



Friday, 16 August 2019

## Weekly Criminal Law

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

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### Executive Summary

**Le v Regina** (NSWCCA) - criminal law - 'cultivating not less than a large commercial quantity of a prohibited plant' - leave to appeal against sentence refused

**Davison v R** (NSWCCA) - criminal law - 'stealing a motor vehicle' - 'aggravated break and enter with intent to commit serious indictable offence (larceny)' - parity - appeal against sentence allowed

**Beagley v R** (NSWCCA) - criminal law - 'firing a firearm with disregard to the safety of another person' - 'causing grievous bodily harm by an unlawful act' - appeal against sentence dismissed

**Bankal v The Queen** (VSCA) - criminal law - 'failing to render assistance after a motor vehicle accident in which a person is killed' - 'driving whilst disqualified' - 'using an unregistered vehicle on a highway' - leave to appeal against sentence refused

**Dalrymple v The Queen** (NTCCA) - criminal law - 'supplying a commercial quantity of methamphetamine' - manifest excess established in respect of sentence - appeal allowed - appellant resentenced

### Summaries With Link (Five Minute Read)

**[Le v Regina](#) [2019] NSWCCA 181**

Court of Criminal Appeal of New South Wales

Bathurst CJ; Price & N Adams JJ

Criminal law - applicant sought to appeal against sentence which trial judge imposed on him for 'cultivating not less than a large commercial quantity of a prohibited plant' - applicant had been sentenced to 2 years 4 months non-parole period with additional 1 year 9 month term - co-offender received same sentence as applicant - co-offender had not made admissions - applicant contended judge had failed to take his admissions into account as 'evidence of assistance to authorities' or 'indication of remorse' - ss23 & 21A(3I) *Crimes (Sentencing Procedure) Act 1999* (NSW) - held: leave to appeal against sentence refused.

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### **Davison v R [2019] NSWCCA 179**

Court of Criminal Appeal of New South Wales

Gleeson JA; Johnson & Price JJ

Criminal law - applicant sought to appeal against sentence imposed on him for 'stealing a motor vehicle' and 'aggravated break and enter with intent to commit serious indictable offence (larceny)' - applicant received 'overall effective sentence' of 3 years 3 months in prison with 2 year non-parole period - applicant contended he had 'justifiable sense of grievance' as to sentence which had been imposed on co-offender - co-offender had been found guilty by jury - applicant had pleaded guilty - parity - whether applicant's guilty plea entitled him to a 'greater degree of leniency' - ss154F & 113(2) *Crimes Act 1900* (NSW) - held: justifiable sense of grievance established - appeal allowed.

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### **Beagley v R [2019] NSWCCA 155**

Court of Criminal Appeal of New South Wales

White JA; Harrison & R A Hulme JJ

Criminal law - applicant sought to appeal against sentence which was imposed on him for 'firing a firearm with disregard to the safety of another person' and 'causing grievous bodily harm by an unlawful act' - applicant had received 'aggregate sentence' of 4 years in prison with 2 years 3 months non-parole period - applicant contended judge 'failed to have proper regard' to principles concerning 'delay in sentencing' - appellant also contended judge erroneously applied 'totality principle' to sentence's 'notional accumulation' and that sentence was manifestly excessive - ss93G(1)(c) and 54 *Crimes Act 1900* (NSW) - held: appeal dismissed.

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### **Bankal v The Queen [2019] VSCA 171**

Court of Appeal of Victoria

Maxwell P & Priest JA

Criminal law - applicant pleaded guilty to 'failing to render assistance after a motor vehicle accident in which a person is killed'. to 'driving whilst disqualified' and to 'using an unregistered vehicle on a highway' - applicant received 'total effective sentence' of 3 years 4 months with 22

months non-parole period - applicant sought to appeal against sentence - whether judge erroneously failed to take into account that others in collision's vicinity 'were able to provide immediate assistance to the victim', and that failure by applicant to render assistance did not have 'deleterious effect' on victim - whether sentences and non-parole period manifestly excessive - held: leave to appeal against sentence refused.

[Bankal](#)

## **Dalrymple v The Queen [2019] NTCCA 17**

Court of Criminal Appeal of the Northern Territory

Grant CJ, Blokland & Barr JJ

Criminal law - appellant pleaded guilty to 'supplying a commercial quantity of methamphetamine' - appellant sentenced to 9 years 7 months in prison with 6 years 9 months non-parole period - appellant contended sentencing judge erroneously assessed offending's objective seriousness and that sentence was manifestly excessive - s5(1) *Misuse of Drugs Act 1990* (NT) - held: 'starting point' which sentencing judge adopted was manifestly excessive - appeal allowed - appellant resentenced.

[Dalrymple](#)



# Benchmark

## **Down By the Carib Sea (VI: Sunset in the Tropics)**

**By:** James Weldon Johnson

A silver flash from the sinking sun,  
Then a shot of crimson across the sky  
That, bursting, lets a thousand colors fly  
And riot among the clouds; they run,  
Deepening in purple, flaming in gold,  
Changing, and opening fold after fold,  
Then fading through all of the tints of the rose into gray.  
Till, taking quick fright at the coming night,  
They rush out down the west,  
In hurried quest  
Of the fleeing day.

Now above where the tardiest color flares a moment yet,  
One point of light, now two, now three are set  
To form the starry stairs,—  
And, in her firefly crown,  
Queen Night, on velvet slippered feet, comes softly down.

[https://en.wikipedia.org/wiki/James\\_Weldon\\_Johnson](https://en.wikipedia.org/wiki/James_Weldon_Johnson)

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