AR CONOLLY & COMPANY
LAWYERS

Benchmark

Friday, 28 October 2016

Weekly Criminal Law Review

Editor - Richard Thomas of Counsel

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

Attorney General of New South Wales v Tho Services Limited (in liquidation) (ACN 000 263 678) (NSWCCA) - criminal law - work health & safety prosecution - leniency appeal - 15 year old work experience student welding without eye safety mask - thermal burns to eyes with loss of vision - company prosecuted and pleaded guilty - charge dismissed - on appeal, dismissal reflected manifest inadequacy - appeal allowed - convicted and fined $240,000

Dimian v R (NSWCCA) - criminal law - sentence appeal - applicant sentenced in 2015 for two offences committed in 1993 - applicant identified by 'cold case' DNA profiling - applicant sentenced to aggregate sentence of 9 years, NPP 6 years - applicant was in custody serving sentences for similar offences committed after the present offences - principles for sentencing offenders serving time of other offences considered - totality applied - appeal allowed - applicant resentenced

Dieu Chol v The Queen (VSCA) - criminal law - sentence appeal - applicant pleaded guilty to one count of intentionally causing serious injury (s15A *Crimes Act 1958* (Vic)) ('ICSI' offence) - applicant on 'ice' had punched victim and kicked him in the head - victim required surgery and was hospitalised - sentenced to 4 years 9 months, NPP 3 years 3 months - sentencing factors for ICSI offence identified - *Nash* & *Cedic* decisions yardsticks - appeal dismissed

DPP (Vic) v Hudgson (VSCA) - criminal law - Crown leniency appeal - applicant found guilty of internationally causing serious injury in circumstances of gross violence (s15A *Crimes Act 1958* (Vic)) ('ICSI' offence) - sentenced to 23 months' imprisonment and a 2 year CCO - pre-sentence detention not taken into account - practice of ignoring PSD constituted error -

sentence manifestly inadequate - appeal allowed - resentenced 5 years, NPP 4 years

R v Adcock (QCA) - criminal law - appellant convicted of three offences: torture, unlawful assault and unlawful detention - at trial, the only issue was whether the appellant was one of the attackers - on appeal, argued that verdict unsafe and that the trial judge erred in admitting a statement from a witness who had died before trial - test for admissibility considered - appeal refused

R v Donald; R v Pitt; R v Whitaker (SASCFC) - criminal law - sentence appeals - sentencing principles for multiple offences identified - relationship between discounts and aggregate sentences (s10C & 18A *Criminal Law (Sentencing) 1988* (SA) considered - applicants conducted a comprehensive drug trafficking network and were sentenced for 57 serious drug offences - error identified in sentencing process - appeals allowed - resentenced

R v Lowe (SASCFC) - criminal law - convictions appeal - attempted murder - victim attacked in 2003 and appellant identified by DNA data match in 2012 - victim knew appellant, but did not identify him as her assailant - prosecution led expert evidence to show her memory was affected by brain injury - whether evidence admissible - whether there had been non-disclosure by the prosecution of a software problem in the DNA profiling - no miscarriage of justice - appeal dismissed

AMH v The State of Western Australia (WASCA) - criminal law - sentence appeal - appellant charged with 7 offences committed against his estranged de facto partner - convicted, effective sentence 11 years imposed - appeal, arguing sentencing judge erred by failing to obtain a pre-sentence report - breach of totality principle - appeal dismissed

Zdravkovic v The Queen (ACTCA) - criminal law - sentence appeal - appellant, president of the ACT chapter of the Comanchero Outlaw Motorcycle Gang, made a false insurance claim and was then found to possess drugs - 4 offences - the sentences imposed were not manifestly excessive and the sentencing judge was entitled to impose a NPP of 66% of the total sentence

Summaries With Link (Five Minute Read)

Attorney General of NSW v Tho Services Limited (in liquidation) (ACN 000 263 678) [2016] NSWCCA 221
Court of Criminal Appeal of New South Wales
Hoeben CJ at CL, Harrison & Campbell JJ
Criminal law - work health & safety prosecution - leniency appeal - 15 year old work experience student attended the respondent's premises and was provided with instruction on welding - he was provided with a welding mask with a manually operated safety visor - he had undergone

welding instruction at school but at that time used an automatic safety mask - the respondent did not provide him with instruction on the use of the manual mask, but did provide him with supervisors - during the day the student welded without using the mask and sustained thermal burns to his eyes, leaving him with a 75% bilateral visual permanent incapacity - the supervisors, who watched the student welding, did not tell him to put down the safety mask to cover his eyes - the respondent was prosecuted under ss19(1) & 32 of the *Work Health and Safety Act 2011* (NSW) for failing to ensure, as was reasonably practicable, the safety of the student - the respondent subsequently entered into liquidation and on 26 October 2015 pleaded guilty - the sentencing judge dismissed the charge under s10 *Crimes (Sentencing Procedure) Act 1999* (NSW) and ordered the respondent to pay the prosecution's costs in the sum of $28,000 - on appeal, argued that the dismissal reflected manifest inadequacy (some 14 grounds relied upon) - held: the sentence was manifestly inadequate - in relation to work health and safety prosecutions, s10 is available where the circumstances are extraordinary and exceptional (for summary of relevant authorities see *Inspector Christopher Downie v Menzies Property Services* [2004] NSWIR Comm 259, [45]-[60]) - the sentencing judge failed to identify the existence of such circumstances and it was clear that none existed - dismissing the charge without the imposition of a penalty constituted manifest inadequacy, the respondent's breach of duty being flagrant and resulted from an egregious and systemic failure to supervise a young and vulnerable person - the magnitude of the risk generated by the failure to properly supervise the young person mandated the need to ensure that he wore a properly adjusted welding helmet at all times - while the need for specific deterrence was affected because the respondent was no longer trading, this was a case where the need for general deterrence was obvious and critical - it is not unreasonable for the respondent to be sentenced in a manner that informs the wider industrial community of the need to take an ever-vigilant and practical approach to safety in similar circumstances - the failures of the respondent relied upon were not only causally related to the risk, but were effectively the fundamental facts and circumstances that created it and the obligation to advise the young person that his helmet had to be worn with the visor down was a continuing one (see *Bulga Underground Operations Pty Ltd v Nash* [2016] NSWCCA 37) - the Court should not exercise its residual discretion not to intervene - offence above mid-range of seriousness - discount allowed 25% - respondent with previous convictions *(R v McNaughton* (2006) NSWLR 566 referred to) - appeal allowed - orders set aside - respondent convicted and fined $240,000.
Tho Services Limited

Dimian v R [2016] NSWCCA 223
Court of Criminal Appeal of New South Wales
Hoeben CJ and CL, Hall & Davies JJ
Criminal law - sentence appeal - applicant, with major depression and symptoms of anxiety and post-traumatic stress, sentenced in 2015 for two offences committed in 1993 - offences were detain for advantage, causing substantial injury and aggravated sexual assault, with the malicious infliction of grievous bodily harm - applicant, who was in custody serving sentences for similar offences committed after the present offences, was identified by a 'cold case' DNA

sample - sentencing judge specified an indicative sentence for the first offence of 2 years and 5 years 6 months for the second - applicant sentenced to aggregate sentence of 9 years, NPP 6 years - argued on appeal that the sentencing judge erred by imposing an aggregate sentence in excess of the combined periods indicated for each count, failing to correctly apply the totality principle, failing to correctly consider the applicant's history of incarceration, failing to give proper weight to the delay and in imposing a NPP in the ratio of 85% - held: s53A *Crimes (Sentencing Procedure) Act 1999* (NSW) enables the Court to impose an aggregate sentence for all or any of two or more offences (*JM v R* (2014) 246 A Crim R 528 referred to) - here, there was nothing to suggest that the indicative sentence indicated by the sentencing judge were to be fixed terms - accordingly they constituted head sentences and as their total was less than the aggregate sentence imposed, no error was demonstrated - the offences were serious and the sentencing judge's assessment that they fell at the upper end of the range of objective seriousness should be accepted - the overall effect of the earlier sentences, which commenced in February 2003, combined with the current sentence, was that the applicant would have been in consistent custody for 17 years, with a NPP ratio of 85% - on the approach to sentencing offenders serving a prior sentence, see *Humphries v R; Ponfield v R* [2016] NSWCCA 86; *Pearce v The Queen* (1998) 194 CLR 610; *Johnson v The Queen* (2004) 78 ALJR 616) - s44 *Crimes (Sentencing Procedure) Act 1999* does not require the court to consider the ratio of the NPP independently of the principle of totality - the first question was what would the appropriate sentence have been if the applicant had been sentenced for all the offences for which he had been incarcerated since February 2003 - would a sentence of 20 years have been appropriate? - here the sentence imposed was, without considering totality, appropriate - however, correctly applying the principle of totality, a lower NPP and an increased concurrency with the prior sentence was required - avoiding an offender becoming institutionalised assists rehabilitation and in the case of repeat sex offenders, protects the community by the imposition of an adequate parole period - issue of delay considered - leave granted, appeal allowed, applicant resentenced to aggregate sentence of 9 years, NPP 4 years 6 months.
Dimian

Dieu Chol v The Queen [2016] VSCA 252
Court of Appeal of Victoria
Maxwell P, Redlich & Weinberg JJA
Criminal law - sentence appeal - applicant, with prior relevant convictions, pleaded guilty to one count of intentionally causing serious injury (s15A *Crimes Act 1958* (Vic)) ('ICSI' offence) - applicant, who was on 'ice', had punched victim and kicked him in the head - victim required to undergo surgery for facial fractures and was hospitalised for 12 days - applicant sentenced to 4 years 9 months, NPP 3 years 3 months - applicant sought leave to appeal - held: sentence lenient - none of the appeal grounds reasonably arguable - this was a very serious instance of ICSI - it was a persistent attack, demonstrating a determination to cause serious injury, making the applicant's culpability high - the immediate and long term consequences for the victim were very serious - *Nash v The Queen* ((2013) 40 VR 134) identifies descriptively, rather than prescriptively, the factors that sentencing judges are to take into account in assessing the

gravity of particular instances of ICSI - these factors include the offender's intent, the seriousness of the injuries inflicted, the vulnerability of the victim, whether a weapon was used, the length of the attack and whether the offender acted in company or not - the development of such a list of indicia is conducive to consistency in sentencing and public confidence in the criminal justice system - ordinarily the first two factors will be the key to the seriousness of the particular offence - here, the fact that the applicant committed the offence a 'mere' 3 weeks after being released on parole and that he was an habitual user of 'ice' emphasised the importance of the sentencing considerations of specific deterrence and the need to protect the community - subsequent offending and an offender's prospects of rehabilitation are also relevant sentencing considerations - in the interests of sentencing consistency, the decisions of *Nash v The Queen* ((2013) 40 VR 134) & *Cedic v The Queen* ([2011] VSCA 258) should be seen as 'yardsticks' against which to examine a proposed sentence for an offence of ICSI in this category of seriousness - referring to *Bugmy v The Queen* ((2013) 249 CLR 571), the applicant's disadvantaged background was given appropriate weight by the sentencing judge - application for leave to appeal refused.
Dieu Chol

DPP (Vic) v Hudgson [2016] VSCA 254
Court of Appeal of Victoria
Weinberg, Whelan & Priest JJA
Criminal law - Crown leniency appeal - applicant found guilty of internationally causing serious injury in circumstances of gross violence (s15A *Crimes Act 1958* (Vic)) ('ICSI' offence) - sentenced to 23 months' imprisonment and a 2 year Community Correction Order ('CCO') - s10(1) *Sentencing Act 1991* (Vic) provides that in the absence of 'a special reason' a non-parole period of not less than 4 years must be imposed upon a person convicted of a s15A offence - s10A *Sentencing Act 1991* identifies 'special reasons relevant to imposing minimum non-parole periods' - In determining the sentence, the sentencing judge failed to declare 150 days of pre-sentence detention (s18(1) *Sentencing Act 1999*) - grounds of appeal identified - error in failing to declare the per-sentence detention, the application of ss 10(1)& 10A, in improperly taking into account a delay of 2 years and in applying the principle of parity - held: in failing to declare the pre-sentence custody time, the sentencing judge was able to sidestep s44(1) *Sentencing Act 1991* and combine a CCO with a term of imprisonment that exceeded the two year limit imposed by the section by 4 months - this Court has deprecated this practice (see *DPP v Grech* [2016] VSCA 98) - both the Director and the respondent agreed that this constituted error and required the respondent to be resentenced - in resentencing the respondent the intention of Parliament was that an offender who sought to escape the operation of s10 bore a heavy onus which is not lightly discharged - s10A(2) requires a finding of 'substantial and compelling circumstances' in order to find 'a special reason' justifying the imposition of a NPP of less than 4 years - the respondent bore the onus of establishing 'a special reason' - where impaired mental function at the time of the offence is relied upon, clear and convincing evidence must be adduced - here, the matters relied upon by the respondent fell well short of establishing substantial and compelling circumstances - no 'special reason' within

s10(1) was demonstrated - consequently, upon resentencing a NPP of at least 4 years was required to be imposed - on any view the sentence imposed at first instance was 'seriously out of kilter with current sentencing practice of ICSI' - authorities cited in *Grech* referred to - regardless of s10, the sentence imposed was manifestly inadequate - appeal allowed, respondent resentenced to 5 years, NPP 4 years [Editor's note: a co-offender pleaded guilty to recklessly causing serious injury and was sentenced to a 4 year Community Correction Order].
Hudgson

R v Adcock [2016] QCA 264
Court of Appeal of Queensland
Gottereson & Morrison JJA, North J
Criminal law - appellant convicted of three offences: torture, unlawful assault being armed and in company and unlawful detention - the complainant had been held captive in a unit for 19 hours by several persons, tortured and assaulted - at trial, the only issue was whether the appellant was one of her attackers - the appeal grounds argued that the verdict was unreasonable and that the trial judge erred in admitting a statement by a witness who had become deceased before trial - held: where there is an appeal against conviction on the ground that the verdict was unreasonable, the ultimate question for the appeal court 'must always be whether the [appeal] court thinks that upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty' - the appeal court is not to substitute trial by an appeal court for trial by jury (*SKA v The Queen* (2011) 243 CLR 400; *M v The Queen* (1994) 181 CLR 487 & *The Queen v Baden-Clay* (2016) 90 ALJR 1013) referred to - here, the main evidence came from the complainant and the sole issue on appeal was the identification of the appellant by the complainant and Mr Woodford, the deceased witness - taking the identification evidence as a whole, it was open to the jury to be satisfied beyond reasonable doubt that the appellant detained, tortured and assaulted the complainant - the statement by the deceased witness was admissible (s93B *Evidence Act 1977* (Qld)) - the test to be applied when considering the application of s98 has been considered in *R v D* ((2003) 141 A Crim R 471) - in the context of s130, the unfairness invoking the exercise of the statutory discretion to exclude is identified in *R v Swaffield* ((1997-1998) 192 CLR 159) as a concern not to jeopardise an accused person's right to a fair trial, 'unreliability" being the touchstone of unfairness - relevant principles in relation to the exercise of the discretion under s98 or s130 identified at [70] - the trial judge ruled against exclusion and his discretion did not miscarry - appeal dismissed.
Adcock

R v Donald; R v Pitt; R v Whitaker [2016] SASCFC 117
Full Court of the Supreme Court of South Australia
Nicholson, Parker & Lovell JJ
Criminal law - sentence appeals - sentencing principles for multiple offences - relationship between discounts and aggregate sentences (s10C & 18A *Criminal Law (Sentencing) 1988* (SA)) - applicants conducted a comprehensive drug trafficking network involving the purchase of

cannabis and methylamphetamine and on-selling the drugs in smaller amounts - the enterprise operated for more than 6 months - they were sentenced for 57 serious drug offences, with one count of drive dangerously to evade police - the appellants were entitled to differing discounts - notional sentences were imposed of 108, 102 & 60 years, but in applying the principles of concurrency and totality the effective sentences imposed were 15 years (NPP 9 years) for Donald & Whitaker and 11 years 9 months (NPP 6 years) for Pitt - held: the appropriate approach when sentencing for multiple offences and the use of s18A discussed - *R v McNamara* (2009) 105 SASR 38; *R v Major* (1998) 70 SASR 488; *R v Copeland (No 2)* (2010) 108 SASR 398; *R v Bagnato* (2011) 112 SASR 39 and *R v Symonds* [1999] SASC 217 considered - the approach identified in *R v Major* is not a mandated one (see *R v Nylander* [2003] SASC 191) - the Court has consistently adopted the position that in some cases the approach of attempting to fix a notional sentence for individual offences will lead to an 'air of unreality' - when an 'air of unreality' arises is a matter of judgment - s10C adds another layer of complexity upon the sentencing process - Blue J in *R v Wakefield* ((2015) 121 SASR 569) identified the relevant sentencing principles at [38]-[41] - where a court wishes to apply s18A and impose one sentence, and different discounts apply to the individual offences, a court must explain how it arrived at the single sentence imposed - this would require identification of the notional sentences for each offence - the process of sentencing is ultimately a matter of discretion and judgment - it is a process of 'instinctive synthesis' and not simply a mathematical exercise - the principles governing the sentencing of an offender for multiple offending set out at [31] (see *R v Dang* [2015] SASCFC 154) - the approach adopted by the sentencing judge disclosed error - the approach he should have adopted was to apply s18A to all the offending for which a 30% discount was available and to also apply s18A to that group of offending which attracted a 10% discount - in resentencing each offender the court must make an easement of the seriousness of the offending, along with matters of mitigation, and then consider the questions of concurrency, or partial concurrency, so as to impose a fair and appropriate sentence - here, the use of the principle of proportionality prevents the imposition of disproportionate punishment for the total offending (see *R v Copeland (No 2)* 108 SASR 398) - the court must also give consideration to the type of illicit drug involved - here, the offending was not at the lower end of objective seriousness - it was largely commercially driven and occurred over a substantial period of time - general deterrence must be given weight - resentenced: Whitaker - 14 years, NPP 7 years 8 months; Donald - 14 years, NPP 7 years 8 months; Pitt - 11 years, NPP 5 years 6 months.
R v Donald; R v Pitt; R v Whitaker

R v Lowe [2016] SASCFC 118
Full Court of the Supreme Court of South Australia
Peek, Nicholson & Doyle JJ
Criminal law - application for leave to appeal convictions for attempted murder - deceased was alone in her home in 2003 when she was attacked with a heavy duty aluminium pipe - she was beaten around the head - her assailant was then unknown, but she provided a description of her attacker and assisted in the production of a composite picture of him - the description and

composite were inconsistent with the then appearance of the assailant, whom she knew - in 2012 the appellant's DNA was entered onto the police database and matched to DNA found at the scene of the assault - the appellant was convicted - the issue at trial was the identity of the assailant and the defence relied upon the victim's initial statement to police and her evidence that although she knew the appellant she did not identify him as her assailant - the prosecution led evidence that the victim's belief that the assailant was different to the appellant was the result of her head injury and associated retrograde amnesia - the defence and the prosecution called experts - on appeal, the defence sought leave to adduce fresh evidence to contest the DNA evidence relied upon by the prosecution, arguing that there had been non-disclosure of a miscoding of the software used in the DNA analysis - at trial, the defence did not raise objections to these matters - held: the fact that counsel did not raise objection during trial does not prevent interference by an appellate court if there is a real risk of a miscarriage of justice (*R v Ibrahim* (2003) 7 VR 141; *Velkoski v The Queen* (2014) 45 VR 680) - in a circumstantial case, all of the evidence is to be considered (*R v Hillier* (2007) 228 CLR 618; *R v Baden-Clay* (2016) 90 ALJR 1013) - the prosecution case was in two parts (1) the circumstantial evidence, including the DNA evidence and (2) the medical evidence demonstrating that the victim's belief was erroneous and the result of her brain injury - when properly understood, the prosecution's circumstantial case that the appellant was the assailant was highly compelling - it was well open to the jury to accept the prosecution evidence that the complainant's memory was unreliable due to her brain injury - DNA evidence examined, identifying the various software programmes used in matching DNA profiles - neither the prosecution nor the defence were aware at trial of the miscoding of the software program - the issue was whether that non-disclosure occasioned a miscarriage of justice - after examination, that miscoding had no impact upon the calculations underpinning the statistical weightings relevant to the DNA evidence - cross examination on the issue would not have been a fertile area for cross examination of the prosecution experts - application to adduce fresh evidence refused - having made an independent assessment of the evidence and applying the precepts in *M v The Queen* ((1994) 181 CLR 487), the verdict was not unreasonable and not unsafe and unsatisfactory - the prosecution medical evidence was admissible and was not directed at the complainant's credibility, but, rather to the question of its reliability (*Toohey v Metropolitan Police Commissioner* [1965] AC 595; *Farrell v The Queen* (1998) 194 CLR 286) - conflicting expert evidence requires careful evaluation and here the trial judge's directions were careful and sufficient - there was no miscarriage of justice - appeal dismissed.
Lowe

AMH v The State of Western Australia [2016] WASCA 180
Court of Appeal of Western Australia
Newnes & Mazza JJA
Criminal law - sentence appeal - appellant charged with 7 offences committed against his estranged de facto partner - unlawful detention (s333 *Criminal Code 1913* (WA) (Code)); unlawful assault causing bodily harm, in circumstance of aggravation (s317(1) Code); sexual penetration without consent (s326 Code); compelling complainant to engage in sexual

behaviour (s327(1) Code) - appellant pleaded guilty to one count and was convicted after trial on the remaining 6 counts - effective sentence imposed of 11 years, with eligibility for parole - 3 grounds of appeal: sentencing judge failed to order a pre-sentence report; sentences imposed in breach of the totality principle; errors identified led to a miscarriage of justice - sentencing judge found that the offending was premeditated and each offence was a serious one, aggravated by the appellant's callous, cruel and evil behaviour - accepted that the appellant had become emotionally unstable, but that his behaviour was 'entirely motivated by his anger' that the complainant had left him and by his jealousy - a discount of 10% was allowed (s9AA *Sentencing Act 1995* (WA)) - held: s20(1) *Sentencing Act 1995* provides that a court may order a pre-sentence report - it is a rare case in which a miscarriage of justice could be demonstrated by the failure of a judge to obtain a pre-sentence report where the offender was represented by counsel and the failure by itself could never constitute a ground of appeal - here, neither an adjournment nor a pre-sentence report was sought by the appellant's counsel - the decision not to seek either was an apparently rational forensic decision, as neither a pre-sentence report, nor expert opinion evidence, could have assisted the appellant - while the offending was not in the worst category, it was extremely serious and general and specific deterrence were important sentencing factors - the total effective sentence of 11 years did not infringe the first limb of the totality principle - leave to appeal refused - appeal dismissed.
AMH

Zdravkovic v The Queen [2016] ACTCA 53
Court of Appeal of the Australian Capital Territory
Murrell CJ, Elkaim & Ross JJ
Criminal law - sentence appeal - appellant, who was the president of the ACT chapter of the Comanchero Outlaw Motorcycle Gang, sought to obtain monies by making a false insurance claim after his motor vehicle was damaged in an accident and on a search of his property was then found to possess drugs - he appealed against sentences imposed for 4 offences: knowingly concerned in attempt to obtain financial advantage (s332 *Criminal Code 2002* (ACT) (Code)); knowingly concerned in possession of cocaine (s164(2)(c) *Drugs of Dependence Act 1994* (ACT)); knowingly concerned in possession of methylamphetamine (s164(2)(c) *Drugs of Dependence Act 1994)*; and possession of MDMA (s171(1)(b) *Drugs of Dependence Act 1994*) - after allowing discounts of 25% on count 1 and 20% on the remaining counts, the appellant was sentenced to periods of 9, 12 and 2 months - on appeal, appellant argued the sentences were manifestly excessive, the NPP (14 months) was excessive and the sentencing judge erred in his application of the principle of accumulation - held: the central purpose of sentencing in most drug supply matters is to deter the dissemination of drugs and to thereby prevent harm to the community and for this reason the quantity and purity of the drugs is relevant to the objective seriousness of the offending - a separate, but related consideration is an offender's knowledge of the nature, quantity and purity of the drug which may inform an assessment of the offender's culpability - lack of knowledge of the quantity or purity of a drug will not usually be an important consideration in sentencing however - here, the quantities that were possessed for supply or sale were unarguably 'quite significant' - it was entirely appropriate for the

sentencing judge to take into account the appellant's conduct and the quantity of drugs and their value, even though there was no evidence of financial reward flowing to the appellant - the culpability of an accessory is not necessarily less than that of a principal and much depends on what the accessory did (*Gas v The Queen* (2004) 217 CLR 198) - here, the drug offences were to be approached on the basis that they were an isolated act, the appellant himself not intending to sell or supply the drugs for financial reward - the quantity of drugs and the appellant's high degree of recklessness gave the offences significant objective seriousness - the authorities relied upon indicate that the sentences were within the available range - when sentencing for multiple offences the sentencing judge must fix an appropriate sentence for each offence and then consider questions of accumulation or concurrence, as well as totality - the real question here was whether the total sentence was 'just and appropriate' - the Court was not persuaded that the sentences were not just and appropriate - in this jurisdiction, non-parole periods are often fixed at 50-70% of the total sentence and generally the determination of an appropriate period will be strongly informed by an offender's rehabilitation prospects (*Barrett v The Queen* [2016] ACTCA 38) - the fixing of a non-parole period is discretionary - where the period set falls outside the range, error is not necessarily established - although the NPP here was 66% of the total sentence, the sentencing judge was sceptical about the appellant's prospects of rehabilitation and was entitled to imposed the NPP he did - appeal dismissed.
Zdravkovic

Spirits of the Dead
By Edgar Allan Poe

I
Thy soul shall find itself alone
'Mid dark thoughts of the gray tombstone—
Not one, of all the crowd, to pry
Into thine hour of secrecy.

II
Be silent in that solitude,
Which is not loneliness—for then
The spirits of the dead who stood
In life before thee are again
In death around thee—and their will
Shall overshadow thee: be still.

III
The night, tho' clear, shall frown—
And the stars shall look not down
From their high thrones in the heaven,
With light like Hope to mortals given—
But their red orbs, without beam,
To thy weariness shall seem
As a burning and a fever
Which would cling to thee for ever.

IV
Now are thoughts thou shalt not banish,
Now are visions ne'er to vanish;
From thy spirit shall they pass
No more—like dew-drop from the grass.

V
The breeze—the breath of God—is still—
And the mist upon the hill,
Shadowy—shadowy—yet unbroken,
Is a symbol and a token—
How it hangs upon the trees,
A mystery of mysteries!?

Click Here to access our Benchmark Search Engine