

Assault occasioning bodily harm

s 317(1) *Criminal Code*

From 1 January 2014

Transitional Sentencing Provisions: This table is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period
- Transitional provisions period
- Pre-transitional provisions period

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
PG	plead guilty
agg	aggravated
burg	burglary
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
ct	count
TES	total effective sentence
EFP	eligible for parole
VRO	violence restraining order
sex pen	sexual penetration without consent

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
16.	<i>McCoombe v The State of Western Australia</i> [2016] WASCA 227 Delivered 13/12/2016	<p>47 yrs at time sentencing.</p> <p>PG (20% discount on ct 4).</p> <p>Long criminal history; many involving violence.</p> <p>Recently released from prison for offences of violence towards this victim.</p> <p>Indigenous Australian. Positive relationships with his siblings.</p> <p>Educated to yr 11.</p> <p>Unemployed for a number of years.</p> <p>Three children from a previous relationship; young child with victim of these offences.</p> <p>History of alcohol abuse; commenced drinking at an early age. No history of illicit substance abuse.</p>	<p>4 x Agg AOBH.</p> <p>McCoombe and the victim, D, were in an abusive relationship. McCoombe would accuse D of infidelity causing him to become jealous.</p> <p>Following an argument McCoombe punched D two or three times to the face with a clenched fist, causing bruising and swelling. He then strangled her so she was unable to breathe, bruising her neck (ct 1).</p> <p>McCoombe forcefully swung a metal chair, striking D on the back of the head. The wound bled profusely (ct 2).</p> <p>McCoombe struck D with a plastic crate to her left leg, ribs and head. He later hit her in the arm with the crate. D sustained bruising to her leg and a cut to her head that bled profusely (ct 3).</p> <p>McCoombe was verbally abusive to D so she went into the toilet to get away from him. He followed and kicked in the door. D attempted to escape the home. As she did so McCoombe got a kettle full of boiling water and poured the boiling water on her. He also pushed D onto a mattress and punched and kicked her (ct 4).</p> <p>D was prevented from obtaining medical treatment for several days. She suffered extensive second and third-degree burns down her back.</p>	<p>Ct 1: 1 yr 2 mths imp (cum).</p> <p>Ct 2: 1 yr imp (conc).</p> <p>Ct 3: 1 yr 2 mths imp (conc).</p> <p>Ct 4: 5 yrs imp (cum).</p> <p>TES 6 yrs 2 mths imp. EFP.</p> <p>The sentencing judge found the circumstances of ct 4 as 'especially serious' and were 'in the most serious category of offending of this kind'.</p> <p>The appellant's criminal history one of the worst records of violent offending seen.</p> <p>Unfavourable antecedents and retribution, deterrence and protection of society were important sentencing considerations in this case.</p> <p>Little insight into his offending.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned length of sentence on ct 4.</p> <p>At [34] Ct 4 was no aberration. It was part of a pattern of serious and ongoing domestic violence against D.</p> <p>At [35] The appellant has no real insight into his offending. He sought to justify what he did by blaming D. ... he poses a high risk of further serious violent offending against his domestic partners.</p> <p>At [36] We are acutely aware of the severity of the sentence imposed on ct 4 ... the sentence was very close to the maximum penalty for the offence. However, when all the relevant circumstances are considered, including the appellant's PG and his antecedents, ct 4 was plainly an offence of the utmost gravity of its kind.</p>
15.	<i>Sophiadakis v</i>	28 yrs at time offending.	<u>Indictment</u>	<u>Indictment</u>	Dismissed.

<p><i>The State of Western Australia</i></p> <p>[2016] WASCA 203</p> <p>Delivered 25/11/2016</p>	<p>29 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>The appellant was on a pre-sentence order for the two agg AOBH offences at time offending on indictment.</p> <p>Significant prior criminal history, including convictions of unlawful damage, use of prohibited drugs, wounding, AOBH, assault a driver, common assault and breach of bail.</p> <p>Deprived childhood; exposed to violence.</p> <p>Illicit drug addiction at time offending; drug free at time sentencing.</p> <p>Drug-fuelled violence not out of character.</p> <p>Mental health issues; stabilised since the appellant had been in custody and ceased taking illicit drugs.</p> <p>The appellant had asserted</p>	<p>1 x With intent to harm did an act likely to endanger life, health or safety.</p> <p><u>Section 32 Notice</u> Ch 1: Agg AOBH. Ch 2: Agg AOBH. Ch 3: Criminal damage. Ch 4: Breach of bail.</p> <p><u>Ch 1 & 2</u></p> <p>A verbal altercation occurred between the appellant and the victim A.</p> <p>After the appellant's children threw sand and grass on A's car, the victim's partner (B) confronted the appellant and flicked the grass at her. The appellant then attacked B, repeatedly punching him to the head (ch 1).</p> <p>A attempted to stop the fight. The appellant grabbed A by the hair and punched her left eye. A fell to the ground and the appellant repeatedly punched her to the head as she lay on the ground (ch 2).</p> <p><u>Indictment and ch 3</u></p> <p>The victim C lived with the appellant. The appellant verbally abused C about a missing television. When C tried to placate the appellant, the appellant became aggressive and irrational. C bent over to pick up food that the appellant had thrown on the floor. The appellant then raised a hammer, said "I'm going to fucking kill you" and</p>	<p>4 yrs imp.</p> <p><u>Section 32 Notice</u> Ch 1: 15 mths imp (conc). Ch 2: 15 mths imp (cum). Ch 3: 18 mths imp (conc). Ch 4: 3 mths imp (conc).</p> <p>TES 5 yrs 3 mths imp.</p> <p>EFP.</p> <p>The sentencing judge observed that the sentences for the two agg AOBH offences were shorter than the offences deserved because of totality reasons.</p> <p>The sentencing judge accepted for sentencing purposes that C was the appellant's drug supplier.</p> <p>Sentencing judge found that the flicking of grass by B was pretty minor, but probably inflamed the situation; the appellant was in a highly volatile state anyway and may well have overreacted even if B had treated her with kid gloves.</p>	<p>Appeal concerned the facts for Agg AOBH charges and totality.</p> <p>At [27] ...neither the prosecutor nor defence counsel who appeared in the District Court was aware of the negotiations and agreement on the material facts which occurred before the appellant entered her PG in the Magistrates Court ...</p> <p>At [28] ... the facts as stated in the Magistrates Court asserted that Rodney Smith had flicked grass into the appellant's face and that Rodney Smith had raised his fist towards the appellant before she struck him. By contrast, the facts as stated in the District Court ... asserted that Rodney Smith had flicked grass at the appellant and the stated facts did not include the assertion that Rodney Smith had raised his fist towards the appellant before she struck him.</p>
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		<p>at sentencing that she was upset with C because C had shown her daughter pornography and believed that C was grooming her daughter.</p>	<p>struck C repeatedly to the head. C raised her hands to protect herself and the appellant hit her arms and legs. C suffered bruising to her arms and legs and required 14 staples to her head.</p> <p>The appellant pursued C out of the house and struck the windscreen and door panel of the C's car (ch 3). \$500 damage was caused to the car.</p> <p>The appellant's young children witnessed part of the offending.</p> <p><u>Ch 4</u> The appellant failed to appear at the Magistrates Court for the return date of her pre-sentence order.</p>	<p>The appellant's mental health was of limited mitigatory value. The sentencing judge found that illicit drug use was the appellant's predominant problem, but accepted that there was also an underlying mental fragility which was exacerbated by the use of drugs. The appellant had abused illicit drugs knowing that she had a tendency to behave violently when both under the influence of and when coming down from drugs.</p> <p>High risk of violent reoffending if relapses into substance abuse and has further contact with C.</p> <p>No evidence of remorse above PG.</p>	<p>At [33] ... the appellant's response was grossly disproportionate on either version of the facts.... even if the appellant should have been sentenced on the basis of the facts as alleged in the Magistrates Court, no different individual sentences should have been imposed for the offences of agg AOBH and no different TES should have been imposed.</p> <p>At [34] ... the level of violence inflicted by the appellant on Samantha Smith, as alleged in the Magistrates Court, was less than the level of violence, as alleged in the District Court, is significant, to the extent it was alleged in the District Court that the appellant struck Samantha Smith to the head after she had fallen to the ground, but less significant, to the extent it was alleged in the District Court that the appellant grabbed Samantha Smith by the hair. However...even if the</p>
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					appellant should have been sentenced on the basis of the facts as alleged in the Magistrates Court, no different individual sentences should have been imposed for ... agg AOBH and no different TES should have been imposed.
14.	<p><i>AMH v The State of Western Australia</i></p> <p>[2016] WASCA 180</p> <p>Delivered 19/10/2016</p>	<p>31 yrs at time offending.</p> <p>PG to Ct 7 (10% discount). Convicted after trial remaining counts.</p> <p>Minor criminal history; no previous relevant offending.</p> <p>15-16 yrs witnessed his mother in a physically abusive relationship.</p> <p>Emotionally unstable as a result of a succession of family tragedies.</p> <p>History of heroin abuse; abstinent from the drug at time offending.</p>	<p>Ct 1: Dep liberty. Cts 2, 6 & 7: Agg AOBH. Ct 3 & 4: Agg sex pen. Ct 5: Sex coercion.</p> <p>AMH and the victim, A, had a violent and abusive de-facto relationship. They separated and AMH spied and stalked A, and committed acts of violence upon her.</p> <p>The time between the initial offending and the report to police was approx. 10 days.</p> <p>AMH tried to persuade A to attend a function with him. He drove to where she was staying, forced her into his car and drove towards Ravenswood (ct1).</p> <p>During the drive and at an isolated area AMH verbally abused and repeatedly struck A in the head (ct2) and forced A to perform fellatio on him (ct3). Threatening to insert a rusty tool into A's anus, he used it to strike A on the legs. He also kicked her in the ribs (ct 6). Forcing A, naked, onto all fours he inserted a spanner into her anus (ct 4). He forced A to put a drink bottle into her</p>	<p>Ct 1: 3 yrs imp (conc). Ct 2: 1 yr imp (conc). Ct 3: 4 yrs imp (conc). Ct 4: 7 yrs 6 mths imp (cum). Ct 5: 3 yrs 6 mths imp (cum). Ct 6: 1 yr 6 mths imp (conc). Ct 7: 2 yrs 8 mths imp (conc).</p> <p>TES 11 yrs imp. EFP.</p> <p>The sentencing judge found the offending premeditated and very serious examples of their kind and agg 'by his callous, selfish and ... cruel and evil behaviours after the event ...'.</p> <p>The offending was found to be not about sexual</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence; individual sentences not challenged.</p> <p>At [42] ... the appellant's overall offending was extremely serious. While it was not in the worst category of offending of its kind, it approached that level. The offending was premeditated, sustained, cruel and humiliating ... The appellant's post-offence conduct cannot be ignored and underscores the appellant's criminality.</p>

			<p>vagina and threatened to kick it in if she didn't push it all the way in (ct 5). He repeatedly bashed her to the head and ribs (ct 7).</p> <p>AMH burnt her with a cigarette or lighter. He also placed the flame close to her genitals. He continually threatened to harm A and her family.</p> <p>AMH forced A to telephone her employer and quit her job. At various points he got A to call and send text messages, so that police would not look for her. AMH took A to his mother's house and when police attended told her she had to get over the fence. She complied, despite being badly injured.</p> <p>A suffered a swollen ear, severely bruised eyeball and eye socket, and bruising and burns to her body. Her rib cage and left leg were badly injured.</p>	<p>gratification, but about sexual dominance, embarrassment and humiliation.</p> <p>No remorse or victim empathy.</p>	
13.	<p><i>The State of Western Australia v WTG</i></p> <p>[2016] WASCA 175</p> <p>Delivered 12/10/2016</p>	<p>31 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>At time offending, WTG was subject to an SIO for convictions of 3 x breach VRO protecting the victim.</p> <p>Significant prior criminal history, including AOBH, agg assault, breaches of protective bail, carrying a weapon with intent to cause fear, agg burg, breaches of</p>	<p>1 x Agg AOBH. 1 x Threat to harm. 1 x Agg GBH.</p> <p>WTG and the victim had been in a relationship, marred by domestic violence, for approx. 15 yrs. They had been separated approx. 2 yrs and, despite a VRO, the victim had contact with WTG.</p> <p>WTG stayed a weekend at the victim's home with their children. They both took drugs and had sexual relations.</p> <p>On the Sunday afternoon, having made arrangements for the children to be looked after</p>	<p>Agg AOBH: 12 mths imp (cum). Threat to harm: 10 mths imp (conc). Agg GBH: 2 yrs 10 mths imp (head sentence)</p> <p>Breach of SIO: 6 mths imp (conc).</p> <p>TES 3 yrs 10 mths imp.</p> <p>The sentencing judge found that the offences caused the victim to suffer</p>	<p>Allowed.</p> <p>Appellant challenged length of sentence and totality.</p> <p>Sentence set aside. WTG re-sentenced to:</p> <p>Agg AOBH: 6 mths imp (cum with head sentence). Threat to harm: 9 mths imp (conc). Agg GBH: 4 yrs 6 mths imp.</p>

		<p>VRO and agg AOBH. A number of convictions of agg assault, agg AOBH and breach VRO against this victim.</p> <p>Difficult childhood, without positive parental guidance.</p> <p>No significant employment history.</p> <p>Three children with the victim.</p> <p>Long history of illicit substance abuse.</p> <p>Prior to offences and whilst on remand in custody attempts made to rehabilitate himself, through religion, rehabilitation and training programmes.</p>	<p>by a friend, WTG became aggravated with the victim over her declining to have sex with him and her prior relationship with another man. WTG became increasingly aggravated by the victim's refusal to discuss the prior relationship. Over the course of the Sunday evening and into the early hours of Monday morning, WTG assaulted the victim a number of times. He struck the top of the victim's head with a knife, cutting her near her left temple (Agg AOBH).</p> <p>Later, the victim locked herself in a bedroom. WTG kicked open the door and punched her hard to the face once or twice with a clenched fist, knocking her to the ground unconscious. WTG then drove the victim around, and punched her in the face again. Later, when the car was parked, WTG asked the victim about the prior relationship and when she refused to answer he punched her in the left side of the face. This occurred at least four or five times. One blow caused her head to hit the car window. During this incident WTG said he would kill the victim (threat to harm).</p> <p>The victim suffered bruising and swelling to the eye, a split lip and a fractured jaw (Agg GBH).</p>	<p>significant adverse consequence, physically and emotionally.</p> <p>No genuine remorse.</p> <p>The offences were committed against a slightly built, defenceless and vulnerable former partner who had placed a degree of faith and trust in WTG by recommencing contact.</p> <p>The GBH took place over a sustained period.</p>	<p>Breach: 6 mths imp (cum).</p> <p>TES 5 yrs 6 months imp.</p> <p>EFP.</p> <p>At [44]-[51] Discussion of comparative cases.</p> <p>At [52]... the sentence imposed in this case for the offence of agg GBH is so far outside the range of sentences open to the sentencing judge in the sound exercise of his discretion as to manifest implied error.</p> <p>At [54] As I have concluded that the head sentence was manifestly inadequate, it follows that the TES was also manifestly inadequate...</p>
12.	<p><i>McIntyre v The State of Western Australia</i></p> <p>[2016] WASCA 150</p> <p>Delivered</p>	<p><u>Appellant H</u> 54 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p>	<p>Ct 1: Agg burg. Ct 2: AOBH.</p> <p>The appellants are father and son. Both attended the victim's house to demand payment of a \$700 debt or the return of a trail bike.</p> <p>M was armed with a wooden axe and H with a</p>	<p><u>Appellant H</u> Ct 1: 2 yrs imp. Ct 2: No penalty.</p> <p><u>Appellant M</u> Ct 1: 18 mths imp. Ct 2: No penalty.</p>	<p>Dismissed.</p> <p>Appellants challenged type and length of sentence.</p> <p>At [17] It has been recognised that agg burgs are prevalent and the</p>

	26/08/2016	<p>Good employment history and offending out of character.</p> <p>No substance abuse issues.</p> <p>Mother terminally ill.</p> <p><u>Appellant M</u> 20 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p> <p>Good employment history and offending out of character.</p> <p>No substance abuse issues.</p>	<p>tyre iron.</p> <p>The appellants arrived at the front of the victim's house. When told to leave M smashed a window at the rear of the house with the axe handle. H used the tyre iron to smash a window at the front of the house.</p> <p>Both appellants entered the house through the broken front window and demanded the victim give them the trail bike or payment for the bike.</p> <p>H struck the victim to the forehead with the tyre iron. M then pinned down the victim with the axe handle whilst H punched the victim.</p> <p>The victim suffered a laceration near his eye that required two stiches, two broken ribs and abrasions and bruising to various parts of his body. He also suffered panic attacks and lost his job because he was unable to leave the house.</p>	<p>The sentencing judge accepted that the appellants' plan was to get either the money or the trail bike, rather than "simply to go there to give him a flogging".</p> <p>The sentencing judge considered the seriousness of the offence and the need for general deterrence precluded the suspension of the term of imp.</p> <p>H demonstrated little or no remorse.</p> <p>M was remorseful and had empathy for his victim; ashamed by what he had done, offending encouraged by his father.</p>	<p>sentencing objectives of general deterrence and denunciation are of particular importance in the exercise of the sentencing discretion.</p> <p>At [19]... it was open to the sentencing judge to conclude that the seriousness of the agg burg offence and considerations of general deterrence outweighed the mitigating factors and made it inappropriate to suspend or conditionally suspend the sentences of imp.</p>
11.	<p><i>Dos Santos v The State of Western Australia</i></p> <p>[2016] WASCA 46</p> <p>Delivered 16/03/2016</p>	<p>34 yrs at time offence. 36 yrs at time sentence.</p> <p>Convicted after trial.</p> <p>Prior criminal history; traffic and minor criminal offences, mostly for public disorder. No previous sentences of imp.</p>	<p>Ct 1: Agg burg, commit offence (Agg AOBH), threats, knew other person in place, habitation. Ct 2: Agg AOBH.</p> <p>The victim, EDS, is Dos Santos' former partner.</p> <p>In a jealous rage he broke into EDS' home. She and her children (B and MJ) were home at the time.</p> <p>Dos Santos confronted and verbally abused EDS</p>	<p>Ct 1: 5 yrs 6 mths imp. (conc). Ct 2: 3 yrs 6 mths imp. (conc).</p> <p>TES 5 yrs 6 ths imp. EFP</p> <p>The sentencing judge characterised the offending as being 'a very</p>	<p>Dismissed.</p> <p>Appellant challenged length of sentence for ct 1.</p> <p>At [41] ... The appellant's criminality is particularly elevated by the extreme vulnerability of EDS. Not only was the appellant physically bigger than her;</p>

		<p>Left school after yr 10.</p> <p>Good employment record and highly regarded in his field. Unemployed at time of offence.</p> <p>Two daughters from a previous marriage; 2 yr old son (MJ) with victim.</p> <p>Occasional heavy drinker; no history of substance abuse.</p>	<p>as she was holding MJ. He struck her three times in the head with a closed fist and continued to hit her as she tried to escape.</p> <p>B tried to pull Dos Santos away from his mother and begged him to leave her alone.</p> <p>When she fell to the ground Dos Santos grabbed EDS by the hair and banged her head into the floor and threatened to kill her.</p> <p>EDS suffered multiple bruises over her face, head, forearms and down her back.</p>	<p>serious example' of its type.</p> <p>The attack was prolonged, sustained and repeated and had police not arrived when they did, the consequences would have been tragic.</p> <p>The offending represented a significant escalation of violence not uncharacteristic of the appellant.</p> <p>Lack of remorse.</p>	<p>she was unable to protect herself because she was attempting to shield MJ and B from the appellant.</p>
10.	<p><i>Gittos v The State of Western Australia</i></p> <p>[2016] WASCA 7</p> <p>Delivered 13/01/2016</p>	<p>29 yrs at time offending.</p> <p>Conviction after PG (10% discount for indictable offences; 15% for section 32 offences).</p> <p>Criminal history, including violent offences.</p> <p>Dysfunctional childhood; ADHD as a child.</p> <p>Left school at age 14; good employment history.</p> <p>No contact with three children.</p>	<p><u>Indictment</u></p> <p>Ct 1: Agg armed robbery. Ct 2: Agg armed assault with intent to rob.</p> <p><u>Section 32 Notice</u></p> <p>Ch 1: Criminal damage. Ch 2: Agg assault. Ch 3: AOBH. Ch 4: Drive MV with number plates not issued for that vehicle. Ch 5: Poss drug paraphernalia containing methyl.</p> <p><u>Ct 1</u></p> <p>The appellant was the front seat passenger in a car that drove up and parked outside the victim's house. The appellant demanded \$150 from the victim, through the open car window. The victim stated that he did not have any money.</p>	<p><u>Indictment</u></p> <p>Ct 1: 4 yrs imp. Ct 2: 3 yrs 6 mths imp to start 6 mths after Ct 1 (conc).</p> <p><u>Section 32 Notice</u></p> <p>Ch 1: 8 mths imp. Ch 2: 6 mths imp. Ch 3: 10 mths imp. Ch 4: \$200 fine. Ch 5: 2 mths imp (cum).</p> <p>Ch 1-3 conc with each other, but cum with sentence on ch 5.</p> <p>TES 5 yrs imp.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p> <p>At [30] Both indictable offences ... involved...an apparent element of premeditation and planning, albeit of a simple kind. They were calculated to force the first complainant to pay to the appellant money he considered he was owed from a drug transaction.</p>

		<p>Supportive new partner.</p> <p>Substance abuse from age 13.</p>	<p>The appellant pointed a double-barrelled shotgun at the victim at very close range, through the open car window. He demanded the victim give all property he was carrying. The victim complied. The appellant then stated “Bring the \$150 in cash to [a stated address] within the hour, or I’ll blow your fucking head off”.</p> <p><u>Ct 2</u> 40 minutes later, the victim attended the stated address with two others, to give the appellant \$100. The appellant aimed the shotgun at the victim and then pressed the barrels of the shotgun against his head. The appellant demanded an additional \$300 from the victim and made similar threats as earlier.</p> <p>The victims left and reported the incidents to police.</p> <p><u>Section 32 Notice</u> The second victim is the mother of the appellant’s 10-mth-old son.</p> <p>In attempt to gain entry to the victim’s house, the appellant caused substantial damage to the garage door (ch 1). The appellant gained entry through a window and, in the presence of their son, repeatedly punched and kicked the second victim’s mother (ch 2). The appellant then punched the second victim in the face while she was carrying their son (ch 3).</p> <p>On another date, the appellant drove a car with</p>	<p>AFP.</p> <p>Sentencing judge found that the appellant’s acceptance of responsibility and remorse for cts 1 and 2 were qualified by the appellant showing little insight into his offending.</p> <p>Sentencing judge found significant qualifications on the appellant’s prospects of rehabilitation.</p>	<p>Both involved the use of a firearm which was not simply brandished by the appellant ... Each act was accompanied by what was, in effect, a threat to kill. .. The fact that a firearm was used, and the manner in which it was used, make these offences particularly serious.</p> <p>At [32] The [section 32] offences ... were also serious offences. Again, these offences were not the result of a momentary aberration ... Given the nature of the assaults, it is only a matter of good fortune that the victims did not suffer more serious injuries.</p> <p>At [33] In relation to these [section 32] offences, there appears on the part of the appellant to have been no acceptance of responsibility, remorse or insight, apart from the pleas of guilty and the appellant's understanding of his anger management problem.</p>
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9.	<p><i>Lawrence v The State of Western Australia</i></p> <p>[2015] WASCA 187</p> <p>Delivered 14/09/2015</p>	<p>34 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Lengthy criminal history, including numerous convictions of violent offences.</p> <p>Offences committed six months after release from prison.</p> <p>Difficult and dysfunctional upbringing.</p>	<p>Ct 1: Act with intent to cause bodily harm. Ct 2: AOBH. Ct 3: Stealing.</p> <p>The appellant and co-offender, Winmar, were highly intoxicated.</p> <p><u>Ct 1</u> The appellant and Winmar were in an aggressive mood and approached the victim's group. A stare-down ensued between Winmar and the victim. Winmar took up a boxing stance and the victim tried to calm the situation down. A fistfight broke out and each landed blows on the other.</p> <p>The appellant punched the victim in the back of the head from behind, causing a cut to his chin. The victim fell to the ground and lapsed in and out of consciousness. The appellant and Winmar kicked and stomped on the victim's upper body and head.</p> <p>The victim received 11 stitches to his chin and sustained a concussion, scalp haematomas, black eye, facial swelling and bruising and soreness to his upper body and neck area.</p>	<p>Ct 1: 5 yrs imp. Ct 2: 1 yrs imp (cum). Ct 3: 3 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge characterised the offending as 'at the high end involving gratuitous violence in company against innocent members of the community'.</p> <p>Sentencing judge found that there was a real potential that harm might have been caused to both victims by reason of the force used by the appellant and Winmar.</p> <p>Sentencing judge found appellant had no remorse,</p>	<p>Dismissed.</p> <p>At [34] ... his antecedents, offending behaviour, lack of insight and absence of remorse belie genuine rehabilitation.</p> <p>At [41] His criminal history is disturbing... the appellant represents a danger to the community...</p>

			<p><u>Cts 2-3</u> The appellant and Winmar then came across the second victim. The victim attempted to avoid the appellant and Winmar.</p> <p>The appellant and Winmar corralled the victim. The appellant punched the victim's left eye with substantial force, knocking him to the ground. The appellant and Winmar punched and kicked him while on the ground.</p> <p>The victim got to his feet and ran away, leaving his mobile on the ground. Railway police later found the mobile in the appellant's pocket.</p> <p>The victim sustained a black eye, facial bruising and swelling, grazing and abrasions to his knees and hands and extensive bruising to his inner left thigh.</p>	no insight into seriousness of his actions and no concern for victims.	
8.	<p><i>Oxenham v The State of Western Australia</i></p> <p>[2015] WASCA 30</p> <p>Delivered 18/02/2015</p>	<p>36 yrs at time sentencing.</p> <p>Convicted after late PG.</p> <p>No relevant prior criminal record.</p> <p>Good and privileged upbringing without any trauma; supportive parents; only engaged in one significant personal relationship; father of 2 young children.</p>	<p>Ct 1: agg AOBH Ct 3: GBH with intent.</p> <p>The appellant and the first victim (Raso) were previously in a de facto relationship and had 2 young children. They separated in April 2012. In August 2012, Raso commenced a relationship with the second victim (Robertson). The appellant reacted poorly to Raso seeing someone else and made multiple threats to harm Robertson.</p> <p>During the day of 12 October 2012, the appellant confirmed twice with the children's nanny that she would not be at Raso's house. At approx. 1.30am the following morning, the appellant went to</p>	<p>Ct 1: 18 mths imp (cum). Ct 3: 6 yrs imp.</p> <p>TES 7 yrs 6 mths imp.</p> <p>EFP.</p> <p>Sentencing judge noted that both offences were 'clearly jealous and anger-fuelled rage offences'.</p> <p>Sentencing judge regarded the GBH with</p>	<p>Dismissed.</p> <p>At [30] In <i>Trompler v The State of Western Australia</i>, Wheeler JA noted that in general, there are three matters of significance to be considered in assessing the criminality involved in an offence of doing GBHAlthough these observations were not made in the context of the offence of doing GBH with</p>

		<p>Educated to year 12 standard; good employment history.</p> <p>No alcohol or drug abuse issues.</p> <p>Received counselling while on remand.</p>	<p>Raso's house. Raso opened the door to the appellant, who pleaded with her to give the relationship one more chance.</p> <p>While Raso held their 1-yr-old, and in the presence of their 5-yr-old, the appellant demanded that Raso give him her mobile telephone. She refused. He grabbed her by the hair, shouting 'give me your fucking phone,' and took the phone from her. He read through the text messages which had passed between Raso and Robertson while threatening to harm and kill her. He repeatedly kicked her in the shins and abused her verbally.</p> <p>The appellant lured Robertson to the house by sending him text messages, constructed to appear as if they had been sent by Raso, from Raso's phone. He forced Raso to call Robertson and to make him come over.</p> <p>When Robertson arrived at the house around 2.00am, the appellant was waiting for him and immediately attacked him. He punched him in the face and, when he fell to the ground, repeatedly kicked and punched him in the head and body. He jumped on him with both feet. The appellant punched Raso in the face with his clenched right fist. Raso observed the appellant continue kicking an unresponsive Robertson. Throughout the attack, the appellant taunted and humiliated Raso. Police arrived at around 2.20am.</p> <p>Raso received largely superficial soft tissue injuries. Robertson's injuries were very serious; he would have died without medical intervention.</p>	<p>intent offence as 'a very serious example of this type of offence' and found it was premeditated.</p> <p>Sentencing judge accepted that the appellant was remorseful and that his behaviour was out of character.</p>	<p>intent, they are relevant to that offence by analogy.</p> <p>At [32] The attack upon Mr Robertson was premeditated, orchestrated by deception, brutally administered and sustained over a significant period of time.</p> <p>At [35] Mr Oxenham did not use a weapon to inflict injury upon Mr Robertson... However, the absence of an aggravating factor is not to be equated with a mitigating factor.</p> <p>At [37] To the extent that a range can be discerned from the previously determined cases... That range equates approximately to a range of between 4 ½ and 8 yrs under the current sentencing system.</p> <p>At [40] – [48] Discussion of comparative cases.</p> <p>At [49] Having regard to all relevant circumstances, Mr Oxenham's offence</p>
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			He has permanent injuries to his right eye.		was properly characterised as lying toward the upper end of the scale of seriousness while not within the worst category of case.
7.	<p><i>Hansen v The State of Western Australia</i></p> <p>[2014] WASCA 229</p> <p>Delivered 11/12/2014</p>	<p>54 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Long criminal record including minor, mostly traffic offences; agg AOBH and common assault.</p> <p>Good upbringing; completed year 10; Regular employment.</p> <p>Indigenous; has standing and respect amongst indigenous people in the Bunbury area.</p> <p>Father of seven children; four of whom are adults.</p> <p>Hereditary heart condition and hypertension.</p>	<p>s317(1) <i>Criminal Code</i> Agg AOBH x1. s297(3) <i>Criminal Code</i> Agg GBH x1.</p> <p>The victim (Lee) was in a family and domestic relationship with the appellant. She had previously been in a relationship with the victim (Hill). The victim's had a child who was in Lee's care. Lee was pregnant with the appellant's child.</p> <p>The victim's and their two children were walking along a street. The appellant followed them in his vehicle. He stopped and alighted from the vehicle carrying a wooden implement. The appellant struck Hill with the stick, possibly seven or eight times, to the ribs, kidney and elbow. Hill suffered a large lump-type bruise to the left elbow, a fracture to the ulna bone, bruising and a laceration and bleeding in and around the kidney.</p> <p>A short time later Lee miscarried and Lee went and stayed with a friend.</p> <p>About 20 days later Lee and the appellant were drinking together at a reserve then returned to the friend's house. The appellant asked Lee for sex, but she refused. The appellant became angry and punched her seven to ten times to her face with a closed fist. Lee was taken to hospital and airlifted</p>	<p>1 yr 6 mths imp. 4 yrs 6 mths imp (cum).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Denied responsibility; No victim empathy or remorse.</p> <p>Sentencing judge characterised Agg AOBH as 'in the mid-range of offences of this kind'; Agg GBH as 'in the mid to upper range of seriousness'.</p> <p>Moderate risk of re-offending.</p>	<p>Dismissed – on papers.</p> <p>At [24] The offences were each serious examples of their type. Each was born out of anger and was brutal, sustained and completely without justification. On both occasions, the victim was defenceless.</p>

			to RPH where she underwent surgery to repair a fractured eye socket.		
6.	<i>Fletcher v The State of Western Australia</i> [2014] WASCA 219 Delivered 21/12/2014	38 yrs at time sentencing. Convicted after trial. Lengthy criminal record including convictions for violent offending. Regularly employed. Committed these offences shortly after being released to parole and the day after his parole was cancelled; Fled to Qld; Extradited to WA and served balance of sentence. On bail for these offences but cancelled as a result of failure to attend court. Co-offender Clinton Lucas convicted of AOBH and stealing and fined \$4000 for AOBH and \$1000 for stealing. Fine payable to victim.	s317(1) <i>Criminal Code</i> AOBH x1. s378 <i>Criminal Code</i> Stealing x 1. s338B <i>Criminal Code</i> Threats to kill x1. The appellant believed his partner was having a relationship with another. The appellant telephoned his partner and threatened and abused her, demanding where to know he would find the victim. She declined to provide the information. The appellant arranged for his co-offender to go to a gymnasium where the victim frequented. Either the appellant or co-offender punched the victim to the side of the face. The victim suffered bruising and tenderness to his jaw, fell into the garden and dropped his bag. Both offenders found the bag and the co-offender picked it up and left. The appellant telephoned his partner on occasions, including an occasion when the appellant told her he had “sorted out” the victim. The appellant made threats to his partner that he was going to tie her to a chair, douse her with petrol and set fire to her. The appellant did not intend to carry out the threat. It was made to intimidate and overbear his partner’s will and it had that effect.	16 mths imp (cum). 3 mths imp (conc). 8 mths imp (conc). TES 2 yrs imp. EFP. Significant delay in proceedings. No PSR or Psychological Reports before the Sentencing Judge.	Allowed. (Mazza dissenting as to reasons in respect of ground 2). Re-sentenced to a total of 16 mths imp. At [25] Unjustifiable disparity is an appealable error although it may not always lead to an appeal being allowed and if allowed, identity of punishment in resentencing is not required. At [32] There is in my view an unjustifiable disparity in the type of sentences imposed on the co-offenders because a fine for the co-offender is the wrong type of sentence.
5.	<i>Knight v The State of Western Australia</i> [2014] WASCA	55 yrs at time sentencing. Convicted after trial. Criminal record including	Ct 1: s401(2) <i>Criminal Code</i> Agg burg (home invasion). Ct 2: s297 <i>Criminal Code</i> GBH. Ct 3: s317(1) <i>Criminal Code</i> AOBH.	Ct 1: 3 yrs imp (conc). Ct 2: 3 yrs 6 mth imp. Ct 3: 18 mths imp (cum).	Dismissed – on papers.

	<p>217</p> <p>Delivered 21/11/2014</p>	<p>firearms, traffic, drug sales and possession charges.</p> <p>Father of four children.</p> <p>Constant work record.</p> <p>History of cannabis and amphetamine use.</p> <p>Appellant's son convicted of agg burg; sentenced to 2 yrs 4 mths imp conditionally suspended for 2 yrs.</p>	<p>As a result of an earlier incident involving one of the appellant's sons, the appellant with three others drove to the victim's house to seek revenge. Three of the four men were armed. The appellant picked up a metal weights bar from the outside front porch and all offenders then forced their way into the house. The victim and two of his friends were set upon. The appellant started striking the victim with the metal bar before escaping outside. Outside the victim was restrained by the appellant's son. The appellant then struck the victim again. The appellant also struck a second victim at least twice with the metal bar to the leg.</p> <p>The victim suffered a left tension pneumothorax, bruising to his right ankle and shin and a laceration to his right knee. If not for medical assistance and treatment, the pneumothorax was likely to have endangered his life. The second victim sustained a fractured right ankle and bad bruising and swelling on his thigh.</p>	<p>TES 5 yrs imp.</p> <p>EFP.</p> <p>No remorse.</p> <p>Principal offender.</p> <p>Sentencing judge described attack as 'a violent and senseless attack' born out of anger from an earlier incident; also found attack was a premeditated and planned 'act of retribution'.</p>	
4.	<p><i>Eric v Bull</i></p> <p>[2014] WASC 342</p> <p>Delivered 24/09/2014</p>	<p>Convicted after PG.</p> <p>Criminal record of traffic offences and disorderly conduct in public place.</p> <p>Married; one small child; partner pregnant.</p> <p>Stable accommodation, employment and family support.</p>	<p>s 317(1) Criminal Code AOBH.</p> <p>The appellant was at a hardware store. He had arranged to collect a hire vehicle from the store but when he arrived he was told it was not available. An argument ensued between the appellant and staff members. The appellant left the store angry and frustrated.</p> <p>The victim was a 17 year old employee of the store. The victim followed the appellant out of the store. The appellant and victim argued in the carpark as they walked to where the appellant had</p>	<p>7 mths imp.</p> <p>Full admissions; admitted he had just 'snapped' as a result of personal pressures and frustration over not being able to hire the vehicle.</p> <p>High level of victim empathy and remorse; wrote letter of apology to victim.</p>	<p>Allowed.</p> <p>Re-sentenced to 7 mths CSIO suspended for 12 mths.</p> <p>At [33] The fact that the appellant had apparently acted impulsively and out of character also provided the appropriate context within which to assess the factors that admittedly</p>

		Voluntarily attended psychologist.	<p>parked his motorcycle. The appellant punched the victim to the face, causing a broking nose, three broken teeth and cuts.</p> <p>The appellant remained at the scene.</p>	Agreed to participate in victim mediation programme.	<p>mitigated the seriousness of the offence and the pattern of sentencing for the offence.</p> <p>At [35] A term of immediate imprisonment was, in this instance, manifestly excessive, having regard to the pattern of sentencing for the offence of AOBH identified by the CoA.</p> <p>At [38] Although the Magistrates Court is not a prescribed court for the purpose of s 81 of the <i>Sentencing Act</i> so that the magistrate could not have made a CSIO, this court can make such an order on re-sentencing following an appeal from the Magistrates Court.</p>
3.	<p><i>Tela v The State of Western Australia</i> [No 2] [2014] WASCA 103 Delivered 15/05/2014</p>	<p>18 yrs at time offending. 19 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Criminal record including possess controlled weapon.</p> <p>Employed since left school.</p>	<p><u>Indictment</u> Ct 1: Agg burg. Ct 2: Agg burg. Ct 3: Burg</p> <p><u>Section 32</u> Ct 1: Drive reckless to escape pursuit Ct 2: Agg fail to stop</p>	<p><u>Indictment</u> Ct 1: 1 yr 6 mths imp (cum). Ct 2: 1 yr 6 mths imp (conc). Ct 3: 1 yr imp (conc).</p> <p><u>Section 32</u> Ct 1: 1 yr imp (cum). Ct 2: 3 mths imp (conc).</p>	<p>Dismissed – on papers.</p> <p>At [19] The indictable offences were undoubtedly serious. They were premeditated and targeted. Substantial amounts of property were taken on each occasion. ... The assault occasioning bodily</p>

		<p>Positive references.</p> <p>Good and supportive family.</p> <p>Breached 6 mth CRO by committing agg burg.</p>	<p>Ct 3: No MDL Ct 4: AOBH</p> <p><u>Indictment</u> The appellant and others committed burglary on homes in order to obtain bicycles, off-road motorcycles and associated equipment.</p> <p><u>Section 32:</u> <u>Ct 1, 2 & 3:</u> The appellant was riding an off-road motorcycle with others. Police received a number of calls from members of the public that there were several motorcycles driving around on roads with no lights on. Police pursued the appellant and two others in vehicles & by helicopter. The appellant rode his motorcycle at an excessively high speed, with lights off and drove on the incorrect side of the road. At the time the appellant's licence was cancelled.</p> <p><u>Ct 4:</u> The appellant assaulted the victim in an unprovoked attack. The appellant swung a baseball bat at the victim, narrowly missing the victim's legs. The appellant continued to swing the bat and eventually struck the victim in the back and the face. The victim suffered a bruised hip, a broken nose and severe swelling to the face.</p>	<p>Ct 3: Fine \$1000. Ct 4: 3 mths imp (cum). TES 2 yrs 9 mths imp. EFP. Motive was greed. Good future prospects.</p>	<p>harm was unprovoked, involved the use of a weapon and inflicted multiple injuries on an innocent victim.</p>
2.	<p><i>Blurton v The State of Western Australia</i> [2014] WASCA</p>	<p>26 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after late PG (PG Cts 1 & 2 in full</p>	<p>Ct 1: AOBH. Ct 2: Acts with intent to cause bodily harm. Ct 3: Unlawful wounding. Ct 4: Criminal damage.</p>	<p>Ct 1: 12 mths imp. Ct 2: 2 yrs 6 mths imp. TES 3 yrs 6 mths imp.</p>	<p>Dismissed.</p> <p>At [38] ... As his Honour rightly said, the</p>

<p>61</p> <p>Delivered 21/03/2014</p>	<p>satisfaction of indictment).</p> <p>Recent violent criminal history; including armed robbery, deprivation of liberty, common assault & unlawful damage.</p> <p>Father of five young children.</p> <p>Not of good character.</p> <p>Intoxicated and angry on the night of the offence.</p>	<p>The appellant was at a family party at a Cavesham Hall. Late in the evening the appellant had an argument with his partner and as a result, he left. Drunk and angry, he walked onto West Swan Road and remained there, posing a hazard to himself.</p> <p>The two victims, both off-duty police officers, were passengers in a motor vehicle driving on West Swan Road. The appellant stood in front of their vehicle on the roadway causing the driver to slow down and drive around him. As she did and without reason, the appellant struck the vehicle several times with his fist. The driver stopped the car.</p> <p>One of the victims got out of the car and approached the appellant. The appellant swung a number of punches at him, which missed, but eventually the victim was struck to the left side of the jaw with a clenched fist. At this point, others who had been at the party, including two co-offenders, joined in the attack. The victim as knocked to the ground, kicked and punched by various people.</p> <p>The second victim got out of the car to assist. He made known to the victim that he was a police officer. The appellant approached the second victim and punched him in the face. Others also attacked him. The victim ended up on the ground, struggling with the co-offenders. As a result he sustained a laceration to his lip.</p> <p>The first victim then came to the second victim's</p>	<p>EFP.</p> <p>Little victim empathy.</p> <p>Voluntarily handed himself into Police.</p> <p>Appellant and co-offender assisted police in the prosecution of third co-offender.</p> <p>In VROI admitted to fighting with victims but denied using anything as a weapon.</p> <p>Sentencing judge found was principal offender.</p>	<p>offences were unprompted and unprovoked by the victims. The appellant assaulted both men out of anger brought on by self-induced intoxication, a factor which affords no mitigation.t</p>
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			<p>aid and pushed his attacker's away. The two men retreated towards their vehicle. As the first victim was retreating, the appellant and co-offenders continued to attempt to strike him. Bottles were thrown, one hitting him on the back of the head. The appellant; armed with a wooden picket struck him on the forehead with such force as to snap the picket in two. Both victims managed to get into their vehicle.</p> <p>Objects continued to be thrown at the car; one a bottle; smashing a window, hitting victim 1 on the jaw and showered him with shattered with glass. At the time the victim's wives and a 10 year old girl were in the car. The second victim had seven stitches inserted inside his mouth. The first victim suffered a laceration to his forehead.</p>		
1.	<p><i>Sinclair v The State of Western Australia</i></p> <p>[2014] WASCA 22</p> <p>Delivered 29/01/2014</p>	<p>18 yrs at time offending. 20 yrs at time sentencing.</p> <p>Ct 1: Convicted after Trial. Ct 2: Convicted after PG.</p> <p>Extensive criminal record; minor offences of dishonesty and public disorder and common assault.</p> <p>Parents separated prior to birth; father shown only intermittent interest in him; mother supportive of him.</p>	<p>Ct 1: Agg armed robbery. Ct 2: AOBH</p> <p>The appellant knew the victim and held a grudge against him.</p> <p>On the night of the incident the appellant was in company with his two co-offenders. The co-offenders had made an arrangement to meet the victim at a park for a drug transaction. When the appellant and co-offenders got to the park, the appellant recognised the victim.</p> <p>The appellant and co-offenders chased the victim. The co-offenders, who were armed, one with a screwdriver and the other a pole, intended to rob</p>	<p>Ct 1: 3 yrs 11 mths imp. Ct 2: s11 no sentence.</p> <p>EFP.</p> <p>Limited remorse.</p> <p>ADHD was a contributor to the offending.</p> <p>Described by judge as 'a serious example of a serious offence'.</p> <p>Found criminal responsibility of appellant</p>	<p>Allowed.</p> <p>Re-sentenced to 2 yrs 9 mths imp.</p> <p>At [32] ... a sentence of immediate imprisonment is imposed for an offence of armed robbery. A non-immediate custodial disposition is exceptional.</p> <p>At [48] [the judge]... having decided that the plea of guilty to count 2 merited some mitigation of</p>

		<p>Diagnosed with ADHD at 8 yrs; untreated since 15 yrs.</p> <p>History of alcohol and substance abuse; efforts so far failed to rehabilitate him.</p> <p>Poor history of Children's Court order compliance.</p> <p>Co-offenders not apprehended and not dealt with.</p>	<p>the victim. The appellant, who was armed with a brick and motivated by his grudge, intended to assault him. Each offender used their implements to rob and inflict serious injury on the victim. The appellant came to know his co-offenders were robbing the victim and assisted and encouraged them.</p> <p>The victim received lacerations to his face, a fractured nose and broken elbow. The appellant derived no benefit from the robbery.</p> <p>The sentencing judge was unable to make a finding attributing particular injuries to each offender; however found the appellant's assault 'undoubtedly' contributed to the injuries.</p>	<p>was less than his co-offenders although not vast.</p> <p>Moderate risk of future violent offending.</p>	<p>the penalty on count 1, needed only to have taken it into account as part of the intuitive synthesis of all of the relevant circumstances of the case... His honour was not required to express the amount of any discount for this factor.</p>
<i>Transitional Provisions Repealed (14/01/2009)</i>					
<i>Transitional Provisions Enacted (31/08/2003)</i>					