

Friday, 10 May 2019

## Weekly Criminal Law

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

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### Executive Summary

**Moustafa v R** (NSWCCA) - criminal law - 'robbery armed with an offensive weapon' - no miscarriage of justice - appeal against conviction dismissed

**Foley v The Queen** (VSCA) - criminal law - 'attempting to possess a commercial quantity of an unlawfully imported border controlled drug' - leave to appeal against sentence refused

**Cook v The Queen** (VSCA) - criminal law - 'intentionally causing injury' - 'recklessly causing injury' - refusal to grant orders or permanent stay of proceedings - competency - leave to appeal refused

**R v Wiedman** (QCA) - criminal law - 'unlawfully doing grievous bodily harm' with 'intent to maim, disable or disfigure or to do some grievous bodily harm' - miscarriage of justice - appeal allowed

**R v Parsons** (SASCFC) - criminal law - 'aggravated causing harm with intent to cause harm' - 'aggravated assault' - leave to appeal against sentence refused

### Summaries With Link (Five Minute Read)

#### **Moustafa v R [2019] NSWCCA 89**

Court of Criminal Appeal of New South Wales  
Payne JA; Wilson & Ierace JJ

# Benchmark

Criminal law - appellant convicted of 'robbery armed with an offensive weapon' - appellant sentenced to 4 years 6 months in prison - appellant contended there had been miscarriage of justice due to counsel's failure to deal with 'issue of recent invention' which prosecution alleged against appellant (ground 1) and counsel's failure 'to seek a direction' concerning recent invention allegation (ground 2) - whether miscarriage of justice - whether appellant had 'lost chance of acquittal that was fairly open' - s97(1) *Crimes Act 1900* (NSW) - r4 *Criminal Appeal Rules* (NSW) - ss46, 65 & 192 *Evidence Act 1995* (NSW) - held: ground 1 dismissed - leave to appeal on ground 2 refused.

[View Decision](#)

## **Foley v The Queen [2019] VSCA 99**

Court of Appeal of Victoria  
Priest & Emerton JJA

Criminal law - applicant pleaded guilty to 'attempting to possess a commercial quantity of an unlawfully imported border controlled drug' - applicant sentenced to 7 years 6 months in prison, with 5 year non-parole period - applicant sought to appeal on basis sentence and non-parole period were 'manifestly excessive' and that there had been miscarriage of sentencing discretion arising from applicant's 'inevitable deportation' upon sentence's completion - held: grounds of appeal concerning deportation risk and 'manifest excess' were not arguable - leave to appeal refused.

[Foley](#)

## **Cook v The Queen [2019] VSCA 87**

Court of Appeal of Victoria  
Priest & Beach JJA

Criminal law - 'interlocutory appeal' - applicant charged with two charges of 'intentionally causing injury', and alternatively with two charges of 'recklessly causing injury' - applicant sought, under s197 *Criminal Procedure Act 2009* (Vic) (CPA), that Victorian Legal Aid (VLA) provide him money for certain purposes, exclusion of certain photographs from evidence and permanent stay of proceedings - applicant also sought certification under s295(3) CPA - judge refused orders and certification request - applicant sought to appeal - whether proceeding should be permanently stayed due to abuse of process - whether photographs should be admitted - whether judge empowered by s197 CPA to order that VLA provide money to applicant - whether appeal competent - held: leave to appeal refused.

[Cook](#)

## **R v Wiedman [2019] QCA 71**

Court of Appeal of Queensland  
Sofronoff P, McMurdo JA & Bowskill J

Criminal law - appellant found guilty of 'unlawfully doing grievous bodily harm' with 'intent to maim, disable or disfigure or to do some grievous bodily harm' - appellant appealed against conviction - appellant contended verdict unreasonable or could not be supported on evidence -

appellant also contended deficiency in respect of trial judge's direction concerning 'alternative verdicts' with result there was miscarriage of justice - whether defective 'summing up' due to jury not being properly alerted to alternative verdict's possibility - whether appellant 'deprived of a real chance' of acquittal on 'malicious act with intent' charge' - whether miscarriage of justice - held: appeal allowed.

[Wiedman](#)

## **R v Parsons [2019] SASCFC 43**

Full Court of the Supreme Court of South Australia

Kelly & Bampton JJ

Criminal law - applicant and co-accused found guilty of 'aggravated causing harm with intent to cause harm' (5 counts) and 'aggravated assault' (2 counts) - applicant sentenced to 9 years in prison - sentence reduced by one year due to 9 months in custody and 3 months 'home detention bail' - applicant sentenced to 8 years in prison with 4 years 6 months non-parole period - applicant sought to appeal against sentence - applicant contended trial judge erred in not reducing non-parole period by time in custody and home detention - applicant also contended sentence 'manifestly excessive' and failed to take applicant's 'increased maturity and lifestyle changes' into account - offending's gravity - deterrence - whether intervention by Court justified - held: leave to appeal refused.

[R v Parsons](#)



# Benchmark

## **Dream-Time**

**By:** Ella Higginson

It is the time when crimson stars  
    Weary of heaven's cold delight,  
And take, like petals from a rose,  
    Their soft and hesitating flight  
Upon the cool wings of the air  
    Across the purple night.

It is the time when silver sails  
    Go drifting down the violet sea,  
And every poppy's crimson mouth  
    Kisses to sleep a lovesick bee;  
The fireweed waves her rosy plumes  
    On pasture, hill and lea.

It is the time to dream—and feel  
    The languid rocking of a boat,  
The pushing ripple round the keel  
    Where cool, deep-hearted lilies float,  
And hear thro' wild syringas steal  
    Some songster's drowsy note.

It is the time, at eve, to lie  
    And in a hammock faintly sway,  
To watch the golds and crimsons die  
    Across the blue stretch of the bay;  
To hear the sweet dusk tiptoe by  
    In the footsteps of the day.

[Ella Higginson](#)

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