

Friday, 14 September 2018

Weekly Criminal Law

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

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Executive Summary

DS v R (NSWCCA) - criminal law - sexual offences - tendency evidence - appeal allowed - conviction and sentence quashed

Melaisis v R (NSWCCA) - criminal law - aggravated robbery - sentence manifestly excessive - appeal allowed - appellant resentenced

R v Bayda; R v Namoa (No 3) (NSWSC) - criminal law - conspiracy - no rule in Australian common law that husband and wife could not be 'guilty of conspiring with each other alone' - application for stay of conspiracy charge refused

R v Peet (SASCFC) - criminal law - murder - appeal by Director of Public Prosecutions against non-parole period on basis of manifest inadequacy - appeal allowed - non-parole period increased

Winmar v The State of Western Australia (WASCA) - criminal law - home burglary - stealing - discount of 10% under *s9AA Sentencing Act 1995* (WA) 'unreasonable or plainly unjust' - appeal allowed - appellant resentenced

Summaries With Link (Five Minute Read)

DS v R [2018] NSWCCA 195

Court of Criminal Appeal of New South Wales

Basten JA; Wilson & Loneragan JJ

Criminal law - sexual offences - tendency evidence - appellant found guilty of having homosexual intercourse with male under 10 years (Count 3) - jury did not return verdicts for two other counts - appellant had pleaded not guilty to all three counts - judge sentenced appellant 5 years in prison with 2 years 6 months non-parole period - appellant contended that judge erred with respect to evidence of his niece - appellant also contended that verdict was unreasonable with regard to evidence and jury's 'failure to agree' on verdicts for the two other counts - appellant also contended sentence was manifestly excessive - presumption of doli incapax - tendency rule - s97 *Evidence Act 1995* (NSW) - whether erroneous admission of niece's evidence on tendency evidence basis - whether erroneous admission of 'pretext phone call' between niece's mother and appellant - whether erroneous direction to jury that niece's evidence could be used demonstrate appellant's tendency to "sexually assault" his 'young relatives' - held: appeal allowed - conviction and sentence quashed - matter remitted.

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Melaisis v R [2018] NSWCCA 184

Court of Criminal Appeal of New South Wales

Macfarlan JA, Hoeben CJ at CL & Fagan J

Criminal law - aggravated robbery - applicant sought to appeal against sentence for aggravated robbery - trial judge imposed a sentence of 3 years in prison with one year 10 months non-parole period - applicant contended judge erroneously failed to have regard to 'degree of pre-trial disclosure' by applicant - applicant also contended that judge, by way in which he took into account 'purported facts' from previous offences, denied applicant procedural fairness, and that sentence was manifestly excessive - 'subjective circumstances' - 'unrelated drug offences' - s95 *Crimes Act 1900* (NSW) - held: Court satisfied sentence was manifestly excessive - 3 year head sentence 'unreasonable and plainly unjust' - appeal allowed - appellant resentenced.

[View Decision](#)

R v Bayda; R v Namoa (No 3) [2018] NSWSC 1381

Supreme Court of New South Wales

Fagan J

Criminal law - conspiracy - Sameh Bayda and Alo-Bridget Namoa (accuseds) charged with conspiracy and other offences 'of a terrorist nature'- accuseds sought permanent stay of charge of conspiracy, claiming they were married at time of alleged conspiracy, and that at common law and under s11.5 *Criminal Code* (Cth), a conspiracy could not be committed 'by husband and wife alone' - held: there was no rule in Australian common law that husband and wife could not be 'guilty of conspiring with each other alone' - if such a rule existed it was not incorporated into s11.5 *Criminal Code* - application dismissed.

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R v Peet [2018] SASCF 91

Full Court of the Supreme Court of South Australia

Kourakis CJ; Doyle & Hinton JJ

Criminal law - murder - respondent pleaded guilty to murder of woman and her two children - appellant sentenced to life in prison under s11 *Criminal Law Consolidation Act 1935 (SA)* for each murder - judge determined, under s32 *Criminal Law (Sentencing) Act 1988 (SA)*, that respondent eligible to seek parole after 30 years in prison, backdated to day of being taken into custody - Director of Public Prosecutions (DPP) sought to appeal against non-parole period on basis it was manifestly inadequate - DPP sought that Court increase non-parole period to 'ensure the maintenance of adequate standards of punishment for the offence of murder' - respondent conceded - held: Court set aside non-parole period and substituted 36 year non-parole period - appeal allowed.

[R v Peet](#)

Winmar v The State of Western Australia [2018] WASCA 155

Court of Appeal of Western Australia

Buss P; Mazza & Mitchell JJA

Criminal law - home burglary - stealing - appellant pleaded guilty 'at the earliest reasonable opportunity' to home burglary and stealing - judge sentenced appellant to 3 years and 3 months in prison - appellant appealed against sentence - ss378 & 401(2)(b) *Criminal Code (WA)* - held: it was not open to judge to afford discount of only 10% under s9AA *Sentencing Act 1995 (WA)* - extent of discount was 'unreasonable or plainly unjust' - appeal allowed - appellant resentenced.

[Winmar](#)



Benchmark

The Crocuses

By: Frances Ellen Watkins Harper
They heard the South wind sighing
 A murmur of the rain;
And they knew that Earth was longing
 To see them all again.

While the snow-drops still were sleeping
 Beneath the silent sod;
They felt their new life pulsing
 Within the dark, cold clod.

Not a daffodil nor daisy
 Had dared to raise its head;
Not a fairhaired dandelion
 Peeped timid from its bed;

Though a tremor of the winter
 Did shivering through them run;
Yet they lifted up their foreheads
 To greet the vernal sun.

And the sunbeams gave them welcome,
 As did the morning air—
And scattered o'er their simple robes
 Rich tints of beauty rare.

Soon a host of lovely flowers
 From vales and woodland burst;
But in all that fair procession
 The crocuses were first.

First to weave for Earth a chaplet
 To crown her dear old head;
And to beauty the pathway
 Where winter still did tread.

And their loved and white haired mother
 Smiled sweetly 'neath the touch,
When she knew her faithful children
 Were loving her so much.



https://en.wikipedia.org/wiki/Frances_Harper

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