



Friday, 14 December 2018

Weekly Criminal Law

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

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Executive Summary

Kocyigit v R (NSWCCA) - criminal law - applicant convicted of robbery inflicting 'actual bodily harm' - leave to appeal against sentence refused

Veith v R (NSWCCA) - criminal law - supplying prohibited drug - error established in sentencing judge's approach but no lesser sentence warranted - appeal dismissed

Kanakaradnam v R (NSWCCA) - criminal law - aggravated indecent assault - extension of to seek leave to appeal against convictions refused

R v C, S (SASCFC) - criminal law - judgments and orders - stay - drug offences - pleadings - stay of 'three counts of five on an information' on basis prosecution of counts 'doomed to fail' - appeal allowed

Samardali v The Queen (WASCA) - criminal law - offences against *Customs Act 1901* (Cth) - attempted offence against s149.1(1) *Criminal Code* (Cth) (Code) contrary to 11.1(1) Code - sentence appeal allowed - appellant resentenced

Summaries With Link (Five Minute Read)

Kocyigit v R [2018] NSWCCA 279

Court of Criminal Appeal of New South Wales

Hoeben CJ at CL

Criminal law - applicant pleaded guilty to robbery inflicting 'actual bodily harm' - judge sentenced applicant to non-parole period of 1 year and 7 months in prison with additional 1 year prison term - applicant sought to appeal against sentence on basis it was 'unreasonably or plainly unjust' and 'manifestly excessive' - s95(1) *Crimes Act 1900* (NSW) - offending's 'objective seriousness' - deterrence - 'subjective case' of applicant - 'psychological condition' of applicant - *R v Henry* (1999) 46 NSWLR 346 - whether sentence was in 'proper range' - held: leave to appeal refused.

[View Decision](#)

Veith v R [2018] NSWCCA 284

Court of Criminal Appeal of New South Wales

Fullerton, Davies & Lonergan JJ

Criminal law - drug offences - judge imposed sentence of 12 months in prison on applicant in respect of offence of supplying prohibited drug - sentence was 12 months in prison - sentence suspended on applicant's entry into 'good behaviour bond' - applicant sought to appeal - whether to grant extension of time - s25(1) *Drug Misuse and Trafficking Act 1985* (NSW) - held: judge had imposed sentence before decision in *Parente v R* [2017] NSWCCA 284 - judge had approached task consistently with decision in *R v Clark* ((Court of Criminal Appeal ((NSW), 15 March 1990, unrep) - judge's approach had included a 'now erroneous step' - Court not satisfied to impose lesser sentence - appeal dismissed.

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Kanakaradnam v R [2018] NSWCCA 282

Court of Criminal Appeal of New South Wales

Simpson AJA; Johnson & N Adams JJA

Criminal law - applicant convicted of aggravated indecent assault offences - applicant sought to appeal against convictions - applicant contended there had been miscarriage of justice on basis he did not 'appreciate or understand' the nature of offences he was charged with, had not 'voluntarily admitted or pleaded guilty', and was not guilty - whether 'substantial miscarriage of justice' would result if applicant not permitted to withdraw guilty pleas - whether merit in ground of appeal - held: extension of time to seek leave to appeal refused.

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R v C, S [2018] SASCF 125

Full Court of the Supreme Court of South Australia

Kourakis CJ; Vanstone & Nicholson JJ

Criminal law - judgments and orders - drug offences - respondent charged with trafficking drugs - Director of Public Prosecutions (DPP) appealed against District Court judge's order staying 'three counts of five on an information' on basis counts' prosecution was 'doomed to fail' - DPP also sought to appeal against judge's alternative decision that counts should be stayed due to inadequacy of DPP's particulars - s352(1)(b) *Criminal Law Consolidation Act 1935* (SA) -



whether evidence established 'prima facie' case respondent 'caused and directed' cannabis's trafficking - whether agent's statements 'admissible as to their truth' - admissibility of an agent's acts in proceedings involving principal - whether judge erred in staying information for 'failure to provide particulars' - held: appeal allowed.

[R v C, S](#)

Samardali v The Queen [2018] WASCA 220

Court of Appeal of Western Australia

Mazza, Mitchell & Pritchard JJA

Criminal law - appellant pleaded guilty to offence contrary to s233BABAD(1) *Customs Act 1901* (Cth) (Customs Act), offence contrary to s233BABAD(2) *Customs Act* and attempting to commit offence against s149.1(1) *Criminal Code* (Cth) (Code) contrary to 11.1(1) Code - applicant convicted of all counts and received total effective sentence of \$10,000 fine, and prison term of 3 years and 2 months with 18 months non-parole period - appellant appealed against sentence - whether sentences manifestly excessive - whether infringement of totality principle's 'first limb' - whether erroneous statement of 'maximum fine' - held: appeal allowed - appellant resentenced.

[Samardali](#)



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Summer Wind

By: William Cullen Bryant

It is a sultry day; the sun has drunk
The dew that lay upon the morning grass;
There is no rustling in the lofty elm
That canopies my dwelling, and its shade
Scarce cools me. All is silent, save the faint
And interrupted murmur of the bee,
Settling on the sick flowers, and then again
Instantly on the wing. The plants around
Feel the too potent fervors: the tall maize
Rolls up its long green leaves; the clover droops
Its tender foliage, and declines its blooms.
But far in the fierce sunshine tower the hills,
With all their growth of woods, silent and stern,
As if the scorching heat and dazzling light
Were but an element they loved. Bright clouds,
Motionless pillars of the brazen heaven—
Their bases on the mountains—their white tops
Shining in the far ether—fire the air
With a reflected radiance, and make turn
The gazer's eye away. For me, I lie
Languidly in the shade, where the thick turf,
Yet virgin from the kisses of the sun,
Retains some freshness, and I woo the wind
That still delays his coming. Why so slow,
Gentle and voluble spirit of the air?
Oh, come and breathe upon the fainting earth
Coolness and life! Is it that in his caves
He hears me? See, on yonder woody ridge,
The pine is bending his proud top, and now
Among the nearer groves, chestnut and oak
Are tossing their green boughs about. He comes;
Lo, where the grassy meadow runs in waves!
The deep distressful silence of the scene
Breaks up with mingling of unnumbered sounds
And universal motion. He is come,
Shaking a shower of blossoms from the shrubs,
And bearing on their fragrance; and he brings
Music of birds, and rustling of young boughs,
And sound of swaying branches, and the voice
Of distant waterfalls. All the green herbs



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Are stirring in his breath; a thousand flowers,
By the road-side and the borders of the brook,
Nod gayly to each other; glossy leaves
Are twinkling in the sun, as if the dew
Were on them yet, and silver waters break
Into small waves and sparkle as he comes.
https://en.wikipedia.org/wiki/William_Cullen_Bryant

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