

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
21.	<p><i>Duncan v The State of Western Australia</i></p> <p>[2018] WASCA 154</p> <p>Delivered 31/08/2018</p>	<p>37 yrs at time offending.</p> <p>Convicted after trial. (alternative charge to GBH).</p> <p>Significant criminal history; numerous offences involving violent assault, including domestic violence; manslaughter conviction for death of his 22 mth old daughter.</p> <p>Aboriginal; raised by relatives; good upbringing.</p> <p>Educated to yr 10; no learning or social difficulties at school.</p> <p>Extensive work history; employed various cattle stations in Kimberley and NT; including in supervisory positions.</p> <p>Nine children born from six different relationships.</p>	<p>1 x AOBH.</p> <p>Duncan and the victim, NFB, were in a de facto relationship. The offence was committed about one month after NFB gave birth to their third child.</p> <p>At a birthday celebration Duncan smoked cannabis and consumed alcohol. NFB also drank alcohol, becoming so intoxicated she fell over a number of times.</p> <p>On the journey home NFB fell asleep in the car and woke up to find they had broken down. As she went to get out of the car she fell and struck her head, injuring herself.</p> <p>Duncan, frustrated the car was not working, took his frustration out on NFB, kicking her in the head, face and body. He then dragged her along as he punched her. NFB screamed at him to stop.</p> <p>Duncan eventually stopped and helped NFB back into the car. Some relatives of NFB happened to pass by and they took her back to their home.</p> <p>NFB went to hospital and was flown to Perth for treatment. She suffered a broken jaw, lacerations and substantial bruising.</p>	<p>3 yrs imp. EFP.</p> <p>The sentencing judge found the offending very serious; it was a sustained; completely unprovoked; cowardly attack on a vulnerable victim who was alone with the appellant in an isolated area; severely intoxicated and who he knew was in no condition to run away or defend herself.</p> <p>The sentencing judge found the offending agg by the fact the victim had only recently given birth to her youngest child and they were in a domestic relationship.</p> <p>Lack of remorse; responsibility and victim empathy; high risk of re-offending against a female partner.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [36] ... the offence in question was a very serious instance of the offence of AOBH. ... It was an entirely unprovoked assault on a defenceless, heavily intoxicated woman, who was lying on the ground and already injured, at the time. ... when the appellant was wearing boots.</p> <p>At [38] The domestic relationship between the appellant and NFB was an agg factor which added to the seriousness of this offence.</p> <p>At [39] ... the offence was properly regarded as more serious because it was committed by the appellant on his partner, who had only very recently delivered his child, and who was entitled to his care, rather than to an</p>

					<p>abject demonstration of his complete lack of respect for her and for her human dignity.</p> <p>At [59] The sentence imposed in this case was undoubtedly a significant sentence for an AOBH. However, the seriousness of the offending ... warranted the imposition of a significant term of imp.</p>
20.	<p><i>Spirovski v The State of Western Australia</i></p> <p>[2017] WASCA 230</p> <p>Delivered 28/11/2017</p>	<p>25 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after trial (alternative charge to GBH).</p> <p>Prior criminal history; comprising traffic matters.</p> <p>Strong work ethic; good community support.</p> <p>Positive relationship with partner.</p>	<p>1 x AOBH.</p> <p>The victim, aged 19 yrs, was out drinking with a friend, H, at a tavern.</p> <p>Spirovski was a security officer at the tavern, and he and another officer observed H to be intoxicated and asked him to leave.</p> <p>H tried to persuade the officers to let him stay. This was refused and Spirovski began to usher him towards the exit.</p> <p>The victim said to Spirovski, 'You don't have to be cunts about it'. He responded by punching the victim in the face, knocking him to the ground and removing him.</p> <p>The victim was conveyed to hospital by ambulance. He suffered a broken nose which was pressed inwards and fractures to his mid face</p>	<p>18 mths imp. EFP.</p> <p>The trial judge found the victim did not threaten the appellant or spit at him.</p> <p>The trial judge found the appellant's reaction to the victim's use of a profanity wholly disproportionate to what was said to him; the punch was forceful and unnecessary.</p> <p>The trial judge found the offence was a serious case of its kind given the degree of force used and the seriousness of the injuries.</p>	<p>Dismissed.</p> <p>Appeal concerned length and nature of sentence.</p> <p>At [58] The degree of force used by the appellant in striking the complainant and the seriousness of the injuries which [he] suffered were significant factors in evaluating the objective seriousness of the offence, whether the offending was a serious example of its kind and the appropriateness of a term of immediate imp. The appellant was the aggressor. He used considerable force in</p>

			<p>extending to the orbits on both sides, requiring surgery and the insertion of several plates.</p>	<p>Expressed some remorse; prior good character.</p>	<p>striking the complainant. The appellant's action had the potential easily to cause even more serious injuries than the complainant in fact suffered. The absence of some of the agg factors that existed in previous cases does not mitigate the seriousness of what the appellant actually did.</p> <p>At [59] Her Honour was entitled, ... to characterise the appellant's offending as a serious example of its kind.</p> <p>At [60] General deterrence was an important sentencing consideration. Violence in public places is a matter of genuine concern in the community.</p> <p>At [71] ... culpability was increased by the degree of force he used in gratuitously striking the complainant and, also, by the appellant's status as a security officer at the premises where the assault occurred.</p>
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<p>19.</p>	<p><i>Allen v The State of Western Australia</i></p> <p>[2017] WASCA 203</p> <p>Delivered 31/10/2017</p>	<p><u>Allen</u> 32 yrs at time offending. 35 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>First trial aborted, PG accepted week prior to second trial commencing.</p> <p>Substantial criminal history, including three prior convictions for AOBH; released from prison about one month before committing present offence.</p> <p>Parents deceased; single; no dependents.</p> <p>Supportive ex-partner.</p> <p>Business owner-operator; successful for a while.</p> <p>Leg injury resulting in a limp; postural problems and headaches. Suffers from depression.</p> <p>Prior history of drug abuse.</p> <p><u>Gastarov</u></p>	<p><u>Allen and Gastarov</u> 1 x AOBH.</p> <p><u>Marsandi</u> 1 x GBH.</p> <p>Late at night the victim and his heavily pregnant partner attended a car park to collect his car. He used a baseball bat to smash a window to gain access to his car, causing the vehicle's alarm to sound.</p> <p>The proprietor of the adjacent workshop was woken by the alarm. He had previously been engaged by Marsandi to work on the vehicle so he telephoned one of the appellants to inform them of what was happening.</p> <p>A short time later Marsandi and Allen arrived. Marsandi spoke to the victim. During the conversation Marsandi picked up the victim's baseball bat and without warning swung the bat the victim's head.</p> <p>The victim fell to the ground. Marsandi swung at the victim with the bat a further five or six times. Not all of those strikes made contact with the victim.</p> <p>The victim got to his feet and run. At this time Gastarov arrived and he pursued the victim in his car, while Allen ran after the victim on foot.</p> <p>When Gastarov and Allen caught up with the victim he started jogging back towards the car</p>	<p><u>Allen</u> 2 yrs 10 mths imp. EFP.</p> <p><u>Gastarov</u> 3 yrs 6 mths imp. EFP.</p> <p><u>Marsandi</u> 6 yrs 4 mths imp. EFP.</p> <p>The sentencing judge characterised each appellant's offence as objectively very serious and at the high end of the objective criminality for offences of its kind.</p> <p>The sentencing judge found it was a sustained attack and the injuries to the victim represented serious examples of the respective offences; carried out in a brazen manner while in company.</p>	<p>Allowed.</p> <p>Appeals concerned lengths of sentences.</p> <p>Re-sentenced to:</p> <p><u>Allen</u> 20 mths imp. EFP.</p> <p><u>Gastarov</u> 2 yrs 4 mths imp. EFP.</p> <p><u>Marsandi</u> 5 yrs imp. EFP.</p> <p><u>Marsandi</u> At [61] ... A sentence in the range of 3 to 5 yrs will commonly be imposed in cases involving the use of weapons.</p> <p>At [68] ... The beating which the victim suffered was severe, While the injuries were moderately severe examples of GBH, they were not established to have resulted in serious permanent disability.</p>
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	<p>(10% discount).</p> <p>First trial aborted, PG accepted week prior to second trial commencing.</p> <p>Limited prior criminal history in WA; no previous terms of imp. After this offence convicted in NSW of AOBH.</p> <p>Close and supportive family; supportive friends.</p> <p>De facto relationship; good and loving father to three young children.</p> <p>Educated to yr 11; completed apprenticeship; good trade and work history.</p>		<p>However, it does not explain the extent of the disparity in this case.</p> <p>At [73] ... the sentence imposed ... was not commensurate with the seriousness of Marsandi's offence ...</p> <p>At [76] ... In all the circumstances, while Marsandi's offence is a serious example of the offence of unlawfully doing GBH, a sentence of 6 yrs 4 mths imp is unreasonable or plainly unjust.</p> <p><u>Allen</u></p> <p>At [81] Allen did not himself actually inflict any of the injuries which the victim sustained. His criminal responsibility is to be assessed on the basis that, by his presence and support ... he aided ... Marsandi and Gstarov, in assaulting the victim ...</p> <p>At [82] ... Allen did not actually inflict any injury, and did not instigate the</p>
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					<p>violence initially directed towards the victim ...</p> <p><u>Gastarov</u> At [87] Gastarov was not present when the injuries constituting GBH were inflicted. ... His culpability is reduced by the fact that he was not present for the whole of the sustained assault on the victim, although it is aggravated by the fact that he himself assaulted the victim who [he] must have appreciated was already seriously injured.</p>
18.	<p><i>Carrick v The State of Western Australia</i></p> <p>[2017] WASCA 175</p> <p>Delivered 22/09/2017</p>	<p>21 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after late PG on day trial was to start (17.5% discount).</p> <p>Charged with GBH. PG accepted in full satisfaction.</p> <p>Co-operation in prosecution of co-accused in that provided witness statement which led to PG by co-offender.</p>	<p>1 x AOBH.</p> <p>Pierotti and Martinac, the co-offenders, were living temporarily with Pierotti's mother at her home. The victim was also staying at the house. Following an argument Pierotti and Martinac were asked to leave.</p> <p>The co-offenders went to the appellant's home, where Pierotti and the victim exchanged text messages. Pierotti sent a text to the victim, threatening him.</p> <p>In the morning the appellant and co-offenders returned to Pierotti's mother's house. Out of fear, the victim armed himself with an ornamental sword. Outside the house the three offenders</p>	<p>2 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found Pierotti, Martinac and the appellant were at the home for a common purpose and the three were 'equally culpable' for the consequential injuries suffered by the victim.</p> <p>Having regard to the seriousness of the offence the sentencing judge</p>	<p>Allowed.</p> <p>Resentenced to 14 mths imp. EFP.</p> <p>Appeal concerned factual basis on which sentenced and length of sentence.</p> <p>At [26] It is clear ... in the sentencing remarks that the appellant was sentenced on the basis that he was culpable for the injuries suffered by the victim, which constituted GBH This finding was not open</p>

		<p>Prior criminal history.</p> <p>Supportive family.</p> <p>Educated to yr 10; interrupted by periods of juvenile detention.</p> <p>Father of three; partner pregnant with fourth child; stay at home dad.</p> <p>Performed some seasonal work; was a commercial fisherman.</p> <p>History of illicit substance abuse.</p>	<p>threw glass bottles and other objects at the victim, who tried to ward off the objects with the sword.</p> <p>The appellant backed the victim into a shed. The appellant punched him in the face about five times, causing relatively minor injuries to his nose and mouth which bled (injuries constituting bodily harm, subject of the offence committed by the appellant).</p> <p>Martinac then threw an object at the victim, which struck him in the face, severely lacerating his lip and fracturing a facial bone. He required hospitalisation (injuries constituting GBH).</p> <p>The State's case was that the appellant and co-offender Pierotti not responsible for GBH suffered by the victim, that Martinac was solely criminally responsible for those injuries.</p>	<p>declined to suspend the term of imp imposed.</p> <p>On premises in company and when not welcome.</p> <p>No provocation to the appellant.</p> <p>The appellant threw objects at the victim before then assaulting him.</p> <p>Appellant increased vulnerability of victim by backing him into a shed.</p> <p>Victim punched five times including after had fallen to the ground.</p> <p>Appellant remorseful.</p>	<p>to his Honour, in light of the appellant's PG to the lesser charge of AOBH and the State's express position that the appellant was not criminally responsible for the GBH suffered by the victim.</p> <p>At [32] ... While the plea was entered to a lesser charge, there is nothing to suggest that it could not have been offered at a much earlier stage in the proceedings. ... In our view, having regard to the late entry of the plea and that it was entered in the face of what appears to have been a strong prosecution case, we would give a discount of 10% for the PG.</p> <p>At [37] ... This was ... an unprovoked and serious assault. It did not occur on the spur of the moment and there is nothing whatever to have justified the appellant's presence in company at the ... house. Having regard to the seriousness of the offence</p>
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					<p>... we are satisfied that only a term of imp can be justified in this case.</p> <p>At [38] ... it would be inappropriate to suspend the term of imp ... having regard to the serious circumstances in which the offence was committed ...</p>
17.	<p><i>Pureau v The State of Western Australia</i></p> <p>[2017] WASCA 115</p> <p>Delivered 26/06/2017</p>	<p>24 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Born in NZ; arrived in Australia aged 17 yrs.</p> <p>Prior criminal history; including a conviction of AOBH in a domestic setting.</p> <p>Employed plasterer.</p> <p>No illicit substance or alcohol use.</p>	<p>Ct 3: Threat to kill. Ct 4: Agg AOBH. Ct 5: Dep lib.</p> <p>The victim, M, was several wks pregnant and had been in relationship with appellant approx 6 wks. They shared a home with three other people.</p> <p>M left to attend appointments, borrowing the appellant's mobile phone and car. When she returned he was angry with her for being away for so long. They argued and he abused and spat in M's face. She called out for someone to call the police, however other occupants did not do so as illicit substances were in the house.</p> <p>The appellant left the house. Other occupants bound M with tape and assaulted her. Bulk of injuries caused by others.</p> <p>The appellant returned. Armed with a knife and taser and wearing gloves, he ordered M into a room and told her he was going to kill her. He pointed the knife and threatened her with the taser, telling her the more she screamed the more</p>	<p>Ct 3: 3 yrs imp (cum). Ct 4: 2 yrs imp (conc). Ct 5: 3 yrs imp (cum).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The judge found appellant's overall offending constituted a very serious example of domestic violence and the real seriousness of the offence was his threats to unlawfully kill M and the deprivation of liberty. The real harm was psychological.</p> <p>Appellant denied the offending.</p> <p>Lack of remorse and genuine empathy.</p>	<p>Dismissed.</p> <p>Appeal challenged the individual sentences on cts 3 and 5 and concerned totality.</p> <p>At [75] ... M was defenceless and particularly vulnerable by reason of the greater physical strength of the appellant and her pregnancy. The offences occurred in a domestic setting. The fact that the offences were committed in such a setting increases the seriousness of what the appellant did. It does not matter that their relationship was brief.</p> <p>At [76] ... Although the offences occurred in the</p>

			<p>pain he would inflict. He att to taser M in the face but she raised her arms to protect herself, the taser cut her thumb.</p> <p>The appellant pulled M's hair and dragged her from room. She was subjected to further threats and assaults before she was able to escape.</p> <p>Between everyone involved, the ordeal lasted more than five hours.</p>		<p>one transaction, the imposition of conc sentences would have resulted in a TES that would be an inadequate and inappropriate reflection of the overall criminality of the appellant's conduct.</p>
16.	<p><i>McCoombe v The State of Western Australia</i></p> <p>[2016] WASCA 227</p> <p>Delivered 13/12/2016</p>	<p>47 yrs at time sentencing.</p> <p>Convicted after 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</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</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.</p> <p>EFP.</p> <p>The sentencing judge found the circumstances of ct 4 '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</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</p>

		<p>these offences.</p> <p>History of alcohol abuse; commenced drinking at an early age. No history of illicit substance abuse.</p>	<p>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>and protection of society were important sentencing considerations in this case.</p> <p>Little insight into his offending.</p>	<p>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.	<p><i>Sophiadakis v The State of Western Australia</i></p> <p>[2016] WASCA 203</p> <p>Delivered 25/11/2016</p>	<p>28 yrs at time offending. 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</p>	<p><u>Indictment</u> 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</u> 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</p>	<p>Dismissed.</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</p>

		<p>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 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><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 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></p> <p>The appellant failed to appear at the Magistrates Court for the return date of her pre-sentence order.</p>	<p>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>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>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> <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</p>
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				No evidence of remorse above PG.	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 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>Convicted after 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</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>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</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</p>

		<p>family tragedies.</p> <p>History of heroin abuse; abstinent from the drug at time offending.</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 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>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 gratification, but about sexual dominance, embarrassment and humiliation.</p> <p>No remorse or victim empathy.</p>	<p>ignored and underscores the appellant's criminality.</p>
13.	<p><i>The State of Western Australia v WTG</i></p> <p>[2016] WASCA 175</p>	<p>31 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>At time offending, WTG was subject to an SIO for</p>	<p>1 x Agg AOBH.</p> <p>1 x Threat to harm.</p> <p>1 x Agg GBH.</p> <p>WTG and the victim had been in a relationship, marred by domestic violence, for approx. 15 yrs.</p>	<p>Agg AOBH: 12 mths imp (cum).</p> <p>Threat to harm: 10 mths imp (conc).</p> <p>Agg GBH: 2 yrs 10 mths imp (head sentence)</p>	<p>Allowed.</p> <p>Appellant challenged length of sentence and totality.</p>

<p>Delivered 12/10/2016</p>	<p>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 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>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 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>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 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>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>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>
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<p>12.</p>	<p><i>McIntyre v The State of Western Australia</i></p> <p>[2016] WASCA 150</p> <p>Delivered 26/08/2016</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>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>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 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><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>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>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 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>
<p>11.</p>	<p><i>Dos Santos v The State of Western</i></p>	<p>34 yrs at time offence. 36 yrs at time sentence.</p>	<p>Ct 1: Agg burg, commit offence (Agg AOBH), threats, knew other person in place, habitation.</p>	<p>Ct 1: 5 yrs 6 mths imp. (conc).</p>	<p>Dismissed.</p>

	<p>Australia</p> <p>[2016] WASCA 46</p> <p>Delivered 16/03/2016</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>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>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 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>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 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>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; she was unable to protect herself because she was attempting to shield MJ and B from the appellant.</p>
10.	<p>Gittos v The State of Western Australia</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><u>Indictment</u></p> <p>Ct 1: Agg armed robbery.</p> <p>Ct 2: Agg armed assault with intent to rob.</p> <p><u>Section 32 Notice</u></p> <p>Ch 1: Criminal damage.</p> <p>Ch 2: Agg assault.</p> <p>Ch 3: AOBH.</p> <p>Ch 4: Drive MV with number plates not issued for</p>	<p><u>Indictment</u></p> <p>Ct 1: 4 yrs imp.</p> <p>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.</p> <p>Ch 2: 6 mths 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</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>Supportive new partner.</p> <p>Substance abuse from age 13.</p>	<p>that vehicle. Ch 5: Poss drug paraphernalia containing methyl.</p> <p><u>Ct 1</u> 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>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</p>	<p>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>EFP.</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>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. 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</p>
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			<p>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 number plates that were not issued for that car (ch 4). A glass pipe containing traces of methyl was found in the car (ch 5).</p>		<p>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> <p>At [34] ... there is cause for concern about the appellant's prospects of rehabilitation and that without substantial change on the appellant's part there is a real risk that he will reoffend.</p>
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.</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</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>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><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>	<p>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, no insight into seriousness of his actions and no concern for victims.</p>	
8.	<p><i>Oxenham v The State of Western Australia</i></p> <p>[2015] WASCA 30</p>	<p>36 yrs at time sentencing.</p> <p>Convicted after late PG.</p> <p>No relevant prior criminal record.</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</p>	<p>Ct 1: 18 mths imp (cum). Ct 3: 6 yrs imp.</p> <p>TES 7 yrs 6 mths imp. EFP.</p>	<p>Dismissed.</p> <p>At [30] In <i>Trompler v The State of Western Australia</i>, Wheeler JA noted that in general, there</p>

	<p>Delivered 18/02/2015</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>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>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 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</p>	<p>Sentencing judge noted that both offences were 'clearly jealous and anger-fuelled rage offences'.</p> <p>Sentencing judge regarded the GBH with 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>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 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</p>
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			<p>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. He has permanent injuries to his right eye.</p>		<p>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 was properly characterised as lying toward the upper end of the scale of seriousness while not within the worst category of case.</p>
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>1 x Agg AOBH. 1 x Agg GBH.</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</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-</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>

		Hereditary heart condition and hypertension.	and stayed with a friend. 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 to RPH where she underwent surgery to repair a fractured eye socket.	offending.	
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	1 x AOBH. 1 x Stealing. 1 x Threats to kill. 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.

		for AOBH and \$1000 for stealing. Fine payable to victim.			
5.	<i>Knight v The State of Western Australia</i> [2014] WASCA 217 Delivered 21/11/2014	55 yrs at time sentencing. Convicted after trial. Criminal record including firearms, traffic, drug sales and possession charges. Father of four children. Constant work record. History of cannabis and amphetamine use. Appellant's son convicted of agg burg; sentenced to 2 yrs 4 mths imp conditionally suspended for 2 yrs.	Ct 1: Agg burg (home invasion). Ct 2: GBH. Ct 3: AOBH. 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. 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.	Ct 1: 3 yrs imp (conc). Ct 2: 3 yrs 6 mth imp. Ct 3: 18 mths imp (cum). TES 5 yrs imp. EFP. No remorse. Principal offender. 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'.	Dismissed – on papers.
4.	<i>Eric v Bull</i> [2014] WASC 342 Delivered	Convicted after PG. Criminal record of traffic offences and disorderly conduct in public place.	1 x AOBH. 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	7 mths imp. Full admissions; admitted he had just 'snapped' as a result of personal pressures and frustration	Allowed. Re-sentenced to 7 mths CSIO suspended for 12 mths.

	24/09/2014	<p>Married; one small child; partner pregnant.</p> <p>Stable accommodation, employment and family support.</p> <p>Voluntarily attended psychologist.</p>	<p>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 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>	<p>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>Agreed to participate in victim mediation programme.</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 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.	<i>Tela v The State of Western Australia</i>	<p>18 yrs at time offending. 19 yrs at time sentencing.</p>	<p><u>Indictment</u> Ct 1: Agg burg. Ct 2: Agg burg.</p>	<p><u>Indictment</u> Ct 1: 1 yr 6 mths imp (cum).</p>	<p>Dismissed – on papers.</p> <p>At [19] The indictable</p>

	<p>[No 2]</p> <p>[2014] WASCA 103</p> <p>Delivered 15/05/2014</p>	<p>Convicted after early PG.</p> <p>Criminal record including possess controlled weapon.</p> <p>Employed since left school.</p> <p>Positive references.</p> <p>Good and supportive family.</p> <p>Breached 6 mth CRO by committing agg burg.</p>	<p>Ct 3: Burg</p> <p><u>Section 32</u> Ct 1: Drive reckless to escape pursuit Ct 2: Agg fail to stop 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 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). Ct 3: Fine \$1000. Ct 4: 3 mths imp (cum).</p> <p>TES 2 yrs 9 mths imp.</p> <p>EFP.</p> <p>Motive was greed.</p> <p>Good future prospects.</p>	<p>offences were undoubtedly serious. They were premeditated and targeted. Substantial amounts of property were taken on each occasion. ... The assault occasioning bodily harm was unprovoked, involved the use of a weapon and inflicted multiple injuries on an innocent victim.</p>
2.	<i>Blurton v The</i>	26 yrs at time offending.	Ct 1: AOBH.	Ct 1: 12 mths imp.	Dismissed.

<p><i>State of Western Australia</i></p> <p>[2014] WASCA 61</p> <p>Delivered 21/03/2014</p>	<p>27 yrs at time sentencing.</p> <p>Convicted after late PG (PG Cts 1 & 2 in full 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>Ct 2: Acts with intent to cause bodily harm. Ct 3: Unlawful wounding. Ct 4: Criminal damage.</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,</p>	<p>Ct 2: 2 yrs 6 mths imp. TES 3 yrs 6 mths imp.</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>At [38] ... As his Honour rightly said, the 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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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</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.</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>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</p>

	<p>intermittent interest in him; mother supportive of him.</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 co-offenders, who were armed, one with a screwdriver and the other a pole, intended to rob 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>Found criminal responsibility of appellant was less than his co-offenders although not vast.</p> <p>Moderate risk of future violent offending.</p>	<p>plea of guilty to count 2 merited some mitigation of 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>				