

Dangerous minds

Mental illness and future danger

By Justin Wong

<http://www.streetoncriminallawyers.com.au/justin-wong-writes-in-the-law-society-journal-on-sentencing/>

In a decision that arguably alters the previous approach in treating mental illness and future danger, the NSW Court of Appeal in *R v Windle* [2012] NSWCCA 222 has highlighted the difficulties in balancing the need to protect the community and the recognition that a mentally ill offender may lack control, thus reducing their moral culpability.

For practitioners appearing for clients where there is evidence of mental illness and a future danger to the community, the decision is a reminder that any sentence imposed cannot breach the fundamental sentencing principle of proportionality. A sentence cannot be increased so that it results in preventative detention. Further, in certain circumstances, mental health legislation may be a more appropriate vehicle than the criminal justice system to protect the public from mentally ill offenders.