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LEGAL PRACTICE



Mental health and criminal sentencing

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When a person is sentenced (punished) by a court for committing a criminal offence, the state of their mental health - both at the time the offence was committed, and at the time of sentencing - will often be raised as a relevant consideration. In this article, we will look at the impact of mental health issues on criminal sentencing.

When is mental health considered a defence in criminal law?

The mental health of an offender is only a *defence* (a complete excuse) when that person was so disturbed as to have been of "unsound mind" (insane) at the time of the offending.

Such a defence is difficult to prove, and therefore quite rare. Far more common is the situation where an offender was mentally ill, but not so affected as to be regarded as insane. In those circumstances, the courts have to consider the impact of the person's mental health on the proper sentence which should be imposed.

The relevance of mental health on sentencing

Mental or psychiatric impairment is not referred to specifically under Queensland's sentencing laws. Despite that, the law allows a court to generally take into account any 'aggravating' or 'mitigating' factors concerning an offender, i.e., things which make their offending more or less serious.

The courts over the years have said that impaired mental functioning, whether temporary or permanent, is relevant to sentencing in a number of ways:

1. The offender's moral culpability may be reduced;

2. It may affect the most appropriate kind of sentence to be imposed;
3. It may mean that *"general deterrence"* (deterring others from future offending) may be less relevant;
4. It may be that specific deterrence (deterring this offender from future offending) may be less relevant;
5. The sentence imposed may be more burdensome on this offender than a person in normal health, and
6. Imprisonment may have a significant adverse effect on the offender's mental health.

The application of these principles will often see an offender's mental health treated as a mitigating factor, i.e., one that reduces the ultimate sentence imposed. In some cases, it can be the difference between a jail sentence and a non-custodial sentence.

The central question for a sentencing court is what, if any, connection exists between someone's mental illness and their offending behaviour. In considering that question, the courts will look for expert evidence (such as from psychiatrists) of the condition suffered by the offender, and its impact on their behaviour.

In doing so, judges have emphasised that they are more interested in the impact that the relevant condition had on an offender, rather than a *"diagnostic label"* of the particular condition suffered by the offender.

Personality disorders in criminal law

In the past, personality disorders were treated quite differently to psychiatric illnesses for the purpose of sentencing. In recent times that distinction has become less important.

That follows a shift in the medical classification of personality disorders, and an increased understanding of just how significantly a personality disorder can impact upon one's decision-making and behaviour. It is now accepted that a serious personality disorder can impact someone's behaviour just as much, if not more, than a psychiatric illness.

Recent cases, therefore, suggest that an offender diagnosed with a personality disorder should be treated in no different position than any other offender who seeks to rely on an impairment of mental functioning. The true question for the court will be the extent to which they were impaired, rather than the specific type of impairment they were suffering.

Mental health impacts in criminal law can cut both ways

Whilst evidence of mental health issues is usually produced to the court by the defence, care is needed in this regard. That is because an offender with mental health concerns is not *necessarily* treated more leniently by a sentencing court. It depends very much on the medical evidence produced as to the nature of the offender's condition, how that condition contributed to their offending, and their likely future conduct.

The provision of mental health information to the court may better explain an offender's criminal behaviour at the time, but it may also raise concerns that the offender is likely to offend again. Given that one of the central objectives of sentencing is community protection, this can be a factor which counts against a defendant. In other words, impaired mental functioning can be both a

mitigating factor and an aggravating factor when it comes to sentencing.

Preparing for sentencing proceedings when mental health is a factor

It is important that those being sentenced for criminal conduct and wishing to rely upon the impact of poor mental health, get expert legal advice early.

Experienced criminal law practitioners will be able to source appropriate medical reports to put before the sentencing court. Such information needs to be obtained from the right type of expert, and address all the factors the court will need to be make a proper assessment of how the offender's mental health should influence the sentence to be imposed.

That will inevitably include an explanation of the nature and extent of the offender's impairment of mental functioning, and its likely impact on the offender both at the time of offending and in the foreseeable future.

Contacting a Gilshenan &Luton criminal lawyer

07 3361 0222 (24/7)

gnl@gnl.com.au

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