

Kidnapping

s 332 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
conc	concurrent
cum	cumulative
PG	plead guilty
agg	aggravated
burg	burglary
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
2.	<p><i>Ashley v The State of Western Australia</i></p> <p>[2017] WASCA 131</p> <p>Delivered 11/07/2017</p>	<p>26 yrs at time offending.</p> <p>Convicted after early PG (20% discount).</p> <p>No relevant prior criminal history.</p> <p>Parents separated aged 9.</p> <p>Completing a university degree at time of offending.</p> <p>Employed.</p> <p>Health issues at time of sentencing resulting from injuries received; will require significant degree of assistance and life long care.</p> <p>Suffering depression time of offending.</p>	<p>Ct 1: Agg burg.</p> <p>Ct 2: Being armed to cause fear.</p> <p>Cts 3-7: Detained another with intent to compel the doing of an act.</p> <p>Ct 8: Agg assault.</p> <p>Ashley was in a relationship with a woman. Some months after the relationship ended he spoke with a former colleague, now a police constable, about the police response to hostage situations. On the same day he attended various retail outlets and purchased numerous items for the purpose of his plan.</p> <p>Two weeks later Ashley went to the home of his ex-girlfriend and spoke with one of the occupants. The house was for sale and he purported to be a potential buyer and asked to see inside the house, but this was refused.</p> <p>Later that evening Ashley returned to the house armed with weapons, including a replica gun and a baton. When his ex-girlfriend answered the door he pointed the pistol at her and forced his way in, striking her to the shoulder and knocking her to the ground.</p> <p>He ordered his ex-girlfriend and the four other occupants of the home into a room and to lie on the floor. When his ex-girlfriend continued to defy his instructions he threatened her, before striking her twice to the elbow with the baton, causing pain and</p>	<p>Ct 1: 3 yrs imp.</p> <p>Ct 2: 12 mths imp (conc).</p> <p>Cts 3-7: 3 yrs imp each ct (conc).</p> <p>Ct 8: 12 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge accepted it was not the appellant's intention to cause physical harm to the hostages; rather, his intention that day was to end his life by 'cop suicide'.</p> <p>The sentencing judge found the offending extremely serious; premeditated and accompanied by a considerable degree of planning.</p> <p>The sentencing judge found the appellant's behaviour threatening and the victims vulnerable and extremely intimidated by his actions. The victims were entitled to feel safe</p>	<p>Allowed.</p> <p>Appeal concerned totality.</p> <p>Re-sentenced on ct 3 to 18 mths imp (cum upon ct 1).</p> <p>All other sentences and orders unchanged.</p> <p>TES 4 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [50] ... even allowing for the fact that the appellant's purpose was to bring about his own death, if his injuries were put to one side, the TES of 6 yrs; imp imposed on the appellant would have been well within the available sentencing range and an appropriate reflection of the criminality of his offences as a whole ...</p> <p>At [56] ... in the circumstances of this case, we think the injuries suffered by the appellant were a mitigating factor attracting very significant</p>

			<p>temporary loss of feeling in her hand (ct 8).</p> <p>Ashley bound his victims' hands and feet with flexi cuffs and covered two of the victims' mouths with tape he had brought with him. He turned off their mobile phones.</p> <p>Ashley called 000 and demanded to speak with a police negotiator, threatening to shoot someone if his demands were not met.</p> <p>For three hours Ashley detained the victims', eventually exiting the house with the replica pistol. When he ignored police commands to drop his gun he was shot twice, resulting in serious permanent injury, including paraplegia.</p>	<p>in their own home at night.</p> <p>Remorseful; engaged in steps towards rehabilitation; physical disabilities make him a low risk of reoffending.</p>	<p>weight... The appellant's injuries significantly moderated the importance of punishment, retribution, and personal deterrence.</p> <p>At [59] ... the total sentence imposed exceeded the bounds of sentences available upon a proper exercise of the sentencing discretion in the circumstances of this case.</p>
1.	<p><i>Mansour v The State of Western Australia</i></p> <p>[2015] WASCA 175</p> <p>Delivered on 01/09/2015</p>	<p>39 yrs at time offending. 42 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history, including drug and weapon offences.</p> <p>Migrated to Australia from Lebanon.</p> <p>Left school age 13 yrs; good work history.</p> <p>Married; supportive wife; five children.</p> <p>Co-offender Mansour convicted after trial of 1 x kidnapping and 1 x GBH</p>	<p>Ct 1: Kidnapping. Ct 2: GBH with intent.</p> <p>The victim owed a significant drug debt to the appellant. In the weeks preceding the offence the appellant sent the victim abusive text messages, including threats of serious harm. The appellant arranged three co-offenders to accompany him from NSW to collect the debt.</p> <p>The appellant arranged for the victim to be at a house. The appellant and the co-offenders ambushed the victim, detained him against his will and savagely assaulted him for approximately six hours.</p> <p>Two children aged 18 mths and 11 yrs were</p>	<p>Ct 1: 4 yrs imp (cum). Ct 2: 8 years imp (cum).</p> <p>TES 12 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant the principal offender and his culpability in respect of ct 1 more serious than that of the co-offenders. He set up the offending conduct in an 'organised, calculated and cold manner'. The offending in respect of ct 2 was a joint</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned parity.</p> <p>At [42] ... the significant distinguishing feature ... was the appellant's role as the principal offender... the appellant made contact with his co-offenders and recruited them to be a part of the joint criminal enterprise. ... the purpose of the offending was to endeavour to recover the significant debt owed by the victim to the appellant. The appellant harassed and</p>

		<p>with intent. TES 11 yrs imp.</p> <p>Co-offender Mannah convicted after trial of 1 x kidnapping and 1 x GBH with intent. TES 11 yrs imp.</p> <p>Co-offender Singh convicted after trial of 1 x kidnapping and 1 x GBH with intent. TES 9.5 yrs imp.</p>	<p>present at the house.</p> <p>After the assault the appellant returned to NSW. Two co-offenders remained and placed the severely injured victim in a car and dumped him behind bins at a park.</p> <p>The victim suffered burns to 14% of his body, multiple traumas including severe traumatic brain injury, bilateral orbital fractures, haemorrhages, deep wounds to his hands, lacerations to his upper back and multiple bruises. The victim was unconscious and was put into an induced coma.</p>	<p>criminal enterprise</p> <p>The sentencing judge found that the assaults upon the victim 'were sustained and deliberately carried out to cause him significant pain and degradation and carried out with such force, consistent with the use of implements, as to lead to life threatening injuries' and 'basically torture'.</p> <p>The sentencing judge found the co-offender Mansour's culpability was less than that of the appellant's; Mannah's consistent with that of Mansour; Singh's greater than that of Mansour and Mannah.</p> <p>Demonstrated no remorse.</p>	<p>threatened the victim before travelling to Perth. ...the appellant was significantly more culpable than his co-offenders.</p>
<i>Transitional Provisions Repealed (14/01/2009)</i>					
<i>Transitional Provisions Enacted (31/08/2003)</i>					