

Childhood Sexual Abuse

Case Summaries

New South Wales:

CSA and *Bugmy v The Queen* (2013) 249 CLR 47

Childhood sexual abuse (CSA) has been taken into account as part of a background of profound childhood deprivation; and is also relevant to offenders as contextualising substance addiction which may have led to offending or as leading to a psychiatric or mental condition.

Propositions for taking into account a history of CSA were set out in ***RG [2025] NSWCCA 36***, below.

[RG v R \[2025\] NSWCCA 36](#) (Yehia J, Davies and Lonergan JJ agreeing)

Propositions for taking into account history of sexual abuse – sentence appeal - child sexual offences

- Aboriginal male with history of exposure to physical violence and sexual abuse. At sentence proceedings, relied upon history of sexual abuse to support “finding of further diminution in his moral culpability, in line also with some consideration of *Bugmy* in that respect”: **at [66]**.
- Propositions for taking into account a history of sexual abuse: **at [78]**.
 - (i) Firstly, for a history of childhood abuse to be taken into account as reducing moral culpability for his acts, an offender must establish on a balance of probabilities the fact of the abuse.
 - (ii) Secondly an offender must establish on a balance of probabilities that the history of abuse *was a contributing factor* in the offender’s own offending conduct (emphasis added).
 - (iii) Thirdly a history of sexual abuse will not automatically lead to reduction of sentence. The important consideration is the consequences which flow from the earlier events.
 - (iv) Fourthly the weight which should be given to the history of sexual abuse will depend very much on the facts of the individual case.
- The Court found the sentencing judge did not fail to have regard to the applicant’s dysfunctional childhood, including the sexual abuse, and its impact on his moral culpability: **at [82]** (appeal allowed on the basis of manifest excess).

[Bethune v R \[2021\] NSWCCA 115](#) (Adamson J; Harrison and Bellew JJ)

Aggravated break, enter – male, aged 47 – CSA, violence – Appeal allowed

- CSA aged 11 by family “friend”. Expert reports noted that CSA is strongly correlated with mental disorders, such as depression, anxiety, substance abuse, low self-esteem and personality disorders: **at [6]-[7]**.

- Moral culpability is reduced by reason of tumultuous upbringing and formative years. The judge's failure to assess moral culpability may have led to failing to appreciate moral culpability and may explain the manifestly excessive sentence: **at [18], [22]; *Bugmy v The Queen* (2013) 249 CLR 571.**
- On re-sentence, Court accepted experts' opinions as to connection between offending and childhood trauma, which included CSA, and that the applicant's upbringing disposed him to substance abuse: **at [24]-[28].**

[R v Hutchison \[2019\] NSWSC 25](#) (Hamill J)

Manslaughter / substantial impairment - considerations in cases of CSA similar to sentencing principles where offender suffered significant deprivation – female, aged 36.

- Psychiatric illnesses resulted from horrendous childhood abuse including CSA by stepfather. Familiar outcomes in cases of serious ongoing CSA are drug use and long-standing substance abuse disorder; and being forced into refuges and onto the streets: **at [17], [36].**

“[37] The considerations that arise when an offender's life has fallen apart because they were the victim of CSA are similar to the sentencing principles that apply when the offender was the victim of domestic violence (*R v TP* [2018] NSWSC 369) or when their early life was marred by significant social deprivation and exposure to alcoholism and violence (*Bugmy v The Queen* (2013) 249 CLR 571).”

[R v Irwin \[2019\] NSWCCA 133](#) (Walton J; Simpson AJA and Adamson J)

Proceeds of crime, firearms - male, aged 28 – Judge erred in declining to apply Bugmy principles – (however, Crown appeal allowed on ground of manifest inadequacy)

- Background of significant deprivation - suffered CSA, mental and physical abuse, the impact of which manifested itself at a young age and contributed to diagnoses of psychological conditions: **at [110], [116].** Expert evidence supported a causal connection between dysfunctional upbringing and offending or that it significantly contributed to offending. Dysfunctional upbringing, social deprivation and abuse represent a reasonably significant subjective feature: **at [121], [123]; *Bugmy v The Queen* (2013) 249 CLR 571.**

Judicial reference to research materials regarding impact of childhood sexual abuse – the Bugmy Bar Book.

[R v Saliba \(No 4\) \[2025\] NSWSC 659](#) (Yehia J)

Manslaughter sentence

- Court satisfied of CSA and therefore accepted PTSD diagnosis (*RG v R* [2025] NSWCCA 36). Offender's impaired capacity is a product of the PTSD which is underpinned by the trauma caused by the CSA. That trauma also contributed to his use of illicit drugs. By reason of the offender's youth and mental health his moral culpability is reduced: **at [85], [89], [94].**
- “The *Bugmy* Bar Book chapter titled “Childhood Sexual Abuse” contains research which demonstrates the link between childhood sexual abuse and adverse mental health, social and behavioural issues. The literature reveals consistent associations between child sexual abuse and significant negative mental health effects such as post-traumatic symptoms, aggressive

behaviour, and conduct problems. It also results in an increased prevalence in diagnoses of PTSD and the use of illicit substances to deal with the symptoms flowing from PTSD”: at [90].

See also [R v Tsingolas \[2022\] NSWDC 34](#) (Yehia SC DCJ); [R v KL \[2020\] NSWDC 409](#) (Weinstein SC DCJ) at [61].

Victoria:

[DPP v Green \[2020\] VSCA 23](#) (Maxwell P, Priest and Kaye JJA)

Armed robbery, attempt kidnapping - appalling physical and sexual abuse by custody officers while in youth custody - material causative role in offending – PTSD and substance abuse - male, age 37 - Crown appeal dismissed.

- At age 13, suffered CSA by a friend’s mother. At age 15, in youth custody, suffered substantial physical and sexual abuse by correctional officers which had a profound and lasting effect: at [35]-[38]. Developed moderately severe post-traumatic stress disorder (‘PTSD’) with panic attacks and dissociative symptoms; and substance abuse: at [44]-[45].
- The CSA, humiliation and degradation, had a demonstrated causal relationship with the offending and drug addiction, which he sought to feed by resorting to offending. Those circumstances constituted substantial mitigating factors: at [80], [96].
- “In recent decades, courts have become all too familiar with the appallingly harmful and destructive effects of sexual and physical abuse perpetrated on minors and young people by persons who are in authority or in a position of power over them. The long-standing and detrimental effects of that abuse have been demonstrated to be profound and, in many cases, permanent”: at [81].
- The principles in *Bugmy v The Queen* at [43]-[44] apply. Subjective culpability could not be equated with a person who committed the same offences, but with the advantage of a normal, stable home environment, and who had not been subjected to sexual and physical abuse experienced by the respondent while in custody. Background constituted an important mitigating circumstance: at [83]; [DPP v Drake \[2019\] VSCA 293](#) at [32].
- The CSA and expert’s conclusions were relevant to an evaluation of the weight to be given to the respondent’s lengthy criminal history – explaining, at least in part, the repeat offending over two decades: at [84]-[87].

[DPP v Drake \[2019\] VSCA 293](#) (Maxwell P, Priest, Kaye, T Forrest and Emerton JJA)

Aggravated burglary, rape, sexual assault on female adult complainant - Aboriginal offender, age 25 - Crown appeal dismissed.

- CSA by two older males, left home aged 12 due to violence, abused substances; is afflicted by trauma-related disorder (PTSD) concerning his upbringing and his CSA: at [10], [13], [30], [31]. Profound dysfunction, disadvantage and abuse relevant to evaluation of moral culpability and played a significant role in shaping personality and responses. His subjective culpability could not be equated with a person who committed the same offence with the advantage of a normal, stable childhood home environment. Those factors constituted an important mitigating circumstance: at [32]; *Bugmy v The Queen* (2013) 249 CLR 571.