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Update Summary

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SUMMARY JUSTICE SOUTH AUSTRALIA

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UPDATED COMMENTARY

Michael Grant has added the following updates to Summary Justice SA

Chapter. 02

2.340- administering of a caution at common law

- updated commentary, interception of text messages.
- Rankine and Ors V The King [2022] SASCA 138

2.150

- Legal professional privilege and parliamentary privilege
- parliamentary privilege, new commentary

Chapter 9

9.630

- Relationship between refusal to suspend a sentence and home detention order, new commentary
- appropriateness of home detention order in cases of long periods of imprisonment, new commentary

Summary Justice SA- Michael Grant has provided the following updates:

- Antecedent criminal history: updated case law and commentary- R v Hunter [2022] SASCA, identification with a violent criminal organization is highly relevant to the fixing of an appropriate sentence.
- Relevance of defendant holding public office- updated commentary: defendants who hold public office of some kind to be treated more severely than ordinary members of the public. Schatto v The King [2022] SASCA 129 [61] [63] [66] [69] Cf. R v Buckskin [2010] SASC 138; R v Harrap (2021) 138 SASR 569.
- Relevance of periods served in custody, Sentencing Act 2017, updated commentary.
- Finding that a factor is 'uncommon' does not mean the circumstances are 'exceptional' Johnson (A Pseudonym) v The King [2022] SASCA 216 [36].
- Commencement of Proceedings: Duplicity and offences of dishonesty, updated commentary, Cakar v The King [2023] SASCA 25.
- Investigation Arrest and Bail: reasonable factors in evaluating 'reasonableness' in relation to search powers, updated commentary
- Strict compliance with terms of a warrant, updated commentary, Lukaj and Lukaj v The King [2022] SASCA 135.

- Criminal Investigation (Covert Operations) Act 2009 – updated commentary
- Relevance of the Covert Operations Act 2009 -updated commentary
- S 79 Arrest without a warrant if a warrant has been issued

Summary Justice SA – November 2022 Update Summary

Jurisdiction

Updated commentary

- The exercise of administrative powers by a registrar or court officer is subject to a right of review. Such application must be made as soon as practicable and otherwise within seven days by application. See [1.180].
- A magistrate, judicial registrar, special justice or other person exercising the jurisdiction of the court, has the same immunity from civil liability as a judge of the Supreme Court: s 44(1) of the *Magistrates Court Act 1991*(SA). See [1.190].
- Immunity from both civil and criminal liability is extended to non-judicial officers from the immunity of Magistrates and Justices and non-judicial officers and is also discussed at [1.190]. It extends to an honest act or omission in carrying out administrative acts whether within jurisdiction or in excess of it: s 44(2) of the *Magistrates Court Act 1991*(SA). See [1.200].
- The court (through the Chief Magistrate, Deputy Chief Magistrate and two or more other Magistrates), is empowered to make rules of court: s 49 of the *Magistrates Court Act 1991*(SA). See [1.210].
- The Magistrates Court has divisions being the Civil (General Claims), Civil (Consumer and Business) and Civil (Minor Claims) Divisions as well as the Criminal Division and Petty Sessions Division: s 7 of the *Magistrates Court Act 1991*(SA). See [1.220].
- The Principal Registrar is required to establish and administer an electronic case management system: r 22.1(1) of the *Joint Criminal Rules 2022* (SA). See [1.230].

Investigation, interrogation, arrest and bail

Updated commentary

- A considerable delay between knowledge of the facts said to inform the suspicion and the action taken based on that suspicion may be relevant to whether a suspicion that was originally reasonable has ceased to be so because it has become “stale” owing to the effluxion of time. See [2.80].

Pleas

Updated commentary

- A court must approach a situation where a defendant applies to have a plea of guilty set aside with great care. It is not in the public interest to allow such a

plea to be set aside because of second thoughts or late regrets. See [7.150].

Sentencing

Updated commentary

- While a sentence of imprisonment cannot be suspended in sentencing for a serious sexual offence committed in other than prescribed circumstances, a court nevertheless has a discretion to order any sentence imposed to be served on home detention provided that “special reasons” exist to justify that course. See [9.620].
- An adult who is being sentenced to imprisonment for a serious sexual offence (which includes indecent assault (s 56 of the *Criminal Law Consolidation Act 1935* (SA) other than one committed in prescribed circumstances cannot have the term of imprisonment suspended in the absence of special circumstances. See [9.805].

Intervention and restraining orders

Updated commentary

- While s 23(3) envisages a concession by a defendant, s 6 provides that before a court issues an intervention order it must be “satisfied” of the matters specified in that section. The facts specified in s 6 are not “jurisdictional facts”. See [13.120].

Index

The index has been updated and included in this update.