

Friday, 13 April 2018

## Weekly Criminal Law

Editor - Richard Thomas of Counsel

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

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## Executive Summary

**Obiekwe v R** (NSWCCA) - criminal law - drug offences - failure by sentencing judge to take into account utilitarian considerations when allowing discount for guilty plea - Court not satisfied lesser sentence should be imposed - appeal dismissed

**Hamzy v R** (NSWCCA) - criminal law - manslaughter - wounding with intent - appeals against convictions and sentences dismissed

**Wells v The Queen** (VSCA) - criminal law - conspiracy to defraud - receiving secret commission - sentence appeal - sentence imposed on conspiracy charge was not manifestly excessive - appeal dismissed

**Hoang v The Queen** (VSCA) - criminal law - drug offences - young offender - individual sentences and total effective sentence were in 'appropriate range' - appeal dismissed

**R v Murray** (QCA) - criminal law - murder - applicability of defences of self-defence, compulsion and accident - directions concerning s31 *Criminal Code Act 1899* (Qld) - trial judge did not misdirect jury - appeal against conviction dismissed

**Usmani v Police** (SASC) - criminal law - assault - convictions for seven counts of assault - appeal dismissed

# Benchmark

## Summaries With Link (Five Minute Read)

### **Obiekwe v R [2018] NSWCCA 55**

Court of Criminal Appeal of New South Wales

Payne JA; Johnson & Campbell JJ

Criminal law - drug offences - applicant pleaded guilty to importing commercial quantity of border controlled drug - appellant sentenced to 12 years in prison with 7 year non-parole period - applicant appealed - Crown accepted sentencing judge erred in not taking into account utilitarian considerations when allowing discount for guilty plea, but submitted no greater discount warranted - s307.1 *Criminal Code Act 1995* (Cth) - held: Court not satisfied lesser sentence was warranted - appeal dismissed.

[View Decision](#)

### **Hamzy v R [2018] NSWCCA 53**

Court of Criminal Appeal of New South Wales

Hoeben CJ at CL, Simpson JA & McCallum J

Criminal law - manslaughter - wounding with intent - applicant sought to appeal against convictions and sentence in respect of offences of manslaughter and wounding with intent to cause grievous bodily harm - whether verdicts unreasonable and unsupportable by evidence - whether open to jury to find beyond reasonable doubt that appellant's conduct not 'reasonable response' in circumstances as appellant perceived them - whether sentences manifestly excessive - whether error in relation to offences' 'objective seriousness' and applicant's 'moral culpability' - ss18, 24 & 33(1)(a) *Crimes Act 1900* (NSW) - held: appeals against convictions and sentence dismissed.

[View Decision](#)

### **Wells v The Queen [2018] VSCA 79**

Court of Appeal of Victoria

Tate, Beach & Niall JJA

Criminal law - fraud - secret commissions - applicant pleaded guilty to charge of 'conspiracy to defraud' and three charges of 'receiving a secret commission' contrary to s176(1) *Crimes Act 1958* (Vic) - applicant sought to challenge sentence imposed on conspiracy charge, of 7 years and 6 months in prison, on basis it was manifestly excessive - current sentencing practices - guilty plea, assistance and cooperation of applicant - indeterminacy of loss from conspiracy - general deterrence - offending's seriousness - held: judge's sentence was 'very stern' but no outside range of available sentences - leave to appeal granted - appeal dismissed.

[Wells](#)

### **Hoang v The Queen [2018] VSCA 86**

Court of Appeal of Victoria

Priest & McLeish JJA

Criminal law - drug offences - youthful offender - appellant, following plea of guilty to charge of

attempting to possess a commercial quantity of a border-controlled drug (Commonwealth charge) and charge of trafficking a large commercial quantity of a drug of dependence (State charge), was sentenced to ten years in prison with six-year non-parole period - appellant appealed against sentence on grounds sentence was manifestly excessive - appellant's role in offending - appellant's guilty plea - rehabilitation prospects - held: Court satisfied that individual sentences, and total effective sentence were within 'appropriate range' - youth of appellant and rehabilitation prospects had been given 'appropriate recognition' in non-parole period - appeal dismissed.

[Hoang](#)

## **R v Murray [2018] QCA 57**

Court of Appeal of Queensland

Morrison & Philippides JJA; Boddice J

Criminal law - murder - defences - directions - appellant appealed against conviction on count of murder - appellant contended that a miscarriage of justice had occurred due to trial judge giving 'truncated and inadequate directions' concerning s31 *Criminal Code Act 1899* (Qld), and that trial judge had erred in directing jury that self-defence, compulsion and accident could only apply where jury 'accepted the appellant's account as true or possibly true' - held: trial judge did not misdirect jury - grounds of appeal failed - appeal dismissed.

[Murray](#)

## **Usmani v Police [2018] SASC 36**

Supreme Court of South Australia

Parker J

Criminal law - assault - Magistrates Court convicted appellant of seven counts of assault - appellant challenged conviction - appellant contended he was 'not allowed to make any statement in his defence' when police questioned him or at trial, that his closing address was 'not welcomed' or read in Court, that he was refused permission to questions witnesses and prosecutor, contended that pre-trial conference were 'a joke', that he was unrepresented, and that prosecutor had harassed him, and - Magistrate's intervention - whether unfair trial arising from lack of representation - whether proceedings 'unjustly decided' - whether consent to appellant's actions by complainants - whether actions were 'normal incidents of social interaction or community life' s20 *Criminal Law Consolidation Act 1935* (SA) - held: appeal dismissed.

[Usmani](#)

# Benchmark

## Fragment: Questions

**By:** Percy Bysshe Shelley

Is it that in some brighter sphere  
We part from friends we meet with here?  
Or do we see the Future pass  
Over the Present's dusky glass?  
Or what is that that makes us seem  
To patch up fragments of a dream,  
Part of which comes true, and part  
Beats and trembles in the heart?

[https://en.wikipedia.org/wiki/Percy\\_Bysshe\\_Shelley](https://en.wikipedia.org/wiki/Percy_Bysshe_Shelley)

Percy Bysshe Shelley - Wikipedia  
en.wikipedia.org

Percy Bysshe Shelley (/ ˈ p ɪ r s i ˈ b ɪ ʃ ɪ l i ; 4 August 1792 – 8 July 1822) was one of the major English Romantic poets, and is regarded by some as among the finest lyric poets in the English language, and one of the most influential.

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