

Friday, 22 March 2019

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

OKS v Western Australia (HCA) - criminal law - indecently dealing with complainant under 13 - erroneous finding that misdirection 'would have made no difference' to jury's guilty verdict - substantial miscarriage of justice - appeal allowed - conviction quashed - new trial

Grajewski v Director of Public Prosecutions (NSW) (HCA) - criminal law - facts could not support finding of guilt for offence against s195(1)(a) *Crimes Act 1900* (NSW) - appeal allowed - conviction quashed

AB (A Pseudonym) v R (No 3) (NSWCCA) - criminal law - applicant sought to appeal against refusal to make non-publication order - leave to appeal granted - appeal allowed - orders granted

DPP v Hodgson (VSCA) - criminal law - armed robbery - sentence manifestly inadequate - appeal allowed - sentence increased

R v Peterson (QCA) - criminal law - drug offences - application for extension of time to seek leave to appeal against sentence - appeal dismissed

Summaries With Link (Five Minute Read)

[OKS v Western Australia \[2019\] HCA 10](#)

High Court of Australia

Bell, Keane, Nettle, Gordon & Edelman JJ

Criminal law - appellant convicted of 'indecently dealing with the complainant, S' - S was child under 13 - trial occurred 'nearly 20 years' after the alleged offence' - trial judge, in summing up, directed jury: "[D]o not follow a process of reasoning to the effect that just because [S] is shown to have told a lie or she has admitted she told a lie, that all of her evidence is in fact dishonest and cannot be relied upon" ('impugned direction') - appellant appealed, contending impugned direction was 'wrong decision on a question of law' - Court of Appeal of Western Australia agreed with appellant's contention but dismissed appeal on basis there had 'no substantial miscarriage of justice' - whether miscarriage of justice - whether misdirection 'would have made no difference' to jury's guilty verdict with result the verdict 'should be accorded very significant weight' - proviso in s30(4) *Criminal Appeals Act 2004* (WA) - held: appeal allowed - conviction quashed - new trial.

[OKS](#)

Grajewski v Director of Public Prosecutions (NSW) [2019] HCA 8

High Court of Australia

Kiefel CJ; Bell, Keane, Nettle & Gordon JJ

Criminal law - appellant convicted of offence against 195(1)(a) *Crimes Act 1900* (NSW) for 'doing "damage [to] property causing the temporary impairment of the working machinery" of Ship Loader 2' - appeal concerned offence's 'physical element' - meaning of 'damage to property' under s195(1) of the Act - whether facts could support finding of guilt - held: 'damage to property' required proof defendant's 'act or omission' had 'occasioned some alteration to the physical integrity of the property, even if only temporarily' - facts could not support finding of guilt - appeal allowed - conviction quashed.

[Grajewski](#)

AB (A Pseudonym) v R (No 3) [2019] NSWCCA 46

Court of Criminal Appeal of New South Wales

Hoeben CJ at CL; Price & Adamson JJ

Criminal law - suppression and non-publication - applicant, pursuant to s14(1) *Court Suppression and Non-Publication Orders Act 2010* (NSW), sought to appeal against refusal to make non-publication order in respect of applicant's 'name or anything that might identify him in connection with' criminal proceedings - whether erroneous failure to apply s8(1)(c) of the Act - "necessary to protect the safety of any person" - de novo hearing - 'public interest in open justice - whether order necessary - held: leave to appeal granted - appeal allowed - orders granted.

[View Decision](#)

DPP v Hodgson [2019] VSCA 49

Court of Appeal of Victoria

Kaye, Niall & Weinberg JJA

Benchmark

Criminal law - respondent sentenced to 5 years and 5 months in prison with 3 years 4 months non-parole period for count of armed robbery - appellant contended sentence was manifestly inadequate and that judge had misapplied parity principle - one co-offender had received sentence of 4 years in prison with 2 years 4 months non-parole period - other co-offender had received 4 year 'community corrections order' - preclusion of Court from relying on medical evidence - s321 *Criminal Procedure Act 2009* (Vic) - held: sentence was manifestly inadequate - respondent resentenced 7 years and 6 month in prison with five years 6 months non-parole period - appeal allowed.

[DPP](#)

R v Peterson [2019] QCA 43

Court of Appeal of Queensland

Fraser JA Gotterson JA & Bradley J

Criminal law - applicant pleaded guilty to 'trafficking in dangerous drugs' - applicant sentenced to 3 years in prison with 'parole release after 18 months' - applicant sought extension of time to seek leave to appeal against sentence - whether explanation for delay - whether evidence in support of application - proposed appeal's prospects - offence's circumstances - 'personal circumstances' of applicant - whether sentence manifestly excessive - held: application for extension of time dismissed.

[R v Peterson](#)



Benchmark

The Cricket

By: Edwin Markham

The twilight is the morning of his day.

While Sleep drops seaward from the fading shore,
With purpling sail and dip of silver oar,
He cheers the shadowed time with roundelay,
Until the dark east softens into gray.

Now as the noisy hours are coming—hark!
His song dies gently—it is growing dark—
His night, with its one star, is on the way!

Faintly the light breaks over the blowing oats—
Sleep, little brother, sleep: I am astir.

We worship Song, and servants are of her—
I in the bright hours, thou in shadow-time:
Lead thou the starlit night with merry notes,
And I will lead the clamoring day with rhyme.

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

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