

Friday, 13 July 2018

## Weekly Criminal Law

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

 Follow @Benchmark\_Legal

### Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

### Executive Summary

**Commissioner of Corrective Services v Liristis** (NSWCA) - criminal law - jurisdiction - Court not empowered to grant orders in relation to respondent's access to, and permission to use, printer/scanner and laptop - appeal allowed

**Kresovic v R** (NSWCCA) - criminal law - drug offences - aggregate sentence not manifestly excessive - appeal dismissed

**XX v R** (NSWCCA) - criminal law - robbery armed with dangerous weapon - assault with intent to rob while armed with dangerous weapon - appeal against sentence dismissed

**Audsley v The Queen** (VSCA) - criminal law - aggravated burglary - common assault - recklessly causing serious injury - armed robbery - appeal against conviction dismissed

**Jones v The State of Western Australia** (WASCA) - criminal law - drug offences - not open to sentencing judge to discount sentence by 10% for guilty plea - sentence discounted by 17.5% - appellant resentenced - appeal allowed

### Summaries With Link (Five Minute Read)

**Commissioner of Corrective Services v Liristis [2018] NSWCA 143**  
Court of Appeal of New South Wales

Beazley P; Basten JA & White JA

Criminal law - jurisdiction - respondent was facing sexual assault charges and was in Long Bay Correctional Complex - respondent claimed he was 'hampered in preparation for his trial' by inability to access laptop and scanner/printer - primary judge granted respondent access to printer/scanner and laptop and permission to use them - Commissioner for Corrective Services sought to appeal - whether jurisdiction to make orders - whether orders supported by ss23 or 69 *Supreme Court Act 1970* (NSW) - inherent jurisdiction - power to deal with contempt - held: primary judge's orders were not supported by its power to deal with contempt, by its power to exercise jurisdiction for purposes of judicial review, or by its 'jurisdiction generally' - appeal allowed.

[View Decision](#)

### **Kresovic v R [2018] NSWCCA 37**

Court of Criminal Appeal of New South Wales

Hoeben CJ at CL, Campbell & N Adams JJ

Criminal law - applicant pleaded guilty to offence contrary to s23(2)(a) *Drug Misuse and Trafficking Act 1985* (NSW) (Drug Misuse and Trafficking Act) of 'cultivate not less than a commercial quantity of cannabis plants by enhanced indoor means', and offence contrary to s25(1) of 'supply a prohibited drug' - count of 'consume electricity without consent' to be taken into account on Form 1 - applicant sentenced to aggregate sentence of 3 years in prison with 1 year 10 month non-parole period - applicant contended aggregate sentence was manifestly excessive - principles relevant to appeal on basis of manifest excess - *Vaiusu v R [2017] NSWCCA 71* - 'objective seriousness' - offender's role - whether *House v King* error established - held: appeal dismissed.

[View Decision](#)

### **XX v R [2018] NSWCCA 112**

Court of Criminal Appeal of New South Wales

White JA; Johnson & Harrison JJ

Criminal law - applicant convicted of 'robbery while armed with a dangerous weapon' - applicant also convicted of 'assault with intent to rob while armed with a dangerous weapon' contrary to s97(2) *Crimes Act 1900* (NSW) - applicant sentenced to overall imprisonment of 5 years and 6 months with 3 years 8 months non-parole period - individual sentences discounted by 45% for guilty plea and 'assistance to authorities' - offence of 'possess unauthorised pistol' taken into account on Form 1 in respect of sentencing for robbery while armed with dangerous weapon - applicant contended sentences 'plainly unreasonable and unjust' and that manifest excess was established - whether error in respect of sentences' starting points - whether error in respect of comparability of sentences with other sentences 'for similar offences' - held: appeal dismissed.

[View Decision](#)

### **Audsley v The Queen [2018] VSCA 162**

Court of Appeal of Victoria

Maxwell P, Priest & Beach JJA

Criminal law - applicant and another convicted of aggravated burglary, common assault[, recklessly causing serious injury and armed robbery - applicant sentenced to total effective sentence of six years and six months in prison with six years non-parole period - applicant contended that trial judge had not adequately directed jury concerning identification evidence, that convictions were unsafe and unsatisfactory, and that trial judge had erroneously admitted 'irrelevant and highly prejudicial evidence' against applicant - held: grounds of appeal were without merit - appeal dismissed.

[Audsley](#)

### **Jones v The State of Western Australia [2018] WASCA 105**

Court of Appeal of Western Australia

Buss P; Mazza & Beech JJA

Criminal law - appellant pleaded guilty to 'possession of methylamphetamine with intent to sell or supply' - appellant sentenced to 20 months in prison - appellant appealed on ground that the 10% discount for his guilty plea was 'unreasonable or plainly unjust' - discount's evaluation under s9AA *Sentencing Act 1995* (WA) - held: Court satisfied that it was not open to sentencing judge to impose 10% discount - Court satisfied to discount sentence by 17.5% - appeal allowed - appellant resentenced.

[Jones](#)



# Benchmark

## Heaven

By: Rupert Brooke

Fish (fly-replete, in depth of June,  
Dawdling away their wat'ry noon)  
Ponder deep wisdom, dark or clear,  
Each secret fishy hope or fear.  
Fish say, they have their Stream and Pond;  
But is there anything Beyond?  
This life cannot be All, they swear,  
For how unpleasant if it were!  
One may not doubt that, somehow, Good  
Shall come of Water and of Mud;  
And, sure, the reverent eye must see  
A Purpose in Liquidity.  
We darkly know, by Faith we cry,  
The future is not Wholly Dry.  
Mud unto mud! – Death eddies near –  
Not here the appointed End, not here!  
But somewhere, beyond Space and Time,  
Is wetter water, slimier slime!  
And there (they trust) there swimmeth One  
Who swam ere rivers were begun,  
Immense, of fishy form and mind,  
Squamous, omnipotent and kind;  
And under that Almighty Fin,  
The littlest fish may enter in.  
Oh! Never fly conceals a hook,  
Fish say, in the Eternal Brook,  
But more than mundane weeds are there,  
And mud, celestially fair;  
Fat caterpillars drift around,  
And Paradisal grubs are found;  
Unfading moths, immortal flies,  
And the worm that never dies.  
And in that Heaven of all their wish,  
There shall be no more land, say fish.

[https://en.wikipedia.org/wiki/Rupert\\_Brooke](https://en.wikipedia.org/wiki/Rupert_Brooke)

[Click Here to access our Benchmark Search Engine](#)