

COURT REPORTS IN THE *VERDINS* ERA

Presentation for the APS College of Forensic Psychologists: *Forensic report writing – What not to do!*

Thomas Embling Hospital, Fairfield (VIC), 5th March 2013

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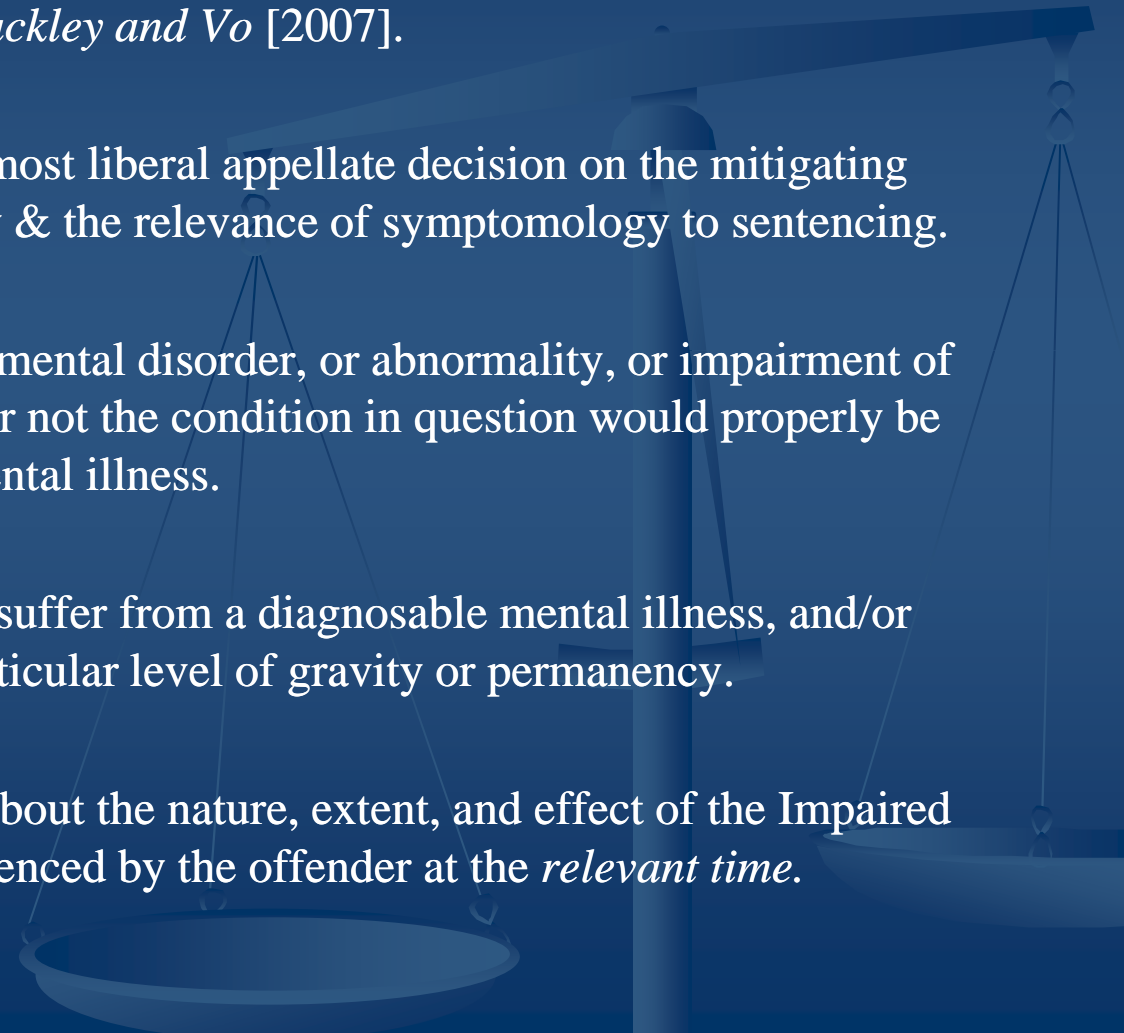
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CONTENTS OF PRE-SENTENCE REPORTS

Section 8B of the *Sentencing Act 1991* (Vic) outlines the contents of pre-sentence report:

- (1) A pre-sentence report may set out all or any of the following matters which, on investigation, appear to the author of the report to be relevant to the sentencing of the offender and are readily ascertainable by him or her -
 - (a) the age of the offender; (b) the social history and background of the offender; (c) the medical and psychiatric history of the offender; (d) any alcohol, drug and any other substance history disclosed by the offender; (e) the educational background of the offender; (f) the employment history of the offender; (g) the circumstances of any other offences of which the offender has been found guilty and which are known to the court; (h) the extent to which the offender is complying with any sentence currently in force in respect of him or her; (i) the financial circumstances of the offender; (j) the ability of the offender to pay a bond; (k) any special needs of the offender; (l) any other services that address the risk of recidivism from which the offender may benefit; (m) any courses, programs, treatment, therapy or other assistance that could be available to the offender and from which he or she may benefit; (n) the relevance and appropriateness of any proposed condition; (o) the capacity of the offender to perform unpaid community work for any proposed unpaid community work condition; (p) the recommended duration of any intensive compliance period fixed under a community correction order; (q) the appropriateness of confirming an existing order that applies to the offender; (r) any other information that the author believes is relevant and appropriate.
- (2) The author of a pre-sentence report must include in the report any other matter relevant to the sentencing of the offender which the court has directed to be set out in the report.

R v VERDINS, BUCKLEY & VO [2007]

- In 2007 the VSCA radically altered judicial sentencing in Victoria, with its decision in *R v Verdins, Buckley and Vo* [2007].
 - *R v Verdins* is seen as the most liberal appellate decision on the mitigating effects of psychopathology & the relevance of symptomology to sentencing.
 - An individual can suffer a mental disorder, or abnormality, or impairment of mental function, whether or not the condition in question would properly be described as a (serious) mental illness.
 - Individuals do not need to suffer from a diagnosable mental illness, and/or for an illness to be of a particular level of gravity or permanency.
 - What matters is evidence about the nature, extent, and effect of the Impaired Mental Functioning experienced by the offender at the *relevant time*.
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VERDINS SENTENCING PRINCIPLES



Impaired Mental Functioning, whether temporary or permanent (*The Condition*), may be relevant to sentencing in at least six ways. The Condition may:

- 1) Reduce the moral culpability of the offending conduct;
- 2) Have a bearing on the kind of sentence imposed/the conditions in which it should be served;
- 3) Moderated or eliminated general deterrence;
- 4) Moderated or eliminated specific deterrence;
- 5) Mean that a sentence will weigh more heavily on the offender than it would on a person in normal health;
- 6) Result in a serious risk that imprisonment has a significant adverse effect on the offender's mental health.

PRIVATE COURT REPORT REFERRALS

Recently VLA requested a psychological assessment and report commenting on:

- Whether [he] suffers any psychological conditions (either now or at the time of the offence)
- Is the condition of a temporary or permanent nature
- The nature and severity of any symptoms my client experiences and the extent to which they affect his mental capacity or functioning (either now or at the time of the offence)
- Does the condition make him disinhibited or affect my client's ability to understand the wrongfulness of his actions, to think clearly and make calm reasoned decisions and appropriate judgments, or to control his emotions or faculties
- Did the condition cause or contribute to the offending behaviour
- If my client is not currently suffering from the condition or its symptoms, what is the likelihood it could reoccur in the future
- Will my client find imprisonment more difficult than a person not suffering this condition and will imprisonment have an adverse effect on his mental health
- The likelihood of my client re-offending and his prospects of rehabilitation
- Any treatment or counselling currently or previously undertaken and its effectiveness
- Any future treatment proposals which could assist his rehabilitation or management of this condition
- My client's response to the offences and if any remorse has been shown
- Any other matters relevant to my client's current court matters.

THE CHANGING FACE OF REFERRALS

- The *Verdins* sentencing principles are becoming more integral to forensic assessments at all stages of the legal process.
- When lodging requests to obtain private court reports, Victoria Legal Aid must specifically comment on aspects of *Verdins* in order to secure funding.
- Remiss for reports prepared under the *Sentencing Act 1991 (Vic)* not to incorporate a comprehensive formulation that encapsulates the *Verdins* Principles in their entirety (Gee & Ogloff, In press).
- There appears to be little difference in the expectations placed on the quality of court reports, regardless of whom the instructing party is.

Gee, D. G. & Ogloff, J. R. P. (In press). Sentencing Offenders with Impaired Mental Functioning: *R v Verdins, Buckley and Vo* [2007] at the Clinical Coalface. *Psychiatry, Psychology and Law*.

LOOKING AHEAD

- To maintain professional integrity within the judicial system, the discipline must seek to improve the overall quality of its member's court reports.
- Practice Guidelines could arguably help in this endeavour.
- When read in conjunction with Section 8B of the *Sentencing Act 1991 (Vic)* practice guidelines would help benchmark acceptable standards for court reports.
- Practise guidelines would also inform the legal fraternity about what can reasonably be expected from assessors providing expert evidence to the court.
- Gee, Ogloff & Sullivan (2013) are in the process of developing such guidelines to help inform Psychiatrists and Psychologists in the preparation of court reports.

Gee, D. G., Ogloff, J. R. P. & Sullivan, D. (2013). Practice Guidelines: Conducting pre-sentence evaluations in the wake of *R v Verdins, Buckley and Vo* [2007].

PARTING THOUGHTS



- Psychometric assessment enhances objectivity and rigor, and is what ultimately sets psychologists apart from other forensic mental health professionals.
- Assessors must avail themselves of the strengths and weaknesses within the current model of custodial mental health; and objectively comment on realistic care-pathways for offenders with impaired mental functioning.
- Ignore *Verdins* at your peril.
- If the discipline chooses not to oversee the standards of its members court reports, the judiciary will likely legislate to ensure such standards; external regulation that can only be counter-productive for forensic psychology.