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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 IN FIXING SENTENCE – WHETHER FACTOR IN SENTENCE – CRITERIA.

The appellant 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:
1. 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 appellant.

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

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

4. 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.

5. 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;
(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 the treatment, the court having the implied jurisdiction to direct the use of force in order to effect treatment;
(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.

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

Cases referred to:
***R v Cuthbert* (1967) 86 WN (Pt 1) 272;**
***Veen v R* [1979] HCA 7; (1979) 143 CLR 458; 23 ALR 281; (1979) 53 ALJR 305;**
***R v Gascoigne* (1964) Qld R 539 (disapproved by Brennan and Toohey JJ)**
***R v Carlstrom* [1977] VicRp 44; (1977) VR 366 (disapproved by Brennan J).**

BRENNAN J: ... The narrative of relevant events commences with the arrival of the appellant on Friday 22nd April 1977, at a construction camp site about 160 km south of Tennant Creek, where a firm Steelcon Constructions was engaged in building a bridge. The appellant was allocated a demountable hut in which to sleep. He shared this hut with a Paddy Ward and Noel Corp. The hut was on the western side of the highway, a short distance away from a store owned by a Steve Kovacs. Kovacs owned the hut and another adjoining hut, but he allowed them to be used by Steelcom. The principal Steelcom camp was across the road on the eastern side of the highway. The men worked on Sunday 24 April and they took a holiday on the following day, being Anzac

Day. Several of them, including the appellant, went to a hotel some distance north along the road. The appellant had a fair amount to drink and subsequently he described himself as being "reasonably drunk". He had a verbal argument at the hotel.

After the participants returned to the Steelcom camp, the argument intensified and the appellant hit Mick Tynan, one of the participants, severely enough to require him to be taken for attention by the nursing sister at Warrabri, a settlement south of the camp. Paddy Ward broke up the argument and the appellant gave him some blows for his troubles. There is no evidence that anybody struck the appellant but the next day he had skin off his nose and a black eye. After the argument broke up, the appellant left the company of his workmates and about 15 minutes later the hut on the other side of the road, which was occupied by the appellant, Ward and Corp, was set on fire. Petrol or some other volatile substance such as power kerosene was fetched from some distance away and used to start the fire. The appellant's hut and the adjoining hut were both destroyed. The huts were valued at $600, and personal effects, valued at $870 belonging to the occupants (other than the appellant) were destroyed. Most of the appellant's belongings were removed by him before the fire started, or at all events before the fire destroyed them. There was evidence from which the jury and the learned trial judge were entitled to infer that the appellant lit the fire in anger at some real or fancied injury. But that was not the appellant's case at the trial. There the argument presented on his behalf was that the crime was motiveless. The learned trial judge in the course of his summing up found it necessary to say to the jury:

> "It is perfectly true that no motive is proved. There is not motive even suggested as to why he might want to do this, except for the suggestion in the evidence that it was a kind of mindless drunken thing that he did. All that is perfectly true"...

After conviction, his Honour heard the evidence of Captain Hills, of the Salvation Army, who had known the appellant as a resident of the Salvation Army hostel in Darwin. Captain Hills said "On about five occasions since he has been with us he has gone off for three, four or five days at a time on wander about, and he then comes back, usually completely exhausted and unable to say where he has been. We have had to feed him up, put him to bed and bring him up to strength. He does not eat at those times. Several times it has involved hitch-hiking long distances into town." ...
