

11 In regard to Mr Binse's mental state at the time of the matters before the Court, the writer
12 notes that he had been released from prison in September 2011 with no or little transitional
13 preparation and no transitional supports. Mr Binse reported fear generated by: (a) finding
14 Alexandridis living nearby to the home of his former partner and child, and his fear of
15 Alexandridis' known associate Preston; and (b) the attempt on the life of associate Toby
16 Mitchell and the murder of associate Adam Khoury. In the writer's view, despite the effects of
17 methylamphetamine, Mr Binse's fear was grounded in reality and not the product of a
18 psychosis or drug induced mental state. His fear was in the writer's view heightened by the
19 nature and quality of his emotional attachment to his daughter.

20
21 Further, Mr Binse has in the past and present been observed with symptoms consistent with
22 Post Traumatic Stress Disorder and in particular fixated ruminative thought in regards to the
23 2006 assault reputedly involving Alexandridis, Walker and Preston. Fixated ruminative thought
24 on the 2006 assault and perceived threat to self and family also plays a part in Mr Binse
25 reported mental presentation leading up to the events before the Court. However, as noted,
26 Mr Binse's fears were not necessarily divorced from reality and in the writer's view are an
27 integrated chronic and complementary aspect of his overall presentation, which is also
28 complicated by other traumatic events over a lifetime; rather than discrete post traumatic
29 mental state causative of Mr Binse's offence behaviour.

72.

72.

ARMED ROBBERY: Supreme Court Plea Hearing March 2017 Evidence:

ARMED ROBBERY: Fears/Concern. P.T.S.D Key elements. Evidence:

Page (129) line 14- Page (132) line 2.

OFFENDER:

Yeah. So I'm - um, um, so it's not just one incident, you know. There's many different other - many instances, you know, like, um, you know, like, um, **for example that banks incident okay, where you seen the photos and stuff, okay. They're pretty graphic. Not many people would be unstained by this, untouched by this, you know.** Um, I've got - and this is the thing, while we're on that subject, I forgot - there are some documents that I had overlooked and there were some documents that I, um, um, was in the possession of my counsel. They gave to me after the proceedings, um, up, up in the cells, there so I'd like to tender them, um, um, um, as they're needed, okay?

HIS HONOUR: Yes.

OFFENDER:

Please. There's an incident report there of Matty Johnson and actually by chance, by fluke - normally they redact it, a 2B sheet, prison report 2B sheet. Normally any person's names and stuff or identities are always redacted but by some chance, by fluke, I got one that hasn't got that - hasn't been redacted and we can identify who they are, who they're talking about, Matty Johnson and Gavin Preston.

Gavin Preston I bumped into

outside, okay? Not bumped into but you know what I mean, there was issues there, you know. Emmanuel Alexandridis was living right behind the complex I was living with, you know. **These, you know - these - when I see these - you see the reports where I have concerns about going to a compound, okay, after the event, you know, a bit worried about getting stabbed, attacked, this and that, my safety, my concern, okay, by others. When I see these people, you know, or become aware of them or something like that, that triggers, that triggers, um, um, fear, it triggers, um, um, um, I can't explain it, Your Honour, properly, you know. It's disturbing, it's troubling, okay?**

⁷² Pamela Mathews 16th September 2010 report, 14th April 2014 reports.

And, um, um, your safety's in jeopardy, you know. Your mind goes back to certain events and it can't forget that, okay? That's there first and foremost, okay? It's fear and flight and fight, you know, and um, um - you know, it just affects you, your rationale, your thinking, it does. Um, um, you do things you probably wouldn't do or you haven't done for a long time, okay, because you feel your safety and those round you, okay, are compromised and in jeopardy, okay? That's the best I can say it, you know. I've alluded to that in my plea materials from p.300 to 306. I say that, they were my concerns but no-one really paid much attention to that in the past, okay, but that's the facts. I need to say this because just to - it is an example, the witnesses in my cases, over 20 years ago, they're still troubled. It doesn't go away, Your Honour. Seriously, it doesn't go away. It stays with you until the day you die and you say you understand my frustrations and stuff? You don't understand, Your Honour. You may say - you haven't put - you haven't tried to asphyxiate yourself on a number of occasions, you haven't put tourniquets - um, um, um, you haven't gone - you haven't slashed your arms, okay, you haven't, um, um, um, um, um, done all sorts of things, swallowed stuff, you know, um, um, you haven't - actually, the canvas smock, rolled it up tight, so used it as a tourniquet around my neck, blacking out. You know, I mean, thinking it's over, it's gone, I'm out of here, to wake up I don't know how long later, stars, blanking oh, what the fuck, I'm still round. The white light, you know. I see a white light, I think maybe I'm somewhere else. It's not, it's the white light, still I'm in the cell, you know what I mean, and I'm still here. The only reason why I'm waking up because when you - when I - when I'm unconscious, I lost my grip, the power in my grip, you know, so losing the strength of the asphyxiation, so I come to. You know, and it's just coming back to this. **My condition through the failure of others to hide, conceal, mislead, the facts, the truth, the extent of things, can only compound things, Your Honour.** **HIS HONOUR:** Pamela Matthews, a psychologist, expressed the view I think in March of this year that - well, she was pessimistic about you going to the distance. In other words, she was troubled about your capacity to self-harm - - ^{33.}

Page (134) line 26- 31.

OFFENDER: This has to come in first. This is supposed to come in first, okay, because I've just referred to it before about Matty Johnson and Gavin Preston. **HIS HONOUR:** All right. **OFFENDER:** So if I could tender this one first, please. There's two here. It's a two-page document, 2B sheet. ^{33.}

Page (134) line 13- 24.

OFFENDER: I just want to support what I say with independent material so I'm not misleading the courts or anything like that. **HIS HONOUR:** No.
OFFENDER: It's shown that what I say I like to try and back up with evidence, you know what I mean. It's not shallow. **HIS HONOUR:**
Yes. **OFFENDER:** Okay? Now, getting - - - **HIS HONOUR:**
HONOUR: I'll just mark these papers you've handed up as exhibits because it's easier to get a little confused if you don't. **#EXHIBIT H - -Two-page**

^{33.} SUPREME COURT OF VICTORIA EVIDENCE 27th MARCH 2017.

^{33.} SUPREME COURT OF VICTORIA EVIDENCE 27th MARCH 2017.

document headed 'Corrections Victoria Sentence Management Unit'.

#EXHIBIT I - Document entitled 'The defence presentation of past PTSD exposure evidence in lieu of 7/10/2016'. That's sufficient to identify it, I think.

OFFENDER: *If I could finish. There's just happened to be by just luck, I suppose, um, um, an article in yesterday's Herald Sun, 'Sunday Herald Sun', March 26 2007, pages 16 and 17, you know, in relation to Matthew Johnson and his disciples, how he sends people out on errands and that are released, he makes the young blokes released from gaol to deal with issues, people that he's got worried about or he doesn't like, I mean, to hunt them, track them down, and in that process police were shot. This is a level of threat. This is the reality of things. These are the circumstances that I was trouble would a number of years ago because I found myself in the same situation but also compounded* - - - ³³.

SUPREME COURT APPEAL Hearing evidence. Miss-carriage of Justice.

Page 5 Line 24-page 6 Line 10: Now, of course I am caught up in this issue of – that was raised by my learned friend, and no doubt would be of concern to the Court, in terms of the specific disavowal of counsel appearing, about the applicability of Verdins case, again that's caught up with grounds four to some degree. But nonetheless, **this is a man that on any view was suffering psychological issues, certainly at the time of offending and certainly at the time of offending. In my submission there's no proper basis for the Court to say- for counsel to have said that the application of some of the principals of Verdins was absent in his case, and whilst it was not sought to demonstrate a connection and the offending, certainly the third and fourth principles of Verdins apply both significantly obviously at the time if it related to the cause of offending.** ⁸⁰.

Page 6 Line 19-28: BEACH JA: **You say he should have also moderated general deterrence?** Yes, I do. Your Honour. I submit that the Court is faced with **an appellant who is one of a very small – thankfully very small – number of troubled and troubling people. To hold up somebody like Mr Binse to the full gaze of general deterrence and try to mete out the full measure of specific deterrence to a person like him with his history is really, in my submission, exceeding that too far.**

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Page 7 Line 4-28: **The imposition of sterner and sterner sentences designed to address specific deterrence** are really falling on, if not deaf ears, falling on – not going directly to why it is that this man has committed the offences that he's committed, both the subject of these charges and his history. **He is a very damaged individual and has to be seen in that light for sentencing purposes, even if it can't be said clearly, but even if it is accepted that there can't be made a link between his psychological conditions and the offending. When his Honour, Justice Whelan, made the point that his Honour Justice Forrest accepted there was a likelihood of a deterioration of mental health, and to moderate the sentence to some degree for that purpose, in my submission that aim or that stated aim of the sentence that' actually imposed cannot in fact be seen to have been the case. In other words, although his Honour correctly understood that part of what he was supposed**

³³. SUPREME COURT OF VICTORIA EVIDENCE 27^H MARCH 2017.

⁸⁰ Supreme Court of Victoria, Court Of Appeal. Christopher Dean Binse S APCR 2014 0121, Before Judges Justice Whelan, Beach and Mc Leish JJA Melbourne. 31 May 2016. Counsel for the Appellant Mr G Hughan. Crown counsel Mr C Boyce SC

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to – of the process of engaging with that sentencing principle, the sentence itself does not reflect such an appropriate weighting for, as I say, a seriously damaged individual whose going to likely deteriorate and whose conditions are likely to be onerous for a very significant period of time for a number of reasons.⁸⁰

Page 7 Line 31-Page 10 Line 23: **WHELAN JA: Sorry, do you say on one view- I'm just speaking for myself- on one view what was disavowed by counsel at the plea was a psychiatric condition affecting the assessment of moral culpability, what we call Verdins**

MR HUGHAN: Yes.

WHELAN JA: Do you say your written submissions confines yourself to three and four and have your oral submissions as well? **So do you accept that this is not a case where moral culpability is relevantly reduced?**

MR HUGHAN:

Your Honour, perhaps the answer to question might depend upon the view the Court takes in respect to ground four.

WHELAN JA: Let's just deal

with one and two discretely and we'll get onto four, but absent any new material on one view- we'll hear what the prosecutor says, **but the interchange at 81 and 82 could read as being about moral culpability.**

MR HUGHAN: Did your Honour say p. 81?

WHELAN JA: Or 82, he's talking about the 2006 assault.

MR HUGHAN: Yes.

WHELAN JA: Which is not with the other material, and does become relevant on the new evidence?

MR HUGHAN: Application.

WHELAN JA: What the panel who were focused on the 2006- did I say 2006 or did I say 2002? 2006?

MR HUGHAN: I think you said that.

WHELAN JA: Anyway 2006 is what I meant to say if I didn't say it- so Pamela Mathews had dealt with that and then the Judge says, "It's not suggesting there's any Verdins' connection or anything like that? Now, connection is usually a concept related to the moral culpability because you normally have to show that there's something about psychiatric condition which has caused or has a connection.

MR HUGHAN: Caused or contributed.

WHELAN JA: With the offending behaviour.

MR HUGHAN: Yes.

WHELAN JA: Then Mr Holt says, "No, no, it's not, your Honour. This evidence about his mental state and history and background and to that category of your Honour's assessment of his overall moral culpability, and I don't seek to put it in a Verdins way. So if you're not really relying on the moral culpability aspect of Verdins, your relying instead on the deterioration in custody which the Judge accepted and the general and specific deterrence which you say he should have accepted, then the disavow doesn't really change anything, because what he was disavowing - - -

MR HUGHAN: Connection.

WHELAN JA: Connection is the moral culpability assessment, I'm not wanting to put words in your mouth, but what do you say about Verdins 1, if I can put it that way? Is his psychiatric condition – does it alter the assessment of his moral culpability?

MR HUGHAN: Your Honour, I do say that that is a possible- that that is a possibility that probably should have been explored more carefully on the plea that ultimately it was and that goes to the heart of the fourth ground, as I've said. On the face of the material at the moment the Court

⁸⁰ Supreme Court of Victoria, Court Of Appeal. Christopher Dean Binse S APCR 2014 0121, Before Judges Justice Whelan, Beach and Mc Leish JJA Melbourne. 31 May 2016. Counsel for the Appellant Mr G Hughan. Crown counsel Mr C Boyce SC

would not be in a position to conclude a causal connection between, say, a recognised impairing of style disorder and the offending. So it does ultimately come down to whether in respect of ground 4 the material adds to that, because it's no doubt that most the psychologists who provided- psychiatrists and psychologists who provided reports spoke of this mans is a very psychologically disturbed individual. I say that from that the Court ought to accept that his background and circumstances are such that his capacity to make rational decisions in that sense is impaired. What's not established in the circumstances of the case with the evidence that's before the Court is that that's by reference to a psychological or psychiatric condition that would attract the – I'm not sure of the word I'm trying to find. It would attract that sort of application of the Verdins 1 Principal, your Honour. So there was a gap in the evidence because each of the experts who either testified or provided reports spoke of post-traumatic stress symptoms, but neither were ultimately able to make a conclusion to that effect. If the material from the medical panel were before the court and before the experts, that may have made a difference to the assessment of moral culpability. That's the best I can, your Honour.⁸⁰.

⁸⁰ Supreme Court of Victoria, Court Of Appeal. Christopher Dean Binse S APCR 2014 0121, Before Judges Justice Whelan, Beach and Mc Leish JJA Melbourne. 31 May 2016. Counsel for the Appellant Mr G Hughan. Crown counsel Mr C Boyce SC