



Friday, 7 December 2018

## Weekly Criminal Law

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

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### Executive Summary

**R v Pullen** (NSWCCA) - criminal law - 'dangerous driving occasioning grievous bodily harm' - 'fail to stop and assist after impact causing grievous bodily harm' - Crown appeal against sentence on ground of manifest inadequacy - appeal allowed - respondent resentenced

**Davis v R** (NSWCCA) - criminal law - applicant convicted of two counts of murder and count of administering poison with intent to murder - appeal against convictions dismissed

**Paulino v The Queen** (VSCA) - criminal law - applicant convicted of murder - leave to appeal granted on ground trial miscarried due to 'accumulation of difficulties' - appeal dismissed

**Farha v The Queen** (VSCA) - criminal law - applicant convicted of 'intentionally causing serious injury in circumstances of gross violence' - leave to appeal refused

**M A C v Tasmania** (TASCCA) - criminal law - applicant convicted of rape - appeal against conviction dismissed - Director of Public Prosecution's appeal against sentence on ground of manifest inadequacy allowed - applicant resentenced

### Summaries With Link (Five Minute Read)

**R v Pullen [2018] NSWCCA 264**

Court of Criminal Appeal of New South Wales

# Benchmark

Johnson, Harrison & Schmidt JJA

Criminal law - respondent pleaded guilty to count of 'dangerous driving occasioning grievous bodily harm' and count of 'fail to stop and assist after impact causing grievous bodily harm' - sentencing judge allowed 25% discount on both counts for early guilty plea - sentencing judge imposed aggregate sentence of 15 months in prison to be served by 'Intensive Correction Order' (ICO) and disqualified respondent from driving for 2 years - Crown appealed on ground sentence was manifestly inadequate, contending 'indicative sentences' did not adequately reflect offending's 'objective criminality' or 'need for denunciation' and deterrence - ss52A(3)(a) & 52AB(2) *Crimes Act 1900* (NSW) - whether sentence should be served by 'full-time custodial sentence or ICO - consideration of *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* (NSW) - held: appeal allowed - applicant resentenced.

[View Decision](#)

## **Davis v R [2018] NSWCCA 277**

Court of Criminal Appeal of New South Wales

Hoeben CJ at CL; Harrison & Schmidt JJ

Criminal law - evidence - coincidence evidence - applicant convicted of two counts of murder and count of administering poison with intent to murder - applicant sentenced to aggregate term of 40 years in prison with 30 years non-parole period - applicant sought to appeal against convictions - applicant contended trial judge erroneously admitted evidence 'for a coincidence purpose' and erroneously reversed onus of proof by use of the coincidence evidence in "backwards reasoning" process - applicant also contended verdicts were unreasonable and could not be supported by evidence - ss18 & 27 *Crimes Act 1900* (NSW) - ss55, 56, 97, 98, 100(2) & 101(2) *Evidence Act 1995* (NSW) - held: leave to appeal granted - appeal dismissed.

[View Decision](#)

## **Paulino v The Queen [2018] VSCA 306**

Court of Appeal of Victoria

Priest, Beach & Kaye JJA

Criminal law - applicant convicted of murder of estranged wife (Teresa Paulino) - applicant sentenced to 30 years in prison with 25 years non-parole period - applicant sought to appeal, contending that trial had miscarried due to 'accumulation of difficulties' - applicant also challenged trial judge's ruling that prosecution 'entitled to rely' on, as 'evidence of incriminating conduct', applicant's failure 'to inquire about what had happened to Teresa' when Detective Senior Constable informed applicant Teresa had passed away - whether jury's attention drawn to 'inadmissible evidence' - whether 'final address of prosecutor' contained submissions without 'evidentiary basis' and/or inappropriate submissions, or submissions which impermissibly altered case concerning forensic evidence - held: applicant granted leave to appeal on ground of accumulation of difficulties - appeal dismissed.

[Paulino](#)

## **Farha v The Queen [2018] VSCA 310**



Court of Appeal of Victoria

Priest, T Forrest & Ashley JJA

Criminal law - applicant pleaded not guilty to count of armed robbery and two counts of 'intentionally causing serious injury in circumstances of gross violence' - applicant found guilty of the two charges of intentionally causing serious injury in circumstances of gross violence - applicant sentenced to 'total effective sentence' of 7 years in prison with 5 years non-parole period - applicant sought to appeal against conviction - applicant contended contents of juror's note were not 'adequately revealed' to applicant's counsel and that a 'substantial miscarriage of justice' had occurred in those circumstances - applicant also contended trial judge erroneously admitted DNA evidence and erred in directions to jury - applicant also contended verdict was 'unsafe and unsatisfactory' - held: leave to appeal refused.

[Farha](#)

## **M A C v Tasmania [2018] TASCCA 19**

Court of Criminal Appeal of Tasmania

Blow CJ; Geason J & Martin AJ

Criminal law - appellant charged with indecent assault and rape of complainant - appellant found guilty of rape - appellant sentenced to 3 years in prison with eligibility for parole after half sentence served - appellant contended verdict was "unsafe and unsatisfactory in all of the circumstances" - Director of Public Prosecutions (DPP) contended sentence was 'manifestly inadequate in all the circumstances' - appellant, under s404 Criminal Code, made application for "for an order for a venire de novo, seeking to adduce "fresh" evidence demonstrating miscarriage of justice - appellant granted leave to add ground of appeal alleging miscarriage of justice - distinction between "fresh" evidence and "new" evidence - whether there had been miscarriage of justice - s185(1) Criminal Code - held: appellant's dismissed - DPP's appeal allowed - appellant resentenced.

[M A C](#)

# Benchmark

## Dream On

**By:** David Conolly

A child in a gallery sits,  
takes paper and pencil,  
and starts to draw.  
The paintings around her  
disappear.  
They have served  
their purpose.

womb of  
They have sparked in her  
the spirit to create –  
the spirit formed in her  
along with bone and blood  
in the mystic dark of  
her mother's womb –  
humanity's sacred site.

Thus is passed  
from age to age  
imagination,  
Dream  
wonder,  
passes  
dreams.  
unborn.

From another womb  
in a faraway age  
another child emerged  
with a dream –  
the Great Dream  
of a world renewed by  
peace and justice,  
formed in the

love.

He said that children  
show us  
what God is like.

No wonder  
we celebrate  
his birth.

No wonder that  
still lives, and  
to children yet

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