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## Weekly Criminal Law

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

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### Executive Summary

**Johnson v The Queen** (HCA) - criminal law - sexual offences - discreditable conduct evidence - evidence of accused's 'other sexual misconduct' admissible - evidence of one incident should not have been admitted but no miscarriage of justice - no miscarriage arising from joinder - appeal dismissed

**Prineas v R** (NSWCCA) - criminal law - conviction on 's166 Certificate' for negligent driving occasioning grievous bodily harm - no inconsistency with acquittal on charge of driving vehicle in manner dangerous occasioning grievous bodily harm to another car's driver - verdict was open to trial judge - appeal dismissed

**Wanat v R** (NSWCCA) - criminal law - assault occasioning actual bodily harm in company - aggravated break, enter and commit serious indictable offence being assault occasioning actual bodily harm - appeal against sentence dismissed

**Robson v The Queen** (VSCA) - criminal law - intentionally causing bushfire - drive while authorisation suspended - individual sentences, cumulation order and total effective sentence were manifestly excessive - appeal allowed - appellant resentenced

**Hodgetts v Tasmania** (TASCCA) - criminal law - sentencing appeal - computer-related fraud - non-parole period imposed was not manifestly excessive - appeal dismissed

# Benchmark

## Summaries With Link (Five Minute Read)

### **Johnson v The Queen [2018] HCA 48**

High Court of Australia

Kiefel CJ; Bell, Gageler, Nettle & Gordon JJ

Criminal law - sexual offences - appellant convicted in District Court of South Australia on five counts of sexual offences against sister - Court of Criminal Appeal allowed appeal on count 1 and count 3 - appeal concerned certain evidence's admissibility under Div 3, Pt 3 *Evidence Act 1929* (SA) - evidence was in respect of accused's sexual misconduct towards complainant on occasions other than 'occasion charged' - use of evidence 'confined to "contextual" purposes' - whether joinder of counts 1 and 3 occasioned miscarriage of justice in remaining counts' trial - whether evidence's probative value outweighed evidence's prejudicial effect on appellant - 'discreditable conduct evidence' - 'permissible use' - held: with exception of one incident, Court of Criminal Appeal correct to find evidence 'other sexual misconduct' admissible on remaining counts' trial - no miscarriage of justice by incident's wrongful admission - joinder of counts did not occasioned miscarriage of justice - appeal dismissed.

[Johnson](#)

### **Prineas v R [2018] NSWCCA 221**

Court of Criminal Appeal of New South Wales

Hoeben CJ, Fullerton J & R A Hulme J

Criminal law - applicant acquitted of charge of driving vehicle in manner dangerous occasioning grievous bodily harm to another car's driver - Crown relied on same evidence for 'backup charge' on 's166 Certificate' of negligent driving occasioning grievous bodily harm - applicant found guilty - applicant sought to appeal against conviction - applicant contended verdict was 'unreasonable or unsupported verdict' and that 's166 Certificate' count was inconsistent with acquittal on other count - s52A(3)(c) *Crimes Act 1900* (NSW) - s117(1)(b) *Road Transport Act 2013* (NSW) - held: appeal dismissed.

[View Decision](#)

### **Wanat v R [2018] NSWCCA 219**

Court of Criminal Appeal of New South Wales

Simpson AJA; Johnson & R A Hume JJ

Criminal law - applicant pleaded guilty to offence of assault occasioning actual bodily harm in company and offence of aggravated break, enter and commit serious indictable offence being assault occasioning actual bodily harm - applicant sentenced to aggregate sentence of 2 years 8 months in prison with of 1 year 6 months non-parole period - ss59(2) & 112(2) *Crimes Act 1900* (NSW) - held: no error established as to sentencing discretion - non-parole period's length did not make sentence 'unreasonable' or plainly unjust - appeal dismissed.

[View Decision](#)

### **Robson v The Queen [2018] VSCA 256**

Court of Appeal of Victoria  
Kyrrou & Kaye JJA

Criminal law - appellant pleaded guilty to two charges of intentionally causing bushfire and three charges of drive while authorisation suspended - appellant sentenced to total effective sentence of 3 years and 9 months in prison combined with community correction order for 3 years and 9 months - appellant appealed against sentence on basis individual sentences, order for cumulation, and total effective sentence were manifestly excessive - s201A *Crimes Act 1958* (Vic) - s30(1) *Road Safety Act 1986* (Vic) - held: sentences imposed were 'inconsistent with current sentencing practices' - individual sentences, cumulation order and total effective sentence manifestly excessive - appeal allowed - appellant resentenced.

[Robson](#)

## **Hodgetts v Tasmania [2018] TASCRA 15**

Court of Criminal Appeal of Tasmania  
Blow J, Wood J & Marshall AJ

Criminal law - appellant pleaded guilty to nine of ten counts of computer-related fraud committed in course of employment - appellant sentenced to 5 years in prison with 3 years non-parole period - appellant contended sentence was manifestly excessive - appellant did not challenge imposition of head sentence - appellant challenged imposition of 'such a long non-parole period', contending sentencing judge had erroneously failed to give 'reasons, or adequate reasons' for its imposition - adequacy of judge's reasons - held: no error in exercise of sentencing discretion - appeal dismissed.

[Hodgetts](#)



# Benchmark

## **Sonnet 53**

**By:** William Shakespeare

What is your substance, whereof are you made,  
That millions of strange shadows on you tend?  
Since every one hath, every one, one shade,  
And you but one, can every shadow lend.  
Describe Adonis, and the counterfeit  
Is poorly imitated after you;  
On Helen's cheek all art of beauty set,  
And you in Grecian tires are painted new:  
Speak of the spring, and foison of the year,  
The one doth shadow of your beauty show,  
The other as your bounty doth appear;  
And you in every blessed shape we know.  
In all external grace you have some part,  
But you like none, none you, for constant heart.

[https://en.wikipedia.org/wiki/William\\_Shakespeare](https://en.wikipedia.org/wiki/William_Shakespeare)

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