



Friday, 11 October 2024

Weekly Criminal Law

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

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Executive Summary

Jurd v The King (VSCA) - sentencing judge gave inadequate reasons for cancelling the treatment and supervision part of a Drug and Alcohol Treatment Order and partially activating the custodial component

Davey v Tasmania (TASCCA) - majority verdicts are permitted in Tasmania in attempted murder trials - tendency evidence had been properly admitted as it was highly probative and the trial judge had ameliorated the danger of unfair prejudice



HABEAS CANEM

Before the puppy ears finally dropped

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Summaries With Link (Five Minute Read)

Jurd v The King [2024] VSCA 224

Court of Appeal of Victoria

Priest & Niall JJA

Sentencing - the applicant pled guilty to one charge of trafficking a drug of dependence, one charge of possession of a drug of dependence, one charge of knowingly dealing with proceeds of crime, one charge of handling stolen goods, and three related summary offences - following a Drug Court determination hearing, the sentencing judge placed the applicant on a Drug and Alcohol Treatment Order for a period of 45 months with a custodial aspect (which would not be served unless activated) of 3 years and 9 months' imprisonment - in due course, the County Court cancelled the treatment and supervision part of the order and partially activated the custodial component, based on poor compliance and supplying a forged medical certificate - the partially activated custodial sentence was 1 year and 8 months' imprisonment - the applicant sought leave to appeal - held: the content and detail of judicial reasons will vary according to the jurisdiction of the court and the subject-matter being considered - the usual baseline for adequacy is that reasons must identify the principles of law applied and the main factual findings relied upon - the sentencing judge had said he was satisfied that the applicant had demonstrated a lack of willingness to comply with the treatment order, but did not identify which conditions the applicant was unwilling to comply with - it was not possible to glean from the transcript the judge's reasoning in arriving at his conclusion that the applicant was unwilling to comply with one or more conditions of the order - the sentencing judge had thereby erred in failing to provide adequate reasons - the Court was also uncertain about whether the judge directed himself to the correct legal question, namely the subjective willingness of the applicant to comply with one or more conditions - the judge may have erroneously treated his discretion to cancel the treatment and supervision part of the treatment order on the basis of unwillingness to comply with conditions as a discretion to impose a sanction for serious past non-compliance - the inadequate reasons meant that the applicant did not know whether the decision was made through correct application of the law - leave to appeal granted, sentence set aside, and DPP's application to cancel the treatment order remitted to a judge of the Drug Court Division of the County Court.

[Jurd](#)

Davey v Tasmania [2024] TASCRA 11

Court of Criminal Appeal of Tasmania

Blow CJ, Jago J, & Martin AJ

Tendency and coincidence evidence - a complainant suffered life-threatening burns to 68% of her body - the applicant was charged with attempted murder and persistent family violence - the Court severed the indictment and the trial proceeded on the count of attempted murder - evidence of the crime of persistent family violence was admitted as relationship evidence and tendency evidence - the jury found the applicant guilty of attempted murder by a majority verdict - the applicant sought leave to appeal - held: under s43 of the *Juries Act 2003* (Tas), a majority

verdict cannot be taken in a criminal trial "relating to" murder - having regard to the extrinsic materials, s43 allowed a majority verdict for attempted murder - tendency evidence is admissible only if the Court considers that the evidence, either by itself or having regard to other evidence, will have "significant probative value" that substantially outweighs any unfair prejudicial effect upon the accused - an appellate Court should determine for itself whether the evidence was of significant probative value, rather than deciding whether it was open to the trial judge to conclude that it was - evidence is not unfairly prejudicial merely because it strengthens the prosecution case, but is unfairly prejudicial only when the jury is likely to give the evidence more weight than it deserves, or when the nature or content of the evidence may improperly influence the jury or divert the jurors from their task - a fundamental fact in issue here was how the complainant came to be set alight - assessing the likelihood of the applicant engaging in controlling behaviour, considering whether he had done so previously, and considering whether he had a tendency to engage in controlling behaviour generally, was highly relevant to the this question - the tendency evidence, if accepted, suggested there was a myriad of ways in which the applicant would seek to dominate and control the complainant - the tendency evidence, which included the applicant using fire and burning as a threat, had high probative value - the trial judge emphasised to the jury that they should take great care to ensure they did not allow any emotional reaction to influence their deliberations and to limit their use of the evidence to the specific purposes for which it had been admitted - the tendency evidence was properly admitted - other grounds of appeal also rejected - leave to appeal granted but appeal dismissed.

[Davey](#)

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Paki Nikora v Tamati Kruger (NZSC) - The Maori Land Court had jurisdiction to review the election of trustees to the Tuhoe - Te Uru Tamatua Trust inasmuch as the Trust, among other functions, held land as a post-settlement governance entity

Summaries With Link (Five Minute Read)

Paki Nikora v Tamati Kruger [2024] NZSC 130

Supreme Court of New Zealand

Winkelmann, CJ, Glazebrook, Williams, O'Regan, & Collins JJ

Paki Nikora contended that two of the trustees of the Tuhoe - Te Uru Taumatua Trust (TUT) had not been selected in accordance with the terms of the trust. Nikora commenced proceedings in the Maori Land Court and the Court ordered fresh elections. TUT refused to acknowledge the jurisdiction of the Land Court and declined to participate in the proceedings. The matter was appealed to the Maori Appellate Court that upheld the decision of the Land Court. However on subsequent review by the Court of Appeal, the decisions of the Maori Land Court and Appellate Court were overturned. The Court of Appeal found that, inasmuch as TUT had authority over a wide range of matters and was not constituted in respect of land and its primary purpose did not relate to land, the Maori Land Court lacked jurisdiction with respect to trust activities. On further review, the Supreme Court determined that the Court of Appeal was in error and concluded that the Maori Land Court had jurisdiction to hear the matter because, from its outset, TUT was established to hold parcels of land regardless of its holdings at the time of its inception. The Court also noted that the Maori Land Court by long experience was sensitive to the challenges of communal asset management and that Maori Land Court judges had special knowledge and expertise and had proceeded with due care to resolve the issues despite the lack of participation by one of the parties.

[Paki Nikora](#)



Poem for Friday

Risk

By Anaïs Nin (1903-1977)

And then the day came,
when the risk
to remain tight
in a bud
was more painful
than the risk
it took
to blossom.

Anaïs Nin, (Angela Anaïs Juana Antolina Rosa Edelmira Nin y Culmell), was born in 1903, outside Paris, of Cuban parents. Her father was the composer, Joaquin Nin. Nin was a French Cuban American who wrote essays, novels and short stories. *The Diary of Anaïs Nin* was written initially as a letter to her father, who had left the family some years before Anaïs Nin wrote, starting at the age of 11 in 1914. The diary of Anaïs Nin was published over 7 volumes, in expurgated and unexpurgated volumes. She was a close friend of Henry Miller. She died in Los Angeles, USA, of cancer.

Reading by **Patricia Conolly**. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world's leading theatrical centres. She has worked extensively in her native Australia, in London's West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada. Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love's Labour's Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

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Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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