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## SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

# *R v ANDERSON, Ronald*

**Young CJ, Murphy and Jenkinson JJ**

**21 May 1980 — [1981] VicRp 17; [1981] VR 155; 2 A Crim R 379**

**SENTENCING – ACCUSED FOUND GUILTY OF WOUNDING WITH INTENT TO MURDER AND MALICIOUSLY INFLICTING GRIEVOUS BODILY HARM – SAID TO BE SUFFERING FROM A DISEASE OF THE MIND NAMELY, PARANOID SCHIZOPHRENIA – SENTENCED TO 20 YEARS ' IMPRISONMENT WITH A MINIMUM OF 17 YEARS – WHETHER SENTENCE MANIFESTLY EXCESSIVE.**

**HELD: Sentences set aside. Sentenced to a term of 10 years on each count to be served concurrently with a minimum of 7 years before being eligible to be released on parole.**
**1. In sentencing generally it is necessary to balance personal and general deterrence on the one hand with rehabilitation on the other. But in the case of an offender suffering from a mental disorder or abnormality general deterrence is a factor which should often be given very little weight, because such an offender is not an appropriate medium for making an example to others. The mental condition of an offender may be taken into account when passing sentence, but whether the evidence establishes legal insanity or mental illness stopping short of legal insanity, the question to be answered is whether the interests of society permit or the interests of the offender require that the sentence to be passed be reduced from what would otherwise be appropriate to rather than whether the offender's responsibility for the offence should be regarded as having been reduced.**
***R v Mooney* (unrep, VSC (CCA), 21 June 1978, applied.**

**2. The sentencing judge said that he took into account that the applicant was sick in the mind at the time when he committed those offences. However, His Honour did not give the mental condition of the applicant sufficient weight and that his discretion thereby miscarried.**

**YOUNG CJ and JENKINSON J:** Ronald Anderson applies for leave to appeal against the sentences imposed upon him on two counts of wounding with intent to murder and one count of maliciously inflicting grievous bodily harm. He was found guilty of those offences after a trial at which he had been charged with three counts of wounding with intent to murder, three counts of wounding with intent to do grievous bodily harm and three counts of maliciously inflicting grievous bodily harm. There were three victims of the applicant's attack and the charges in respect of each victim were alternative.

The applicant is a man of forty-eight years of age; he is unmarried and lives with his parents. He acknowledged one prior conviction in 1970 for causing wilful damage for which he was fined $200. It is insignificant for present purposes. For many years the applicant conducted a business of making or assembling trailers in a street in Preston. On 12th December 1978 he was at the premises as usual throughout most of the day. He conducted the business single-handed and worked long hours in it. During the afternoon of Tuesday, 12th December 1978 he made some preparations for the attacks to be made later in the day. He cleaned the upper portion of a window in his workshop which overlooked the entrance to an adjoining factory. From this window the applicant fired two shots at the proprietor of the factory while he was closing the door of his factory at about 5.30 pm. and so had his back to the applicant. Further shots were fired at this victim, a Mr Wahren, as he lay disabled on the ground. The applicant then chased him and fired at him again until he escaped into his factory. A Mr Borsato who had been working in the vicinity attempted to rescue Mr Wahren and he too was shot at. The third victim was Mr Sutterby, a temporary employee of Mr Wahren, who also went to Mr Wahren's assistance. He found Mr Wahren lying on the ground just inside the factory to which he had escaped for protection. The applicant entered the factory and found Mr Sutterby in a defenceless position. He was shot twice at point blank range.

Altogether the applicant fired eleven shots, eight of which reached their targets. Each victim was seriously wounded and will carry permanent disfigurement for the remainder of his

life. The applicant was quickly apprehended but when questioned by the police he maintained that he had no recollection of the shooting. He could remember nothing about the critical events.

At the trial the applicant gave evidence on oath but said he could remember nothing until he was placed in a police van. He offered no explanation for the acts which the Crown alleged he had committed. The applicant was represented by counsel at the trial and after he was convicted a plea for leniency was made on his behalf. Perhaps as a result of a suggestion made by the learned trial Judge counsel called Dr Bartholomew, the Consultant Psychiatrist at Pentridge. Dr Bartholomew gave evidence that he had examined the applicant on four occasions before the trial and had formed the opinion that he suffered from a disease of the mind, paranoid schizophrenia, and that in all probability he was acting at the relevant time as a result of insane automatism. Dr Bartholomew thought that the applicant could not have reasoned about the wrongness of his actions with a moderate degree of sense and composure and he would have supported a defence of insanity. He considered, however, that the applicant was fit to plead. Counsel informed the trial Judge that a deliberate decision had been taken not to raise the defence of insanity.

In passing sentence the learned trial Judge said that he had no jurisdiction to give effect to any view that the applicant was of unsound mind because the jury had found him guilty of the three offences. His Honour did, however, take into account that the applicant was "sick in the mind" at the time when he committed the offences. He then sentenced the applicant to fifteen years' imprisonment on each of the counts of wounding with intent to murder and five years on the count of maliciously inflicting grievous bodily harm. His Honour then made concurrency orders which produced the result that the total effective term of imprisonment was twenty years and fixed a minimum term of seventeen years during which the applicant should not be eligible to be released on parole. The applicant seeks leave to appeal to this Court on the ground that the sentence is manifestly excessive and that the learned trial Judge failed to take into account the mental condition of the applicant at the time of the offences. *[After discussing whether or not the Court should exercise the power conferred by s569(4) of the* Crimes Act *the Court continued]* ... We turn, therefore, to a consideration of the question whether the sentence was excessive having regard to the mental condition of the applicant, to his age and to the fact that he has no relevant prior convictions.

In *R v Mooney* (unreported, judgment delivered 21st June 1978) the Court was concerned with an applicant who had pleaded guilty. On the plea evidence was given to the effect that at the time of the commission of the offences he was suffering from a mental condition described as "mental depressive psychosis". There was evidence upon which a conclusion might have been based that he was insane within the legal test usually described as the *M'Naghten Rules*. There was also evidence that the applicant had since the offence undergone treatment and that his condition was under control. One of the grounds of the application for leave to appeal to this Court against the sentence was that the trial Judge had failed to give proper weight to the medical condition of the applicant both at the time of the commission of the offences and at the time of sentencing.

*[In dealing with this ground the Chief Justice said:]* It is well established that when a trial judge turns to the task of passing sentence upon an offender convicted by a jury, he must not act upon a view of the facts that is inconsistent with the verdict of the jury. On a plea of guilty a sentencing judge is precluded from passing sentence on any basis inconsistent with the conclusion that the offender is legally responsible for the crime to which he has pleaded guilty.

In sentencing generally it is necessary to balance personal and general deterrence on the one hand with rehabilitation on the other. But in the case of an offender suffering from a mental disorder or abnormality general deterrence is a factor which should often be given very little weight, because such an offender is not an appropriate medium for making an example to others. The mental condition of an offender may be taken into account when passing sentence, but whether the evidence establishes legal insanity or mental illness stopping short of legal insanity, the question to be answered is whether the interests of society permit or the interests of the offender require that the sentence to be passed be reduced from what would otherwise be appropriate to rather than whether the offender's responsibility for the offence should be regarded as having been reduced."

In *Mooney's Case*, Lush J said:

> "A sentence imposed with deterrence in view will not be acceptable if its retributive effect on the offender is felt to be inappropriate to his situation and to the needs of the community. In the present case, a defence of insanity probably could have been made out on Mooney's behalf. The defence not having been taken, the Court could not deal with him upon the basis that a disease of the mind had so affected his reason that he did not know what he was doing, Or that what he was doing was wrong. It is, however, common experience that evidence of mental states is given upon a plea of guilty or after conviction. This is necessary and proper, and if in particular cases some appearance of illogicality emerges that must be accepted as a practical consequence of the disadvantage of advancing a plea of insanity in defence of any charges except the gravest. The sentencing court, however, must proceed upon the basis that the offender has accepted legal responsibility for his offence either by a plea or verdict. His mental condition, and in particular the possibility that his mental condition in the future may be different from that existing at the time of the offence, remain significant in the determination of what is an appropriate course to be adopted in relation to him as an individual and to the protection of the community from him and from those who might be disposed to imitate him. In my opinion Mooney was, at the time when he was sentenced, an inappropriate person to be made the medium of a deterrent sentence. Moreover, since public sentiment is of significance in this area of the law, I think that sensible people well informed as to the facts would hold that view."

It is apparent in this case that the learned trial Judge has not approached his task of sentencing the applicant in accordance with the principles discussed in *Mooney's Case.* His Honour said that he took into account that the applicant was sick in the mind at the time when he committed those offences. We think, however, that His honour did not give the mental condition of the applicant sufficient weight and that his discretion thereby miscarried. Accordingly we must set aside the sentences passed and ourselves re-sentence the applicant.

Having regard to the applicant's age and to the evidence relating to his mental condition we think that he should be sentenced to be imprisoned for a term of ten years on each of the counts of wounding with intent to murder and to three years on the count of maliciously inflicting grievous bodily harm. Since the offences comprised a single criminal episode, we shall direct that all sentences be served concurrently and that the applicant serve a minimum term of seven years before being eligible to be released on parole.

MURPHY J delivered a separate judgment in which he agreed with the orders proposed.

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