SUPREME COURT OF QUEENSLAND

CITATION:	*R v HBA* [2010] QCA 306
PARTIES:	**R** **v** **HBA** (applicant)
FILE NO/S:	CA No 181 of 2010 DC No 1395 of 2010
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	5 November 2010
DELIVERED AT:	Brisbane
HEARING DATE:	21 October 2010
JUDGES:	McMurdo P, Muir and White JJA Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**The application is refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where applicant inserted her fingers into her infant son's anus on multiple occasions over a 14 month period – where applicant pleaded guilty to one count of grievous bodily harm and six counts of assault occasioning bodily harm – where child would have suffered permanent damage without medical intervention – where child suffers daily faecal soiling and a psychological pre-occupation with his anus – where learned sentencing Judge found applicant deliberately inflicted severe pain and injury on her son over a lengthy period of time – where applicant denied conduct, covered it up and continued offending – where reports from psychiatrists regarding applicant's intellectual and psychiatric deficits differed – where learned sentencing Judge found that although applicant's judgment was impaired, she knowingly inflicted pain on her child – where applicant sentenced to five years imprisonment with parole eligibility after 16 months – whether sentence manifestly excessive CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – NON-PAROLE PERIOD OR MINIMUM

TERM – QUEENSLAND – PARTICULAR CASES – where learned sentencing Judge set parole eligibility date at four months less than one-third of the sentence to give recognition to mitigating factors – where applicant submits reduction failed adequately to recognise applicant's impaired mental functioning and reduced moral culpability – where learned sentencing Judge found applicant had capacity to understand what she was doing and control her actions – whether parole eligibility date gave sufficient recognition to mitigating factors

Channon v The Queen (1978) 33 FLR 433; [1978] FCA 16, considered
Markarian v The Queen (2005) 228 CLR 357; [2005] HCA 25, cited
R v Brand [2006] QCA 525, cited
R v Bryan; ex-parte A-G (Qld) (2003) 137 A Crim R 489; [2003] QCA 18, applied
R v FJ; ex parte A-G (Qld) [2005] QCA 15, considered
R v Goodger [2009] QCA 377, cited
R v J [1998] QCA 143, followed
R v M, unreported, Skoien DCJ, District Court of Queensland, No 692 of 2003, 8 July 2005, distinguished
R v PAA [2006] QCA 56, cited
R v SAV; ex parte A-G (Qld) [2006] QCA 328, considered
R v Tez [2007] QCA 227, cited
R v Tsiaras [1996] 1 VR 398, cited
R v Ungvari [2010] QCA 134, cited
R v Verdins (2007) 16 VR 269; [2007] VSCA 102, cited

COUNSEL: D R MacKenzie for the applicant
M B Lehane for the respondent

SOLICITORS: Legal Aid Queensland for the applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **McMURDO P:** The sentence in this case is not manifestly excessive. It follows that the application for leave to appeal against sentence must be refused. I agree with White JA's reasons and proposed order.

[2] **MUIR JA:** I agree that the application for leave to appeal should be refused for the reasons given by White JA.

[3] **WHITE JA:** On 5 July 2010 the applicant pleaded guilty to one count of doing grievous bodily harm to her infant son on dates unknown between 1 May 2005 and 30 June 2006 and to six counts of assault occasioning bodily harm to the same victim on various dates between the dates nominated in count one.

[4] On 13 July 2010 the applicant was sentenced to five years imprisonment in respect of count one and 18 months in respect of each of the assault charges, to be served concurrently. To reflect the factors favourable to the applicant, the learned District

Court Judge fixed the applicant's parole eligibility date at 13 November 2011, that is, after serving 16 months of the sentence.

[5] The applicant contends that the five year head sentence is manifestly excessive and that the parole eligibility date fixed by his Honour insufficiently recognised the mitigating factors, particularly her intellectual/psychiatric deficits. Mr MacKenzie, for the applicant, submitted that his Honour ought to have imposed a head sentence of three to four years with a parole release date fixed at less than 12 months. The prosecutor below had contended for a head sentence of between five and seven years with parole eligibility after 18 months to two years. Mr MacKenzie, who was counsel below, had sought a sentence of three years with an immediate parole release order.

[6] The applicant is the natural mother of a young child who was aged between six and 20 months during the period of the offending. Over the indicted period from the beginning of May 2005 to the end of June 2006, the applicant inserted her fingers into the baby's anus causing injuries which amounted to grievous bodily harm. The individual assaults also relate to incidents of digital anal penetration. Grievous bodily harm arose because, without medical intervention, it was likely that the child would have suffered permanent damage to his anal sphincter and some permanent loss of sensation of rectal distension. He has been left, at age five years, with ongoing faecal soiling on a daily basis, probably due to not having full sensation of rectal distension. It was unknown at sentence whether that condition was permanent. The child now has a pre-occupation with his anus and puts his finger inside his bottom two or three times a week on average and touches others inappropriately. Paediatric medical opinion is that this behaviour is psychological in origin. The applicant has no prior criminal history. She has two other children, born in 1995 and 2003

[7] Sentence proceeded on the basis of a summary of facts not disputed by the defence. The assault charges related to dates where fresh bleeding was seen to have occurred in the child's anus and thus immediate harm could more readily be identified. At sentence, defence counsel said that the applicant accepted that there were more than six occasions when this occurred but did not know how often she had assaulted her son in the manner charged. The applicant was aged between 29 and 30 at the time of the offending and 34 at sentence. The lengthy delay in disposing of these charges was largely due to psychiatric investigations.

[8] Reports were prepared by Dr Jill Reddan and Dr Peter Fama for Mental Health Court proceedings. Dr Fama supported a defence of unsoundness of mind pursuant to s 27 of the *Criminal Code.* Dr Reddan did not. The applicant was found fit for trial and leave was granted for those reports to be used in the criminal proceedings. After issues relating to charging more serious offences had been resolved, the matter was listed as a plea. According to the summary of facts:[1]

> "The pleas of guilty are accepted on the basis that the actions of the accused were deliberate and that she knowingly caused pain to the child. The pleas of guilty are not accepted on the bases that the accused was acting under some misguided sense of helping the child, nor that she was acting under any psychosis. The plea is made on the

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1 AR 160.

> basis that a defence of insanity can not be made out and that the accused at all times, despite any psychological condition, and being aware that her conduct was wrong, chose to conduct herself in a manner which she knew caused pain and injury to the child."

[9] The applicant took the baby to the Redlands Hospital on 5 May 2005 after three weeks of diarrhoea reporting a history of rectal bleeding. The nappy showed fresh blood and the cause could not be found. The applicant again brought the baby to the hospital about 10 days later. He was taken with the applicant to the Mater Children's Hospital on various dates in May 2005 and was admitted to the Royal Children's Hospital with persistent rectal bleeding accompanied by chronic ulceration in June 2005. Various explanations for the child's condition were explored based on reporting by the applicant. The baby was subjected to endoscopies and colonoscopies in an effort to identify the cause of the bleeding. Eventually abuse by the mother was suspected and all other reasonable explanations were eliminated. Nursing staff noted the applicant's rough handling of her child and that the bleeding resolved when she was absent from the hospital. They also noted that the baby was very resistant to having his nappy changed. Nursing staff described the applicant as presenting with "celebrity patient" type behaviour, impressing the other patients with how unwell her baby was.

[10] The child was re-admitted to the Royal Children's Hospital at the end of January 2006. This description is in the nursing notes:

> "[Child] was extremely resistant to examination of his anus (clenched buttocks, rigid extended legs, cried/whimpered). He remained elevated off the bed for several minutes due to distress/defensive posturing."

Again notes for 18 June 2006, when the child was re-admitted to the Royal Children's Hospital after transfer from the Hervey Bay Hospital, similarly described him as "screaming" when laid flat and his nappy removed. This was noted to be "extremely unusual behaviour for an infant" which did not occur even in those with painful napkin area rashes. When the child was examined under anaesthetic, old/persistent damage in the anus and rectum was seen which included a lax anus, abnormal perianal skin, anal fissures and rectal ulcers. Recent trauma in the rectum was observed including "contusion, graze, arcuate scratches (fingernail shaped scratches up in the rectum, directed towards the anus)". Dr Frances Connor, a specialist paediatric gastroenterologist who treated the baby, exhibited those notes to her affidavit which was tendered on sentence and concluded:[2]

> "In summary, the findings are consistent with anal and rectal trauma, repeatedly inflicted over a long period of time. In my opinion, the fact that bleeding only began while the patient was in contact with his mother, his defensive/fearful behaviours when changed by his mother and all the other factors listed above make it extremely likely that [the applicant] has been inducing these injuries by forcing nappy wipes into [child's] anal passage at nappy changes and by forcibly gouging the rector mucosa with a finger inserted via the anus to induce bleeding."

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2 AR 78.

[11] In February 2006 the Department of Child Safety had received a notification in relation to concerns about the child. Representatives attended at the applicant's home and spoke to her. When questioned about the number of hospital visits she indicated that she and her husband were "over cautious parents". She blamed the problem on the child's lactose and dairy intolerance. The Department received another notification in June 2006 and on 18 June the applicant took part in an interview with police at the Royal Children's Hospital. She made no admissions. In a letter dated 23 June to her husband, revealed subsequently, she sought to explain the damage to the child because she was treating him as directed by the doctors with enemas.

[12] The applicant's children were removed from the care of their parents. Subsequently the applicant had supervised access when they were returned to the care of their father. After he remarried the access has only been by telephone. The applicant commenced treatment at the Fraser Coast Mental Health Service in July 2006 after the children were removed from her care. She was commenced on medication for her problems of stress and alleged hearing of voices.

[13] The learned sentencing Judge had reports from four psychiatrists – Dr Reddan and Dr Fama, as mentioned, which were prepared for the Mental Health Court - and from Dr Karin Fuls dated 4 July 2006 and Dr Peter Clark on various dates, associated with the applicant's treatment at the Fraser Coast Mental Health Service. Amongst other things, the applicant told Dr Fuls that she had hurt her son so that she could get attention for her problems. She told Child Safety officers that she was frustrated with the baby which she had not wanted and with whom she had not bonded. She told Dr Reddan that she was frustrated with doctors and took it out on her child because she did not know who else to turn to.

[14] Dr Reddan was sceptical about a diagnosis of schizophrenia based on auditory hallucinations (and some tactile and visual hallucinations) since there were no other significant symptoms or objective signs of psychosis. On the other hand Dr Fama accepted the applicant's reporting of voices.

[15] Dr Fuls noted that the applicant was "orientated in all spheres and had a good command of English". She had used many medical terms throughout her interview and had an accurate understanding of the terminology. She noted that her memory was intact and that "[she] clinically appears to function at an average intellectual level in spite of her apparent perception that she is possibly intellectually disabled". Dr Fuls noted that the applicant appeared motivated to receive treatment but also "very motivated to be diagnosed as suffering from a mental illness" as she said she might be charged for harming her children and believed that a diagnosis of a mental illness might change that. Dr Fuls observed:[3]

> "Her judgement is impaired as evidenced throughout the interview by a lack of empathy for her children and the impact of her actions on them. She appears to have a limited understanding of the severity of her circumstances and a concerning focus on her own issues to the exclusion of a broader perspective – for example she wants her family back but this appears to be motivated more by her needs and less by concern for the welfare of her children."

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[3] AR 83.

[16] Dr Reddan noted that late in her interview with the applicant, the applicant said that she had been hearing voices since she was a teenager. Sometimes they would instruct her to harm herself but she did not do so as she did not wish that to happen. She told Dr Reddan that those voices told her to insert her finger into the child's anus but added that she probably did it because she was angry and confused.

[17] Although there were strong submissions about her intellectual deficits, the applicant told Dr Reddan that in year 12 she passed four subjects. Dr Reddan reported that although the applicant expressed regret about her actions she did not express remorse and impressed as being egocentric "but not grossly impaired". By the time she came to be sentenced, his Honour found that she was remorseful. Dr Reddan also noted that when first questions by Departmental officers the applicant stressed that she was helping her child and was not aware that she could have been causing him harm; that if anything she was an over-protective parent. Dr Reddan described the applicant as "deceptive in her conduct" when talking with officers of the Department of Child Safety. The alternative explanation of voices instructing her to harm her child developed "somewhat later". Dr Reddan summarised the progress of the explanation in this way:[4]

> "… [the applicant] now admits that she caused the injuries although she minimises the extent of her behaviour. [The applicant] has offered various explanations for her conduct, and these explanations have developed a little over time and they vary from [the applicant] reporting that she was aiming to help [her child], frustration in her role as a wife and mother with some degree of blame of her former husband, but most recently she has claimed that she injured [her child] at the instruction of command auditory hallucinations. None of these explanations are, on their own, entirely satisfactory, as they do not encompass the nature and extent of the injuries suffered by the child nor [the applicant's] behaviour, as observed by attending doctors, Department of Child Safety officers and the police during the relevant time."

[18] Dr Reddan concluded that the applicant was a woman of few personal resources, having significant difficulty in acknowledging and expressing anger; she was manifesting stress but her behaviour in injuring her child suggested "significant deficits in her capacity for empathy". She concluded that:[5]

> "… psychosis as a cause of a parent or caregiver injuring or deliberately making a child sick so as to bring it into medical care, must be extraordinarily rare, and the published literature contains virtually no descriptions of psychosis as the underlying cause of such behaviour."

[19] Dr Fama initially diagnosed the applicant as suffering from paranoid schizophrenia (in remission) and Munchausen Syndrome by Proxy. Two years later, on 1 June 2010 after seeing a CT head scan report dated 13 July 2006 which stated that "[n]o corpus callosum can be reliably identified …" and in light of a further consultation with the applicant, Dr Fama revised his diagnoses to agenesis of corpus callosum; chronic hallucinatory psychosis and Munchausen Syndrome by Proxy. The applicant told Dr Fama that she was no longer medicated and did not suffer

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4 AR 99.

5 AR 100.

hallucinations. Dr Fama maintained that agenesis of corpus callosum, a physical brain abnormality, appeared in an increased rate amongst schizophrenics.

[20] Dr Reddan rejected Dr Fama's diagnoses of Munchausen Syndrome by Proxy or Factitious Disorder by Proxy, identifying them as a variety of motivations underlying abnormal behaviours. Nor did she accept that an agenesis of corpus callosum would explain the applicant's behaviour towards her child noting that it was described in the literature "as being associated with a wide range of psychiatric disorders, but it can also be found as an incidental finding in those who manifest no particular disorder at all". Notwithstanding those differences, both counsel below submitted that the learned sentencing Judge would not be assisted in resolving the conflict about the applicant's condition by hearing evidence from the psychiatrists. As his Honour noted, the applicant's plea of guilty excluded any psychiatric condition inconsistent with that plea.

[21] The learned sentencing Judge noted the applicant's "brain anomaly", as he described the physical deficit noted on the CT scan, but concluded in his sentencing remarks:[6]

> "… in view of your explanation for the offending, the absence of any objective signs of psychosis, and your purposeful harming of [the child] and deceptive conduct over a protracted period of time, there is no evidence that this condition played any role in your offending."

Mr MacKenzie did not challenge this conclusion. The learned sentencing judge did, however, note that there were relevant mental health issues to be considered when sentencing. He accepted that the applicant was of low intellect although recognising Dr Fuls' assessment that clinically she appeared to function at an average intellectual level. His Honour commented that at the time of the offending the applicant was not coping with her children and was in an unhappy relationship with little assistance, under considerable stress and with few personal resources. He added:[7]

> "Taking a simplistic view, the offending in this case is so disgraceful that one would think that mental health issues must have intruded. That a mother, with judgment fully intact, would inflict such excruciating pain and injury on her baby, is too horrible to contemplate."

His Honour concluded that the applicant fell to be sentenced on the basis that:[8]

> "…over the lengthy period of about 14 months, [you] deliberately inflicted severe pain and injury on your baby son. In doing so, you put your interests first.
>
> Whilst I am prepared to accept that your judgment was impaired, you, nonetheless, knowingly continued with this offending and deceptively covered it up."

His Honour's use of the word "knowingly" was accepted by both counsel to mean "deliberately" rather than "with intent" which would suggest an offence with which she was not charged.

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6 AR 36.
7 AR 37.
8 AR 38.

[22] His Honour accepted that the plea of guilty was timely; that the applicant was remorseful for her offending; and that her judgment was adversely affected by her mental health issues and her predicament at the relevant time. He also observed that because of the lengthy delay in resolving the charges, the applicant had lived with uncertainty of outcome. He regarded this as a mitigating factor. He commented that she had suffered the loss of her family unit, and, although her conduct brought it about, it was "additional punishment" for her. He disagreed that general deterrence was not as significant a feature as in some other cases because, while of low intellect and with some impaired judgment, the applicant fell to be sentenced on the basis that she deliberately inflicted cruel pain on her baby over a lengthy period and not only denied the conduct but successfully covered it up and continued offending.

Whether sentence manifestly excessive

[23] The maximum sentence for grievous bodily harm is 14 years. As Williams JA, with whom the Chief Justice and Cullinane J agreed in *R v Bryan; ex-parte A-G (Qld)*:[9]

> "It is difficult, if not impossible, when dealing with the offence of grievous bodily harm to speak meaningfully of a "range" when considering penalty. A great variety of acts may result in the commission of that offence. A single blow with the hand, the negligent use of a dangerous object, excessive force in resisting an attack, and blows struck in a highly emotional situation may all result in the offence being committed. Also the nature of the injuries sustained and the permanent consequences thereof may vary greatly. All of those factors will have some impact in determining the appropriate sentence.

Similarly in *R v Brand*,[10] Williams JA, with whom Jerrard and Holmes JJA agreed, said:[11]

> "The only real conclusion that can be drawn from a consideration of the cases … is that the appropriate sentence for the offence of grievous bodily harm will vary significantly and that relevant factors will include the nature of the injuries sustained, the age of the offender, the criminal history of the offender, whether or not a weapon was used, whether the offence was established by one blow or whether there was a sustained attack on the complainant."

In *R v SAV*; *ex parte A-G (Qld)*,[12] the President with whom Wilson and Atkinson JJ agreed, reviewed a number of cases where the offender, usually a parent, was sentenced for inflicting grievous bodily harm upon a young child and concluded that they established a range of four to six years.[13]

[24] *R v J*[14] has many similarities to the present case. The applicant was a 27 year old mother with no criminal history, who was poorly educated, suffered from a specific

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9 (2003) 137 A Crim R 489 at 495; [2003] QCA 18 at [32].
10 [2006] QCA 525.
11 Ibid at [15].
12 [2006] QCA 328.
13 Ibid at [28].
14 [1998] QCA 143.

learning disability and had previously suffered from severe depression because of the death of her young son. She pleaded guilty to one count of grievous bodily harm and one of assault occasioning bodily harm. The first count referred to an offence which occurred on various dates between 25 December 1996 and 5 April 1997 (approximately three months) and the second on 25 February 1997. The victim in each case was her 18 month old daughter. The most serious injuries inflicted by the applicant on her baby were caused by inserting her finger into the child's anus on numerous occasions thereby causing damage to her bowel and rectum and causing the child excruciating pain. As a consequence she required intensive care and for a time her condition was life threatening. Davies JA noted the possibility that the child would require major reconstructive surgery in the future to remove scarred and diseased areas of the rectum and the replacement of part of the bowel. The child also suffered some injuries to her oesophagus.

[25] That applicant was sentenced to five years imprisonment with a recommendation for release on parole after serving two years. Her mental condition was described as Munchausen Syndrome by Proxy and Factitious Disorder by Proxy. Davies JA noted that they were more appropriately descriptive of a pattern of behaviour than of any mental disorder. As here, the court noted that the possible causes of such behaviour as discussed by the psychiatrists include a feeling of lack of self-worth and a desire to receive attention, admiration or sympathy. His Honour noted that the injuries were inflicted in circumstances not of loss of self-control but "in callous disregard for the pain which she was plainly inflicting on the child". The sentence was not found to be manifestly excessive.

[26] The present offending was persisted in over a much longer period than in *R v J*. Mr MacKenzie submitted that *R v J* was a more serious case, in that the rectal injury was described as life threatening without medical intervention. Here, the injuries were serious and have possibly left permanent deficits for the child with serious social and psychological consequences.

[27] Mr MacKenzie referred to *R v M*, an unreported decision of Senior Judge Skoien in the District Court on 8 July 2005,[15] as being of assistance. Although the offender in that case suffered from psychological deficits and was charged with counts of torture, wounding and causing an obnoxious thing to be taken with intent to annoy in respect of her young children, the sentencing Judge stated expressly that it was "not a case in which actual pain was suffered" by her children. It is, accordingly, distinguishable from the present for that reason and also for other features that need not be further elaborated.

[28] Mr Lehane for the respondent referred to *R v FJ; ex parte A-G (Qld).*[16] FJ pleaded guilty to one count of grievous bodily harm and one count of assault occasioning bodily harm in respect of his eight month old son. He pleaded guilty to assaulting the child by violently shaking him on more than one occasion. The child had multiple bruises to the head, mainly over the forehead and cheeks as well as on his body. He had retinal haemorrhaging of different ages. He also had other traumas to his body including to the liver, a fractured skull and multiple skeletal fractures of various ages. The court noted that the baby seemed to have made a full physical recovery, although the possibility of brain injury and learning difficulties remained to be explored. FJ was sentenced to five and a half years imprisonment with

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15 No 692 of 2003.

16 [2005] QCA 15.

eligibility for parole after 22 months. That sentence was held not to be manifestly inadequate on an Attorney-General's appeal.

[29] The great variety of circumstances for which grievous bodily harm is charged, from a single blow to frequent assaults, makes finding a comprehensive range a fruitless exercise, as mentioned by Williams JA in *Bryan*. Greater assistance is obtained, in the time honoured process engaged in in sentencing generally, by comparing like with like. The common features in *R v J* with the present case makes that sentence apt for comparison and demonstrates that the five year sentence imposed below was not manifestly excessive. When other grievous bodily harm cases against young children are also considered, such as *SAV* and *FJ* where the injuries took place over a brief period and likely arose more from a loss of control than a deliberate course of conduct, the sentence is seen to be within an appropriate range.

Mental disorder as a mitigating feature

[30] The learned sentencing Judge fixed parole eligibility after the applicant has served 16 months of the five year sentence. His Honour made the reduction for a combination of all the mitigating factors at less than one-third without any further dissection of those factors. Mr MacKenzie submitted that his Honour has taken a sentence of 60 months, reduced it to one-third (20 months) for the plea of guilty and reduced that period by four months for the appellant's mental deficits. He submitted that that reduction failed adequately to recognise the applicant's reduced moral culpability.

[31] In *Channon v The Queen*,[17] Brennan J said:[18]

> 'Psychiatric abnormality falling short of insanity is frequently found to be a cause of, or a factor contributing to, criminal conduct. The sentencing of an offender in cases of that kind is inevitably difficult. The difficulty arises in part because the factors which affect the sentence give differing significance to an offender's psychiatric abnormality. An abnormality may reduce the moral culpability of the offender and the deliberation which attended his criminal conduct; yet it may mark him as a more intractable subject for reform than one who is not so affected or even as one who is so likely to offend again that he should be removed from society for a lengthy or indeterminate period. The abnormality may seem on one view to lead towards a lenient sentence, and on another to a sentence which is severe."

Mr MacKenzie relied upon observations in the Court of Appeal in Victoria in *R v Tsiaras*[19] and the more recent decision of *R v Verdins*[20] to explain the relevance of a psychiatric illness not amounting to insanity upon the sentencing of an offender. This Court in *R v Goodger*[21] referred with approval to those decisions. In *Tsiaras*, the court, in effect, emphasised the observation of Brennan J in *Channon* quoted above. In *Verdins*, the Court of Appeal identified the ways in which impaired mental functioning is relevant to sentencing. The court said:[22]

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17 (1978) 33 FLR 433; [1978] FCA 16.
18 (1978) 33 FLR 433 at 436-7.
19 [1996] 1 VR 398.
20 (2007) 16 VR 269; [2007] VSCA 102.
21 [2009] QCA 377.
22 (2007) 16 VR 269; [2007] VSCA 102 at [32].

> "1. The condition [impaired mental functioning] may reduce the moral culpability of the offending conduct, as distinct from the offender's legal responsibility. Where that is so, the condition affects the punishment that is just in all the circumstances; and denunciation is less likely to be a relevant sentencing objective.
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> 2. The condition may have a bearing on the kind of sentence that is imposed and the conditions in which it should be served.
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> 3. Whether general deterrence should be moderated or eliminated as a sentencing consideration depends upon the nature and severity of the symptoms exhibited by the offender, and the effect of the condition on the mental capacity of the offender, whether at the time of the offending or at the date of sentence or both.
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> 4. Whether specific deterrence should be moderated or eliminated as a sentencing consideration likewise depends upon the nature and severity of the symptoms of the condition as exhibited by the offender, and the effect of the condition on the mental capacity of the offender, whether at the time of the offending or at the date of the sentence or both.
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> 5. The existence of the condition at the date of sentencing (or its foreseeable recurrence) may mean that a given sentence will weigh more heavily on the offender than it would on a person in normal health.
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> 6. Where there is a serious risk of imprisonment having a significant adverse effect on the offender's mental health, this will be a factor tending to mitigate punishment."

Keane JA, with whom Fraser JA and Atkinson J agreed, said of those observations in *Goodger*:[23]

> "This Court has accepted the proposition that, generally speaking, a mental disorder short of insanity may lessen the moral culpability of an offender and so reduce the claims of general or personal deterrence upon the sentencing discretion."

The respondent does not challenge the sentencing principles set out in *Verdins*. Rather, as in *Goodger*, it is to their application to the facts and circumstances of the case that attention must be given.

[32] The learned sentencing Judge took time to consider this sentence. He read all of the extensive psychiatric material and particularly noted the statement of facts upon which the plea was entered. He recognised that the difference between counsel's submissions was one of emphasis as to how much the applicant's mental health

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23 [2009] QCA 377 at [21].

issues ought to be reflected in the sentence reduction. Of the suggestion that the applicant was acting on command auditory hallucinations, his Honour said:[24]

> "However, having read carefully all of the material, if you are being genuine in what you say about hearing voices, it seems likely that what is described as hearing voices at the material time, is really only your thoughts which present as words spoken out loud in your head. You, yourself, think that this may be so.
>
> In your letter, Exhibit 6, you say: "It is difficult to explain to someone. I am not sure whether the voices were just thoughts as words spoken out loud." In this letter, you give the clear impression that you were well capable of ignoring the voices. You do not suggest that you were compelled by voices to do anything. You state "I should have just ignored them"."

His Honour accepted the applicant's own assessment that she was trying to get attention for herself and that while her judgment was impaired, she continued to offend over a lengthy period and deceitfully covered up that offending. His Honour considered that, contrary to defence counsel's submission, there were general deterrence issues. In *R v J*, Davies JA thought that general deterrence was important in cases of this kind because they were difficult to detect and prosecute – as the facts here clearly demonstrate.

[33] The learned sentencing Judge was aware of all the factual issues surrounding the applicant's mental health and weighed her moral culpability carefully. The analysis by Mr MacKenzie of reducing by one-third the time to be served to reflect the plea of guilty and then further reducing that time below 12 months for the other mitigating factors, particularly mental health issues, involves fragmenting the sentencing process which can, and does, lead to a distorted sentence, a method deprecated by the High Court in *Markarian v The Queen.*[25] The reduction by up to one-third of the non-release period for a guilty plea to give effect to the requirement in s 13 of the *Penalties and Sentences Act* 1992 (Qld) is a useful practice, well-recognised in Queensland,[26] but it is by no means mandatory. It is the totality of the sentence which must be considered against the facts and circumstances of each case. A parole eligibility date after serving 16 months was an appropriate response to this applicant's mitigating factors and involved no error.

Order

[34] I would refuse the application.

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24 AR 34-35.

25 (2005) 228 CLR 357 at 374..

26 *R v PAA* [2006] QCA 56 at [14] per Jerrard JA; *R v Tez* [2007] QCA 227 at 8 per Mullins J; *R v Ungvari* [2010] QCA 134 at [30] per White JA.