

Friday, 9 November 2018

Weekly Criminal Law

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

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Executive Summary

Nye v R (NSWCCA) - criminal law - drug offences - applicant sought to appeal against sentences - conceded grounds of appeal established - Court not satisfied to intervene concerning sentences - appeal dismissed

Platt v The Queen (VSCA) - criminal law - recklessly causing injury - rape - reckless conduct endangering a person's safety - no erroneous failure to discharge jury member - leave to appeal refused

Sidebottom v The Queen (VSCA) - criminal law - contempt - applicant sought leave to appeal against sentence - appeal allowed - matter remitted for determination by different judge

R v Partington (SASCFC) - criminal law - appellant found guilty of rape - admissibility of evidence - whether directions flawed - whether trial miscarried - appeal dismissed

RMM v The State of Western Australia (WASCA) - criminal law - child neglect - appellant not convicted of offence for which he was punished - sentence appeal allowed

Summaries With Link (Five Minute Read)

Nye v R [2018] NSWCCA 244

Court of Criminal Appeal of New South Wales

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Hoeben CJ at CL, Walton & Button JJ

Criminal law - applicant sought leave to appeal against sentences for serious drug offences - two grounds of appeal were subject of Crown concession - grounds of appeal in respect of which Crown conceded error were that "His Honour erred in finding the applicant's offending was aggravated by being a series of criminal acts" and that "In passing sentence for the sequence 5 offence, the learned sentencing judge erred by applying the wrong maximum penalty." - whether concessions appropriate - whether to intervene on sentences which Court imposed - 'mitigatory duress' - whether Court would make 'lesser findings' concerning moral culpability - whether lesser sentence warranted - held: conceded grounds of appeal established but Court not satisfied to intervene on sentences - appeal dismissed.

[View Decision](#)

Platt v The Queen [2018] VSCA 276

Court of Appeal of Victoria

Tate, Whelan & Niall JJA

Criminal law - applicant convicted of one charge of recklessly causing injury, two charges of rape, and one charge of reckless conduct endangering a person's safety - applicant sentenced to total effective sentence of 8 years in prison with 5 year non-parole period - applicant sought leave to appeal on ground that trial judge erroneously failed to discharge juror 'whose family-owned business previously employed the Applicant's mother' - asserted association between juror's relatives and applicant's relative - whether open to judge to accept statement of juror that he did not know applicant or applicant's mother - whether judge required to discharge juror - s43 *Juries Act 2000* (Vic) - held: leave to appeal refused.

[Platt](#)

Sidebottom v The Queen [2018] VSCA 280

Court of Appeal of Victoria

Priest & Beach JJA; Macaulay AJA

Criminal law - contempt - appellant sentenced to four months in prison for contempt - applicant sought to appeal against sentence - whether judge punished appellant for contempt charge he had not been called to answer - whether judge erred in finding appellant's apology 'disingenuous' - procedural fairness - whether manifestly excessive sentence - *O75 Supreme Court (General Civil Procedure) Rules 2015* (Vic) - held: appeal allowed - matter remitted for determination by different judge.

[Sidebottom](#)

R v Partington [2018] SASCF 113

Full Court of the Supreme Court of South Australia

Vanstone, Lovell & Hinton JJ

Criminal law - appellant found guilty of rape of woman (V) - appellant appealed - appellant contended his interview with police erroneously admitted, evidence of telephone conversation between V and friend after incident erroneously admitted, that directions concerning 'complaint

evidence' were flawed, that trial miscarried due to statements by V during evidence, and that verdict unreasonable - whether compliance with s74E *Summary Offences Act 1953 (SA)* - interests of justice - whether open to jury to find appellant guilty - held: grounds of appeal not made out - appeal dismissed.

[Partington](#)

RMM v The State of Western Australia [2018] WASCA 183

Court of Appeal of Western Australia

Mazza & Mitchell JJA; Hall J

Criminal law - appellant and de facto partner convicted of child neglect in relation to child of appellant's de facto partner, who was hospitalised with 'catastrophic injuries' - appellant sentenced to '5 years' 'immediate imprisonment' - appellant appealed against conviction, contending there had been miscarriage of justice due to failure to receive fair trial on account of trial counsel's incompetence - appellant also appealed against sentence - s101(1)(b) *Children and Community Services Act 2004 (WA)* - held: Court not satisfied of incompetence by trial counsel - no miscarriage of justice - trial judge erroneously sentenced appellant on basis he 'inflicted the catastrophic injuries', thus punishing appellant for an offence he was not convicted of - not open to trial judge to be satisfied beyond reasonable doubt of fact appellant had inflicted the catastrophic injuries - appeal against sentence allowed.

[RMM](#)

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Floating Island

By: Dorothy Wordsworth

Harmonious Powers with Nature work

On sky, earth, river, lake, and sea:

Sunshine and storm, whirlwind and breeze

All in one duteous task agree.

Once did I see a slip of earth,
By throbbing waves long undermined,
Loosed from its hold; — how no one knew
But all might see it float, obedient to the wind.

Might see it, from the mossy shore
Dissevered float upon the Lake,
Float, with its crest of trees adorned
On which the warbling birds their pastime take.

Food, shelter, safety there they find
There berries ripen, flowerets bloom;
There insects live their lives — and die:
A peopled world it is; in size a tiny room.

And thus through many seasons' space
This little Island may survive
But Nature, though we mark her not,
Will take away — may cease to give.

Perchance when you are wandering forth
Upon some vacant sunny day
Without an object, hope, or fear,
Thither your eyes may turn — the Isle is passed away.

Buried beneath the glittering Lake!
Its place no longer to be found,
Yet the lost fragments shall remain,
To fertilize some other ground.

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

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