



Friday, 25 October 2024

Weekly Criminal Law

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

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Executive Summary

R v VR (NSWCCA) - sentence for numerous sexual offences was unreasonably low and plainly wrong, and Crown appeal against sentence succeeded

Arch v Linfox Australia Pty Ltd (WASC) - the *Sentencing Act 1995* (WA) and the *Spent Convictions Act 1988* (WA) do not empower the courts to make a spent conviction order in respect of a corporate offender

HABEAS CANEM

Habeus Halloween



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Summaries With Link (Five Minute Read)

R v VR [2024] NSWCCA 91

Court of Criminal Appeal of New South Wales

Mitchelmore JA, Wright, & Hamill JJ

Crown appeals against sentence - a jury found the respondent guilty of 12 counts of sexual intercourse without consent and one count of inciting the commission of an act of indecency, and found the respondent not guilty of seven other counts - the trial judge found the respondent guilty of two related offences of common assault and one offence of intimidation, and found the respondent not guilty of one other summary offence of common assault - the respondent was sentenced to an aggregate sentence of 11 years and 3 months with a non-parole period of 7 years and 6 months - the DPP appealed against sentence on the ground that it was manifestly inadequate - held: manifest inadequacy of sentence is a conclusion, which does not depend upon attribution of identified specific error in the reasoning of the sentencing judge - prosecution appeals against asserted inadequacy should be rare and generally be brought when there is a question of importance to be determined or where an intermediate appellate court can provide guidance as to such principles or on appropriate patterns of sentencing - the appellate court must take into account that there is no single correct sentence and that the law allows a wide discretion to a sentencing judge to determine the appropriate sentence by their own instinctive synthesis of a wide number of factors - in the absence of an identifiable error, an appellate court will not intervene unless the sentence imposed is manifestly unreasonable, plainly unjust or wrong - the appellate court must undertake its own synthesis of the relevant facts and circumstances to determine whether the sentence is so far below a legitimate discretionary range that it must intervene to correct the error - the indicative sentences stated by the sentencing judge for each offence were mostly very lenient and, in some cases, unreasonable and manifestly inadequate - when the leniency of the indicative sentences was considered along with the extent of the notional accumulation and the substantial downward adjustment of the minimum term, the inevitable conclusion was that the aggregate sentence and non-parole period were unreasonable and plainly wrong - the Crown must also discharge the onus of showing that the Court should exercise its "residual discretion" to intervene and increase the sentence - the Court was satisfied the DPP had discharged this onus - respondent resentenced to an aggregate sentence of 14 years, 6 months with a non-parole period of 10 years.

[View Decision](#)

Arch v Linfox Australia Pty Ltd [2024] WASC 376

Supreme Court of Western Australia

Cobby J

Statutory construction - Linfox Australia Pty Ltd pled guilty to one charge of failing to comply with a loading requirement pursuant to r187 of the *Road Traffic (Vehicles) Regulations 2014* (WA), contrary to s29(1) of the *Road Traffic (Vehicles) Act 2012* (WA) - the Magistrate imposed a fine of \$9,000 and made a spent conviction order - the prosecutor sought leave to appeal, contending that the Magistrate erred in law because the courts lack power to make a spent

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conviction order where the offender is a corporation - held: a spent conviction order is a creature of statute - s39(1) of the *Sentencing Act 1995* (WA) provides that that section applies to an offender 'who is a natural person' - s39(2)(d) provides that a court sentencing an offender may make a spent conviction order - s45(1) provides that the Court must not make a spent conviction order unless it considers that the offender is unlikely to commit such an offence again, and, having regard to the trivial nature of the offence or the previous good character of the offender, it considers the offender should be relieved immediately of the adverse effect that the conviction might have - s45(2) provides that an order that a conviction is a spent conviction for the purposes of the Act has the effect that the order is a spent conviction for the purposes of the *Spent Convictions Act 1988* (WA) - s40(1) provides that that section applies where the offender is a body corporate - there is no mention of making a spent conviction order, or any reference to s45, in s40(2) - Linfox's contention that the legislature would have included a specific provision prohibiting the making of a spent conviction order where the offender is a body corporate if that had been its intention should be rejected - the text of the Sentencing Act made clear that Parliament did not intend that a spent conviction order could be made in respect of a body corporate, and Parliament drew a clear distinction in s39 and s40 between natural persons and bodies corporate - the starting point for determining the meaning of a statutory provision is the text of the statute whilst having regard to its context and purpose - a purposive approach to construction may allow reading a provision as if it contained additional words, but a construction which 'fills gaps disclosed in legislation', or make an insertion which is 'too big, or too much at variance with the language in fact used by the legislature' is unlikely to be justified - the *Spent Convictions Act*, in its terms, was also restricted to natural persons - the *Spent Convictions Act* does not invalidate or render void a conviction, but instead limits or provides relief from its adverse effects - a spent conviction order made in relation to a body corporate would therefore take effect in a very different manner than that contemplated by the *Spent Convictions Act* in respect of natural persons - leave to appeal granted and appeal allowed.

[Arch](#)

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

In the Matter of McAleenon (UKSC) - Supreme Court held that an individual had the right to compel judicial review of a government decision relating to landfill contamination even though a private right of action against the alleged polluter may have been available

Summaries With Link (Five Minute Read)

In the Matter of McAleenon [2024] UKSC 31

Supreme Court of the United Kingdom

Lord Lloyd-Jones, Lord Briggs, Lord Sales, Lord Stephens, & Lady Simler

Noeleen McAleenon resided near a landfill that was operated by a private firm. Ms McAleenon maintained that the Lisburn and Castlereagh Council had regulatory authority concerning nuisances like the landfill. She sought judicial review of how the Council had dealt with complaints about the landfill. The government argued that she could not seek judicial review of the Council's actions because she had available to her a private right of action against the alleged polluter. The Court of Appeal sustained this objection and held that there were suitable alternative remedies available to Ms McAleenon and that judicial review was not available to her. The Supreme Court reversed and found that the existence of a private claim in nuisance against the alleged polluter did not constitute a suitable alternative remedy to judicial review of the Council's conduct. The Court stated that the fact that different proceedings could have been brought against another party did not mean that there existed a suitable alternative so as to preclude judicial review. The Court further stated that it is not the courts' role to say that a claimant should have sued someone other than the branch of government whose actions were being questioned.

[In the Matter of McAleenon](#)

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Poem for Friday

Life

By Charlotte Brontë (1816-1855)

LIFE, believe, is not a dream
So dark as sages say;
Oft a little morning rain
Foretells a pleasant day.
Sometimes there are clouds of gloom,
But these are transient all;
If the shower will make the roses bloom,
O why lament its fall ?

Rapidly, merrily,
Life's sunny hours flit by,
Gratefully, cheerily,
Enjoy them as they fly !

What though Death at times steps in
And calls our Best away ?
What though sorrow seems to win,
O'er hope, a heavy sway ?
Yet hope again elastic springs,
Unconquered, though she fell;
Still buoyant are her golden wings,
Still strong to bear us well.
Manfully, fearlessly,
The day of trial bear,
For gloriously, victoriously,
Can courage quell despair !

Charlotte Brontë was born on 21 April 1816, in West Yorkshire, UK. She was an English poet and novelist. She was the eldest of the three Brontë sisters. Her siblings were Emily Brontë, Anne Brontë, Branwell Brontë, Elizabeth Brontë, and Maria Brontë. She had a year of formal education at Clergy Daughters' School at Cowan Bridge. Thereafter she and her siblings learned at home, from each other and their parents, and aunt Elizabeth Branwell who lived with the family. She is famous for her novel *Jane Eyre*, which she first published under the pseudonym Currer Bell in 1847. She was married to Arthur Bell Nicholls from 1854 to 1855, for the last 9 months of her life. Nicholls had been the curate



to Charlotte's father, Patrick Brontë, an Anglican clergyman. Charlotte Brontë died on 31 March 1855 in Haworth, England.

Reading by **Patricia Conolly**. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world's leading theatrical centres. She has worked extensively in her native Australia, in London's West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada. Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love's Labour's Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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