

Friday, 6 September 2019

Weekly Criminal Law

A Weekly Bulletin listing Decisions
of Superior Courts of Australia covering criminal

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Executive Summary

Udovcic v R (NSWCCA) - criminal law - 'assault occasioning actual bodily harm in company' - 'wounding with intent to cause grievous bodily harm' - appeal against sentence dismissed

Durham v The Queen (VSCA) - criminal law - rape - sexual assault - appeal against sentence dismissed

DPP v Rubio Peters (a Pseudonym) (VSCA) - criminal law - perjury - 'common law privilege against self-incrimination' - erroneous exclusion of evidence of witness - ruling set aside

R v Itshaky (QCA) - criminal law - 'dangerous operation of a motor vehicle causing death while adversely affected by an intoxicating substance' - leave to appeal against sentence refused

Bransby v City of Wanneroo (WASC) - planning and development - offences contrary to *Planning and Development Act 2005* (WA) - appeals dismissed for non-compliance with 'procedural orders' - appeal allowed - dismissal set aside

Summaries With Link (Five Minute Read)

Udovcic v R [2019] NSWCCA 196

Court of Criminal Appeal of New South Wales
Payne JA, Davies J & Hidden AJ

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Criminal law - applicant pleaded guilty to 'assault occasioning actual bodily harm in company' and 'wounding with intent to cause grievous bodily harm' - applicant received aggregate sentence of 10 years in prison with 7 years 6 months non-parole period - applicant sought to appeal against sentence - applicant contended 'indicative sentence' concerning wounding with intent manifestly excessive, and that "less than 5 per cent" discount for guilty pleas inadequate - applicant also appealed on ground concerning complaint as to 'incompetence of counsel' and of solicitor - ss33(1)(a) & 59(2) *Crimes Act 1900* (NSW) - held: appeal dismissed.

[View Decision](#)

Durham v The Queen [2019] VSCA 176

Court of Appeal of Victoria
Emerton JA and Lasry AJA

Criminal law - applicant pleaded guilty to rape and sexual assault - applicant sentenced to 'total effective sentence' of 4 years in prison with 2 year non-parole period - applicant sought to appeal - applicant contended sentences and non-parole period manifestly excessive - whether failure to discount for, or give sufficient weight to 'time spent in the secure facility' - whether sentence 'wholly outside the range' of available options - held: appeal dismissed.

[Durham](#)

DPP v Rubio Peters (a Pseudonym) [2019] VSCA 193

Court of Appeal of Victoria
Priest & Niall JJA; Croucher AJA

Criminal law - perjury - Director of Public Prosecutions sought to appeal against interlocutory decision ('second ruling') in trial of respondent for perjury - by second ruling, judge excluded evidence of witness on basis it tended to incriminate witness - whether s128 *Evidence Act 2008* (Vic) abrogated 'wholly or partly' the 'common law privilege against self-incrimination' - whether witness had waived right to reliance on privilege against self-incrimination - held: second ruling erroneous - ruling set aside.

[DPP v Rubio Peters](#)

R v Itshaky [2019] QCA 168

Court of Appeal of Queensland
Boddice J; Morrison & Philippides JJA

Criminal law - applicant pleaded guilty to 'dangerous operation of a motor vehicle causing death while adversely affected by an intoxicating substance' - applicant sentenced to five years in prison 'suspended after serving 18 months' for five year 'operational period' - applicant sought to appeal against sentence, contending sentence 'manifestly excessive' - applicant contended the 'manifest excess' arose from requirement that applicant serve 18 months in prison before sentence's suspension - offence's circumstances - 'personal circumstances' of applicant - 'comparable authorities' - held: leave to appeal refused.

[R v Itshaky](#)



Bransby v City of Wanneroo [2019] WASC 305

Supreme Court of Western Australia

Le Miere J

Planning and development - appellant convicted of offence contrary to s218(b) *Planning and Development Act 2005* (WA) (Planning and Development Act) and offence contrary to s214(7) Planning and Development Act - appellant appealed against convictions - appellant's wife also appealed against conviction for failure 'to comply with a written direction' - appeals dismissed for appellants' failure to comply with 'procedural orders' - appellant sought to set dismissal of appeal aside, contending he did not receive notice concerning appeals' hearing date or court's communications requiring filing of documents - 'programming orders' - whether 'delay and non-compliance' explained - interests of justice - held: dismissal of appeal set aside.

[Bransby](#)



From: The Hunting of the Snark

By: Lewis Carroll

Fit the Sixth

The Barrister's Dream

They sought it with thimbles, they sought it with care;
They pursued it with forks and hope;
They threatened its life with a railway-share;
They charmed it with smiles and soap.

But the Barrister, weary of proving in vain
That the Beaver's lace-making was wrong,
Fell asleep, and in dreams saw the creature quite plain
That his fancy had dwelt on so long.

He dreamed that he stood in a shadowy Court,
Where the Snark, with a glass in its eye,
Dressed in gown, bands, and wig, was defending a pig
On the charge of deserting its sty.

The Witnesses proved, without error or flaw,
That the sty was deserted when found:
And the Judge kept explaining the state of the law
In a soft under-current of sound.

The indictment had never been clearly expressed,
And it seemed that the Snark had begun,
And had spoken three hours, before any one guessed
What the pig was supposed to have done.

The Jury had each formed a different view
(Long before the indictment was read),
And they all spoke at once, so that none of them knew
One word that the others had said.

"You must know—" said the Judge: but the Snark exclaimed
"Fudge!"

That statute is obsolete quite!
Let me tell you, my friends, the whole question depends
On an ancient manorial right.



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"In the matter of Treason the pig would appear
To have aided, but scarcely abetted:
While the charge of Insolvency fails, it is clear,
If you grant the plea 'never indebted.'

"The fact of Desertion I will not dispute;
But its guilt, as I trust, is removed
(So far as relates to the costs of this suit)
By the Alibi which has been proved.

"My poor client's fate now depends on your votes."
Here the speaker sat down in his place,
And directed the Judge to refer to his notes
And briefly to sum up the case.

But the Judge said he never had summed up before;
So the Snark undertook it instead,
And summed it so well that it came to far more
Than the Witnesses ever had said!

When the verdict was called for, the Jury declined,
As the word was so puzzling to spell;
But they ventured to hope that the Snark wouldn't mind
Undertaking that duty as well.

So the Snark found the verdict, although, as it owned,
It was spent with the toils of the day:
When it said the word "GUILTY!" the Jury all groaned,
And some of them fainted away.

Then the Snark pronounced sentence, the Judge being
quite
Too nervous to utter a word:
When it rose to its feet, there was silence like night,
And the fall of a pin might be heard.

"Transportation for life" was the sentence it gave,
"And then to be fined forty pound."
The Jury all cheered, though the Judge said he feared
That the phrase was not legally sound.



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But their wild exultation was suddenly checked
When the jailer informed them, with tears,
Such a sentence would have not the slightest effect,
As the pig had been dead for some years.

The Judge left the Court, looking deeply disgusted:
But the Snark, though a little aghast,
As the lawyer to whom the defence was intrusted,
Went bellowing on to the last.

Thus the Barrister dreamed, while the bellowing seemed
To grow every moment more clear:
Till he woke to the knell of a furious bell,
Which the Bellman rang close at his ear.

https://en.wikipedia.org/wiki/Lewis_Carroll

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