

[PSA 9\(10\)](#)

Veen v The Queen [No. 2] (1988) 164 CLR 465:

“... the antecedent criminal history of an offender is a factor which may be taken into account in determining the sentence to be imposed, but it cannot be given such weight as to lead to the imposition of a penalty which is disproportionate to the gravity of the instant offence. To do so would be to impose a fresh penalty for past offences: Director of *Public Prosecutions v Ottewell* (35). The antecedent criminal history is relevant, however, to show whether the instant offence is an uncharacteristic aberration or whether the offender has manifested in his commission of the instant offence a continuing attitude of disobedience of the law. In the latter case, retribution, deterrence and protection of society may all indicate that a more severe penalty is warranted. It is legitimate to take account of the antecedent criminal history when it illuminates the moral culpability of the offender in the instant case, or shows his dangerous propensity or shows a need to impose condign punishment to deter the offender and other offenders from committing further offences of a like kind.”

Recent Examples –

[*Tryhorn v The Commissioner of Police* \[2022\] QDC 194](#)

Facts: 19 days after the operational period of a suspended sentence, a 38-year-old drug dependant man committed a series of property and stealing offences. The most serious was entering an underground car park stealing a carton of beer and taking an ‘UberEats’ tablet from a business. The lesser offences included possessing tainted property (a mountain bike likely stolen), stealing a bottle of alcohol bottle shops on two occasions, \$200 groceries from Coles and Woolworths, hair products from Priceline and a few other lesser charges. The appellant has a significant criminal history with 39 prior court entries with 78 prior entries for dishonesty offences. The sentencing magistrate imposed 18 months imprisonment with parole release after 6 months. The appeal was on the basis the court imposed a sentence manifestly excessive.

Finding: The criminal history of the appellant left the court little to use in mitigation, however the sentencing court was overborne by the criminal history and imposed a sentence that was disproportionate to the otherwise low-end offending. A sentence of 12 months imprisonment, with the parole release date set on the date of the appeal (5 months instead of 6).