

## **'Instruments of injustice': Victoria's highest court denounces state's mandatory sentencing**

*Justices Chris Maxwell and Terence Forrest said the 'oppressive sentencing regime' ignored evidence and was contrary to public interest*



*In a judgment published on Thursday, two justices wrote that the Victorian government appeared to ignore evidence on the impact of adult jail on young offenders.*

**Nino Bucci**

Thu 14 Jul 2022

Victoria's highest court has delivered a withering assessment of the state's mandatory sentencing regime, saying it required "judges to be instruments of injustice" and showed a "profound misunderstanding" of the community's best interests.

In a judgment published on Thursday, court of appeal president, Justice Chris Maxwell, and Justice Terence Forrest said introducing mandatory sentencing for a range of offences over the past decade showed that state governments appeared to have "ignored the incontestable evidence about the adverse impact of adult gaol on young offenders".

"This blunt, oppressive sentencing regime is contrary to the public interest and incompatible with modern sentencing jurisprudence," the pair wrote.

"Mandating imprisonment in this way must be seen to reflect the ascendancy of a punitive sentiment and a disregard of the demonstrated benefits of non-custodial orders and ... the vital importance of rehabilitating young offenders.

“Mandatory sentencing reveals a profound misunderstanding of where the community’s best interests lie, especially in the sentencing of young offenders. As has been pointed out repeatedly, sending young people to adult gaol is almost inevitably counterproductive.”

Maxwell and Forrest were ruling on an application by Beau Buckley, an 18-year-old who had been sentenced to a mandatory minimum term of three years prison for committing an aggravated carjacking.

There were no legal grounds for Buckley’s appeal to be upheld, but the justices noted: “in refusing this application we have been compelled to do the applicant an injustice, and the community a disservice.”

In March last year, Buckley and a co-offender arranged to meet a man to buy \$300 worth of nitrous oxide canisters, commonly known as nangs, which are typically inhaled to induce a high.

When the man arrived, they used knives to threaten him to hand over his car keys and phone, and fled.

Buckley only turned 18 four weeks before the offence, and while he had a criminal record he had no prior convictions.

His lawyers submitted that he was immature, with a history of mental ill-health and undiagnosed verbal learning impairments. He had used drugs to self-medicate from about the age of 13.

But none of those factors satisfied the “exception” to the mandatory sentencing requirements, the justices found, describing the test as “near-impossible”.

“Mandatory minimum sentences are wrong in principle,” the justices said.

“They require judges to be instruments of injustice: to inflict more severe punishment than a proper application of sentencing principle could justify, to imprison when imprisonment is not warranted and may well be harmful, and to treat as identical offenders whose circumstances and culpability may be very different.”

The regime had effectively prohibited the use of non-custodial orders, or orders that would result in an offender being detained in youth detention, the justices said, indicating a “preoccupation with being, and being seen to be, punitive” which had “obscured a proper appreciation of the public interest”.

“The parliament appears to have ignored the incontestable evidence about the adverse impact of adult gaol on young offenders and, equally, the opportunities which non-custodial orders and YJC [youth justice centre] orders provide for minimising the risk of reoffending,” they said.

The case is one of the final matters to be overseen by Maxwell, who has retired as president and will serve his last day in the role on Friday.