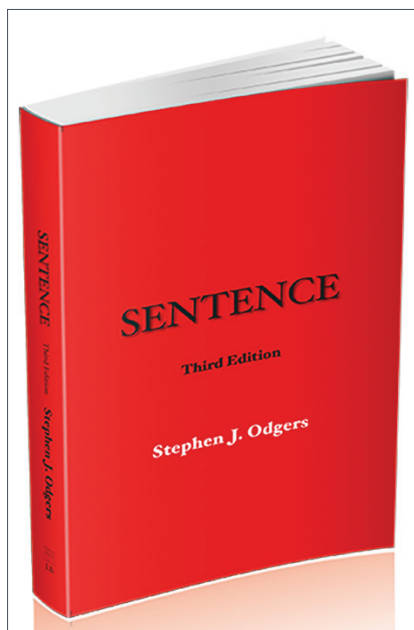


Sentence: The Law of Sentencing in NSW Courts for State and Federal Offences (3rd ed)

By Stephen J Odgers | 2015



importance of this branch of the law. Sentence proceedings and judgments have become progressively more complex and lengthy. Long gone are the days of the pithy sentence pronouncement numbering but a few pages. The systematic online publication of unreported sentence appeal decisions no doubt has had an effect here. Sentencing jurisprudence is a crowded and sometimes confusing space. The High Court also appears to be less disinclined to intervene in sentence appeals, to reorientate the law of sentence upon its proper course. *Hili, Muldrock, Barbaro and Kentwell*³ are recent examples of paradigm shifts in what were hitherto thought to be well-settled areas of sentencing principle.

expressed are usually insightful and lively, occasionally unorthodox.

The second virtue of the text is found in its copious footnotes. The degree of research and referencing to applicable authority is most impressive. This is clearly a book written by a practitioner who methodically analyses and tabulates appellate sentence decisions across the jurisdictions. The book is also written for practitioners. Find the relevant footnote and there is good chance that you will find the applicable case to advance a good argument, or put an end to an untenable one. This is a book that I invariably and extensively consult in the preparation of sentence submissions.

The vast majority of matters adjudicated in the criminal courts in this country result in imposition of a sentence. In the period 2013–14, about 93 per cent of adjudicated matters in the higher criminal courts (including those involving guilty pleas) resulted in the passing of a sentence. The corresponding figure for local courts was about 98 per cent. New South Wales boasted the highest median length of sentences involving actual custody.¹ It may not be surprising to hear that the figure was more than double the duration achieved by the clement Victorians. It may cause some consternation, however, to learn that we bettered our punitive-minded neighbours to the immediate north by a very healthy margin. A recent comparative study of custodial sentences rated our state as ‘one of the harshest jurisdictions in Australia’.²

Arresting statistics indeed. They explain why sentencing law and practice lies at the core of any criminal practice at the bar. But there are other measures of the

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With all this in mind, barristers practising in the criminal law and related areas have need for a lucid and comprehensive text on sentencing law. The latest edition of *Sentence* is such a work.

The book has two notable virtues. The first is the clarity with which principles are extracted and discussed. Each topic commences with a summary of the fundamental, often competing, principles that operate in the area. The analysis assists the practitioner to think beyond the catalogue of relevant circumstances and to engage with the deeper questions of how the circumstances interact with the overarching purposes of the sentencing exercise and inform the ultimate determination. The views

The organisation of the text is logical. The chapter titled ‘Principles’ provides an exegesis of twenty general principles that inform the sentencing discretion (for example, ‘factors relevant to the determination of sentence must be taken into account in an instinctive synthesis’, ‘there must be reasonable consistency in sentences’, ‘there must not be double punishment’, etc). The chapter at the centre of the work, ‘Factors’, provides a commentary on thirty-four issues or circumstances that are likely to require consideration in a sentencing exercise. Examples include: objective seriousness, mental illness, good character, assistance to the authorities, delay and non-curial punishment. There are also dedicated chapters on procedure, sentencing

BOOK REVIEWS

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options, specialist courts, sentence appeals (including Crown appeals) and sentencing reform.

The third edition contains some timely and pertinent additions to its predecessor. It discusses recent High Court decisions including *Filippou v The Queen*⁴, *CMB v Attorney General (NSW)*⁵, *Achurch v The Queen*⁶ and *Barbaro v The Queen*⁷. There are significant updates to the commentary on topics such as minimum sentences, the relevance of intoxication, the *Ellis* discount, delay, double punishment for individuals and companies and parity in sentencing. Recent changes in Commonwealth law and practice have also been addressed, including the use of victim impact statements and proposed legislative amendments concerning assistance to authorities and intensive correction orders in federal matters.

My one criticism of the work concerns its inadequate cross-referencing and indexing. The table of contents does not descend to the detail of particular topics. The list of specific topics is tucked away in the introductory chapter. Use of the index generally requires working out the relevant chapter heading first (although the two-stage sentencing process is widely regarded as erroneous, the author requires his reader to engage in two-stage searching). Importantly, there is only a table of references to High Court decisions, which makes searching for intermediate appellate court decisions an arduous task. While these deficiencies may have something to do with the perils of self-publication, they can frustrate swift deployment of the very useful information contained in the book in the heat of litigation. The digital version of the book overcomes some of these problems.

A final sentence: this is an important and valuable text for any barrister practising in the criminal law and related areas.

Reviewed by Simon Buchen

Endnotes

1. Australian Bureau of Statistics, Criminal Courts, Australia, 2013–14 (15 March 2015).
2. G. Brignell & H. Donnelly, Sentencing in NSW: A cross-jurisdictional comparison of full-time imprisonment (Judicial Commission of NSW, Research Monograph 39, March 2015).
3. *Hili v The Queen* (2010) 242 CLR 520; *Muldrock v The Queen* (2011) 244 CLR 120; *Barbaro v The Queen* (2014) 253 CLR 58; *Kentwell v The Queen* (2014) 252 CLR 601.
4. [2015] HCA 29; (2015) 89 ALJR 776.
5. [2015] HCA 9; (2015) 89 ALJR 407.
6. [2014] HCA 10; (2014) 253 CLR 141.
7. [2014] HCA 2; (2014) 253 CLR 58.