SUPREME COURT OF QUEENSLAND

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| CITATION: | R v Finn [2023] QSC 10 |
| PARTIES: | R(Crown)vCHRISTOPHER JAMES FINN(Defendant) |
| FILE NO/S: | Indictment No 1263 of 2022, *ex officio* indictment presented 2 February 2023, Bench Charge Sheet No 46 of 2023 |
| DIVISION: | Trial Division |
| PROCEEDING: | Criminal |
| ORIGINATING COURT: | Supreme Court of Queensland |
| DELIVERED ON: | 10 February 2023 (orders and directions made on 2 February 2023) |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 2 February 2023 |
| JUDGE: | Applegarth J |
| ORDER: | 1. Copies of all exhibits are to be provided to Queensland Corrective Services. Particular attention to be urgently given by Queensland Corrective Services to the psychologist report of Louise Smith dated 1 February 2023 as to the Defendant’s mental condition, his current circumstances and difficulties encountered with him receiving essential psychological treatment from his psychologist whilst in custody at Woodford Correctional Centre.
2. Queensland Corrective Services are to advise ODPP and the Defendant’s solicitors as to the anticipated security classification, transition from Woodford Correctional Centre and proposed course of mental health and other treatment that the Defendant is expected to receive in the 12 months following sentencing.
3. Pursuant to s 344 *Corrective Services Act* 2006, Queensland Corrective Services are to prepare a pre-sentence report which should include the matters outlined above. The report is to be provided to the ODPP, the Defendant’s solicitors and the Supreme Court Criminal List Manager, within the soonest reasonable time.
4. Sentence is adjourned to a date to be fixed.
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| CATCHWORDS: | CRIMINAL LAW – SENTENCE – HARDSHIP – where a distinguished war veteran developed PTSD and other mental illnesses after three tours of duty in Afghanistan – where those conditions and inadequate treatment of them resulted in sleep deprivation and had other serious consequences ­– where the veteran resorted to illicit drugs as a form of self-medication – where he currently is in a maximum security prison with inadequate access to the specialised PTSD treatment that he needs – where his current inability to access specialised treatment will exacerbate his war-caused mental health conditions, jeopardise his rehabilitation, and elevate his risk of suicide, either in custody or upon his release – where his treating psychologist and the Court are concerned about his safety, welfare and his prospects of rehabilitation if the status quo continues for the lengthy period in custody that lies ahead of him ­– the relevance of the defendant’s mental illness to the harshness of his current and future time in custody – where the Court needs more information about how harsh the anticipated circumstances of his future custody will be in order to arrive at a sentence that is a just punishment for the defendant’s crimes, given his personal circumstances *Corrective Services Act* 2006 (Qld), s 209, s 211*Human Rights Act 2019* (Qld), s 30, s 37*Attorney General v Tichy* (1982) 30 SASR 84, cited*R v Bowley* [[2016] QCA 254](https://archive.sclqld.org.au/qjudgment/2016/QCA16-254.pdf); (2016) A Crim R 93, cited*R v Braeckmans* [[2022] QCA 25](https://archive.sclqld.org.au/qjudgment/2022/QCA22-025.pdf), cited*R v Hartas* [[2021] QCA 178](https://archive.sclqld.org.au/qjudgment/2021/QCA21-178.pdf), cited*R v Hawke* [[2021] QCA 179](https://archive.sclqld.org.au/qjudgment/2021/QCA21-179.pdf), cited*R v Johnson* [[2007] QCA 433](https://archive.sclqld.org.au/qjudgment/2007/QCA07-433.pdf), cited*R v Nicholson* [[2016] QCA 315](https://archive.sclqld.org.au/qjudgment/2016/QCA16-315.pdf), cited*R v Verdins* (2007) 16 VR 269; [2007] VSCA 102, cited |
| COUNSEL: | C Cook for the CrownA S McDougall for the Defendant  |
| SOLICITORS: | Office of the Director of Public Prosecutions (Qld) for the CrownOwens and Associates for the Defendant |

1. Mr Finn served this nation and also the people of Afghanistan with great bravery and distinction. He is now aged 35.
2. As an elite soldier, he displayed courage under heavy enemy contact in Afghanistan. After serving in East Timor in 2006, he completed three tours of duty in Afghanistan in 2008, 2011 and 2013 for six-and-a-half months at a time. He saw death, destruction and human suffering over that lengthy period of service.
3. He witnessed these things both as second-in-command of an elite team of soldiers and as the Team Medic. Mr Finn’s experiences included seeing his hero and commander, Cameron Baird VC, shot dead in front of him, as the commander pushed past him to enter a building. Mr Finn had to assume command and retreat to safety with his commander’s body. Mr Finn wrongly feels responsible and thinks that it should have been him who died. This is described by his psychologist as Survivor Guilt over the incident.
4. Another incident that contributed to Survivor Guilt was when a fellow soldier and friend, walking three metres behind Mr Finn, was blown to pieces when he stood on a concealed bomb. When Mr Finn returned to Australia, bone fragments of his friend had to be surgically removed from Mr Finn’s neck.
5. These are only two incidents among many in which Mr Finn witnessed fellow commandos and civilians suffer horrendous injuries and violent deaths. Later I describe how as Team Medic, Mr Finn attended about 100 deaths, and how this experience exposed him more than other soldiers to Post Traumatic Stress Disorder.
6. Because of his war experiences and Complex PTSD, Mr Finn struggled after leaving the army. His marriage broke down and he was divorced in 2016. He felt unsafe in the community and experienced a range of disturbing symptoms. He did not receive all the help he needed to treat what his psychiatrist later diagnosed as severe Complex PTSD, Depression and Anxiety. Instead, Mr Finn self-medicated with drugs.
7. Like many other chronic drug users, he sold drugs to support his addiction.
8. He has taken responsibility for his criminal actions by pleading guilty to drug trafficking, other drug offences and possession of a revolver in a public place. On any view, he faces a head sentence of many years’ imprisonment.
9. For more than 5 months, Mr Finn has been imprisoned, serving a sentence imposed by the District Court in late 2021. After he was arrested on 28 August 2022, his parole was cancelled. The fulltime release date of that sentence is 20 July 2024. During his imprisonment, he had to sleep on a thin mattress on the floor of a one-person cell, with his head abutted to the toilet, for a number of months. Presently, he is in Woodford, which is a maximum-security prison. It is populated by many hardened criminals and members of gangs.
10. Mr Finn needs urgent access to the kind of specialised treatment that is required for someone with his complex and severe PTSD. Yet he is not receiving it. In Queensland, there is no dedicated support for veterans while in prison.
11. Mr Finn’s treating psychologist is greatly concerned about his wellbeing and safety. Normally, she does not continue with clients who go to jail, nor does she do weekly appointments. However, she was so concerned about Mr Finn’s severe PTSD and suicidal ideation, that she made an exception and decided to continue his treatment while he is in custody. However, currently she is unable to access confidential video conferencing, and it is not practical for her to attend Woodford for a face-to-face visit because it is a four hour round trip by car. Her report identifies areas of urgent concern about Mr Finn’s access to medication and mental health care, including confidential psychology appointments.
12. The evidence before me on 2 February 2023 indicates that a continuation of Mr Finn’s present custodial arrangements and his effective denial of EMDR therapy from his psychologist will exacerbate his war-caused mental health conditions, jeopardise his rehabilitation, and elevate his risk of suicide, either in custody or upon his release.
13. I declined to sentence Mr Finn on 2 February 2023 because I was left completely uncertain and concerned about the prospect that he will remain in Woodford for the foreseeable future, and be denied access to the specialised health services that he desperately needs.

The issue

1. What is to be done by Queensland Corrective Services to facilitate his specialised treatment and rehabilitation?
2. Is the status quo in terms of his place of incarceration, his circumstances there, and the denial of essential therapy for his war-caused mental illness the best that a grateful nation and the State of Queensland can do for this courageous veteran?
3. Mr Finn, those who care for him (including comrades and others who attest to his character), the community and the Court should not be left to guess whether the long time in custody that lies ahead of Mr Finn will be as debilitating and dangerous as his recent months in custody have been.
4. I am not prepared to guess or assume that he will get ready access to the specialised treatment that he desperately needs, but which is presently denied to him in Woodford. I will not assume that he will be moved soon from Woodford and reclassified so he can get better access to treatment, and resume the rehabilitation to which he is committed.
5. This Court needs to know, with some degree of certainty, how harsh the long period in custody that lies ahead of Mr Finn is likely to be. Only then can a just sentence, with a suitable parole eligibility date, be fixed.
6. That parole eligibility date must be at least 12 months from the date of sentence because that is the mandatory minimum period of actual custody that must be imposed for the weapons offence. How harsh and dangerous that period will be will enable me to arrive at a sentence that is a just punishment for his crimes in his circumstances.
7. For these reasons and for reasons to be developed, I declined to sentence Mr Finn on the day he pleaded guilty. Apart from anything else, I wished to give the Department of Corrective Services, and those with direct responsibility for managing Mr Finn in custody, the opportunity to respond to the concerns expressed in Ms Smith’s psychological report dated 1 February 2023, and to inform the Court about the proposed management of Mr Finn’s incarceration and his treatment in custody.
8. I directed that the exhibits, including Ms Smith’s report, be provided to the Department of Corrective Services, and that the Department provide as soon as reasonably possible a report. I indicated that the report should be provided as soon as reasonably possible because of concerns about Mr Finn’s mental health and what the current state of his incarceration, without adequate treatment, may do to him.
9. I should not need to remind the Department of Corrective Services of its obligations under the *Human Rights Act* 2019 (Qld) to treat Mr Finn with humanity (s 30) and of his right to access health services without discrimination (s 37). Had the *Human Rights Act* not been enacted, then the moral or social duty that is owed to a veteran whose imprisonment is the direct result of his distinguished war service would impose similar kinds of obligations.

Mr Finn’s background

1. Mr Finn was born in 1987. He grew up in New South Wales before joining the Army. When he was 13, his mother separated from his father, who is reported to have been an alcoholic and violent towards Mr Finn’s mother. It was only when Mr Finn started receiving EMDR therapy from Ms Smith, a psychologist, that he began to address the childhood abuse and trauma that he had experienced. EMDR therapy is an integrative psychotherapy approach that has been extensively researched and proven effective for the treatment of trauma, especially Complex PTSD. As noted, Mr Finn presently does not have access to it. Ms Smith observes that veterans often find military service controls the effects of childhood trauma but this is not lasting.
2. Mr Finn began a relationship with his ex-wife from a young age. The relationship lasted until they separated in 2015. They were divorced in 2016. The breakdown in their marriage was due to his struggle with the embarrassment of waking up screaming at night, crying, and struggling with his mental health. He received a property settlement which he used for living expenses.
3. Mr Finn has two older brothers with whom he is not close. Mr Finn’s mother has recently relocated from Wagga Wagga to Port Stephens. She is unable to see her son face-to-face regularly for any length of time. She speaks to him and uses video calls as often as she can. She is doing everything possible to help her son during his incarceration. Despite his crimes, she is extremely proud of her son’s service of his country. She remarks that this decorated commando veteran returned with severe PTSD.
4. Ms Smith records that Mr Finn’s treating psychiatrist, Dr Barison, suggested that Mr Finn attend Mirikai for a comprehensive residential rehabilitation treatment, and that Mr Finn entered there in February 2022. This program appeared to assist Mr Finn. However, it was not enough to resolve his problems. He tried to adhere to his therapy program.
5. Later, he attended the Military Service Trauma Recovery Program, which is a niche six-week program at a private hospital. He received Prolonged Exposure Therapy (PET) that is designed to improve mood and reduce symptoms. However, it appears that this program exacerbated rather than minimised Mr Finn’s PTSD symptoms. Apparently, he was required to record his recollections of a traumatic incident from his overseas deployment and was told to listen to it before he went to sleep every night. This triggered his PTSD. He asked to cease PET but was encouraged each time to continue it.
6. According to his mother, Mr Finn’s symptoms increased in July 2022, immediately after he attended the therapy program that used PET. She says that the daily reliving of traumatic events from his service experience badly triggered his PTSD. It reached the point where he felt so unsafe that he felt he had to protect himself the best way he knew how to, namely by carrying a weapon.
7. After going into custody on 28 August 2022, Mr Finn encountered difficulties in accessing medication, in having his medication adjusted and in seeing a GP in Woodford. Ms Smith’s 1 February 2023 report alleges mishandling of requests to access a GP. She says it took over three and a half months for him to see a GP but then the GP simply directed him to request to see a psychiatrist. Mr Smith contends that Mr Finn has not been given his access to rights as a veteran and that she has communicated with prison authorities numerous times about this and about his physical and mental health and his medication.

Mr Finn’s character

1. The evidence demonstrates Mr Finn’s underlying good character and achievements before the onset of Complex PTSD, drug use and crime. I will return to his distinguished military service. The present issue is his character and motivation towards rehabilitating himself and helping others.
2. Ms Smith and others who know Mr Finn attest to his determination to recover from his severe Complex PTSD, Depression, Anxiety and other conditions. Apart from being determined to rehabilitate himself, Mr Finn has expressed a desire to use his experience to support other veterans with substance use and mental health challenges. He has considered future possible career options and has decided to study counselling through TAFE with a view to obtaining a Diploma of Counselling.
3. One of his army comrades who has known Mr Finn for almost 18 years describes him as a “loyal, caring man with an enthusiasm for life whilst also being a well-respected, professional soldier at every unit he served in”. Another war veteran who has known Mr Finn for 20 years and has served with him in special operations describes Mr Finn as embodying “the ethos and values of the Australian Army by setting an example of discipline, professionalism, and mateship to those around him.” This veteran eloquently describes the singular challenge facing veterans returning to the civilian world. He observes that “the true sacrifice of service is only realised by veterans when they return to the community with no point of reference.” This veteran had personal experience of those mental health challenges. After years of struggle and hospitalisation, he reconnected with the community, and now supports others who are experiencing similar challenges. Mr Finn has shared with this man his desire to use his experiences to support other veterans. He believes that Mr Finn can turn his life around and again be an upstanding member of the community. He expresses a view, shared by many, that further time spent in incarceration will only serve to “flatten the trajectory of his life and recovery”. He concludes:

“Chris is an exceptional and courageous individual whom excelled at an elite level whilst in the military. I know Chris has retained that drive and desire to excel in civilian life.”

1. Another referee, who does not have a military background, came to meet Mr Finn socially about five years ago. This was at a particularly low point for this person, who confided in Mr Finn about an abusive relationship. Mr Finn helped this individual to leave the relationship. That individual describes Mr Finn as having “an incredibly oversized heart and very broad shoulders”. This referee says that like Mr Finn’s mother, Mr Finn has “the ability to embrace and nurture others more vulnerable”. The letter states that Mr Finn is not a bad person but is a person who made bad decisions and embarked on a self-destructive journey. The writer also states:

“It is not my intention to mitigate the severity of Chris’s behaviour, but I know that he is a man who on the inside is screaming for help. He has so much to contribute to this world …”

1. Ms Smith began her therapeutic relationship with Mr Finn in September 2019. Based on their interactions, she describes him as consistently polite, honest and non-aggressive. She describes him as an intelligent, creative person who thinks laterally. When he commits to a task, he has high motivation and uninterrupted focus. He has well-developed social and emotional skills, is tolerant and extremely loyal.

Mr Finn’s military service

1. I have briefly summarised Mr Finn’s outstanding military service. He was in the ADF for twelve years between 2004 and 2016. His ADF Service Record is an exhibit. It records the numerous skills and competencies he acquired. As noted, he did three deployments of six-and-a-half months each of continuous service in Afghanistan. He did not take the usual three month break after those deployments and Ms Smith opines that the deployments without the recognised three months break contributed directly to his Complex PTSD. Mr Finn’s field record includes seven Excellent and three Very Good ratings. He consistently performed his duties in combat and on the base to an excellent standard.
2. In his deployment to Afghanistan, Mr Finn was the Team Medic. Ms Smith reports:

Military combat medics are at higher risk of burnout, compassion fatigue, combat stress, and Medic PTSD compared to other military personnel. He has treated almost every possible type of traumatic injury including gunshot wounds, traumatic amputations, blast injuries burns and many more. He also attended approximately 100 deaths of civilians, Afghan Partner Force and Friendly Forces. This also included some mass casualties with more than 10 people.

As Team Medic, Chris was more exposed than other soldiers to seriously wounded or dead fellow servicemembers often with the added pressure of being close to the soldiers he was trying to keep alive. When wounded soldiers and civilians die in combat, many medics suffer intense moral anguish as they have been unable to fulfill their professional purpose and this violates their sense of self. This Moral Injury is separate to PTSD. On numerous occasions, Chris was required to assume duties of Team 2IC 2nd in Command. He did this without prompting to the highest standard

A troubled transition to civilian life

1. Ms Smith’s report confirms what is stated by the men with whom Mr Finn served, what is said in some popular songs, and what a federal Royal Commission is currently investigating: the difficulties of ADF personnel transitioning to civilian life. When they leave the army, soldiers no longer have the scaffold of army life around them. In Mr Finn’s case, after being part of an elite team where trusting each other was imperative to survival, he found it difficult to know who to trust. This is said by Ms Smith to be especially true if a veteran has a family or personal history of childhood abuse.
2. Unfortunately, Mr Finn did not engage in any DVA transition program. Three days after leaving the armed forces, he flew to New York to join his then wife who had a job there. He did not access any of his DVA entitlements until his marriage broke up and he returned home to Australia five years later.
3. PTSD does not resolve on its own. Mr Finn had severely disrupted sleep with repeated disturbing dreams of distressful and horrific military service. He had great difficulty preventing flashbacks, memories and hyper-vigilance. He also sustained various physical injuries due to his service.
4. After his marriage broke up as a direct result of his PTSD, he continued to struggle with his mental health issues. In 2018, he formed a relationship with a woman who he met in New York and later became engaged to. In 2019, they moved to Australia but, with the onset of the COVID-19 pandemic, she returned to the US while she still could and their relationship ended.
5. Mr Finn had to wait for more than 18 months for his Veterans Affairs’ pension to be granted and during this time was not well enough to work.
6. Mr Finn trialled different medications, largely without success, and often experienced side effects causing him stress and sleep disruption.
7. His continued lack of sleep and unsuccessful medication trials led him to start taking cocaine, then methylamphetamine, to overcome his sleep deprivation and to medicate his mental health conditions.
8. Therefore, there is a direct causal link between his Complex PTSD and other mental health issues and his offending.

Mr Finn’s criminal history and criminal conduct

1. On 9 August 2020, Mr Finn and a co-offender broke into the home of someone who was known to his co-offender. Each was armed with a knife. Mr Finn had a metal knuckle duster. There was no physical assault. Instead, the co-offender took items of property that he said belonged to him. On 29 October 2021, Mr Finn was sentenced in the District Court at Brisbane to two years and nine months imprisonment. However, the contribution of his war-caused PTSD, his lack of criminal history and his genuine attempts to rehabilitate himself resulted in his being granted immediate release on parole. Pre-sentence custody was not declared.
2. On 14 January 2022, Mr Finn was dealt with in the Wynnum Magistrates Court for drug possession offences committed on 11 August 2020. He was sentenced to imprisonment for three months to be suspended for 12 months. The convictions for the offences with which he is to be sentenced by me breached that suspended sentence and there were no submissions made as to why that suspended sentence should not be wholly activated.
3. On 26 June 2021, Mr Finn was arrested at 1.45am after he consented to a search of his vehicle and himself. Police found him in possession of two grams of substance that contained 1.59 grams of pure methylamphetamine along with other substances and drug paraphernalia. These are five of the many summary offences that are before me and which I will not detail.
4. As was later revealed, on 25 June 2021, and while still on bail for the home invasion, Mr Finn offered to supply 5.25 grams of methylamphetamine for $1,300 (Count One).
5. Telephone intercepts and searches of seized mobile phones, drugs, cash and other property laid the foundation for the trafficking charge (Count Two). Mr Finn trafficked in methylamphetamine and GHB between 22 July 2021 and 7 September 2021 (a seven week period).
6. During this period and on 29 July 2021, a search by police located methylamphetamine (22 grams gross and a little under 11 grams pure) along with 5 MDMA tablets, a small quantity of GHB, drug paraphernalia and $2,600 in cash. They also found a set of knuckledusters. These are reflected in Counts Three and Four on the Indictment and various summary charges.
7. Despite this police intervention, Mr Finn continued to engage in communications about purchasing methylamphetamine.
8. On 4 September 2021, Mr Finn was located by police in a car in Fortitude Valley. He had knuckledusters, a replica handgun, 1.3 grams of methylamphetamine and $5,500 in cash.
9. On 7 September 2021, police again attended his apartment. They located a tick sheet that indicated drug debts of $36,095 and 14 customers. He was also in possession of the dangerous drug buprenorphine (Count Five). This marks the end of the trafficking period.
10. Mr Finn was remanded in custody after his arrest on 7 September 2021 until he was granted bail on 26 October 2021. The affidavit in support of his bail indicated that his imprisonment had been a salutary lesson and that he intended to comply fully with any bail order.
11. In February 2022, Mr Finn went into residential rehabilitation at the Mirikai Rehabilitation Centre on the Gold Coast for three months. However, he absented himself from that facility on a couple of occasions, resulting in summary charges for breach of the bail order which imposed residential and curfew conditions. He breached those conditions in April 2022.
12. On 6 May 2022, whilst absent from the rehabilitation centre, Mr Finn was found at a hotel on Mary Street with his then-girlfriend. Police located almost 8 grams of substance containing 6 grams of pure methylamphetamine along with small quantities of cannabis (one gram) and drug paraphernalia. They also found $5,900 in a safe. Mr Finn was arrested for these offences on 9 June 2022 and granted bail the next day.
13. Mr Finn’s summary offences include failure to report and forgery and uttering in relation to a medical certificate with a forged date. The false date was used to explain why he had been unable to report to the police station.
14. On 28 August 2022, Mr Finn’s car was pulled over by police at Milton for a licence check. They conducted a search and during a pat down found an operational revolver in the waistband of his pants. It was loaded with 6 rounds and is the subject of the ex officio indictment. A few days earlier, he had stolen almost $70 of petrol from a Caltex station and was found in possession of items that had been stolen from a store. He was remanded in custody on 28 August 2022 and his parole was suspended on 29 August 2022.
15. The almost six months period since 28 August 2022 should not be declared as time already served under the sentences that I will impose because, for this period, he has been serving his District Court sentence.[[1]](#footnote-1) The 50 days spent in custody between 7 September 2021 and 26 October 2021, after which he was released on bail, should be declared as time already served.

Drug use prompted by serious mental illness

1. Veterans with serious mental health conditions should not be unfairly advantaged over other defendants who suffer similar debilitating mental health conditions through no fault of their own.
2. The daily procession of defendants being sentenced for drug offences in the Supreme Court includes a high proportion whose drug use was related to a serious mental health condition that was not of their own making. Typically, chronic depression or other serious mental health conditions cause these individuals to self-medicate with drugs like methylamphetamine. Methylamphetamine use only makes their mental health worse. Some of these offenders are drug-free or well down the road to rehabilitation when they come to be sentenced. They do not need a very long non-parole period in actual custody to break their drug addiction or to get help in the community to do so.[[2]](#footnote-2) Others need to go into custody for a substantial time in the hope that lack of easy access to drugs while in custody will end their drug use and that a drug-free existence can be a platform for rehabilitation programs in custody and upon their release on parole.
3. The daily procession of cases through this Court reveal personal circumstances that invoke sympathy. That sympathy has to be balanced, however, against the recognition that even mentally-damaged drug users deserve to be punished, denounced and deterred from committing further offences. These purposes generally are served by substantial terms of imprisonment, with a parole release date fixed (if the imprisonment is three years or less) or the possibility of being released on parole after they become eligible to apply for it. Street-level drug users who deal in Schedule 1 drugs for even a period of weeks, as Mr Finn did, normally can expect a sentence of at least four years’ imprisonment. During my 14 years as a Judge, the typical sentence for this kind of street-level trafficking has drifted from three to four years to four to five years.
4. Increasing sentences in the interest of general deterrence is based, in part, on the questionable theory that drug users who sell drugs to support their addiction think about the period of imprisonment to which they will be sentenced if convicted. This assumes that they make some calculation about the length of sentence they may receive, would not be deterred by a three to four year sentence, but will be deterred by a sentence of four to five years. In my respectful opinion, the theory of general deterrence gains little traction in the drug-addled minds of the mentally ill who self-medicate with dangerous drugs and who stupidly choose to risk detection and lengthy imprisonment. Many of these mentally ill offenders are in day-to-day survival mode and are incapable of calibrating the length of imprisonment they will receive for their criminal conduct. Personal and general deterrence depend more on their assessment of the risk of detection, conviction and imprisonment than a prediction or guess whether the sentence will be three, four or five years. About a century of social science in the field of criminology supports these observations.
5. A number of decisions of the Court of Appeal refer to the common pattern of sentences of between three and five years for offenders who traffic in Schedule 1 drugs like methylamphetamine in relatively small quantities for a short period of time to support their own addiction, who do not accumulate any wealth as a result of selling drugs, and who often end up with large drug debts at the end of their trafficking period.
6. The decade-long drift from sentences that once clustered in the three to four year range to sentences that cluster in the four to five year range has not been shown, as far as I can tell, to have resulted in a diminution in drug use by reason of general deterrence. Imprisonment for longer periods, on average, may reduce drug offending to some limited extent by taking the relatively small number of drug users who are in prison, compared to the large numbers of drug users who are in the community, out of circulation.
7. One consequence of steadily increasing sentences for street-level drug dealing is its contribution to prison overcrowding and the perceived necessity to build more prisons. More prisons may seem like a solution to the problems of people like Mr Finn, who are forced to sleep on the floor of a small prison cell that was designed to accommodate one prisoner, and in which the second prisoner’s head ends up close to the toilet. But the grim experience of the United States in recent decades in building more prisons to accommodate more prisoners is a reason for our community to reflect on whether it can imprison its way out of the social blight of drug offending, and, even if it could, what the social and economic cost of doing so would be.
8. A picture is worth a thousand words. Clever people at Columbia University in New York depicted the financial cost of high rates of incarceration in poor communities. These are called “Million Dollar Blocks”.[[3]](#footnote-3) The million dollar figure is the financial cost to the community of imprisoning a number of individuals who used to live on one block. The images prompt viewers to wonder about the potential for social improvement if the money spent on building and operating prisons was spent on rehabilitation of offenders in the community and making communities safer and more resilient.
9. Evidence-based answers to that question appear in the reports of our State’s and our nation’s Productivity Commissions, which have extensively analysed the criminal justice system.[[4]](#footnote-4) The Queensland Productivity Commission concluded that increasing imprisonment reduces community safety over time. One reason is that prisons are not effective at rehabilitation and can increase the risk of reoffending.
10. Prison overcrowding makes it hard for dedicated people within the Corrective Service system to rehabilitate offenders in custody. It exacerbates tensions, increases acts of violence, jeopardises the mental health of inmates, and renders any term of imprisonment harsher by way of punishment. The punishment entailed by imprisonment is supposed to be the denial of liberty during incarceration, not inhumane treatment that jeopardises rehabilitation and increases the risk of reoffending upon an individual’s eventual release. These consequences flow from overcrowding, and reduced access to mental health care, programs and vocational training in custody.
11. Prison overcrowding makes our community less safe. It makes the rehabilitation of the mentally ill within prison harder, and inadequate treatment of mental conditions of individuals in custody overburdens parole authorities upon these individuals’ release.
12. Based on the findings of the Productivity Commission, many informed citizens may think that the money spent on building more prisons might be better spent on constructing secure rehabilitation facilities at which prisoners, released on parole, can be securely and safely accommodated as they gradually transition from the prison environment and at which they can receive rehabilitation services and other support. These, however, are policy or political decisions for the Executive Government to make about the most cost-effective use of public funds to make our community safer.
13. It remains to be seen whether, by the time Mr Finn reaches the last part of his terms of imprisonment, government resources will be spent on building even more prisons or, instead, be spent on secure rehabilitation centres in which offenders released on parole are securely accommodated, rather than drifting through the community in search of accommodation. Locating suitable accommodation for offenders who should be subject to parole is a continuing challenge for the parole authorities and often leads to parole being refused for people who otherwise have earned that privilege. The absence of suitable accommodation in purpose-built rehabilitation centres contributes to prison overcrowding.
14. The result is that Mr Finn and other prisoners with severe mental illness serve their sentences in overcrowded prisons. Due to overcrowding and other systemic issues, Correctional Services struggle to rehabilitate offenders as well as they might. This diminishes the protection of the community.
15. Because of his distinguished war service, the plight of Mr Finn may seem more compelling than the plight of other mentally ill inmates. But it is not categorically different. Equal justice should incline me to treat his circumstances in custody similarly to other inmates with serious mental conditions who must suffer the harshness of imprisonment in overburdened and overcrowded correctional centres.
16. The street-level drug dealers who this Court sentence every day of the working week often have stories about the circumstances that gave them a mental illness, that then prompted them to resort to drugs, then get addicted, and then sell drugs to support their addiction after they lost their jobs, their savings, and their children. On any day of the week, the story may be one of the sexual abuse a person suffered as a child, domestic violence, post-traumatic stress disorder, a loved one being a homicide victim, or of the chronic depression that may overwhelm a woman who experiences multiple miscarriages.
17. Judges say to these individuals that self-medication for chronic depression, PTSD, and other mental conditions, with drugs like methylamphetamine is the worst thing that they could have done to address their mental illness. These observations probably do not need to be made to these individuals, who know all too well about their self-destruction and the damage that they have done to others by their ill-judged resort to drugs as a form of self-medication. The message is mainly directed to the community, rather than individual offenders.
18. Insofar as the message is intended for broader community consumption, I regret that it seems to have done little to educate vulnerable individuals about the dangers of self-medicating with methylamphetamine and that any methylamphetamine use supports evil criminal organisations and corrodes our community. In sentencing for serious drug offences, Supreme Court Judges continue to explain why even vulnerable, mentally ill, street-level drug dealers must be sentenced to lengthy terms of imprisonment. But our sentencing remarks are rarely reported in the media and, even when they are, they must have a limited effect upon the behaviour of individuals who are tempted to self-medicate with drugs. Influencing that behaviour depends more on public education and support for the vulnerable to make better decisions than the theory of general deterrence.
19. Seen against the background of the daily procession of defendants who come to be sentenced in this Court for street-level drug trafficking, Mr Finn’s predicament in custody is not unusual. Among the offenders who are routinely sentenced to four or five years for street-level drug dealing are many mentally ill men and women. Few of them, I dare say none of them, have served their nation with the bravery and dedication that Mr Finn demonstrated during his 12 years of military service. But that difference between his case and theirs should not entitle Mr Finn to much better treatment than someone in the next cell who suffers from the same debilitating illness through no fault on their part, for example, because their illness was the result of being the victim of childhood sexual abuse.
20. Mr Finn’s compelling story does not call for unfairly favourable treatment for him compared to another mentally ill inmate who experiences the same degree of hardship. Instead, it calls for the application of general principles of sentencing to Mr Finn’s individual and rare circumstances.
21. Mr Finn’s individual circumstances also call for urgent consideration by the Department of Corrective Services about the steps that will enable him to gain access to the specialised treatment that Ms Smith and other health professionals are able to provide to him. Allowing Mr Finn to access the individualised, specialised treatment that is on offer to him from Ms Smith and others will enhance his rehabilitation, and free up, to some small extent, prison mental health services and other support services to treat other prisoners with mental illnesses.
22. If Mr Finn does not have access to the specialised treatment that is on offer, but not presently accessible by him, then his rehabilitation will be jeopardised and he will be at greater risk of self-harm and of committing crimes upon his eventual release from custody. Such an outcome would be a disaster for him and for the community that he served as an elite, courageous, and compassionate soldier, and which he wishes to serve again as a counsellor to other veterans upon his release.

The relevance of Mr Finn’s mental illness

1. The presence of a serious psychiatric illness is often a significant matter in the sentencing process. The relevant principles have been adopted by the Court of Appeal in a number of decisions.[[5]](#footnote-5) They are a reformulation of what was said by the Victorian Court of Appeal in *R v Verdins*.[[6]](#footnote-6) They are that impaired mental functioning, whether temporary or permanent, is relevant to sentencing in at least the following six ways:[[7]](#footnote-7)

“1. The condition may reduce the moral culpability of the offending conduct, as distinct from the offenders’ legal responsibility. Where that is so, the condition affects the punishment that is just in all the circumstances; and denunciation is less likely to be a relevant sentencing objective.

2. The condition may have a bearing on the kind of sentence that is imposed and the conditions in which it should be served.

3. Whether general deterrence should be moderated or eliminated as a sentencing consideration depends upon the nature and severity of the symptoms exhibited by the offender, and the effect of the condition on the mental capacity of the offender, whether at the time of the offending or at the date of sentence or both.

4. Whether specific deterrence should be moderated or eliminated as a sentencing consideration likewise depends upon the nature and severity of the symptoms of the condition as exhibited by the offender, and the effect of the condition on the mental capacity of the offender, whether at the time of the offending or at the date of the sentence or both.

5. The existence of the condition at the date of sentencing (or its foreseeable recurrence) may mean that a given sentence will weigh more heavily on the offender than it would on a person in normal health.

6. Where there is a serious risk of imprisonment having a significant adverse effect on the offender’s mental health, this will be a factor tending to mitigate punishment.”

1. Mr Finn’s current mental condition and the expectation that his Complex PTSD will endure for the foreseeable future while he remains in custody, means that any substantial period of imprisonment will mean that the sentence will weigh more heavily on him than it would on a person in normal health.
2. In addition, there is a serious risk of imprisonment having a significant adverse effect on his mental health. The above principles mean that this should mitigate punishment.
3. More generally, the harshness of the conditions in which Mr Finn is currently incarcerated, namely in a maximum security prison that houses violent offenders and gang members, will weigh more heavily on him than imprisonment in a correctional centre with a lower or low security status.
4. Also, and independent of Mr Finn’s mental illness, is the fact that imprisonment of any offender in an overcrowded prison of any security classification imposes a harsher form of punishment than punishment for the same period of imprisonment did some years ago when prisons were not as overcrowded. This should be reflected in some adjustment to the length of sentence that would have been a just sentence some years ago.

Rehabilitation

1. An offender who has embarked upon rehabilitation, who is committed to rehabilitation, and who has prospects of rehabilitation should not have their rehabilitation delayed for longer than is necessary to achieve the other purposes of sentencing, including punishment, denouncement and deterrence. The period during which they are required to remain in custody before being eligible for parole should not be excessive, lest it prove crushing and permanently jeopardise their chances of rehabilitating.
2. Because Mr Finn must spend at least another 12 months in custody before being even eligible to apply for parole, his rehabilitation should not be delayed until his release.
3. He needs the kind of specialised treatment that Ms Smith and others offer, but which is not available, it seems, from services provided by Corrective Services in custody. Mr Finn should have access to that treatment, either through confidential counselling sessions by a suitable video link, or in person, at places in which treating psychologists and other health practitioners can conveniently access him.
4. Even a low security prison presents challenges in this regard, especially one that is in a remote location. This is because video conferences by the systems that Ms Smith describes in pages 9 and 10 of her report make it difficult, if not impossible, to deliver EMDR therapy.

Submissions and structure of the sentence

1. The learned Crown prosecutor submitted that the starting point for the numerous offences is a global sentence in the range of six to six-and-a-half years. However, his submissions acknowledged that the sentence would be reduced having regard to totality considerations if it were to be served cumulatively upon the sentence of two years and nine months that Mr Finn is currently serving. A suggested sentence was one of five years commencing on the expiry of that sentence (20 July 2024), with other lesser concurrent sentences. The Crown submitted that if the most serious offences were viewed in isolation then they would receive the following terms of imprisonment:
* supplying a dangerous drug on 25 June 2021: 6 to 12 months imprisonment;
* trafficking in dangerous drugs: 4 to 5 years imprisonment;
* aggravated possession of methylamphetamine on 6 May 2022: 12 to 18 months imprisonment;
* unlawful possession of Category H weapon in a public place on 28 August 2022: 2 to 2 ½ years imprisonment, with a mandatory minimum period in actual custody of 12 months.
1. Shorter concurrent sentences were submitted for on a number of the remaining summary charges. Another submission is that the suspended sentences imposed by a Magistrate on 14 January 2022 be activated, requiring Mr Finn to serve the balance of three months’ imprisonment. The Crown prosecutor submitted that parole eligibility should be set at 6 February 2025.
2. Mr Finn’s counsel submitted that his genuine attempts at rehabilitation were evidenced by 10 negative urine tests during late 2021 and early 2022 and by undertaking the Mirakai program, and that I should find that Mr Finn has made meaningful efforts at rehabilitation. The following observations of McMurdo P in *R v Nicholson*[[8]](#footnote-8) were cited and I respectfully adopt them:

“The harsh reality of the evils of drug addiction is that an addict, even a highly motivated one, can relapse several times before succeeding in taming the addiction.”

1. Reliance also is placed upon the observation of Keane JA in *R v Johnson[[9]](#footnote-9)* about the significance of drug addiction:

“There is much force in the submission … that the criminality of an addict who sells dangerous drugs at the retail level to support his habit is of a different order from that of a larger retailer or wholesaler whose motivation is ‘cynically commercial’. While one cannot ignore the seriousness of the applicant’s offending and the social harm he has caused, it would be both unrealistic and unduly harsh to refuse to recognise that the applicant too is a victim of dangerous drugs.”

1. Defence counsel submitted that Mr Finn’s trafficking and other drug offending ordinarily would result in a sentence of about four years. The sentence for the weapons offence would be concurrent. Any starting point for a head sentence would take account of the sentence of two years and nine months. Taking into account totality considerations, the period of almost six months that Mr Finn has served since his parole was revoked, and mitigating circumstances that include Mr Finn’s military service, his addiction, and mental health decompensation, and his rehabilitation, defence counsel submitted for a sentence of four years’ imprisonment from the date of sentence, with parole eligibility after serving 12 months.
2. In summary, the Crown contends for sentences that are concurrent with each other and that are accumulated on the 2 year 9 month sentence for the home invasion that runs until 20 July 2024. The defence contends for sentences that commence on the date of sentence and that overlap with the home invasion sentence.

Should the head sentence be concurrent with or accumulated upon the existing sentence?

1. One matter for decision is whether to impose a cumulative sentence that is moderated significantly to take account of the totality principle or to impose sentences that overlap with his current sentence, and, to that extent, give Mr Finn the benefit of partial concurrency with the home invasion sentence.
2. I respectfully adopt the insightful statement of Wells J in *Attorney General v Tichy*.[[10]](#footnote-10) The passage is long but I reproduce it because it provides the context for the parts I have highlighted.

“It is both impracticable and undesirable to attempt to lay down comprehensive principles according to which a sentencing judge may determine, in every case, whether sentences should be ordered to be served concurrently or consecutively. According to an inflexible Draconian logic, all sentences should be consecutive, because every offence, as a separate case of criminal liability, would justify the exaction of a separate penalty. But such a logic could never hold. … what is fitting is that a convicted prisoner should be sentenced, not simply and indiscriminately for every act that can be singled out and brought within the compass of a technically identifiable conviction, but for what, viewing the circumstances broadly and reasonably, can be characterised as his criminal conduct. Sometimes, a single act of criminal conduct will comprise two or more technically identified crimes. Sometimes, two or more technically identified crimes will comprise two or more courses of criminal conduct that, reasonably characterized, are really separate invasions of the community’s right to peace and order, notwithstanding that they are historically interdependent; the courses of criminal conduct may coincide with the technical offences or they may not. Sometimes, the process of characterization rests upon an analysis of fact and degree leading to two possible answers, each of which, in the hands of the trial judge, could be made to work justice. **The practice of imposing either concurrent or consecutive sentences cannot avoid creating anomalies, or apparent anomalies, from time to time. What must be done is to use the various tools of analysis to mould a just sentence for the conduct of which the prisoner has been guilty. Where there are truly two or more incursions into criminal conduct, consecutive sentences will generally be appropriate. Where, whatever the number of technically identifiable offences committed, the prisoner was truly engaged upon one multi-faceted course of criminal conduct, the judge is likely to find concurrent sentences just and convenient.** There are dangers in each course. **Where consecutive sentences are imposed it may be thought that they are kept artificially apart where they should, to some extent, overlap. Where concurrent sentences are imposed, there is the danger that the primary term does not adequately reflect the aggravated nature of each important feature of the criminal conduct under consideration**.” (emphasis added)

1. The home invasion occurred on 9 August 2020. It pre-dated the trafficking period (22 July to 7 September 2021) by about a year. It did not involve drug possession, let alone drug dealing, by Mr Finn. His role was to assist his co-offender to obtain property from the complainant’s home that the co-offender said was his. The co-offender was affected by drugs. Mr Finn may have been as well, although this is not clear. He was using drugs around the time. The circumstances, including Mr Finn’s psychiatric illness, warranted a sentence of two years and nine months imprisonment with immediate release on parole.
2. Although remote in point of time and a different kind of offending to the offences with which Mr Finn stands to be sentenced by me, Mr Finn’s behaviour on 9 August 2020 was clearly associated with his descent into drug use and ongoing PTSD.
3. On one view, Mr Finn’s criminality consists of a course of criminal conduct associated with his addiction to methylamphetamine, which reached its peak during the seven week trafficking period in mid-2021, but which was punctuated by periods of abstinence (evidenced by multiple negative drug tests in late 2021 and early 2022), engagement with rehabilitation and then relapse into drug use.
4. One such relapse was Mr Finn’s possession of methylamphetamine on 6 May 2022 and the summary offences that were committed that month.
5. The weapons offence on 28 August 2022 post-dated the trafficking period by about a year. The weapon was not used to effect a drug deal. It seems to have been kept for personal protection rather than any intended act of aggression. The fact that Mr Finn’s PTSD and military service disposed him to carry a weapon because, according to his disturbed thinking, this was the only way that he could feel safe, may explain his possession. It does not lessen the objective seriousness of having a loaded revolver in the community. During the sentencing hearing I explained to Mr Finn that the Court must denounce and punish on behalf of the community unauthorised possession of guns. Gun violence blights many countries and is a great danger in this nation. The fact that he is required to serve at least 12 months of actual custody for this offence signals the seriousness of the offence.
6. The sentence that Mr Finn should receive for this offence should be less than possession by a criminal of a gun for some more sinister purpose. If I was sentencing Mr Finn in isolation for possession of the revolver then, given his circumstances, an appropriate sentence would be one of two years’ imprisonment.
7. The better view, I think, is that Mr Finn engaged in “one multi-faceted course of criminal conduct,”[[11]](#footnote-11) between August 2020 (the date of the home invasion) and August 2022 (when he again went into custody), punctuated by periods of rehabilitation and abstinence from drugs. His criminality is closely associated with his mental illness at the time the offences were committed and the use of drugs to which he resorted by way of self-medication and self-destruction.
8. His offending conduct should result, in my view, in sentences that overlap with his current sentence for the home invasion.
9. The head sentence on Count 2 should reflect the number of crimes that he committed, the seriousness of many of them, the period over which they were committed and the objective seriousness of his offending. Imposing sentences that overlap with his current sentence gives Mr Finn some of the benefits of concurrency, rather than complete concurrency.
10. Account should be taken of the fact that he already has served several months in custody for the home invasion offence, and that this period of custody, which I will not declare as pre-sentence custody, also has been served because of the offending for which I must sentence him and that triggered the suspension of his parole.
11. My present inclination is to sentence Mr Finn to sentences that are concurrent with each other and that run from the date of sentence.
12. The length of the head sentence that is imposed on the trafficking offence should reflect, not only the offences for which he is being sentenced by me, but the offences for which he was sentenced by the District Court. It should take account of his course of criminal conduct, and the sentence which he is still serving. This is to reflect the overlap or partial concurrency of the sentences and to ensure that his total period of imprisonment reflects the totality of his criminality. I take into account that he has served the home invasion sentence partly in the community and partly in custody. I also take account that the sentence of actual imprisonment that I will impose exposes him to automatic and retrospective cancellation of his parole under the *Corrective Services Act* 2006 (Qld) ss 209 and 211. As already noted, I will take into account without declaring it as pre-sentence custody, the period between 28 August 2022 and the date that he is sentenced by me.

The completion of the sentencing process

1. The fixing of an appropriate head sentence and a parole eligibility date depends, for the reasons that I have given, on information that I have requested from the Department of Corrective Services. That information may assist me to make a more informed assessment of the harshness of Mr Finn’s incarceration in the future and to assess the extent to which a given sentence will lay more heavily on him than it would on a person in normal health.
2. It will also place the Court in a more informed position to assess the effect that a lengthy period in custody will have on his prospects of rehabilitation.
3. I propose to sentence Mr Finn as soon as I reasonably can. I will review the matter to ensure that this occurs.
4. Mr Finn and others should appreciate that the Court does not decide in what prison a defendant will be accommodated, the prisoner’s security classification, the treatment that the prisoner will receive in custody, whether the prisoner occupies a cell designed for one with another prisoner, the courses that the prisoner undertakes to advance his rehabilitation or the conditions under which treating doctors and psychologists access prisoners to provide treatment and counselling. These are matters for decision by the Executive Government.
5. The Court, however, should have a better understanding than it currently has about the circumstances under which Mr Finn will be incarcerated during a lengthy sentence. Only then can the Court properly perform its function of imposing a just sentence.
6. A final point about the Court’s limited but important function is associated with the overcrowded correctional system in which Mr Finn must remain in custody with his complex mental health needs and the absence of enough post-prison rehabilitation facilities into which he and others like him might transition if granted parole. The Executive Government, not the Courts, decide on priorities and resource allocations in the criminal justice system. It decides whether to build more prisons or more secure rehabilitation centres for mentally ill offenders like Mr Finn, who are motivated to rehabilitate themselves and have the character to do so.
7. The Executive Government, not the Courts, make these decisions, hopefully based on the evidence accumulated by social scientists and bodies like the Queensland Productivity Commission about what works best to rehabilitate individuals like Mr Finn and thereby make our community safer.
1. *R v Braeckmans* [2022] QCA 25 [↑](#footnote-ref-1)
2. *R v Hawke* [2021] QCA 179 [↑](#footnote-ref-2)
3. Center for Spatial Research, ‘Million Dollar Blocks’, **<**https://c4sr.columbia.edu/projects/million-dollar-blocks>**;** Professor Steven Pinker in ‘Design and Violence’ by Paola Antonelli and Jamer Hunt (2015, The Museum of Modern Art, New York) <https://www.moma.org/interactives/exhibitions/2013/designandviolence/million-dollar-blocks-by-the-spatial-information-design-lab/>. [↑](#footnote-ref-3)
4. Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, August 2019); Australian Government Productivity Commission, ‘Australia’s prison dilemma’, (Research Paper, 2021). [↑](#footnote-ref-4)
5. See for example *R v Bowley* [2016] QCA 254 at [34]; (2016) A Crim R 93. [↑](#footnote-ref-5)
6. (2007) 16 VR 269; [2007] VSCA 102. [↑](#footnote-ref-6)
7. Quoted in *R v Bowley* at [34]; see also *R v Hartas* [2021] QCA 178 at [30]. [↑](#footnote-ref-7)
8. [2016] QCA 315 at [3]. [↑](#footnote-ref-8)
9. [2007] QCA 433 at [17]. [↑](#footnote-ref-9)
10. (1982) 30 SASR 84 and 92-3. [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)