

Friday, 7 June 2019

## Weekly Criminal Law

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

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### Executive Summary

**Twaddell v R** (NSWCCA) - criminal law - 'breaking, entering and stealing' - 'aggravated breaking, entering and stealing' - appeal against sentence allowed

**Gorman v The Queen** (VSCA) - criminal law - 'false imprisonment' - 'possession of an unregistered general category handgun' - contravention of bail conditions - appeal against sentence dismissed

**Kennedy v The Queen** (VSCA) - criminal law - 'cultivation of a narcotic plant' - theft - 'trafficking a drug of dependence' - 'dealing with property suspected of being the proceeds of crime' - leave to appeal against sentence refused

**R v Hyatt** (QCA) - criminal law - 'assault occasioning bodily harm with a circumstance of aggravation' - trial miscarried - appeal allowed - conviction quashed - retrial

**Higgins v The State of Western Australia** (WASCA) - criminal law - 'dealings in prohibited drugs' - appeal against sentence dismissed

### Summaries With Link (Five Minute Read)

**Twaddell v R [2019] NSWCCA 116**

Court of Criminal Appeal of New South Wales

Leeming JA; Ierace J & Hidden AJ

Criminal law - applicant pleaded guilty to 'two charges of breaking, entering and stealing and one charge of aggravated breaking, entering and stealing' - applicant sentenced to 5 years 6 months in prison with 3-year non-parole period - applicant sought to appeal against sentence - applicant contended judge failed to assess offences' 'objective seriousness' or failed to give reasons - applicant also contended judge did not know of, and thus did not take into account, applicant's 'intellectual disability', resulting in miscarriage of justice - 'additional evidence' - held: leave to appeal granted - appeal allowed - applicant resentenced.

[View Decision](#)

## **Gorman v The Queen [2019] VSCA 128**

Court of Appeal of Victoria

Priest & Kaye JJA

Criminal law - appellant pleaded guilty to 'false imprisonment', 'possession of an unregistered general category handgun' and summary charge of contravention of bail conditions - appellant sentenced to 3 years 9 months in prison with 2 years 6 months non-parole period - appellant contended sentences and non-parole period manifestly excessive - appellant also contended sentence 'not sufficiently disparate' from co-offender's sentence - 'objective criminality' - whether 'reasonably open' to judge to differentiate between appellant and co-offender in manner she did - whether appellant's 'age and criminal history' justified judge's 'different approach' to sentencing appellant - *Collins v The Queen* [2015] VSCA 106 - held: appeal dismissed.

[Gorman](#)

## **Kennedy v The Queen [2019] VSCA 127**

Court of Appeal of Victoria

Priest & Kaye JJA

Criminal law - applicant pleaded guilty to 'cultivation of a narcotic plant', theft, 'trafficking a drug of dependence' and 'related summary charge of dealing with property suspected of being the proceeds of crime' - applicant sentenced to 5 years in prison with 3-year non-parole period - applicant sought to appeal against sentence - applicant contended judge had not given appropriate weight applicant's admissions, erred in finding principles in *Nguyen v The Queen* [2016] VSCA 198 applicable, and that sentences and non-parole period were manifestly excessive - held: leave to appeal refused.

[Kennedy](#)

## **R v Hyatt [2019] QCA 106**

Court of Appeal of Queensland

Sofronoff P, Morrison JA & Davis J

Criminal law - appellant convicted of 'assault occasioning bodily harm with a circumstance of aggravation' - appellant sentenced to 3 years 3 months in prison - appellant appealed against conviction and sought to appeal against sentence - whether miscarriage of justice arising from defence counsel's conduct - whether trial unfair due to judge's intimation that cross-examination

of appellant on criminal convictions would be allowed - whether trial miscarried due to judge's failure to give warning concerning evidence - s15 *Evidence Act 1977* (Qld) - held: appeal allowed - conviction quashed - retrial.

[R v Hyatt](#)

## **Higgins v The State of Western Australia [2019] WASCA 78**

Court of Appeal of Western Australia

Buss P; Beech & Pritchard JJA

Criminal law - appellant pleaded guilty to '40 counts' concerning 'dealings in prohibited drugs' - appellant sentenced to 12 years 6 months' imprisonment - appellant appealed against sentence - appellant contended judge erred in relation to discount under s9AA *Sentencing Act 1995* (WA) for guilty pleas - appellant also contended judge erred in parity principle's application - whether to grant leave to appellant to adduce 'additional evidence' - held: leave to adduce additional evidence granted - to appeal on ground concerning discount refused - leave to appeal on ground concerning parity principle granted - appeal dismissed.

[Higgins](#)

# Benchmark

## **To a Locomotive in Winter**

**By:** Walt Whitman

Thee for my recitative,  
Thee in the driving storm even as now, the snow, the winter-  
day declining,  
Thee in thy panoply, thy measur'd dual throbbing and thy  
beat convulsive,  
Thy black cylindric body, golden brass, and silvery steel,  
Thy ponderous side-bars, parallel and connecting rods,  
gyrating, shuttling at thy sides,  
Thy metrical, now swelling pant and roar, now tapering in  
the distance,  
Thy great protruding head-light fix'd in front,  
Thy long, pale, floating vapor-pennants, tinged with delicate  
purple,  
The dense and murky clouds out-belching from thy smoke-  
stack,  
Thy knitted frame, thy springs and valves, the tremulous  
twinkle of thy wheels,  
Thy train of cars behind, obedient, merrily following,  
Through gale or calm, now swift, now slack, yet steadily  
careering;  
Type of the modern—emblem of motion and power—pulse of  
the continent,  
For once come serve the Muse and merge in verse, even  
as here I see thee,  
With storm and buffeting gusts of wind and falling  
snow,  
By day thy warning ringing bell to sound its notes,  
By night thy silent signal lamps to swing.

Fierce-throated beauty!  
Roll through my chant with all thy lawless music, thy  
swinging lamps at night,  
Thy madly-whistled laughter, echoing, rumbling like an  
earthquake, rousing all,  
Law of thyself complete, thine own track firmly holding,  
(No sweetness debonair of tearful harp or glib piano thine,)  
Thy trills of shrieks by rocks and hills return'd,  
Launch'd o'er the prairies wide, across the lakes,  
To the free skies unpent and glad and strong.



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