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FEDERAL COURT OF AUSTRALIA — GENERAL DIVISION

CHANNON v R

Brennan, Deane and Toohey JJ

25 May 1978 — [1978] FCA 16; (1978) 33 FLR 433; 20 ALR 1

CRIMINAL LAW – SENTENCE – PSYCHIATRIC TREATMENT – PSYCHIATRIC ABNORMALITY – RELEVANCE TO FIXING SENTENCE – WHETHER FACTOR IN SENTENCE – CRITERIA.

The appellant, Gordon Channon, was convicted in the Supreme Court of the Northern Territory of arson, and sentenced to three years' imprisonment with hard labour. A non-parole period of 15 months was fixed, and the trial judge directed that the appellant, while in prison, "receive such psychiatric treatment as may be thought to be appropriate". The only evidence before the court touching on the appellant's psychiatric condition was evidence given by a member of the Salvation Army who had known the appellant. The appellant appealed against sentence on the grounds that a sentence which imprisons a person for psychiatric treatment may not be imposed; and that there was no material on which the trial judge could properly base an order for psychiatric treatment.

HELD: *per curiam*: (i) The sentence imposed by the trial judge should be varied to two years' imprisonment with hard labour and a non-parole period of nine months; and the order should include a request that psychiatric treatment be made available to the appellant.

(ii) A psychiatric abnormality falling short of insanity, where connected to criminal conduct, is a relevant factor in determining sentence.

(iii) Criminal sanctions are purposive, and are imposed to protect society, but only to the extent necessary to achieve that purpose.

R v Cuthbert (1967) 86 WN (Pt.1) (NSW) 272; [1967] 2 NSW 329; 67 SR (NSW) 95, approved by Brennan and Toohey JJ.

(iv) A sentence intended to deter the offender from committing offences of the same kind, or to reduce or eliminate the factors which contributed to the conduct for which he is sentenced, serves such a purpose.

(v) Psychiatric treatment may be taken into account in fixing a period of imprisonment where:—

(a) the offender suffers from a mental abnormality which contributed to the relevant offence;

R v Veen (NSW, unreported, 1976) approved by Brennan J;

R v Gascoigne (1964) Qd R 539, disapproved by Brennan and Toohey.

(b) psychiatric treatment for that abnormality is likely to be made available to the offender during imprisonment;

(c) the offender is likely to avail himself of that treatment, the court having no implied jurisdiction to direct the use of force in order to effect treatment;

R v Carlstrom [1977] VicRp 44; (1977) VR 366, disapproved by Brennan J.

(d) there is a reasonable prospect that the treatment will reduce or eliminate the abnormality, provided the period of imprisonment does not exceed the maximum that might be fixed in accordance with the other principles of sentencing.

(vi) A trial judge should not speculate as to an accused's mental condition and the possible results of treatment.

(vii) Per Brennan J (Deane J dissenting): There was insufficient evidence before the trial judge to justify consideration of treatment in fixing sentence.

(viii) Per Deane and Toohey JJ: There was no evidence before the Judge that the appellant's psychiatric problem would benefit from a substantial period of imprisonment during which he could receive treatment.