

JANUARY 2025

Criminal decisions from the High Court, Federal Court, and the
Supreme Courts of all Australian States and Territories

THE
AUSTRALIAN
CRIMINAL
REPORTS

2023-2024

EDITOR

MATTHEW GOODE, LLB (Hons), LLM
Solicitor

VOL 307 — PART 2

PAGES 149-295

The mode of citation of this part will be:
307 A Crim R

TABLE OF CASES REPORTED

Part 2 — Pages 149-295

BM v The King (NSW Sup Ct (Ct of Cr App))	1
Fitzgerald; R v (SA Sup Ct (Ct of Cr App))	101
Fleming; R v (SA Sup Ct (Ct of Cr App))	101
Gamage v Riashi (NSW Sup Ct)	259
Hill; Director of Public Prosecutions (Vic) v (Vic Sup Ct (Ct of App))	273
Kola; Director of Public Prosecutions (Cth) v (High Ct of Aust)	133
Lanciana v The King (Vic Sup Ct (Ct of App))	185
LJ; R v (NT Sup Ct)	17
Mason v The King (Vic Sup Ct (Ct of App))	169
NDA v Western Australia (WA Sup Ct (Ct of App))	47
Nehme; R v (NSW Sup Ct)	40
Nehme; R v (NSW Sup Ct)	43
Price; R v (NSW Sup Ct)	40
Price; R v (NSW Sup Ct)	43
Public Prosecutions (ACT), Director of v Whittle (ACT Sup Ct)	62
Public Prosecutions (Cth), Director of v Kola (High Ct of Aust)	133
Public Prosecutions (NSW), Director of v TH (NSW Sup Ct (Ct of Cr App))	149
Public Prosecutions (NSW), Director of; Zahed v (NSW Sup Ct)	243

Case Citation of The Criminal Appeal Reports

From the first issue of 2001, cases published in Sweet and Maxwell's The Criminal Appeal Reports have been given a unique case number. Case citations take the form of, for example, [2001] 1 Cr App R 2 for the second case reported in Volume 1 of Cr App R in 2001. The Australian Criminal Reports has adopted this style of case citation.

(Cases in **bold** reported in this part)



© 2025 Thomson Reuters (Professional) Australia Limited

Lawbook Co.

ABN 64 058 914 668

Published in Sydney

ISSN 0159-6667

TABLE OF CASES REPORTED

Public Prosecutions (Vic), Director of v Hill (Vic Sup Ct (Ct of App))	273
Public Prosecutions (Vic), Director of v Roder (High Ct of Aust)	283
R v Fitzgerald (SA Sup Ct (Ct of Cr App))	101
R v Fleming (SA Sup Ct (Ct of Cr App))	101
R v LJ (NT Sup Ct)	17
R v Nehme (NSW Sup Ct)	40
R v Nehme (NSW Sup Ct)	43
R v Price (NSW Sup Ct)	40
R v Price (NSW Sup Ct)	43
R v Rahim (NSW Sup Ct)	40
R v Rahim (NSW Sup Ct)	43
R v Rizk (NSW Sup Ct)	40
R v Rizk (NSW Sup Ct)	43
R v Taufahema (NSW Sup Ct)	40
R v Taufahema (NSW Sup Ct)	43
Rahim; R v (NSW Sup Ct)	40
Rahim; R v (NSW Sup Ct)	43
Riashi; Gamage v (NSW Sup Ct)	259
Rizk; R v (NSW Sup Ct)	40
Rizk; R v (NSW Sup Ct)	43
Roder; Director of Public Prosecutions (Vic) v (High Ct of Aust)	283
Rodgers v Western Australia (WA Sup Ct (Ct of App))	196
Taufahema; R v (NSW Sup Ct)	40
Taufahema; R v (NSW Sup Ct)	43
TH; Director of Public Prosecutions (NSW) v (NSW Sup Ct (Ct of Cr App))	149
Western Australia; NDA v (WA Sup Ct (Ct of App))	47
Western Australia; Rodgers v (WA Sup Ct (Ct of App))	196
Whittle; Director of Public Prosecutions (ACT) v (ACT Sup Ct)	62
Zahed v Director of Public Prosecutions (NSW) (NSW Sup Ct)	243
Zirilli v The King (Vic Sup Ct (Ct of App))	76

(Cases in **bold** reported in this part)

INDEX

Part 2 — Pages 149-295

COMPLICITY

- Aid, abet, counsel and procure — Applicant charged both as principal or accessory — Whether jury must be unanimous as to which route to guilt — No requirement for unanimity — Distinction between principal and accessory legally irrelevant — Crimes Act 1958 (Vic), s 323.
Lanciana v The King (Vic Sup Ct (Ct of App)) 185

INCHOATE OFFENCES

- Conspiracy — Conspiracy to pervert the course of justice — Fault elements — General principles — What accused conspirator knew of object of agreement — State particulars went beyond necessary minimum — Verdict unreasonable — Criminal Code (WA), s 135.
Rodgers v Western Australia (WA Sup Ct (Ct of App)) 196

PROCEDURE

- Committal hearings — Appeal against order extending time for filing charge certificate — Reference to “community expectations” — Crucial material held by New South Wales Crime Commission — Power of Director of Public Prosecutions to require production of material — Consideration of power to extend time — Interests of justice — Criminal Procedure Act 1986 (NSW), ss 66, 67 — Director of Public Prosecutions Act 1986 (NSW), ss 3, 15A, 33 — Crime Commission Act 2012 (NSW), ss 45, 45A.
Zahed v Director of Public Prosecutions (NSW) (NSW Sup Ct) 243
- Issuance of summons and notice of motion on pending charges — Argument that surveillance devices warrant invalidly issued — Avoidance of fragmentation of proceedings — Not in the interests of justice — Surveillance Devices Act 2007 (NSW), s 43.
Gamage v Riashi and Another (NSW Sup Ct) 259

SENTENCE

- Calculation — Failure to specify what sentence would have been imposed but for cooperation — That specification not a sentence — Not an error in a sentence — Crimes Act 1914 (Cth), s 16AC — Judiciary Act 1903 (Cth), s 68(1)(c) — Criminal Procedure Act 2009 (Vic), ss 278, 280, 281.
Mason v The King (Vic Sup Ct (Ct of App)) 169
- Calculation — Mitigating factors — Cooperation with authorities — Requirement to specify discount — Hypothetical sentence not “head sentence” — Notional sentence — Not two-stage sentencing — Purposes of hypothetical sentence — Crimes Act 1914 (Cth), s 16AC.
Mason v The King (Vic Sup Ct (Ct of App)) 169

INDEX

SENTENCE — *continued*

- Mitigating factors — Family hardship — Child sex offences — Spouse terminally ill — Cruel to imprison — Exceptional circumstances found.
Director of Public Prosecutions (Vic) v Hill (Vic Sup Ct (Ct of App)) 273
- Sentencing standard — Child sexual assault — Multiple offences — Form 1 offences — Indicative sentences — Manifestly inadequate.
Director of Public Prosecutions (NSW) v TH (NSW Sup Ct (Ct of Cr App)) 149

TRIAL

- Directions — Tendency evidence — Evidence of charged acts — Burden of proof — Charged acts to be considered both as tendency evidence and as charges — Forms of direction to jury considered — General principles — Jury Directions Act 2015 (Vic), ss 61, 62.
Director of Public Prosecutions (Vic) v Roder (High Ct of Aust) 283

WORDS AND PHRASES

- “Exceptional circumstances”.
Director of Public Prosecutions (Vic) v Hill (Vic Sup Ct (Ct of App)) 273
- “Head sentence”.
Mason v The King (Vic Sup Ct (Ct of App)) 169
- “Sentence”.
Mason v The King (Vic Sup Ct (Ct of App)) 169