



**COURT OF APPEAL  
CRIMINAL APPEALS - FEBRUARY**

<b>Case</b>	<b>Primary charge(s)</b>	<b>Sentence</b>	<b>Nature of appeal</b>	<b>Outcome of appeal</b>	<b>Successful ground (if any)</b>	<b>New sentence (if any)</b>	<b>Date of judgment</b>	<b>Bench</b>
<i>DPP (Vic) v Chatterton</i> ; <i>DPP (Cth) v Chatterton</i> [2014] VSCA 1	Pleaded guilty to using a carriage service to transmit indecent communication to person under 16 (one charge); sexual penetration of a child under 16 (five charges); using a carriage service to procure a child under 16 (one charge); possession of child pornography (one charge) and furnish false or misleading information (one summary charge)	Three months' imprisonment, three year Community Corrections Order	Director's appeal against sentence	Allowed	Manifest inadequacy	Four years' imprisonment, non-parole period of two years and six months	4 February 2014	Weinberg, Whelan and Priest JJA

<i>Soylemez v The Queen</i> [2014] VSCA 23	Pled guilty to misconduct in a public office (one charge) and possession of a drug of dependence (two charges)	Two years and three months imprisonment with a non-parole period of 15 months	Appeal against sentence	Dismissed	N/A	N/A	5 February 2014	Neave and Bongiorno JJA
<i>Ejupi v The Queen</i> [2014] VSCA 2	Pled guilty to attempted theft (two charges) and recklessly causing serious injury (one charge)	Five years' imprisonment with a non-parole period of three years and six months	Appeal against sentence	Dismissed	N/A	N/A	6 February 2014	Priest and Coghlan JJA.
<i>Hughes v the Queen</i> [2014] VSCA 4	Convicted of aggravated burglary (one charge), intentionally causing serious injury (one charge), making a threat to kill (one charge) and reckless conduct endangering life (one charge)	Eight years and six months imprisonment, with a non-parole period of six years and six months	Appeal against convictions	Dismissed	N/A	N/A	6 February 2014	Weinberg, Priest and Coghlan JJA
<i>El-Haouli v The Queen</i> [2014] VSCA 5	Pled guilty to intentionally causing injury (one charge) and intentionally causing serious injury (one charge)	Two years and five months' imprisonment with a non-parole period of eight months	Appeal against sentence	Dismissed	N/A	N/A	6 February 2014	Priest and Coghlan JJA

<i>Aggelidis v The Queen</i> [2014] VSCA 6	Convicted of reckless conduct endangering life (one charge)	Four years' imprisonment, with a non-parole period of two years and nine months	Appeal against conviction and sentence	Appeal against conviction dismissed; appeal against sentence allowed	Sentence was manifestly excessive	Three years' imprisonment, with a non-parole period of 18 months	7 February 2014	Maxwell P, Priest and Coghlan JJA
<i>Kruzenga v The Queen</i> [2014] VSCA 10	Pleaded guilty to armed robbery (one charge) and shortening the barrel of a longarm (one charge)	Six years' imprisonment, with a non-parole period of three years and 11 months	Appeal against sentence	Allowed	Sentence was manifestly excessive.	Five years and four months' imprisonment, with a non-parole period of five years	11 February 2014	Redlich and Weinberg JJA
<i>Secombe v The Queen</i> [2014] VSCA 28	Pleaded guilty to aggravated burglary (one charge), making threats to kill (one charge), common assault (one charge) and criminal damage (one charge)	Five years' imprisonment, with a non-parole period of three years and six months	Appeal against sentence	Dismissed	N/A	N/A	12 February 2014	Neave and Bongiorno JJA
<i>Khoja v The Queen</i> [2014] VSCA 9	Pleaded guilty to culpable driving causing death (one charge), negligently causing serious injury (four charges)	Eight years and 6 months' imprisonment, with a non-parole period of five years and six months.	Appeal against sentence	Dismissed	N/A	N/A	13 February 2014	Maxwell P, Nettle and Priest JJA

<i>Saw Wah v The Queen</i> [2014] VSCA 7	Convicted of sexual penetration of a child under 16 (one charge) and indecent act with a child under 16 (three charges)	Five years and 6 months' imprisonment, with a non-parole period of three years and seven months	Appeal against conviction	Allowed	Trial judge misapprehended the correct application of the law regarding evidence of good character, in ruling that, in the event the applicant called such evidence, the Crown would be permitted to call evidence in rebuttal.	Convictions quashed, matter remitted.	14 February 2014	Weinberg, Priest and Coghlan JJA
<i>Wade (a pseudonym) v The Queen</i> [2014] VSCA 13	Convicted of armed robbery (one charge) and attempted armed robbery (one charge)	25 year custodial supervision order, to be reviewed after 15 months	Appeal against conviction	Dismissed	N/A	N/A	14 February 2014	Nettle, Redlich and Coghlan JJA
<i>T S v The Queen</i> [2014] VSCA 24	Pleaded guilty to aggravated burglary (one charge), causing injury recklessly (one charge) and theft (one charge)	Three years and 6 months' imprisonment, with a non-parole period of two years	Appeal against sentence	Allowed	Sentence was excessive without error by sentencing judge In light of fresh evidence of applicant's mental health	Two years and 6 months' imprisonment, with a non-parole period of 18 months	21 February 2014	Weinberg and Osborn JJA



### COURT OF APPEAL CRIMINAL APPEALS - MARCH

Case	Primary charge(s)	Sentence	Nature of appeal	Outcome of appeal	Successful ground (if any)	New sentence (if any)	Date of judgment	Bench
<i>Alavy v The Queen</i> [2014] VSCA 25	Pleaded guilty to importing a marketable quantity of a border controlled drug (methamphetamine, one charge)	Seven years' imprisonment with a non-parole period of five years	Appeal against sentence	Dismissed	N/A	N/A	3 March 2014	Weinberg and Coghlan JJA

<p><i>Hibgame v The Queen</i> [2014] VSCA 26</p>	<p>Pleaded guilty to importing a marketable quantity of a border controlled drug (benzylpiperazine, one charge), trafficking in border controlled drugs (benzylpiperazine and methamphetamine, one charge) and importing a prohibited import (trifluoromethylphenylpiperazine, six summary charges)</p>	<p>Five years and six months' imprisonment with a non-parole period of two years and six months; aggregate fine of \$2,000 imposed in relation to the summary offences</p>	<p>Appeal against sentence</p>	<p>Allowed</p>	<p>The sentencing judge erred in her assessment that the trafficking charge was a 'very serious example' of that type of offence; manifest excess</p>	<p>Four years' imprisonment with a non-parole period of one year and nine months; aggregate fine of \$2,000 imposed in relation to the summary offences affirmed</p>	<p>3 March 2014</p>	<p>Weinberg and Coghlan JJA</p>
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<p><i>DPP (Cth) v Guest</i> [2014] VSCA 29</p>	<p>Pleaded guilty to using a carriage service to access child pornography (one charge), using a carriage service to transmit child pornography (one charge) and possessing child pornography (one charge)</p>	<p>Three years and six months' Community Correction Order with 300 hours of community service; registrable sex offender for life</p>	<p>Directors' appeal against sentence</p>	<p>Allowed</p>	<p>Manifest inadequacy</p>	<p>Eighteen months' imprisonment backdated to commence at the beginning of the Community Correction Order; released on Recognizance Release Order in the sum of \$1,000 for two years</p>	<p>3 March 2014</p>	<p>Weinberg, Whelan and Coghlan JJA</p>
<p><i>West v The Queen; Beyer v The Queen</i> [2014] VSCA 36</p>	<p><b>West</b> Pleaded guilty to recklessly causing serious injury (one charge)  <b>Beyer</b> Pleaded guilty to recklessly causing serious injury (one charge)</p>	<p><b>West</b> Six years' imprisonment with a non-parole period of four years  <b>Beyer</b> Five years' imprisonment with a non-parole period of three years</p>	<p>Appeal against sentence</p>	<p>Dismissed</p>	<p>N/A</p>	<p>N/A</p>	<p>13 March 2014</p>	<p>Weinberg and Coghlan JJA</p>

<p><i>Heathcote (a pseudonym) v The Queen</i> [2014] VSCA 37</p>	<p>Pled guilty to using a carriage service to access child pornography (one charge), using a carriage service to transmit child pornography (one charge), knowingly possessing child pornography (one charge), visually capturing another person's genital or anal region (one summary charge) and distributing images of another person's genital or anal region (one summary charge)</p>	<p>18 months' imprisonment; released on recognisance of \$500 after serving five months' imprisonment; registrable sex offender for life</p>	<p>Appeal against sentence</p>	<p>Appeal allowed but to allow the offender's release date to be amended to take into account offender's period of pre-sentence custody</p>	<p>N/A</p>	<p>N/A</p>	<p>13 March 2014</p>	<p>Tate JA and Sifris AJA</p>
<p><i>Swan v The Queen (No 2)</i> [2014] VSCA 41</p>	<p>Pled guilty to dangerous driving causing death (one charge), failing to stop after an accident (one charge), failing to render assistance (one charge) and unlicensed driving (one summary charge)</p>	<p>Six years imprisonment with a non-parole period of four years and four months, licence disqualification order of seven years</p>	<p>Appeal against sentence</p>	<p>Appeal allowed</p>	<p>Manifest excess</p>	<p>Applicant disqualified from driving for four years</p>	<p>13 March 2014</p>	<p>Maxwell P, Bongiorno and Coghlan JJA</p>



<i>McKinnell v The Queen</i> [2014] VSCA 39	Pleaded guilty to trafficking in a large commercial quantity of methylamphetamine (one charge) and handling stolen goods (one charge)	Nine years and nine months' imprisonment with a non-parole period of six years and three months	Appeal against sentence	Dismissed	N/A	N/A	21 March 2014	Neave and Bongiorno JJA
<i>Altun v The Queen</i> [2014] VSCA 46	Pleaded guilty to dangerous driving causing serious injury (one charge), driving whilst disqualified (one summary charge) and unlawful assault (one summary charge)	Three years and three months' imprisonment with a non-parole period of two years; disqualified from obtaining a driver's licence for five years	Appeal against sentence	Allowed	The non-parole period was manifestly excessive as the circumstances of the case called for the imposition of a lower than usual non-parole period	Three years and three months' imprisonment with a non-parole period of 14 months	25 March 2014	Weinberg and Coghlan JJA

<p><i>Dang v The Queen</i> [2014] VSCA 49</p>	<p>Pleaded guilty to trafficking in a drug of dependence (methylamphetamine, one charge), trafficking in a drug of dependence (heroin, one charge) and trafficking a commercial quantity of a drug of dependence (methylamphetamine, one charge)</p>	<p>Seven years' imprisonment with a non-parole period of four years and six months</p>	<p>Appeal against sentence</p>	<p>Allowed</p>	<p>Sentence imposed reflected an element of double sentencing</p>	<p>Six years and six months' imprisonment with a non-parole period of four years</p>	<p>25 March 2014</p>	<p>Weinberg, and Tate JJA</p>
<p><i>Blackwood v The Queen</i> [2014] VSCA 47</p>	<p>Pleaded guilty to sexual penetration of a child under sixteen (two charges) and indecent act with or in the presence of child under sixteen (three charges)</p>	<p>Six years' imprisonment with a non-parole period of three years and six months</p>	<p>Appeal against sentence</p>	<p>Dismissed</p>	<p>N/A</p>	<p>N/A</p>	<p>26 March 2014</p>	<p>Neave and Coghlan JJA</p>

<p><i>Benson v The Queen</i> [2014] VSCA 51</p>	<p>Convicted of rape (one charge)</p>	<p>Seven years' imprisonment with a non-parole period of five years</p>	<p>Appeal against conviction and sentence</p>	<p>Allowed</p>	<p>Substantial Miscarriage of justice; trial judge erred in admitting evidence of the applicant's past violent conduct as relationship evidence</p>	<p>New trial ordered</p>	<p>28 March 2014</p>	<p>Neave, Bongiorno and Coghlan JJA</p>
<p><i>Nguyen v The Queen</i> [2014] VSCA 53</p>	<p>Pleaded guilty to failing to stop after a motor vehicle accident (one charge), failing to render assistance after an accident (one charge) and unlicensed driving (one summary charge)</p>	<p>Two years and one months' imprisonment with a non-parole period of 12 months</p>	<p>Appeal against sentence</p>	<p>Appeal allowed in relation to summary charge only</p>	<p>Manifestly excessive</p>	<p>Two years' imprisonment with a non-parole period of 12 months</p>	<p>31 March 2014</p>	<p>Neave and Weinberg JJA</p>



## COURT OF APPEAL CRIMINAL APPEALS - APRIL

Case	Primary charge(s)	Sentence	Nature of appeal	Outcome of appeal	Successful ground (if any)	New sentence (if any)	Date of judgment	Bench
<i>Kaya v The Queen</i> [2014] VSCA 55	Pleaded guilty to driving whilst disqualified (two charges), contravention of suspended sentence (one charge)	Two years six months' imprisonment, non-parole period of two years (includes restoration of suspended sentence)	Appeal against sentence	Allowed	Cumulation and length of non-parole period offended the principle of totality	Two years two months' imprisonment, non-parole period of 18 months (sentence taking effect 7 November 2013)	1 April 2014	Neave and Weinberg JJA
<i>DPP v Bryan</i> [2014] VSCA 54	Pleaded guilty to manslaughter (one charge)	Six years' imprisonment, non-parole period of three years six months	Director's appeal against sentence	Allowed	Manifest inadequacy	Eight years' imprisonment, non-parole period of four years and six months	3 April 2014	Neave, Weinberg and Beach JJA

<i>Papadopoulos v The Queen</i> [2014] VSCA 63	Pleaded guilty to manslaughter (one charge)	11 years and six months' imprisonment, non-parole period of nine years	Appeal against sentence	Dismissed	N/A	N/A	4 April 2014	Nettle and Weinberg JJA and Sifris AJA
<i>McPherson v The Queen</i> [2014] VSCA 59	Pleaded guilty to persistent sexual abuse of a child under the age of 16 (one charge) and indecent act with or in the presence of a child under 16 (19 charges)	11 years and two months' imprisonment, non-parole period of seven years and six months; registrable sex offender, life reporting period; forfeiture of \$100,000	Appeal against sentence	Dismissed	N/A	N/A	8 April 2014	Maxwell P and Neave and Redlich JJA

<p><i>DPP v Holder</i> [2014] VSCA 61</p>	<p>Pleaded guilty to trafficking a large commercial quantity of a drug of dependence (methylamphetamine, one charge), dealing with property suspected of being the proceeds of crime (one summary charge)</p>	<p>Eight years six months' imprisonment, non-parole period five years and nine months</p>	<p>Director's appeal against sentence</p>	<p>Dismissed</p>	<p>N/A</p>	<p>N/A</p>	<p>8 April 2014</p>	<p>Maxwell P and Neave and Redlich JJA</p>
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<p><i>Davies v The Queen</i> [2014] VSCA 69</p>	<p>Pleaded guilty to incest (eight charges), unlawful carnal knowledge (one charge), gross indecency (one charge), production of child pornography (three charges), administration of drug for purposes of sexual penetration (one charge) and indecent act with or in the presence of a child under 16 (six charges)</p>	<p>16 years' imprisonment, non-parole period of 14 years; registrable sex offender, life reporting period</p>	<p>Appeal against sentence</p>	<p>Allowed – no point of principle</p>	<p>Sentencing did not reflect his Honour's intention</p>	<p>14 years 43 days imprisonment (to be served concurrently with an existing sentence), non-parole period of 12 years 43 days (to commence on 23 December 2009)</p>	<p>10 April 2014</p>	<p>Neave and Weinberg JJA</p>
<p><i>Hothnyang v The Queen</i> [2014] VSCA 64</p>	<p>Convicted of murder (one charge)</p>	<p>14 years' imprisonment, non-parole period of ten years six months</p>	<p>Appeal against conviction</p>	<p>Dismissed</p>	<p>N/A</p>	<p>N/A</p>	<p>11 April 2014</p>	<p>Nettle and Neave JJA and Sifris AJA</p>

<i>Delich v The Queen</i> [2014] VSCA 66	Pled guilty to murder (one charge)	20 years' imprisonment, non-parole period of 16 years	Appeal against sentence	Dismissed	N/A	N/A	11 April 2014	Nettle and Neave JJA and Sifris AJA
<i>A C v The Queen</i> [2014] VSCA 71	Convicted of rape (one charge)	Five years detention in a residential treatment facility <sup>1</sup>	Appeal against conviction	Dismissed	N/A	N/A	11 April 2014	Neave, Weinberg and Osborn JJA
<i>Polimeni v The Queen</i> [2014] VSCA 72	Convicted of conspiracy to commit an offence of possessing a commercial quantity of an unlawfully imported border controlled drug (cocaine, one charge)	18 years' imprisonment, non-parole period of 12 years	Appeal against conviction and sentence	Appeal against conviction dismissed, appeal against sentence dismissed	N/A	N/A	16 April 2014	Weinberg and Coghlan JJA
<i>Wu v The Queen</i> [2014] VSCA 79	Convicted of murder (one charge)	27 years' imprisonment, non-parole period of 21 years	Appeal against conviction and sentence	Appeal against conviction dismissed, appeal against sentence dismissed	N/A	N/A	24 April 2014	Weinberg, Tate and Coghlan JJA

<sup>1</sup> This is taken from the particulars of the appeal documents – it is not disclosed in the reasons dismissing the application for leave to appeal.



<i>Tran v The Queen</i> [2014] VSCA 85	Pleaded guilty to receiving a secret commission (one charge) and obtain financial advantage by deception (16 charges)	Two years six months' imprisonment, non-parole period of 18 months	Appeal against sentence	Allowed	Manifest excess	Two year community corrections order with 300 hours unpaid community work	29 April 2014	Nettle and Priest JJA
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