

## **Sentencing where Mental Health issues are factors relevant at sentencing.**

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[R v JAD \[2021\] QCA 184](#), applying *Verdins & R v Tsiaras* [1996] 1 VR 398,:L

In *Verdins*, the Court said this about the relevance of an offender's impaired mental functioning to their moral culpability "Impaired mental functioning at the time of the offending may reduce the offender's moral culpability if it had the effect of:

- (a) impairing the offender's ability to exercise appropriate judgment;
- (b) impairing the offender's ability to make calm and rational choices, or to think clearly;
- (c) making the offender disinhibited;
- (d) impairing the offender's ability to appreciate the wrongfulness of the conduct;
- (e) obscuring the intent to commit the offence; or
- (f) contributing (causally) to the commission of the offence.

As we have said, this is not to be taken as an exhaustive list."

*R v Hoskin* [2020] QCA 10 at page 8 – surmised as:

Psychiatric conditions and reports and the facts of substance abuse are factors which diminish claims for general and specific deterrence at a sentence.

*E v Elliott* [2000] QCA 267 at 11

"... Mental abnormality falling short of insanity may be a significant mitigating factor. Apart from the question of culpability, it makes it difficult to the court to apply factors such as general deterrence. Of course such a factor as to aged, and where such a person is a danger to the public, this factor may be brought into account increase of sentence. Breenan J in *Channon v R* Noted that:

*"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 of the factors which affect descent into give differing to get into an offender psychiatric at the malady. At that malady may reduce the moral culpability of an 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 lean towards a lenient sentence, and on the other two are sentence which is severe"*

*R v Neumann: Ex Parte Attorney-General (QLD)* [2007] 1 Qd R 53 at 27

Low intelligence and diminished responsibility falling short of insanity will operate on sentence as a mitigating factor (if otherwise relevant). It diminishes the culpability of the offender. Mental abnormality falling short of insanity may be a significant mitigating factor. Apart from the question of culpability of, it makes it difficult for the court to apply factors such as general deterrence. The circumstances where an offender suffers from a mental disorder may well be of considerable significance in a number of respects to the sentencing task. In sentencing generally, it is necessary to balance personal and general deterrence on one hand with rehabilitation on the other, but in the case of an offender suffering from mental disorder or abnormality general deterrence is a factor which should be given little weight. General

deterrence should often be given very little weight in the case and offender suffering from mental disorder or abnormality because such an offender is not an appropriate medium for making an example to others. It is not essential that there be a causal relationship between the abnormality in the commission of the offence; although causation must be taken into account in assessing the circumstances of the case (citations omitted)

*R v Goodger* [2009] QCA 377 at 21

*"... Generally speaking, a mental disorder short of insanity may lessen the moral culpability of an offender and so reduce claims of general personal deterrence upon the sentencing discretion..."*