiencing homelessness or at risk of homelessness among Australia's most socially and economically disadvantaged – Aboriginal and Torres Strait Islander people ten times more likely to experience homelessness - interplay between homelessness and overincarceration of First Nations people: **at [73]-[76]**
- Noted homelessness should not alone constitute unacceptable risk in consideration of bail - giving significant weight to homelessness as a factor puts Aboriginal people at a disadvantage and contributes to their overrepresentation in custody: **at [77]-[79], [105]**

Rose (No.2) [2025] NSWSC 88 (Weinstein J)

Manslaughter – impact of deprived childhood – interrupted schooling - homelessness

- Sentence imposed for manslaughter caused by unlawful and dangerous act – while intoxicated offender became angry and punched victim to head – made victim unsteady on feet – victim later died from injuries caused by falls after offender left
- Sentencing judge took into account evidence of offender's difficult and deprived background including domestic violence, sexual abuse, early substance abuse, interrupted schooling and homelessness under **Bugmy** - reduced moral culpability: **at [148]**
- Impact of offender's significant periods of homelessness since young age:
 - [139] I have written elsewhere that in my view homelessness sits at the apex of disadvantage: see **R v Edwards** [2022] NSWDC 110 at [97]. Without a home, one cannot have visitors. It is not possible to receive mail without a fixed home address. One cannot enter a home address on an application for a driver's licence or other identification, or for government support. Without a home, there is no access to electricity, gas or water. It is not possible to store food, clothing and other possessions safely and securely. There is no Wi-Fi, which we take for granted, and no access to the internet on which we all depend. Where does one wash? Where does one cook? How does one stay warm or dry? How does one stay safe? In the context of this case, how will those who will supervise, be able to locate him?

- [140] Mr Rose's homelessness is directly related to his childhood deprivation. In the future, it will be necessary for him to have a home in order to have the best chance of rehabilitation. If he has no fixed home address, it will be extremely difficult for him to access treatment from service providers, including Community Corrections and case management services. It will be difficult for him to maintain meaningful relationships, which is clear from the offender's history to date. Ms Hübner noted that the offender's high risk of reoffending would decline if his dynamic factors were addressed. Perhaps the easiest dynamic factor to remedy is to find him stable accommodation. In my opinion, it is of utmost importance to ensure that the offender has a home, which I believe will materially reduce the risk of his reoffending.

Edwards [2022] NSWDC 110 (Weinstein SC DCJ)

Sentencing for aggravated carjacking – Bugmy Bar Book chapters referred to as ‘invaluable resource’ – homelessness referred to as apex of disadvantage

- Aboriginal offender with disadvantaged background including sexual abuse, exposure to violence and substance abuse, interrupted school attendance and homelessness
- Referred to chapters from **Bugmy Bar Book** as ‘invaluable resource’: **at [77]**
- Homelessness referred to as ‘apex of disadvantage’

[95] Although the reported episodes of homelessness in the offender's case are sporadic, the Bar Book notes that it is “one of the most potent examples of disadvantage in the community and one of the most important markers of social exclusion”. It is well known that Aboriginal and Torres Strait Islander persons have a significantly increased incidence of homelessness compared to the general Australian community.

[96] Furthermore, the Bar Book cites research that housing, homelessness and mental health are interrelated, and that episodes of homelessness can trigger mental health issues. As the research suggests, and which appears obvious, there is a relationship between homelessness and poverty, violence, substance abuse, social exclusion, ill health and interaction with the criminal justice system.

[97] Homelessness in my opinion sits at the apex of disadvantage, for how can a person be effectively rehabilitated without a permanent abode? The offender may have no access to the internet and all the information available to the average person. He has no fixed address to receive mail or to access home treatment from service providers including Community Corrections and case management services. He has no place to store his possessions including food and clothing. He has no place to wash and maintain hygiene. Without a home, he is destined to live a transient lifestyle, disconnected from society and isolated from friends, family and support networks.

[98] The offender's (sporadic) homelessness is not to be underestimated as a barrier to his ultimate rehabilitation for these reasons, and in my view constitutes significant disadvantage.

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 Bugnay*.

- 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 permeance 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]**

Hughes, Rigney-Brown [2016] SASCFC 126 (Kourakis CJ, Peek and Lovell JJ agreeing)

Robbery offences – Crown appeal against non-parole period – relevance of background of entrenched social disadvantage – tension in balancing reduction in moral culpability with importance of deterrence and community protection

- Both offenders had significantly disadvantaged and unstable childhood including violence, drug abuse, homelessness, neglect, poor education and early exposure to substance abuse – justified reduction in moral culpability but also relevant to questions of personal deterrence and community protection
- In circumstances of case accepted reduced non-parole period to extend period of supervision on parole justified and dismissed Crown appeal

[7] However the factual circumstances of the respondents' offending and their antecedents acutely raises the tension between the competing sentencing purposes which judges must balance when punishing offenders for crimes borne out of great social, educational and financial impoverishment. The respondents were born into communities of entrenched social disadvantage. They were subject to parental neglect and abuse. They subsequently became homeless and addicted to drugs. These factors denied them meaningful social engagement and the development of adult moral responsibility which comes with it. On the other hand, those very circumstances remain criminogenic factors which call for community protection and deterrence.

[8] The Courts do not balance these competing considerations subjectively but by reference to a coherent body of sentencing principles and precedent. In the ordinary course, having regard to the purposes of parole, a non-parole period of less than 50 per cent of the head sentence can only be justified by good evidence of solid prospects of rehabilitation and indications that the risk of recidivism is low. There was no such evidence with respect to either of the respondents. Yet, at the time of the commission of the offences Ethram Hughes was just 18 and David Rigney-Brown 19. Sentencing principle recognises that the good reasons for differentiating between youths and adults do not vanish when the clock strikes midnight on the day before an offender's eighteenth birthday.

[9] There are additional principle based reasons which support the relatively low non-parole periods fixed by the Judge. First, through no fault of their own, the respondents did not develop adult insights, values and responsibility because of their social deprivation and

marginalisation. For that reason their moral culpability is relatively less. Secondly, the nonparole periods were significantly longer, particularly in the case of Ethram Hughes, than any earlier imposed periods of imprisonment or detention. The law of sentencing recognises that in the case of a youth incremental increases may sufficiently serve the purposes of personal deterrence. Thirdly, supervision on parole is more intensely and strongly managed than any other corrections order. The respondents have not yet had the opportunity to reform themselves through a period on parole.

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.