

People with mental illness - Cases

The cases identified here provide examples of the way judicial officers have dealt with some of the issues raised in the context statement.

Click on the citation to be directed to a summary of the case in the Case Database.

***R v Bell* [2005] ACTSC 123 (1 December 2005) – Australian Capital Territory Supreme Court**

Higgins CJ at [31]: ‘I appreciate that personality disorders may often underlie the criminal behaviour of men who beat women. Alcohol or other substance abuse may sometimes be a triggering factor. Nevertheless, they must take responsibility for their actions and be seen to have done so. The offence is often hidden, so general deterrence is a factor that is quite prominent. So also is specific deterrence. No offender engaging in this kind of behaviour, nor their victims, should feel that it is to be treated lightly. Rather, it must be made the subject of condign punishment. That is not to say, of course, that any mitigatory factors or prospects for rehabilitation will be disregarded’.

***R v In* [2001] ACTSC 102 (2 November 2001) – Australian Capital Territory Supreme Court**

Crispin J at [19]: ‘The extent of his psychological condition is relevant to the issue of general deterrence but, in my view, the need to protect former spouses or partners from conduct of this nature cannot be so easily dismissed. Many people no doubt experience great stress upon the break-up of their marriages or other close relationships and in some cases they may suffer from symptoms of an underlying psychological illness or even become psychologically ill for the first time. One may and should respond with sympathy. However, when a person commits serious criminal acts against a former spouse or partner the court must take into account the need to deter other people from similar conduct. The risk of serious injury and, as in this case, grave emotional trauma may be at least as serious when the offender is psychologically ill. Accordingly, the need for deterrence should be given due recognition, though the weight which should be given to that factor will vary according to the circumstances of the case, and the actual sentences must be determined by reference to all relevant factors referred to in s 429A of the *Crimes Act 1900*’.

***Pasinis v The Queen* [2014] VSCA 97 (22 May 2014) – Victorian Court of Appeal**

Kyrou JA at [54]: ‘The effects of family violence are now well documented. They are not confined to physical injury. Victims often feel responsible for the violence and ashamed that they were not able to prevent the perpetrator from offending. As occurred in this case, it is common for victims to deny or conceal that their partners have assaulted them until the violence becomes unbearable. This phenomenon was

reflected in the behaviour of D, which is described at [5] and [8] to [10] above. Victims who have been dominated, controlled and beaten by their partners over a significant period experience serious and long-lasting psychological trauma. As in the present case, the physical effects of the violence and its erosion of the victim's confidence can also affect their ability to participate in paid work and have other serious financial effects'.

***R v Margolis* [2021] VSC 341 (15 June 2021) – Victorian Supreme Court**

As to aggravating factors, Beale J observed:

[16] The prosecution submitted that there were a number of aggravating circumstances to your offending. First, you kept pursuing Ms Vang, who was much smaller than you, from room to room in your house, even though you realised you were losing control and posed a danger to her. Second, the killing was an instance of domestic violence: you and Ms Vang were living together in an intimate relationship, albeit one of short duration. Third, you killed her, intending to kill her. Fourth, you sent false messages to Ms Vang's sisters and left her body on the floor for an extended time.

[17] The fact that this killing was an instance of domestic violence is certainly a circumstance of aggravation, as is the fact, established by your suicide note, that you actually intended to kill. As for the other matters, I consider that your thought processes were so clouded by your mental health problems (which I discuss below) that it would be inappropriate to treat them as circumstances of aggravation.

As to *Verdins* principles, Beale J stated:

[54] Dr Zimmerman found that you have a borderline personality disorder and long-term PTSD. Associate Professor Carroll found that you have a severe personality disorder and long-term PTSD, both conditions commencing in your teens and likely to be permanent.

[55] I accept the findings of Associate Professor Carroll that you have a severe personality disorder and long-term PTSD. Neither diagnosis was disputed by the prosecution. I find that your mental health problems enliven principles 1, 3, 4, 5 and 6 of the well-known case of *R v Verdins*. In other words, your moral culpability is somewhat reduced by your mental health issues, which I find contributed causally to the commission of the offence. Because of your entrenched mental health issues, you are not an appropriate medium for giving full effect to general and specific deterrence. Although it seems you are currently feeling well supported by the prison mental health services, it is also likely that the substantial prison term which I must impose on you will exacerbate your mental health issues and make jail harder for you than for prisoners who do not have such issues.