



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

BETWEEN:

GBU

Appellant

and

THE KING

Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

1. The submission is in a form suitable for publication on the internet.

Part II: Propositions to be advanced in oral argument

A. Application for leave to amend ground of appeal

2. The appellant applies for leave to amend the ground of appeal to that set out in the Amended Notice of Appeal (CAB 52). The proposed amended ground addresses the issues raised at the hearing of the application for special leave to appeal.

B. The error

3. The sentencing judge failed to apply, or misapplied, the principles in *Verdins*. The Court of Appeal erred, by failing to recognise, and correct, this error (Reply [2]–[4]).

C. *Verdins*

4. A sentencing court should not be diverted by the diagnostic label applied to the offender's mental condition. Rather, the court must direct careful attention to the nature, extent, and effect of the mental condition on the offender before, during, and after, the time of the offence (AS [38]–[41]; *Verdins* at [13]).
5. After that, the court should determine if the condition operates to, inter alia, reduce moral culpability, or moderate the demands of general or specific deterrence (*Verdins* at [14]–[26], [32]). As every case is unique, the *Verdins* assessments must be undertaken with care (AS [25], [41], *Markarian* at [37]).

D. The sentencing judge's approach

6. Martin J found that the case was an appropriate one for demonstrating general deterrence, given the appellant's illness was drug-induced. He did not consider whether moral culpability was reduced, or whether the demands of specific or general deterrence ought to be moderated, on account of the appellant's mental illness (AS [16]–[19]).

E. The nature and effect of the appellant's mental condition required that *Verdins* be applied

7. The appellant was, at the time of the offence, experiencing a drug-induced psychotic illness, which had persisted in the absence of illicit substances in the appellant's body (AS [13], ABFM 26 L17–19, 28 L39–43). He was not using illicit substances at the time of the offence (CAB 13 L13–32).
8. The appellant's illness alone substantially impaired his capacity to know he ought not to do the acts which caused his wife's death. He was of diminished responsibility pursuant to s 304A(1) of the *Criminal Code* (Qld) (AS [14]).

F. The moral culpability of offenders who use intoxicants and become psychotic

9. The extent of a reduction, if any, in an offender's moral culpability, and the extent of the moderation of the demands of deterrence, depend on features like foreseeability of the consequences of drug use, and the availability of choice (AS [42]–[64]).
10. The appellant's particular mental condition led to a reduction in legal responsibility, but it also required a reduction in moral culpability and an attenuation of the demands of deterrence. His mental condition existed well beyond any suggested illicit drug use. It was not open to presume, or otherwise find, he had been aware that his drug use would cause the condition he ultimately experienced at the time of the offence (AS [65]–[69]).

G. The sentencing judge and the Court of Appeal erred

11. The sentencing judge erred by failing to take into account the mitigating effect of the appellant's reduced moral culpability and the attenuation of the demands of specific and general deterrence (AS [70]).

12. The Court of Appeal erred in not recognising and correcting the sentencing judge's error. The appellant was not required to prove a lack of knowledge of the potential for drug use to cause psychological conditions for there to be a mitigating effect (AS [72]–[78]).

H. The respondent's submission, that at sentence there was significant mitigation on account of the appellant's mental illness (RS [6](c)), is misconceived

13. First, nothing in the record of the sentence hearing, or the sentencing remarks, supports such a reading (Reply [5]).
14. Second, it cannot be inferred, from the sentence and available maximum penalty, that there was significant mitigation due to mental abnormality (cf RS [6](c), [54]), given:
 - (a) The respondent submitted at sentence that the mental condition should not mitigate and should, in fact, aggravate the sentence. The respondent sought a sentence of not less than 10 years' imprisonment (Reply [7]); and
 - (b) There were mitigating factors other than the appellant's mental condition (CAB 12, 13 and 16).
15. Third, the mere availability of different penalties up to life imprisonment does not itself constitute mitigation at sentence. Mitigation involves a reduction in penalty, not a possibility of it (Reply [14]–[15], AS [15]).
16. Fourth, it cannot be assumed that the presence of a mental condition which gives rise to diminished responsibility and reduces an offender's moral culpability will not be offset by other sentencing purposes, such as community protection (AS [34]–[35], *Veen (No 2)* at 476–477). A precise assessment of the nature of the condition giving rise to the diminished responsibility will be determinative. Therefore, it cannot be assumed the acknowledgment of a mental condition has resulted in a shorter sentence. Thus, the reasons for sentence are critically important in determining how this assessment was made, and what, if any, mitigation was made on account of the condition (Reply [8]).



Dated: 15 October 2026

Name: Joseph Briggs