



Friday, 12 October 2018

## Weekly Criminal Law

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

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### Executive Summary

**Rodi v Western Australia** (HCA) - criminal law - possession of prohibited drug with intent to sell or supply it to another - fresh evidence - erroneous refusal to grant extension of time to appeal against conviction - appeal allowed - conviction quashed - retrial

**Fung v R** (NSWCCA) - criminal law - dealing with money with intention it would become an instrument of crime - erroneous failure to refer to guilty plea's utilitarian value - Court not satisfied to impose lesser sentence - appeal against sentence dismissed

**Lawson v R** (NSWCCA) - criminal law - dangerous driving - grievous bodily harm - failure to stop and assist - mental illness - appeal against sentence dismissed

**Herodotou v The Queen** (VSCA) - criminal law - murder - mens rea - verdict not unsafe or unsatisfactory - no substantial miscarriage of justice - appeal against conviction dismissed

**Wadeson v The State of Western Australia** (WASCA) - criminal law - supplying prohibited drug to another - possession of cash 'reasonably suspected of being unlawfully obtained' - appeal against sentence dismissed

### Summaries With Link (Five Minute Read)

**[Rodi v Western Australia \[2018\] HCA 44](#)**

High Court of Australia

Kiefel J; Bell, Keane, Nettle & Gordon JJ

Criminal law - police, upon searching appellant's home, located 925.19 g of cannabis - appellant charged with one count of possession of prohibited drug with intent to sell or supply it to another - jury returned guilty verdict - appellant sentenced to 12 months in prison - appellant sought extension of time to appeal, contending that "as a result of fresh or new evidence a miscarriage of justice has occurred" - Court of Appeal of Western Australia refused extension of time to appeal on basis there was no merit in proposed appeal - Court found no miscarriage of justice established by fresh evidence or by non-disclosure of evidence - appellant contended that Court of Appeal should have set aside guilty verdict on basis of fresh evidence and that there been a breach of 'duty to disclose evidentiary material' under s95(6) *Criminal Procedure Act 2004* (WA) or common law - appellant contended there had been miscarriage of justice - respondent, by notice of contention, contended Court's decision should be affirmed on basis Court had erred in finding breach of prosecutor's duty of disclosure - s6(1)(a) *Misuse of Drugs Act 1981* (WA) - held: fresh evidence gave rise to 'significant possibility' appellant might have been acquitted - appeal allowed - conviction quashed - retrial.

[Rodi](#)

## **Fung v R [2018] NSWCCA 216**

Court of Criminal Appeal of New South Wales

White JA; Price & Wilson JJ

Criminal law - applicant pleaded guilty to dealing with money with 'intention it would become an instrument of crime' - applicant sentenced to 6 years and 4 months in prison with 4 years 6 months non-parole period - applicant contended that judge had erred in failure to take his guilty plea's utilitarian value into account - s400.3(1) *Criminal Code 1995* (Cth). - held: sentencing judge failed to refer to guilty plea's utilitarian value - error established - Court not satisfied that a lesser sentence should be imposed - appeal dismissed.

[View Decision](#)

## **Lawson v R [2018] NSWCCA 215**

Court of Criminal Appeal of New South Wales

Gleeson JA; Fagan & Walton JJ

Criminal law - applicant pleaded guilty to two offences arising from dangerous driving of vehicle - offences were aggravated dangerous driving occasioning grievous bodily harm, and failure to stop and assist after applicant's vehicle was involved in impact and applicant should have known grievous bodily harm suffered - sentencing judge allowed 25% discount for guilty pleas - applicant sentenced to 4 years in prison with 2 years 6 months non-parole period - applicant appealed against sentence on basis of 'reduced culpability for mental illness' - applicant also contended sentence was manifestly excessive - ss52A(4) & 52AB(2) *Crimes Act 1900* (NSW) - held: appeal dismissed.

[View Decision](#)

## **Herodotou v The Queen [2018] VSCA 253**

Court of Appeal of Victoria

Beach, Kaye & Weinberg JJA

Criminal law - murder - applicant convicted of murder - applicant sought to appeal against conviction - applicant contended verdict was unsafe and unsatisfactory because evidence could not sustain inference that 'fatal injury' was inflicted by 'conscious, voluntary and deliberate act' or inference that applicant had 'relevant mens rea' - applicant also contended there had been substantial miscarriage of justice because judge 'left intentional murder to the jury', and because of 'changes in the Crown case' - whether to permit amendment to ground of appeal - whether 'reckless murder' should also have been left to jury - whether open to jury to be satisfied of applicant's guilt beyond reasonable doubt - held: appeal dismissed.

[Herodotou](#)

## **Wadeson v The State of Western Australia [2018] WASCA 171**

Court of Appeal of Western Australia

Buss P; Mazza JA & Hall J

Criminal law - appellant pleaded guilty to count of supplying prohibited drug to another and count of possession of 'a thing capable of being stolen', namely cash, which was 'reasonably suspected of being unlawfully obtained' - appellant convicted and sentenced to two years in prison - appellant sought to appeal - whether total effective sentence infringed totality principle's first limb - whether judge erroneously failed to suspend prison sentences - s6(1)(c) *Misuse of Drugs Act 1981* (WA) - s417(1) *Criminal Code* (WA) - held: total sentence not 'unreasonable or plainly unjust' - no erroneous failure to suspend sentences - leave to appeal refused - appeal dismissed.

[Wadeson](#)



# Benchmark

## Evening Song

**By:** Sherwood Anderson

MY song will rest while I rest. I struggle along. I'll get back to the corn and the open fields. Don't fret, love, I'll come out all right.

Back of Chicago the open fields. Were you ever there—trains coming toward you out of the West—streaks of light on the long gray plains? Many a song—aching to sing.

I've got a gray and ragged brother in my breast—that's a fact. Back of Chicago the open fields—long trains go west too—in the silence. Don't fret, love. I'll come out all right.

[https://en.wikipedia.org/wiki/Sherwood\\_Anderson](https://en.wikipedia.org/wiki/Sherwood_Anderson)

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