

Stealing

378(7) *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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
att	attempted
ct	count
TES	total effective sentence
EFP	eligible for parole
CBO	community based order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
26.	<p><i>Moore v The State of Western Australia</i></p> <p>[2019] WASCA 35</p> <p>Delivered 19/02/2019</p>	<p>44 yrs at time offending. 46 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; convictions for very similar offending; imprisoned most of his adult life.</p> <p>Parents separated prior to his birth; never met his father; in foster care from a very young age; adopted by foster parents.</p> <p>Adoptive parents caring and supportive; victim of sexual abuse aged 5-8 yrs.</p> <p>Behavioural problems from young age; completed school aged 16 yrs; connected with his biological mother when a teenager.</p> <p>No long-term relationships; single at time of sentencing; 20-yr-old daughter from a brief union.</p> <p>Commenced alcohol and cannabis use in his teens; methyl and heroin use by age</p>	<p>Cts 1-5: Agg burg. Ct 6: Agg indec assault. Ct 7: Stealing.</p> <p>Moore followed and propositioned a female in a park. She ran and managed to elude him.</p> <p><u>Cts 1- 2</u> In an attempt to try and locate the female Moore went to a unit owned by the victim, McKenzie. He opened a window with the intent of entering the unit to look for her and indecently assault her. He ran when seen by McKenzie.</p> <p>Moore then ran to a unit owned by the victim, McGauran. He entered this unlocked unit, still searching for the female with the intention of indecently assaulting her. Once inside he spoke to McGauran. McKenzie, who had followed him to the unit, intervened causing him to leave. A short time later he was apprehended by police, charged and released on bail.</p> <p><u>Cts 3-7</u> The next day Moore gained entry to the home of the victims, Drewett and Ford, by throwing a gas bottle through a door. Hearing the noise Ford hid, whilst Drewett went to investigate. Finding Moore inside his home Drewett told him to leave. After a brief argument he threw the gas bottle at the victim and left.</p> <p>Minutes later Moore entered the unlocked</p>	<p>Ct 1: 15 mths imp (conc). Ct 2: 2 yrs imp (cum). Ct 3: 2 yrs 6 mths imp (cum). Ct 4: 2 yrs imp (conc). Ct 5: 5 yrs 6 mths imp (cum). Ct 6: 5 yrs 6 mths imp (conc). Ct 7: 6 mths imp (conc).</p> <p>TES 10 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the offending serious; the appellant had been released from prison three days before committing ct 1; he was on bail for cts 1 and 2 when he committed cts 3-7; there was a degree of persistence in relation to the offending the subject of cts 1 and 2; there was violence in the commission of the offence the subject of ct 3; his criminal conduct in relation to ct 4 was brazen; there was a degree of persistence in his assault of RB.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p> <p>At [64] The appellant is at a high risk of reoffending in a sexual manner if he continues to resist treatment and makes no progress in dealing with the issues which underpin his sexual offending. His prospects of rehabilitation are not encouraging.</p> <p>At [67] Although cts 1-2 were committed in close temporal proximately, and cts 3-7 were also committed in close temporal proximity, it was necessary to accumulate some of the individual sentences in order to ensure that the TES imposed ... was commensurate with the seriousness of his overall offending.</p> <p>At [68] ... the TES ... did not infringe the first limb of</p>

		<p>20 yrs.</p> <p>History of schizophrenia, att suicide and depression.</p>	<p>home of the victims Dunn and Funnell. He entered the bedroom in which the victims were sleeping and stole a number of items. He fled when confronted by Dunn.</p> <p>Almost immediately Moore entered the home of the victim RB. She was home alone. He approached her, told her to be quiet and grabbed and pulled at her clothing with the intent of exposing her breasts. He then hit her in the face, causing her mouth to bleed, before dragging her to her bedroom and onto her bed. When she began screaming loudly he desisted and left the home, taking with him her wallet.</p>	<p>No demonstrated remorse or victim empathy; continues to deny the offending; history of refusing to accept responsibility; resistant to treatments and unwilling to engage in programs or address issues underlying his sexual offending.</p>	<p>the totality principle. A custodial term of that length was required in order properly to mark the very serious character of the appellant's offending as a whole, ... The TES bears a proper relationship to the criminality involved in all of the offences, viewed together, and having regard to all relevant facts and circumstances ... including the seriousness of the overall offending, the vulnerability of the victims (especially RB), the pattern of sentencing in prior cases with some comparable features, and the limited mitigation.</p>
<p>25.</p>	<p><i>Boase v The State of Western Australia</i></p> <p>[2018] WASCA 93</p> <p>Delivered 19/06/2018</p>	<p>31 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Minor criminal history; stealing and traffic offences.</p> <p>Supportive family and partner; three children.</p> <p>Offending precipitated by car accident; left with physical injuries restricting his ability</p>	<p>Ct 1: Burglary Ct 2: Stealing Ct 3: Criminal damage by fire.</p> <p><u>Cts 1 and 2</u> Boase cut a chain to gain access to a local government depot. Once inside he started a motor vehicle and drove it from the premises.</p> <p><u>Ct 3</u> Several weeks later Boase was involved in a police pursuit whilst driving the stolen vehicle he had fitted with stolen plates. To evade police he drove into bushland, where the vehicle became bogged. He then set fire to the</p>	<p>Ct 1: 12 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 18 mths imp (cum).</p> <p>TES 18 mths imp; cum on 4 yrs imp currently serving.</p> <p>The sentencing judge found some premeditation and planning in the burglary and stealing offences and that the criminal damage by fire was agg by the possibility</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality principle, including Magistrates Court sentence.</p> <p>At [25] As the sentencing judge rightly observed, the fact that the appellant committed the offence of criminal damage by fire in order to avoid detection for other offences was an agg factor of the appellant's offence of criminal damage</p>

		<p>to work resulting in loss of employment and financial difficulties.</p> <p>History of illicit substance use.</p>	<p>vehicle in an attempt to destroy evidence.</p> <p><u>Magistrates Court sentences</u> Boase fitted the stolen vehicle with different number plates at different times and used it to commit a number of serious offences during a six-week crime spree.</p> <p>The offences committed during the spree include 10 burglaries, five agg burglaries, three stealing motor vehicle offences, two reckless driving to escape police, five poss stolen and unlawfully obtained property and a number of other offences.</p> <p>TES 4 yrs imp for Magistrates Court offences.</p>	<p>of catastrophic damage; it was committed in an att to destroy evidence; at night when the chance of detection was lower and other property in the car was also destroyed.</p> <p>Remorseful.</p>	<p>by fire.</p> <p>At [28] ... in our view it would have been inappropriate to have made the sentences for the three offences wholly conc with the existing terms of imp. The appellant's conduct ... called for some accumulation on top of the 4 yr term already imposed ... particularly true of the offence of criminal damage by fire, which was a serious offence in its own right, and which involved a distinctly different form of criminality.</p>
<p>24.</p>	<p><i>Plumley v The State of Western Australia</i></p> <p>[2018] WASCA 33</p> <p>Delivered 19/03/2018</p>	<p>48 yrs at time offending. 49 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history; traffic and dishonesty offences; no prior violent or sexual offending; no prior sentences of imp.</p> <p>Close family; seven siblings; parents deceased; difficulties coping with grief after their deaths.</p>	<p>Ct 1: Att sex pen. Ct 2: Stealing.</p> <p>The 32 yr old victim, a Chinese national, was in WA for a holiday. Plumley was not known to her.</p> <p>The victim was out walking near the river when she became aware Plumley was behind her.</p> <p>The victim went to a nearby public toilet to change, before going for a swim.</p> <p>When she finished her swim the victim returned to the toilet block. She was changing when Plumley entered the block. She shouted</p>	<p>Ct 1: 4 yrs 3 mths imp. Ct 2: 6 mths imp (conc).</p> <p>TES 4 yrs 3 mths imp. EFP.</p> <p>The sentencing judge found ct 1 a serious offence and 'outrageous conduct'. Whilst penetration did not occur it was not due to his lack of trying, rather it was due to the victim struggling and screaming.</p> <p>The sentencing judge</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence on ct 1.</p> <p>Re-sentenced:</p> <p>Ct 1 3 yrs 3 mths imp. Ct 2: 6 mths imp (cum).</p> <p>TES 3 yrs 9 mths imp. EFP.</p> <p>At [47] The offence ... was an objectively serious example of an att to commit sex pen. ...</p>

		<p>Left school yr 9.</p> <p>Employed various unskilled jobs.</p> <p>Single at time offending; number of short term relationships.</p> <p>Homeless; living in his vehicle at time of offending.</p> <p>Medicated for depression.</p> <p>Abused alcohol from 17 yrs; ceased drinking aged 21 yrs; no history of illicit substance abuse.</p>	<p>‘what are you doing’ before running into a cubicle. The cubicle door did not lock so Plumley pushed it open and forced his way in.</p> <p>Forcing the victim to her knees Plumley attempted to get her to perform oral sex on him. She screamed so he eventually released her.</p> <p>As he left the toilet block he took the victim’s handbag, containing her passport, credit card and \$300 in cash.</p>	<p>found no sentence other than imp was appropriate and the term imposed needed to reflect the ‘brazen nature’ and ‘very serious’ circumstances of the offending.</p> <p>Little understanding of impact of his offending on the victim; at risk of re-offending unless underlying causes of his behaviour addressed.</p>	<p>At [50] ... the only reason that the appellant did not complete the offence was due to the resistance of the victim. However, that does not mean that he can be sentenced as if he had committed a completed offence.</p> <p>At [51] ... the length of the sentence did not properly reflect the PG and the maximum penalty for the offence. ... it must be concluded that the sentence imposed for ct 1 reveals implied error. The sentence imposed was not consistent with sentences imposed in the comparable cases referred to ...</p> <p>At [54] ... Although the stealing was committed immediately following the att sex pen, it was a distinct offence that involved additional criminality.</p> <p>At [55] It was suggested ... that the stealing offence was opportunistic. This is an inappropriate description in</p>
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					circumstances where the opportunity to take the victim's handbag was created by the appellant. He forced her into the cubicle and to the ground. He knew that she was helpless to prevent the theft of her property. He took her money, credit card and passport leaving her desperate and causing her additional trauma.
23.	<p><i>Dutton v The State of Western Australia</i></p> <p>[2017] WASCA 169</p> <p>Delivered 15/09/2017</p>	<p>54 yrs at time sentencing.</p> <p>Convicted after PG (17% discount).</p> <p>No prior criminal history.</p> <p>Born India; one of five children; arrived WA with his family as a child.</p> <p>Supportive and nurturing parents; good education.</p> <p>Trained chef before studying and working as an accountant; undertook law degree late 30s; established practice in family and commercial law.</p> <p>Married 32 yrs; separated; two adult children; current</p>	<p>2 x Stealing (involving a total of \$40,000).</p> <p>Dutton was a solicitor. The offending involved two separate victims who were his clients, Mr T and Mr B.</p> <p><u>Ct 1</u> As an upfront payment for fees \$3,000 was paid by Mr T into Dutton's trust account. In the course of legal proceedings an interim distribution of \$50,000 was paid to Mr T. It was agreed this money would also be held in Dutton's trust account.</p> <p>Dutton withdraw a total of \$20,000 from the account for his own use. This was done over a period of several weeks.</p> <p>Dutton did not invoice Mr T for legal services or provide him with a trust account statement.</p> <p>Agreement was made for Dutton to repay Mr T \$12,000 in instalments of \$1,000. Only one</p>	<p>15 mths imp each ct (cum).</p> <p>TES 2 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offences could not be explained by any incompetence or inadequate book-keeping and were committed through self-interest and dishonesty.</p> <p>The sentencing judge noted the offending was not isolated, rather consistent with other dishonest conduct on his part at the expense of clients.</p>	<p>Dismissed.</p> <p>Appellant appealed severity of sentence and asserted error in judge's reference to stealing as a servant cases.</p> <p>At [41] We respectfully agree with the characterisation by the sentencing judge of the appellant's offences as involving 'egregious breaches of trust'. The relationship of solicitor and client is a paradigm fiduciary relationship.</p> <p>At [42] The appellant's offences were, in no sense, isolated acts. They each involved a course of conduct, over a period of several</p>

		<p>partner supportive.</p>	<p>instalment was paid.</p> <p><u>Ct 2</u> Mr B was permitted to draw up \$20,000 from a joint trust account for the purposes of paying legal fees. Mr B then engaged Dutton, who informed the other party's lawyer he was acting. Dutton then requested, and subsequently received, the transfer of the \$20,000 into his own general account.</p> <p>Dutton withdraw a total of \$20,000 from the account for his own use. This was done over a period of several weeks.</p> <p>Dutton did not invoice Mr B for legal services and did not provide him with a trust account statement.</p>	<p>Appellant made acts of restitution to his victims; but sentencing judge not satisfied the appellant was remorseful.</p>	<p>weeks, during which amounts were removed by the appellant from the accounts.</p> <p>At [43] His offences were not done as a result of stresses or strains, but simply because he allowed his self-interest and dishonesty to triumph over his client's interests. His offences caused substantial loss and distress to his clients.</p> <p>At [45] ... The sentencing judge suggested, by an analogy with offending for stealing as a servant, and with reference to the breach of trust involved, that the significance given to general deterrence meant that it was exceptional in fact for immediate imp to be avoided. ... That was the extent of the sentencing judge's reference to offences of stealing as a servant in the course of the sentencing remarks. ... the breach of trust involved in the appellant's offending militated strongly against the suspension of his term of</p>
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					imp.... At [49] ... the features of the appellant's offending and his personal circumstances ... amply sustain the judge's exercise of discretion to impose a ... sentence of ... immediate imp.
22.	<p>Cummins v The State of Western Australia</p> <p>[2017] WASCA 135</p> <p>Delivered 20/07/2017</p>	<p>31 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Lengthy prior criminal history; previous offences of stealing a motor vehicle and reckless driving; first custodial sentence aged 17; most of his adult life spent in prison; difficulties with reintegration.</p> <p>Average childhood; supportive parents; family home free from abuse or illicit substance use; currently not close to his family.</p> <p>Left school aged 13; plasterers apprentice; not employed since aged 17.</p> <p>Father of three children to</p>	<p>Ct 1: Steal motor vehicle. Ct 2: Steal motor vehicle drive recklessly. Ct 3: Threats with intent to compel. Ct 4: Att steal motor vehicle. Ct 5: Burglary. Ct 6: Steal motor vehicle drive recklessly.</p> <p>Cummins met the owner of a motor vehicle advertised for sale. Following a test drive he drove off in the car at high speed (ct 1).</p> <p>Several days later Cummins was seen driving the stolen car. Police requested he stop by activating their vehicle's emergency lights and siren, but he accelerated away at high speed. To evade police he weaved in and out of traffic at high speed, crossed to the incorrect side of the road, failed to observe a stop sign and drove through a busy intersection, forcing other cars to brake heavily to avoid a collision (ct 2).</p> <p>In the hour following Cummins was involved in a number of crashes whilst driving the stolen car. Armed with a samurai sword in a sheath he got out of the car and hit cars as they</p>	<p>Ct 1: 18 mths imp (conc). Ct 2: 3 yrs 6 mths imp. Ct 3: 2 yrs 4 mths imp (conc). Ct 4: 8 mths imp (cum on ct 2). Ct 5: 2 yrs 6 mths imp (conc). Ct 6: 3 yrs 8 mths imp (cum on ct 2).</p> <p>TES 7 yrs 10 mths imp.</p> <p>EFP.</p> <p>Ct 4 reduced from 12 mths to 8 mths imp on totality principle.</p> <p>The sentencing judge found the theft of the car the subject of ct 1 a premeditated and planned theft.</p> <p>The sentencing judge</p>	<p>Dismissed.</p> <p>Appeal concerned totality.</p> <p>At [41] ... Clearly this was an extremely serious course of criminal conduct. The driving-related offences involved highly dangerous actions that put the lives of many members of the public at risk. In both instances, the driving persisted and was agg by the fact the appellant was seeking to flee from police and that he had no authority to drive. The threat charge was also a very serious offence That offence was agg not only by the terms of the threat, but that it was accompanied by use of a highly dangerous weapon that was wielded in a menacing way and that</p>

		<p>two partners; first relationship characterised by illicit substance use and domestic violence; current partner supportive and disapproving of illicit substance use.</p> <p>Significant use of illicit drugs; commenced using methyl aged 13; heavily under the influence of drugs at time of offending.</p>	<p>past, attempting to open the doors of cars, before they sped off. He then ran towards the victim and yelled for him to give him his car keys. Pulling the sword from its sheath he pointed it at the victim, demanding his car keys or he would chop his head off. Out of fear the victim dropped his keys (ct 3).</p> <p>Using the keys Cummins attempted to start the victim's vehicle. Unable to do so he chased the victim to a house whilst brandishing the samurai sword, striking the front door before running off (ct 4).</p> <p>Cummins jumped into the rear yard of a neighbouring property. Entering the home through an unlocked door he stole the keys to a vehicle, got into the car parked in the driveway and driving off at speed (ct 5).</p> <p>A short time later he was seen by police driving the stolen vehicle. He failed to stop and accelerated away at high speed when requested to stop. He weaved in and out of heavy traffic, causing vehicles to brake heavily to avoid being hit. He drove through a busy shopping centre carpark at high speed, crossed to the incorrect side of the road, through red traffic lights and rammed numerous vehicles in order to escape. His vehicle was eventually intercepted and he was arrested.</p>	<p>described the appellant's driving as appalling and that he 'selfishly put the lives and safety of other road users at significant risk'.</p> <p>The sentencing judge found ct 3 was a very serious offence; being armed with a sword lent credence to the threat.</p> <p>Appellant at high risk of committing further serious offences; remorseful and insight into the seriousness of his offending.</p>	<p>the appellant pursued the complainant whilst brandishing the weapon.</p> <p>At [58] ... it is relevant to consider the sentences imposed on the individual cts. In this regard, other cases dealing with offences of agg stealing of a motor vehicle ... that are relevant ... demonstrate that the sentences imposed on cts 2 and 6 were within the customary discretionary range for offences of this nature and this level of seriousness. There is nothing to suggest that the sentences imposed for the threat offence, ct 3, or the burglary offence, ct 5, were outside the customary range for those offences.</p>
21.	<i>Burnes v The State of Western Australia</i>	<p>28 yrs at time sentencing.</p> <p>Convicted after PG.</p>	<p><u>Indictment 861</u> Ct 1: Poss methyl wiss 10.9g at 27% purity.</p> <p><u>Indictment 236</u></p>	<p><u>Indictment 861</u> Ct 1: 1 yr 6 mths imp (cum).</p>	<p>Allowed - error of fact only, otherwise dismissed.</p> <p>Appeal concerned totality</p>

<p>[2017] WASCA 77</p> <p>Delivered 21/04/2017</p>	<p>Extensive criminal history; including stealing, driving, drug and firearm offence; assaulting police and armed robbery.</p> <p>Left school at yr 8.</p> <p>Negative peer associations.</p> <p>Minimal employment history.</p> <p>Long and entrenched history of illicit drug use; commenced using aged 15 yrs.</p>	<p>Ct 1: Burglary. Ct 2: Stealing.</p> <p><u>Section 32 notice 1</u> Ch 1: Att pervert justice.</p> <p><u>Section 32 notice 2</u> Ch 1, 13 & 19: Steal motor vehicle. Ch 2-3 & 7: Poss firearm/ammunition. Ch 4: Poss stolen property. Ch 5: Carried controlled weapon. Ch 6 & 8: Poss prohibited weapon. Ch 9-11: Breach bail. Ch 12: Threats to injure. Ch 14: Assault to prevent arrest. Ch 15: No authority to drive. Ch 16: Reckless driving. Ch 17: Fail to stop. Ch 18: Carried prohibited weapon.</p> <p><u>Indictment 861</u> Police stopped and searched Burnes' car. They found a clipseal bag containing the methyl and a set of electronic scales.</p> <p><u>Indictment 236</u> Burnes removed a flyscreen from a sliding door, smashed the glass and entered the victim's home. He ransacked the home and stole jewellery valued at approx. \$27,000. None of the jewellery has been recovered.</p> <p><u>Section 31 notice 1 and 2</u> A hired car was reported stolen and later found abandoned. A DNA profile taken from the car</p>	<p><u>Indictment 236</u> Ct 1: 2 yrs imp (cum). Ct 2: No punishment (s11).</p> <p><u>Section 32 notice 1</u> Ch 1: 1 yrs imp (cum).</p> <p><u>Section 32 notice 2</u> Ch 1: 1 yr imp (conc). Ch 2: 1 yr imp (conc). Ch 3: 3 mths imp (conc). Ch 4: 6 mths imp (conc). Ch 5: 8 mths imp (conc). Ch 6: 4 mths imp (conc). Ch 7: 9 mths imp (conc). Ch 8: 8 mths imp (conc). Ch 9: 3 mths imp (conc). Ch 10: 3 mths imp (conc). Ch 11: 3 mths imp (conc). Ch 12: 1 yr 6 mths imp (cum). Ch 13: 9 mths imp (conc). Ch 14: 1 yr 6 mths imp (cum). Ch 15: 6 mths imp (conc); MDL susp 12 mths. Ch 16: 8 mths imp (conc); MDL susp 24 mths. Ch 17: 1 mths imp (conc); MDL susp 4 yrs (cum). Ch 18: 6 mths imp (conc). Ch 19: 1 yr 6 mths imp (conc).</p> <p>TES 7 yrs 6 months imp.</p>	<p>and error of fact in respect of ch 12 (PE 48601 of 2015).</p> <p>Re-sentenced to:</p> <p>Discount of 10% on indictable offences; discount of 20% on section 32 notice offences.</p> <p>Ch 12: 12 mths imp (cum).</p> <p>All other individual sentences and orders remain.</p> <p>TES 7 yrs imp. EFP.</p> <p>At [33] ...the TES of 7 yrs 6 mths imp did not infringe the first limb of the totality principle.</p> <p>At [35] ... his Honour found that the appellant used a <i>loaded</i> firearm when making the threat. ... There was no evidence to support his Honour' finding that the firearm was loaded during the offence ...</p> <p>At [36] The appellant should have been sentenced</p>
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			<p>was matched to Burnes (ch 1).</p> <p>On another occasion Burnes threatened and intimidated the owner of a car into giving him the car's keys. He then drove off in the car (ch 19).</p> <p>On another occasion Burnes failed to appear in the Perth Magistrate's Court while remanded on bail (ch 9).</p> <p>On another occasion Burnes drove a stolen car to his former partner's house (ch 13). His former partner walked up to the car and, during a heated argument, Burnes pointed a firearm directly at her and said 'I'll fix you' (ch 12).</p> <p>On another occasion Burnes was seen to get into the stolen car the subject of ch 19. To prevent him from driving, police stopped their car behind and to the side of his car, their lights and siren activated. Burnes accelerated heavily and deliberately reversed in to the police car while two police officers were inside (ch 14). He failed to stop and drove away at speed (ch 17). Pursued by police, he drove on the incorrect side of the road and contravened traffic control signals. He mounted a kerb and drove over a median strip (ch 16). It was raining heavily; there were other vehicles on the road and his driving so dangerous the pursuit was aborted. He was not the holder of a valid MDL at the time (ch 15). The vehicle was later found abandoned and inside, was a prohibited electronic shock weapon, disguised</p>	<p>EFP.</p>	<p>in respect of PE 48601 of 2015 on the basis that the weapon he used was unloaded. The finding that the firearm used to threaten the appellant's former partner was loaded made the offence more serious. This is because of the risk that a loaded firearm may somehow be discharged. It is evident ... his Honour regarded the 'fact' that the firearm was loaded justified the imposition of a more severe penalty.</p> <p>At [39] Although the firearm was not loaded, the victim was not to know whether the weapon was loaded or unloaded. The use of the unloaded weapon by the appellant was designed to terrify and doubtless had that effect. The offence was still serious.</p>
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			<p>as a torch (ch 18).</p> <p>On another occasion Burnes was bailed to appear in the District Court, he failed to do so (chs 10 & 11).</p> <p>On another occasion Burnes went to an apartment to meet an acquaintance. Police were at the apartment in order to execute a search warrant. Alerted to his presence in the lobby he was searched and found to be in poss of \$4,700 in cash (ch 4) and a replica firearm (ch 5). A set of home-made knuckledusters (ch 6), nine 12 gauge shotgun cartridges and 51 .22 calibre revolver rounds (ch 7) were found in his car. When asked to provide his personal details he gave a false name and signed identification and bail documents using the false name (ch 1 of section 32 notice 1).</p> <p>On another occasion police searched Burnes' home and found a crossbow (ch 8) and a .22 calibre bolt-action repeater rifle (ch 2), loaded with six bullets (ch 3). The rifle had been modified and its serial numbers removed.</p>		
20.	<p><i>Smith v The State of Western Australia</i></p> <p>[2017] WASCA 73</p> <p>Delivered 10/04/2017</p>	<p>22yrs at time offending. 23yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>No prior criminal history.</p> <p>Raised in UK; loving and very supportive family.</p>	<p>1 x Stealing.</p> <p>The victim was 82yrs and cared for his wife who suffered dementia. Smith was a painting contractor working at their house.</p> <p>Smith used the toilet and found an unlocked safe containing \$362,450. He stole the money and left abruptly, feigning illness.</p>	<p>12 mths imp. EFP.</p> <p>The sentencing judge found the appellant stole an enormous amount of money and 'preyed on the elderly for monetary gain' and to capture the criminality of the offending the offence</p>	<p>Appeal allowed.</p> <p>Appeal concerned type and length of sentence.</p> <p>Resentenced to 10mths imp suspended for 12mths.</p> <p>At [41 ... the fact that the appellant was willing to</p>

		<p>Low to average intelligence.</p> <p>Left school at 16 yrs.</p> <p>History of depression and OCD.</p>	<p>Smith drove to Kalgoorlie where he stayed two nights, before deciding to return the money to the complainant. The victim had reported the theft to police and when stopped for speeding the stolen money was located.</p>	<p>must be met with a term of imp.</p> <p>Low risk of offending.</p> <p>Demonstrated genuine remorse; undertook counselling to reduce his risk of reoffending.</p>	<p>take what was obviously a very large sum of money from an elderly couple was a significant aggravating feature of the offending.</p> <p>At [45] This is a highly unusual case. The very large sum stolen, and the impact which the loss of that money would have had ... on the elderly victims, meant that the offence was serious.</p> <p>At [48] The appellant's offending was brief and opportunistic. The decision to return the money meant that he would have obtained no actual benefit from the offence ... The appellant had not targeted elderly persons as victims because of their vulnerability, and the offending was not planned.</p> <p>At [51] ... it was not open to the sentencing judge to conclude that it was inappropriate to suspend or conditionally suspend the sentence of imp. The decision to impose a term</p>
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					of immediate imp was unreasonable or plainly unjust in all the circumstances.
19.	<p><i>Mamkin v The State of Western Australia</i></p> <p>[2017] WASCA 61</p> <p>Delivered 31/03/2017</p>	<p>18 yrs at time offending. 19 yrs at time sentencing.</p> <p>Convicted after PG (25% discount for cts 1 and 7).</p> <p>Current offending are the first convictions as an adult.</p> <p>Extensive prior criminal history as a juvenile, including sanctions of detention.</p> <p>On bail for cts 1-6 at time offending for ct 7.</p>	<p>Ct 1: Armed robbery. Ct 2: Stealing. Ct 3: Agg robbery. Ct 4: Att agg robbery. Ct 5: Agg burg. Ct 6: Steal motor vehicle. Ct 7: Agg armed robbery.</p> <p><u>Ct 1</u> The victim parked his car at a shopping centre and remained in the driver's seat. Mamkin approached the victim, produced a long knife and told him, 'Don't do anything or I'm going to stab you'. Mamkin got into the car, behind the victim, and asked what he had on him. The victim handed a mobile and \$50 cash to Mamkin.</p> <p>On Mamkin's instruction, the victim drove to an ATM to withdraw cash. While holding the knife against the victim's ribs, Mamkin demanded the victim's PIN for his bankcard and said, 'If you lie I will stab you'.</p> <p>On Mamkin's instructions, the victim drove to a cul-de-sac and got out of the car. Mamkin patted the victim's pockets and took his car keys and house keys. Mamkin fled in the car which contained the victim's property.</p> <p><u>Ct 2</u></p>	<p>Ct 1: 4 yrs 9 mths imp (reduced from 7 yrs imp). Ct 2: 1 mth imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 10 mths imp (conc). Ct 5: 2 yrs 6 mths imp (conc). Ct 6: 12 mths imp (conc). Ct 7: 5 yrs 3 mths imp (reduced from 8 yrs imp) (to commence 1 yr 7 mths after commencement of ct 1).</p> <p>TES 6 yrs 10 mths imp.</p> <p>EFP.</p> <p>Sentences on cts 1 and 7 reduced for PG and youth. Sentence on ct 7 also reduced for time in custody.</p> <p>Sentencing judge took into account PG, youth and cooperation with police (admissions to police) for cts 2-6.</p> <p>PSR indicated no real appreciation of the effect</p>	<p>Dismissed.</p> <p>Appeal concerned totality and discount for cooperation.</p> <p>At [34] ...the appellant's admissions were not made as a consequence of genuine remorse or contrition. They did not involve the provision of useful information to the police... The admissions were made in confined parts of the video-recorded interview during which the appellant repeatedly, but unsuccessfully, endeavoured to mislead the police as to the truth about the serious offences in which he was involved as a principal offender.</p> <p>At [35] The appellant made no admissions of any significance concerning ct 1. His cooperation with the police when they searched his premises was</p>

			<p>On the same date as ct 1, Mamkin and his associates stole fuel to the value of \$76.46.</p> <p><u>Cts 3 and 4</u> On the same date as ct 1, Mamkin and his associates parked the stolen car behind the victims who were attempting to withdraw cash at an ATM. Mamkin approached the victims and said 'Do you want to pull some money out or get mobbed?'. Mamkin took a wallet from one victim. The other victim attempted to prevent Mamkin from taking the wallet and Mamkin punched the second victim to the face. A violent confrontation ensued and the victims escaped on foot.</p> <p><u>Cts 5 and 6</u> The following day, Mamkin entered the victim's house while the victim was asleep. He stole the victim's handbag which contained her wallet, car keys and the keys to a vault at her work. Mamkin then stole the victim's car.</p> <p><u>Ct 7</u> The victim was a taxi driver. On another date, Mamkin arranged for the victim to collect him from Bassendean. As Mamkin could not pay a deposit, the victim refused to drive him to his destination but offered to drive him, without charge, to a train station.</p> <p>As the victim drove around the corner, Mamkin produced a long knife and held it at the victim's throat. He threatened to kill the victim if he did not hand over his money, his</p>	<p>which Mamkin's conduct must have had on his victims, or a willingness or real capacity to deal with the issues which led to his offending.</p> <p>Sentencing judge commented that the current offences indicate a serious escalation in the level of violence involved in Mamkin's offending.</p> <p>No remorse or contrition.</p> <p>Very serious risk of re-offending.</p>	<p>insignificant. His insubstantial admissions and cooperation were not of any material weight for sentencing purposes. In any event, a different individual sentence for ct 1 should not have been imposed.</p> <p>At [36] His Honour did not state the discount he applied but his Honour was not bound to do so. In any event, a different sentence should not have been imposed for any of cts 2, 3 or 4.</p> <p>At [37] The appellant's overall offending was, no doubt, extremely serious... The offences involved some planning... The actual or threatened violence associated with the commission of cts 1 and 7 was significant. The victims must have feared for their lives. They would have suffered emotional trauma... The victim of ct 7 was a taxi driver. People who work as taxi drivers are vulnerable to attacks of this kind.</p>
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			<p>mobile and the passcode for the mobile. The victim complied with those demands. His wallet contained \$450 cash.</p> <p>Mamkin's two associates approached the taxi, opened the door and told Mamkin to take the mobile and cash and get out of the taxi.</p>		<p>At [48] The egregious character of the appellant's offending, and the very serious risk that he will reoffend, reduced the extent to which he could be given credit in the sentencing process for his youth.</p>
18.	<p><i>Atherley v The State of Western Australia</i></p> <p>[2017] WASCA 53</p> <p>Delivered 23/03/2017</p>	<p>53-61 yrs at time offending. 66 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p>	<p>Cts 1 & 2: Stealing. Ct 3: Perjury.</p> <p>Atherley was the victim's accountant and had enduring power of attorney. He was later appointed her legal guardian and executor of her will due to her declining mental faculties. He was the only person with authority to make transfers from her bank accounts.</p> <p>Atherley stole \$1,309,070.50 over 165 fraudulent transactions before the victim's death (ct 1). He retrospectively created false entries in his accounting system about work purportedly done. He told police that the transactions were for fees incurred and work completed.</p> <p>After the victim's death, Atherley stole \$312,925 and generated a number of false invoices for the transactions (ct 2).</p> <p>Atherley gave false affidavit evidence and oral testimony in probate proceedings to the effect that he performed accounting and financial planning work that he did not in fact perform</p>	<p>Ct 1: 4 yrs imp. Ct 2: 2 yrs 6 mths imp (cum). Ct 3: 12 mths imp (cum).</p> <p>TES 7 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found that there was a high level of criminality involved and the appellant engaged in prolonged and significant dishonesty; abusing a position of trust, compounded by an unsuccessful attempt to cover his tracks by false documents and perjury.</p> <p>Co-operative with authorities.</p> <p>Absence of remorse.</p>	<p>Dismissed.</p> <p>Appeal concerned totality.</p> <p>At [56] ... ct 1 occurred over the course of four yrs and involved 168 separate dishonest transactions while Mr Atherley was ... subject to a fiduciary, professional and moral obligation to protect the interests of his client, who he knew to be incapable of protecting her own interest. ... Mr Atherley's offending was not an isolated lapse of judgment or impulsive but was deliberate, methodical, planned, systematic and prolonged. ... the stealing increased exponentially in the latter part of [the victim's] lifetime as her mental state declined and her vulnerability to ... Mr</p>

			<p>(ct 3). He annexed false invoices and a spreadsheet of false work entries to his affidavits.</p>	<p>Atherley's abuse of trust increased.</p> <p>At [57] ... Mr Atherley's offending appears to have been motivated entirely by greed, that the money was used for his own personal benefit, and that the money has not been repaid to any extent.</p> <p>At [59] ... Mr Atherley's conviction ct 3 is also properly regarded as manifesting a high level of criminality. ... The unsuccessful attempt to deceive the court was... protracted ...the perjury ...was central to the issue to which the proceedings were directed...</p> <p>At [61] The weight to be given to the fact that Mr Atherley had not previously been convicted of any offence is significantly undermined by the fact that he engaged in persistent and serious criminal conduct between 2002 and 2010, which he successfully concealed until</p>
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					the latter part of that period. Further and in any case, when a professional person uses their reputation and apparent integrity to obtain a position of trust which is then abused, it is difficult to give any significant weight to the previous good behaviour that gave rise to the reputation which became the springboard for the offending conduct.
17.	<p><i>Mogridge v The State of Western Australia</i></p> <p>[2016] WASCA 205</p> <p>Delivered 29/11/2016</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Subject to a SIO and CBO at time offending.</p> <p>Lengthy criminal history, including property offences and violent offences. Mogridge has breached every court order previously imposed upon him.</p> <p>Deprived childhood; exposed to domestic violence and chronic illicit drug and alcohol abuse.</p> <p>Diagnosed schizophrenic, with multiple admissions to Graylands Hospital.</p>	<p><u>Indictment</u> 1 x Robbery.</p> <p><u>Breach of SIO</u> 1 x Burg. 2 x Burg with intent. 2 x Unlawful poss.</p> <p><u>Breach of CBO</u> 1 x Breach police order. 1 x Breach of protective bail condition. 1 x Damaging property. 1 x Disorderly conduct. 4 x Stealing.</p> <p><u>Indictment</u> M entered a shop and stole an iPad and two bags belonging to the shop's owner (the victim). The victim's wife and 4 yr-old son were present. The victim tried to prevent M from leaving and during a struggle M punched the victim in the face. M dropped the stolen</p>	<p><u>Indictment</u> 3 yrs imp.</p> <p><u>Breach of SIO</u> Burg: 3 mths imp (cum). Burg with intent: 6 mths imp (cum). Burg with intent: 3 mths imp (cum). 2 x Unlawful poss: 3 mths imp each (conc).</p> <p><u>Breach of CBO</u> Breach police order: 3 mths imp (conc). Breach bail: no sentence. Damaging property: 6 mths imp (conc). Disorderly conduct: \$250 fine. 3 x Stealing: 3 mths imp each (conc).</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged individual sentence for the Robbery offence, totality, and sentencing judge's failure to state discount provided for PG.</p> <p>At [40] While the robbery offence committed by the appellant was not at the upper end of seriousness of offences of robbery, it was not at the lower end of the scale and involved considerable criminality. The appellant used actual violence upon the victim to steal the iPad and the two bags. The offence was committed in the presence</p>

		<p>Antisocial personality disorder.</p> <p>Illicit drug use.</p>	<p>items and left.</p> <p><u>Breach SIO</u> M smashed the rear glass doors of an Indian restaurant and entered with others, but could not find anything to steal (burg with intent).</p> <p>M smashed a window of a pharmacy, entered and smashed an internal wall. Two co-offenders wanted to steal drugs and M assisted to receive \$50 (burg with intent).</p> <p>M was found in poss of property worth in excess of \$500 (unlawful poss).</p> <p>M forced entry to a shopping centre and stole 189 SIM cards valued at \$378 from a kiosk (burg). M was found by police in poss of the SIM cards and other items (unlawful poss).</p> <p><u>Breach CBO</u> After the burg on the Indian restaurant subject to SIO, M smashed the glass panel to the doors (damaging property).</p> <p>M smashed a car window and stole property valued at approx. \$700 (stealing).</p> <p>M yelled obscenities and threats at his mother after being issued with a 72-hr police order prohibiting him from entering her house or approaching within 100 m of her (disorderly conduct). M was arrested and released on protective bail. He later hid in his mother's unit in breach of the police order and</p>	<p>1 x Stealing: no sentence (s 11).</p> <p>TES 4 yrs imp; \$250 fine.</p> <p>EFP.</p> <p>Sentences for breach of CBO made conc for totality reasons.</p> <p>Sentencing judge found that Mogridge's mental illness was not at the root of his offending; illicit drug use was the cause of offending.</p> <p>Not a good vehicle for general deterrence because of his mental illness.</p> <p>Very high risk of reoffending.</p> <p>No remorse; inability to accept responsibility for offending behaviour.</p>	<p>of the victim's wife and young child... The appellant was, at the time, subject to the CBO and the SIO. Specific deterrence and the need to provide public protection were matters of importance.</p> <p>At [41] The appellant ... has a very long and serious criminal history... he suffers from a significant mental illness, but that illness was not causative of his offending, nor will it result in imp being more onerous for him than in the ordinary case. The appellant is not motivated to deal with his illicit drug use, which is the real driver of his offending, and he has no insight into the effects that his offending has on his victims. His prospects for rehabilitation appear to be very poor and he poses a very high risk of reoffending.</p> <p>At [45] Her Honour erred by overlooking to state the extent of the reduction for the PG. However, in this</p>
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			<p>protective bail conditions (breach offences).</p> <p>M stole property valued at \$50 from a car (stealing). M returned to the same address and stole \$50 in change from another car (stealing).</p> <p>M was charged with stealing for the stolen SIM cards he took in the burg subject to SIO (stealing).</p>		<p>case, the error is not material. It is not reasonably arguable, having regard to all relevant sentencing considerations (including the PG), that different individual sentences, or a different TES should have been imposed...</p>
16.	<p><i>The State of Western Australia v Smith</i></p> <p>[2016] WASCA 153</p> <p>Delivered 31/08/2016</p>	<p>25 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Significant and lengthy prior criminal history, including convictions for breaching VRO, agg common assault and being armed in public in a way that may cause fear.</p> <p>History of domestic violence towards his partners.</p> <p>Emotional trauma associated with the death of his father.</p> <p>History of methyl use; affected by drugs at time offending.</p> <p>Offending occurred while appellant was subject to an</p>	<p><u>Indictment</u></p> <p>Ct 1: Agg unlawful wounding. Ct 2: Agg GBH. Ct 3: Att steal motor vehicle. Ct 4: Assault public officer. Ct 5: Obstructing public officer.</p> <p><u>s.32 notice</u></p> <p>Ch 1: Trespass. Ch 2: Steal motor vehicle. Ch 3: Cruelty to an animal.</p> <p><u>Ct 1</u></p> <p>Smith and the victim were in a domestic relationship. They were at home using drugs and Smith left the house armed with a hammer and in an agitated state. He returned with the hammer and argued with the victim. He threatened to hit her with the hammer. The victim turned her back to Smith and he violently hit her head with the hammer, exposing her skull.</p> <p><u>Ct 2</u></p> <p>Smith struck the victim again as she tried to</p>	<p><u>Indictment</u></p> <p>Ct 1: 6 mths imp (conc). Ct 2: 18 mths imp. Ct 3: 3 mths imp (conc). Ct 4: 6 mths imp (cum). Ct 5: 3 mths imp (conc).</p> <p><u>s.32 notice</u></p> <p>Ch 1: \$500 fine. Ch 2: 3 mths imp (conc). Ch 3: 2 mths imp (cum).</p> <p><u>SIO</u></p> <p>Ordered to serve 6 mths of 10 mths SIO (conc).</p> <p>TES 2 yrs 2 mths imp.</p> <p>EFP.</p> <p>The sentencing judge noted the offences reflected an escalation in his offending behaviour, but that Smith had not been before the</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence for cts 1 and 2 and totality.</p> <p>Re-sentenced to:</p> <p>Ct 1 (ind): 2 yrs imp (conc). Ct 2 (ind): 3 yrs 6 mths imp.</p> <p>Sentences for ct 4 (ind) and ch 3 (s32 notice) and 6 mths imp for SIO cum upon each other and cum upon new sentence for ct 2 (ind). All other sentences conc.</p> <p>TES 4 yrs 8 mths imp. EFP.</p> <p>At [30] The respondent had a history of domestic violence towards his partners, and this</p>

		<p>SIO of 10 months imp, susp 12 mths.</p>	<p>flee, hitting and fracturing her hand.</p> <p><u>Ct 3</u> Police found Smith walking down the street. As the officer got out of his patrol car and approached Smith, Smith ran to the other side of the car, got into the driver's seat and attempted to drive away.</p> <p><u>Cts 4-5 and ch3</u> The officer tried to stop Smith and was struck on the arm by the car's door. They wrestled for control of the car. Smith pulled out a knife and the officer attempted to knock it from his hand. The officer then attempted to taser Smith.</p> <p>A police dog grabbed Smith by his leg and pulled him from the car. With a hammer Smith struck the dog on the head and the officer's arm. He attempted to hit the dog again, but the officer tasered him and he fell to the ground. Continuing to fight the officer, still armed with the hammer, he was tasered a third time. The officer kicked the hammer from Smith's hand and restrained him until assistance arrived.</p>	<p>courts from 2005-2010.</p> <p>Remorseful; claimed no recollection of actions due to drug intoxication.</p> <p>Psychological report indicated developing insight into his behaviour and reasons for it.</p> <p>High risk of re-offending if illicit drug use continues.</p>	<p>underscored the importance of personal deterrence as a sentencing factor.</p> <p>At [39] ... the respondent's offending was serious... The respondent armed himself with a ... weapon capable of inflicting serious harm, and his attacked upon the victim was unprovoked... The respondent's conduct in striking the victim ... had the potential to cause her extremely serious injury. He was physically stronger and more powerful than her.</p> <p>At [95] ... it was significant that the injury in fact sustained [for ct 2] was a defensive wound caused by an attempt to strike the victim with a hammer, in circumstances where the respondent had just struck her with the hammer to the back of her head. The use of the hammer in that manner was likely to permanently injure or even kill the victim. The level of violence employed against</p>
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					<p>the victim was high. The infliction of the injury formed part of a sustained attack against the victim which ceased only after she was able to take refuge at the neighbour's premises. The victim had not provoked the attack, and posed no threat to the respondent.</p> <p>At [100] The respondent acknowledged that he had perpetrated domestic violence on a regular basis.</p> <p>At [104] Any AOBH to a police officer performing his or her important community function is a serious matter. That is particularly so where weapons are involved. The respondent produced a knife, which he did not have the opportunity of using, and employed a claw hammer to inflict bodily injury...</p>
15.	<p><i>Cameron v The State of Western Australia</i></p> <p>[2016] WASCA</p>	<p>19 yrs at time offending. 20 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount for agg burg</p>	<p>Ct 1: Agg burg (dwelling). Ct 2: Murder (victim 1). Ct 3: Murder (victim 2). Ct 4: Steal motor vehicle.</p>	<p>Ct 1: 15 yrs imp (conc). Cts 2 and 3: Life imp on each ct (conc). Min non-parole period of 32 yrs on each ct.</p>	<p>Dismissed.</p> <p>Appellant challenged offence characterization (worst category) and length</p>

<p>92</p> <p>Delivered 08/06/2016</p>	<p>and steal motor vehicle offences).</p> <p>Prior criminal history, including multiple offences of stealing; agg common assault; agg burg and breach of bail.</p> <p>Very turbulent, disturbed and difficult childhood. Discipline issues and violent from age 11. History of fire setting and cruelty to animals.</p> <p>Diagnosed with ADHD as a child.</p> <p>Long standing drug abuse habit, resulting in mental health issues.</p> <p>Never worked.</p> <p>Three children from three relationships.</p> <p>History of domestic violence and assault.</p>	<p>Victim 1 is a female aged 26 yrs; victim 2 is victim 1's mother aged 68 yrs.</p> <p>After seeing victim 2 enter her home Cameron armed himself with a hammer and walked into the house through an open rear door.</p> <p>Cameron went to the bedroom of victim 1, who was naked having just showered. Cameron struck her on the head twice with the hammer.</p> <p>Knowing another person was also in the house Cameron then went to the main bedroom. He struck victim 2 on the head with the hammer, covered her head with a pair of shorts and pulled her T-shirt over her shoulders to expose her bare chest. She was otherwise naked.</p> <p>Cameron returned to victim 1, put on a condom and had sexual intercourse with her until he ejaculated. It is unknown whether the victim was alive or dead, but she was unconscious.</p> <p>At some point he stabbed victim 2 in the chest with a pair of scissors. He also stabbed victim 1 six times in the chest and inflicted penetrating wounds to her throat.</p> <p>Cameron stole victim 1's car and drove it to a number of places around the metropolitan area, eventually parking it in a street, where it was located by police the next day.</p>	<p>Ct 4: 5 yrs 3 mths imp (conc).</p> <p>The sentencing judge found the offences were "of the most serious nature and of the worst kind in their categories" and there did not appear to be any clear motive.</p>	<p>of min non-parole period.</p> <p>At [79] ... the murders were within the range of the 'worst category' of cases of murder.</p> <p>At [80] ... the offence of stealing a motor vehicle was especially egregious in that ... it involved 'stealing from a house where two occupants [had] been killed without any attempt to see to their welfare' ... and, further, the appellant stole the motor vehicle for the purpose of making good his escape and having committed murders within the 'worst category' of cases of that kind.</p> <p>At [123]–[177] Discussion of comparative cases.</p> <p>At [183] ... the extraordinary degree of objective seriousness of the appellant's offending, and the need to protect public safety as a consequence of his significant risk of violent reoffending, required that the mitigating</p>
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					<p>effect of his youth and traumatic childhood be reduced substantially in determining the sentencing outcome.</p> <p>At [187] The objective seriousness of the appellant's offending, and the important sentencing considerations of condign punishment [for the random, intentional and unprovoked killing of two vulnerable people, during an agg home burglary, by brutal and sustained violence], the protection of the public and personal and general deterrence, precluded the imposition of a lesser min non-parole period ... despite the appellant's youth, early PG and traumatic childhood.</p>
14.	<p><i>Stack v The State of Western Australia</i></p> <p>[2016] WASCA 89</p> <p>Delivered 03/06/2016</p>	<p>27 yrs at time offending.</p> <p>Convicted after PG (15% discount).</p> <p>Significant criminal history, including prior offences of agg burg.</p> <p>Parents heavy drug users.</p>	<p>1 x Steal motor vehicle. 1 x Agg burg.</p> <p>Stack and two male co-offenders (Taylor and the other unidentified) used a stolen car to drive to a townhouse. The unidentified co-offender was armed with a pistol.</p> <p>The two male co-offenders forced entry by smashing through the front door. Stack entered</p>	<p>Steal motor vehicle: 6 mths imp (conc). Agg burg: 4 yrs imp (conc).</p> <p>Conc with sentence of 1 yr 9 mths then serving.</p> <p>TES 4 yrs imp.</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged length of sentence; totality principle and parity.</p> <p>At [12] Taylor was 21 at the time of the agg burg... Taylor did not know or intend that violence</p>

		<p>Serious drug user from a young age.</p> <p>Under the influence of drugs at time offending.</p> <p>10-year-old son cared for by her elderly father.</p> <p><u>Co-offender Taylor</u> Convicted after PG (10% discount) to steal motor vehicle and agg burg. Sentenced to 3 yrs 4 mths imp.</p>	<p>a short time later.</p> <p>Three tenants were inside the townhouse at the time. One escaped. Two locked themselves in a bedroom. The unidentified co-offender smashed the lock and doorhandle to gain entry. Inside he brandished the pistol and demanded the male victim's wallet, striking him five times to the forehead with the pistol. Stack was present when these demands were made.</p> <p>The female victim hid in a wardrobe until the unidentified co-offender yelled at her to get out.</p> <p>The unidentified co-offender found a bankcard and struck the male victim on the back with the pistol when he was unable to provide the PIN on demand.</p> <p>Stack and both co-offenders searched the house and stole a bankcard, wallet, camera and mobile phone.</p> <p>As they were leaving police arrived. Stack discarded her stolen items as she ran down the driveway.</p>		<p>would be used to steal from the victims; was not present when the assaults occurred; and was not the instigator of the violence... the appellant and the unidentified co-offender were in control when the offence was committed... the appellant's criminal record was significantly more serious than Taylor's.</p> <p>At [14] The circumstances of the appellant's agg burg offence place it at the serious end of the scale. Having regard to the nature and extent of the appellant's record of offending, there is a need for personal as well as general deterrence in her sentencing.</p>
13.	<p><i>Garlett v The State of Western Australia</i></p> <p>[2016] WASCA 80</p> <p>Delivered</p>	<p>21 yrs at time sentencing.</p> <p>Convicted after early PG (20% discount).</p> <p>At time offending Garlett subject to a 12-mth ISO for convictions of receiving,</p>	<p><u>Indictment</u> Ct 1: Agg burg (dwelling). Ct 2: Steal motor vehicle.</p> <p><u>Section 32 notice</u> Ch 1: Poss amphetamine. Ch 2: Steal motor vehicle and drive recklessly. Ch 3, 8 and 12: Stealing.</p>	<p><u>Indictment</u> Ct 1: 1 yr 6 mths imp (cum). Ct 2: 1 yr imp (conc).</p> <p><u>Section 32 Notice</u> Ch 1: 1 mth imp (conc). Ch 2: 1 yr imp (conc).</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged length and type of individual sentence, as well as totality.</p> <p>At [47] The appellant's</p>

19/05/2016	<p>burg (dwelling) and agg burg (dwelling).</p> <p>Significant criminal history.</p> <p>Indigenous.</p> <p>Positive childhood; supportive family.</p> <p>Gifted footballer; played at AFL level.</p> <p>History of illicit substance abuse, including intravenous amphetamines.</p>	<p>Ch 4 and 10: Failing to stop in circ of agg.</p> <p>Ch 5: Agg reckless driving.</p> <p>Ch 6-7: Reckless driving.</p> <p>Ch 9: Steal motor vehicle.</p> <p>Ch 11: Agg burg (dwelling).</p> <p><u>Indictment</u></p> <p>Garlett entered the victim's home through a window and took car keys, an iPhone and wallet to the value of approx \$1,444 (ct 1). He then used the car keys to steal a vehicle valued at approx. \$10,200 (ct 2). The occupants of the house were asleep inside at the time.</p> <p><u>Section 32 Notice</u></p> <p>Ch 1: Garlett was found to be in poss of a small clip seal bag containing 0.1g of amphetamine.</p> <p>Ch 2: Garlett and a co-offender took a set of keys from the front door of a house and used the keys to steal the motor vehicle parked out the front of the house. They drove the vehicle for four days before being involved in a pursuit in which he drove recklessly.</p> <p>Chs 3-6: Garlett, in company with a co-offender, stole \$50.96 worth of petrol from a service station. A short time later they were seen by police driving the stolen motor vehicle (subject of ch 2) who attempted to intercept the vehicle. Garlett failed to stop, and to evade police drove recklessly on residential and major arterial roads, weaving in and out of heavy traffic. Police were forced to abort the</p>	<p>Ch 3: 5 days imp (conc).</p> <p>Ch 4: 3 mths imp (conc).</p> <p>Ch 5: 8 mths imp (cum).</p> <p>Ch 6: 6 mths imp (conc).</p> <p>Ch 7: 6 mths imp (conc).</p> <p>Ch 8: 5 days imp (conc).</p> <p>Ch 9: 9 mths imp (conc).</p> <p>Ch 10: 3 mths imp (conc).</p> <p>Ch 11: 1 yrs imp (cum).</p> <p>Ch 12: 4 mths imp (conc).</p> <p><u>Breach ISO</u></p> <p>Re-sentenced to:</p> <p>Receiving: 1 mth imp (conc).</p> <p>Burg: 1 yr imp (conc).</p> <p>Agg burg: 1 yr 6 mths imp (cum).</p> <p>TES 4 yrs 8 mth imp.</p> <p>EFP.</p> <p>Sentencing judge found Garlett had ignored previous opportunities to rehabilitate himself and had continued to offend, use drugs and put the community at risk. Sentence of imp not susp in view of Garlett's complete disregard for the community and property and the fact that he had not</p>	<p>overall offending was numerous, serious and persistent. The indictable offences and the s 32 notice offences were all committed whilst he was subject to the ISO. The appellant was given two chances to comply with the ISO and within days of each of those proceedings, he committed the further offences. The offending shows that the appellant has little regard for the law. Personal deterrence was a relevant sentencing factor. So too was general deterrence. The imposition of a susp term of imp was inappropriate given the seriousness of the offending...</p> <p>At [48] I do not regard the imposition of an immediate term of imp of the length imposed as infringing the first limb of the totality principle. To the contrary, it bore ... a proper relationship to the overall offending involved in all the offences, viewed in their entirety and having</p>
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			<p>pursuit. A speed camera recorded Garlett driving at 161 km p/h in an area with a speed limit of 110 km p/h.</p> <p>Ch 7: In the stolen vehicle Garlett recorded himself on his iPhone driving between 140-200 km p/h.</p> <p>Chs 8-10: Whilst he was on bail for the above offences Garlett stole a motor vehicle, using a spare key from a house. Garlett was seen by police and attempted to escape by driving recklessly and attempting to cross a sandy median strip. The vehicle became bogged and Garlett ran from the vehicle into nearby bushland.</p> <p>Ch 11: In company with another male Garlett broke the glass panel of a rear door and entered a house and stole property to the value of \$2,500.</p> <p>Ch 12: Garlett stole clothing from a department store.</p>	<p>one, but two opportunities and the availability of support.</p>	<p>regard to the circumstances of the case, including those referable to the appellant personally.</p>
12.	<p><i>Worthington v The State of Western Australia</i></p> <p>[2016] WASCA 57</p> <p>Delivered 08/04/2016</p>	<p>37 yrs at time offending. 38 yrs at time sentencing.</p> <p>Convicted after PG (15% discount).</p> <p>Appalling criminal history, including dishonesty offences and 27 prior convictions for burglary. Repeat offender.</p>	<p>Cts 1 and 2: Agg burg. Cts 3; 6 and 11: Burg. Cts 4; 7 and 12: Stealing. Ct 5: Stealing motor vehicle. Cts 8-10 and 13-20: Fraud.</p> <p>Over a seven-week period Worthington broke into five homes and stole property.</p> <p>Worthington entered a home. The victim and her two-year-old child were home alone.</p>	<p>Cts 1 and 11: 18 mths imp (cum). Ct 2: 20 mths imp (conc). Ct 3: 3 yrs 6 ths imp (cum). Cts 4 and 6: 18 mths imp (conc). Ct 5 and 7: 12 mths imp (conc). Ct 8-10 and 13: 3 mths imp (conc). Ct 12: 1 mth imp (conc)</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle, individual sentences not challenged.</p> <p>At [18] ... Given the number of offences and the multiple occasions upon which offences were committed, it was</p>

		<p>Dysfunctional childhood; subjected to violence; substance misuse; neglect; abuse and his parents separation.</p> <p>Left home at a young age.</p> <p>The offences occurred only five mths after his release from prison for assault and burglary offences.</p>	<p>\$4,100 worth of property was stolen. Identified by fingerprints (ct 1).</p> <p>Worthington entered a home and stole \$770 worth of property before being disturbed by the occupant (ct 2).</p> <p>Worthington forced entry to a home and stole a large amount of property, including a car, trailer and boat valued at approx. \$46,000 (cts 3-5).</p> <p>Worthington smashed his way into a home and stole a credit card and goods worth approximately \$9,900. He used the card on three occasions to purchase \$137.21 worth of property. Some of the property was later located (cts 6-10).</p> <p>Worthington forced entry a home. He stole approximately \$4,000 worth of property and a credit card. The card was used on eight occasions to purchase goods worth \$380.09 (cts 11-20).</p> <p>Worthington's offending led to a gross property loss of at least \$60,000. Only some of the stolen property was recovered.</p>	<p>Cts 14-20: 3 mths imp (conc).</p> <p>TES 6 yrs 6 mths imp. EFP.</p> <p>The sentencing judge identified no mitigating personal circumstances. Personal and general deterrence and community protection were significant factors in the exercise of her discretion.</p> <p>The appellant did not express remorse.</p>	<p>appropriate ... to accumulate some of the sentences imposed.</p> <p>At [22] Although the TES ... was substantial, it is not reasonably arguable that it was, in all of the circumstances of the case, erroneous. The TES bore a proper relationship to the appellant's overall criminality, viewed in its entirety and having regard to the circumstances of the case, including the appellant's personal circumstances, and the total effective sentences imposed in comparable cases.</p>
11.	<p><i>Garraway v The State of Western Australia</i></p> <p>[2015] WASCA 240</p>	<p>32 yrs at time of sentence.</p> <p>Significant criminal history, including offences of violence and burglary.</p> <p>Deprived upbringing and</p>	<p>Ct 1: Armed Robbery. Ct 2: Burglary. Ct 3: Stealing.</p> <p>Offences breached an SIO and CBO (for AOBH on partner).</p>	<p>Ct 1: 2 yrs 10 mths imp. Ct 2: 1 yr 11 mths imp. Ct 3: nil.</p> <p>Breach of SIO: 9 mths imp. To be served cumulatively with cts 1 and 2.</p>	<p>Dismissed – on papers.</p> <p>At [27]... the appellant has fallen well short of demonstrating that the total effective sentence imposed upon him infringes the first</p>

	<p>Delivered 27/11/2015</p>	<p>limited education. Depressed and suicidal.</p> <p>Lengthy history of illicit drug and alcohol abuse.</p> <p>5 young children from two relationships.</p>	<p><u>Ct 1:</u> Garraway approached the victim and used the victim's mobile phone to make a call. After this the victim walked away. Garraway approached the victim again and asked to use his phone. The victim said no. Garraway pulled a syringe from his pocket, took off the protective cap and pointed it towards the victim, saying 'give us your phone or I'll stab you'. Garraway grabbed the phone and walked away.</p> <p><u>Ct 2 and 3:</u> Garraway went to the Broome Boulevard Shopping Centre and smashed the glass fire door to gain entry. Garraway then smashed the glass window of Dick Smith store with a brick. He used the brick to break a glass cabinet and stole 15 mobile phones, to the value of \$11,300.</p>	<p>TES 5 yrs 6 mths imp. EFP.</p> <p>Sentencing judge not satisfied appellant demonstrated genuine remorse.</p> <p>Ct 1 not at high end scale of seriousness. Ct 2 and 3 characterised as 'significant' as it was planned and premeditated.</p>	<p>limb of the totality principle. Having regard to the appellant's total criminality and all of the circumstances of the case, including those factors referable to the appellant personally, the sentence... reflected a sound exercise of his Honour's sentencing discretion.</p>
10.	<p><i>Newport v The State of Western Australia</i></p> <p>[2015] WASCA 224</p> <p>Delivered 12/11/2015</p>	<p>32 yrs at time offending.</p> <p>Convicted after PG to ct 1 and 2; convicted after trial for cts 3-5 and 7-11.</p> <p>Offending breached SIO and bail.</p> <p>Prior criminal history of summary offences.</p> <p>Unemployed at time offending.</p>	<p><u>Indictment</u> Ct 1: Burg (residential). Ct 2: Steal motor vehicle. Cts 3-5 and 7-11: Receiving.</p> <p><u>Section 32 Notice</u> Ch 1: Reckless driving. Ch 2: Failure to stop. Ch 3: No authority to drive. Ch 4: Steal motor vehicle.</p> <p><u>Cts 1-2</u> Newport smashed a rear bedroom window and entered the house. The victim was not home. He stole various items to the value of \$5,000.</p>	<p><u>Indictment</u> Ct 1: 25 mths imp (cum). Ct 2: 8 mths imp (conc). Ct 3: 18 mths imp (conc). Ct 4: 9 mths imp (conc). Ct 5: 10 mths imp (conc). Ct 7: 18 mths imp (conc). Ct 8: 20 mths imp (cum). Ct 9: 17 mths imp (conc). Ct 10: 15 mths imp (conc). Ct 11. 18 mths imp (conc).</p> <p><u>Section 32 Notice</u> Ch 1: 3 mths imp (conc) and 24 mths driver's</p>	<p>Dismissed.</p> <p>At [42] The burg represented a significant escalation in the seriousness of the appellant's offending; the appellant had a history of persistent offending.</p> <p>At [50] ... the value of the property taken was 'not insignificant' and...some of the stolen items were of 'significant personal value'</p>

		<p>Two children from prior relationship; mother cares for children.</p> <p>Entrenched and significant substance abuse problem.</p> <p>History of poor problem solving, antisocial decision-making and low self-confidence.</p> <p>Failed to comply with prior requirements to undertake counselling and CBO.</p>	<p>Newport found car keys in the house and used them to steal a car parked at the house. The car was recovered from Newport's house.</p> <p><u>Cts 3-11</u> The receiving offences committed over a period of approx. one mth.</p> <p>Newport received a 'Stinger' electrical circuit tester, a motorcycle and a 'Toyota Hi-Ace' van (cts 3-5). Newport knew the property had been obtained by a burg.</p> <p>Newport received from burgs various electrical and personal items (cts 7-11).</p> <p><u>Section 32 Notice</u> Newport drove a stolen motorcycle, without a licence. In order to evade police, Newport reached speeds in excess of 80km per hour in a 50km per hour speed limit zone and drove on the wrong side of the road.</p>	<p>licence disqualification (cum). Ch 2: \$150 fine. Ch 3: 7 mths imp (conc) and 16 mths driver's licence disqualification (cum). Ch 4: 10 mths imp (cum).</p> <p><u>Breach of SIO</u> 3 mths imp (cum).</p> <p>TES 4 yrs 10 mths imp.</p> <p>EFP.</p> <p>Remorseful and empathetic for his victims; some prospects of rehabilitation.</p> <p>Sentencing judge was not satisfied that Newport was shown to have been in the business of a fence (a distributor for reward of unlawfully obtained property).</p>	<p>to the victim...</p> <p>At [58] The appellant's offending occurred over a relatively short period of time. However, the offences did not form a single criminal enterprise, apart from the offences alleged in cts 1 and 2 of the indictment. Rather, the offences constituted a course of persistent offending.</p>
9.	<p><i>Ponnambalam v The State of Western Australia</i></p> <p>[2015] WASCA 185</p>	<p>29 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history in Canada, including convictions of fraud.</p>	<p>220 x Stealing choses in action.</p> <p>Ponnambalam was a participant in a highly organised credit card skimming scheme. Information was skimmed using devices installed in EFTPOS machines at various McDonald's restaurants in the metropolitan area. That information was used to access the</p>	<p>2 yrs imp on each ct. Cts, 28, 29, 143 and 368 ordered to be served cum.</p> <p>TES 8 yrs imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>At [68] This was highly organised criminal activity involving a great deal of planning, expertise and coordination.</p>

	Delivered 14/09/2015		accounts of customers who had used the machines. Money totalling \$401,086.13 was withdrawn from those accounts. Ultimately, the losses were paid for by various financial institutions with whom the customers banked.		At [70] ...the appellant's offending may properly be seen as being at the high end of the scale of seriousness of offences of this type.
8.	<i>Lawrence v The State of Western Australia</i> [2015] WASCA 187 Delivered 14/09/2015	34 yrs at time sentencing. Convicted after trial. Lengthy criminal history, including numerous convictions of violent offences. Offences committed six months after release from prison. Difficult and dysfunctional upbringing.	Ct 1: Act with intent to cause bodily harm. Ct 2: AOBH. Ct 3: Stealing. Lawrence and the co-offender, Winmar, were highly intoxicated. <u>Ct 1</u> Lawrence 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. Lawrence 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. Lawrence and Winmar kicked and stomped on the victim's upper body and head. The victim received 11 stitches to his chin and sustained a concussion, scalp haematoma, black eye, facial swelling and bruising and soreness to his upper body and neck area. <u>Cts 2-3</u>	Ct 1: 5 yrs imp. Ct 2: 1 yrs imp (cum). Ct 3: 3 mths imp (conc). TES 6 yrs imp. EFP. Sentencing judge characterised the offending as 'at the high end involving gratuitous violence in company against innocent members of the community'. 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. Sentencing judge found appellant had no remorse, no insight into seriousness of his actions and no concern for victims.	Dismissed. At [34] ... his antecedents, offending behaviour, lack of insight and absence of remorse belie genuine rehabilitation. At [41] His criminal history is disturbing... the appellant represents a danger to the community...

			<p>Lawrence and Winmar then came across the second victim. The victim attempted to avoid them.</p> <p>Lawrence and Winmar corralled the victim. Lawrence punched the victim in the eye with substantial force, knocking him to the ground. Lawrence 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 Lawrence'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>		
7.	<p><i>McKenzie v The State of Western Australia</i></p> <p>[2015] WASCA 163</p> <p>Delivered 24/08/2015</p>	<p>20 yrs at time offending. 22 yrs at time sentencing.</p> <p>Convicted after PG of cts 1, 2 and 6. Convicted after trial of cts 3, 4 and 5.</p> <p>Criminal history, including convictions for stealing, criminal damage, trespass, agg burg, threats, common assault, breach of pre-sentence order and AOBH.</p> <p>Disadvantaged background; brother committed suicide;</p>	<p>Ct 1: Steal motor vehicle. Ct 2: Stealing. Ct 3: Agg burg. Ct 4: Agg GBH with intent. Ct 5: Agg GBH with intent. Ct 6: Steal motor vehicle.</p> <p>McKenzie and two co-offenders stole a Holden Commodore sedan by taking the keys for the car from a house (ct 1).</p> <p>McKenzie then picked up Wells and Akee and drove to BP. McKenzie put fuel in the car and left without paying for the fuel (ct 2).</p> <p>The car ran out of fuel and was abandoned.</p>	<p>Ct 1: 12 mths imp (conc). Ct 2: \$500 fine. Ct 3: 3 yrs 6 mths imp (cum). Ct 4: 7 yrs 6 mths imp (cum). Ct 5: 5 yrs imp (conc). Ct 6: 12 mths imp (cum).</p> <p>TES 12 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found high risk of reoffending and significant need for</p>	<p>Dismissed – on papers.</p> <p>At [53] Cts 3, 4 and 5 were especially egregious. Those offences were committed in company; the appellant and his co-offenders were armed with a hammer and a screwdriver; the offences were committed on residential premises; the appellant and his co-offenders knew, before entering the premises, that they were occupied; Mr and Mrs Elliot were viciously</p>

		<p>father had depression and schizophrenia; parents separated when aged 11 or 12.</p> <p>Never been employed.</p> <p>History of substance abuse.</p> <p>History of suicide attempts and depression.</p> <p>Diagnosed with paranoid personality disorder, borderline personality disorder and antisocial personality disorder.</p>	<p>The offenders walked to Mr and Mrs Elliott's property to steal another car. Wells and Akee remained at the front gate of the property. The offenders formed a plan to enter the house and steal the keys to one of the cars. McKenzie, armed with a hammer, and a co-offender, armed with a screwdriver, entered the house through an unlocked sliding door (ct 3).</p> <p>Mr and Mrs Elliott were sitting at a table eating dinner. Mr Elliott was aged 71 and Mrs Elliott was aged 67. Mr Elliott stood up when the offenders entered the kitchen. McKenzie struck him twice on the head with the hammer (ct 4) and Mrs Elliott, at least once, on the head with the hammer (ct 5). They were rendered unconscious.</p> <p>McKenzie and co-offenders then ransacked the house and stole various items, including the keys to Mrs Elliott's car.</p> <p>McKenzie and the co-offenders stole Mrs Elliott's car (ct 6). They stopped at the front gate to pick up Wells and Akee.</p> <p>Mr Elliott suffered four lacerations, a significant depressed fracture to the left and the front of his skull and bruising to his brain. Mrs Elliott suffered three lacerations and a fractured skull.</p>	<p>protection of the community.</p> <p>Psychiatrist report stated that the appellant's mental state, mood disorder, substance abuse and personality pathology, contributed to the offending.</p>	<p>assaulted; the appellant personally assaulted them with the hammer; the victims did not confront, provoke or resist the offenders; the offenders were youthful whereas the victims were of an advanced age; the offenders outnumbered the victims; the victims were vulnerable; the victims ...suffered severe injuries and ongoing trauma; and Mr Elliot has been left with distressing residual disabilities.</p> <p>At [56] ... the weight to be accorded to the appellant's psychological difficulties was decisively overpowered by his risk of violent reoffending.</p> <p>A [57] ... the appellant's reasonably extensive and serious prior criminal record as an adult, together with the facts and circumstances of his current offending and the significant risk he poses to public safety, form a proper basis for deciding that he</p>
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					could not be afforded any leniency in the sentencing disposition for the offences in question.
6.	<p><i>Wallam v The State of Western Australia</i></p> <p>[2015] WASCA 132</p> <p>Delivered 29/06/2015</p>	<p>19 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Lengthy criminal history, including violent offending.</p> <p>Parents separated when aged 14; talented footballer; educated to yr 10; no employment history.</p> <p>Appellant had a chronic major depressive episode with significant anti-social personality traits.</p> <p>Using alcohol and drugs at time offending.</p> <p>At time offending, appellant serving a 12 mth CSIO for offence of agg rob. Order breached by bail offence and failing to attend supervision appointments.</p>	<p>Ct 1: Stealing a motor vehicle. Ct 2: Agg assault with intent to rob. Ct 3: Agg armed robbery.</p> <p><u>Ct 1:</u> Wallam was a passenger in a stolen car. He travelled in it knowing it to be stolen and became a party to the offence of stealing by that conduct.</p> <p><u>Ct 2:</u> The stolen car was driven through the car park of a shopping centre. Wallam got out of the car and yelled out to a young woman demanding that she hand her handbag to him. Wallam tried to pull the bag away from her and in the ensuing struggle he struck her to the side of the head with a clenched fist. He continued to demand the handbag and struck the victim to the head several times as she lay on the ground. He was then joined by the driver of the vehicle who also assaulted the victim and a female friend of the victim who was trying to assist. Wallam and his co-offender ran off without the bag.</p> <p>Wallam subsequently identified his cousin as being driver of the car.</p> <p><u>Ct 3:</u> Wallam entered a liquor store armed with a</p>	<p>Ct 1: 9 mths imp (conc). Ct 2: 5 yrs 6 mths imp. Ct 3: 4 yrs 6 mths imp (conc). Breach of CSIO: 12 mths imp (cum).</p> <p>TES 6 yrs 6 mths imp.</p> <p>Sentencing judge accepted that the appellant's mental illness diminished his ability to think rationally.</p> <p>Psychiatric report noted that the risk of reoffending was assessed as being at the higher end of the spectrum.</p>	<p>Allowed.</p> <p>Resentenced to: Ct 1: 6 mths imp (conc). Ct 2: 4 yrs 9 mths imp. Ct 3: 4 yrs imp (conc).</p> <p>Requirement to serve previously susp sentence was unaffected.</p> <p>TES 5 yrs 9 mths imp.</p> <p>At [34]-[40] Discussion of comparable cases.</p> <p>At [47] The first two offences were committed within two weeks of that [CSIO] sentence being imposed. To offend in these circumstances shows contempt for the law.</p> <p>At [56] In respect of ct 2 his Honour reduced the sentence by 18 mths, but this is less than the 25% that he said he would allow.</p> <p>At [57] ... it is apparent</p>

			<p>machete and approached the counter demanding money. The attendant began to open the tills to get out money and while Wallam menaced him with the machete. After being given a quantity of cash Wallam stole a four pack of pre-mixed alcoholic drinks and left the store.</p>		<p>that the discounts for PG were the only reductions allowed in respect of all three cts. This is not consistent with the fact that the sentencing judge acknowledged that the appellant's youth, limited cooperation and mental illness were deserving of some weight.</p>
5.	<p><i>Stokke v The State of Western Australia</i></p> <p>[2015] WASCA 131</p> <p>Delivered 11/03/2015</p> <p>Published 25/06/2015</p>	<p>26 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Lengthy criminal history, including poss of drugs and criminal damage.</p> <p>Good relationships with parents and siblings.</p> <p>Using methyl since age 14; prone to binge drinking.</p> <p>Under influence of alcohol and methyl at time offending.</p> <p>At the time the appellant was sentenced, principal offender Kristien Stokke (appellant's brother) had not yet been sentenced. Kristien was convicted after PG for a</p>	<p>Ct 1: Stealing. Ct 2: Accessory after the fact to arson.</p> <p>Stokke drove a Holden Commodore, without a valid driver's licence, to a tavern. His brother Kristien was a passenger. Stokke parked next to a Holden Astra.</p> <p>Kristien got out of the Commodore and walked over to the Astra. Stokke remained seated in the Commodore. Kristien smashed the window of the Astra and transferred property, valued at \$2,650, to the Commodore. Stokke warned Kristien when strangers left the tavern and walked in their direction.</p> <p>Kristien walked back to the Astra and set fire to the car after realising he had left forensic evidence which might incriminate him. The fire destroyed the car, valued at \$12,300. Stokke was not aware that Kristien intended to commit the arson offence. Stokke immediately drove Kristien from the scene.</p>	<p>Ct 1: 14 mths imp. Ct 2: 30 mths imp (start 6 mths after ct 1).</p> <p>TES 3 yrs imp.</p> <p>EFP.</p> <p>Disqualified from holding or obtaining driver's licence for 18 mths.</p> <p>Not premeditated; no remorse; unwilling to accept responsibility for conduct.</p>	<p>Allowed.</p> <p>Re-sentenced to: Ct 1: 7 mths imp (cum). Ct 2: 20 mths imp (cum).</p> <p>TES 2 yrs 3 mths imp.</p> <p>EFP.</p> <p>At [78] The individual sentence imposed upon the appellant for the offence of stealing was, in our view, high, but ... not... manifestly excessive.</p> <p>At [99] ... the correct approach to be taken to the parity principle is to have regard to the TES imposed upon the appellant, on the one hand, and Kristien Stokke, on the other hand,</p>

		number of offences and sentenced to TES 4 yrs 8 mths imp. Individual sentence for stealing was 7 mths imp (conc) and arson was 27 mths imp (conc).	Stokke lied to police to conceal his own involvement and that of Kristien Stokke. CCTV footage recorded the offence.		rather than merely the sentences that were imposed for the [stealing and arson] offences... At [103] Even taking into account the matters favourable to Kristien Stokke, it must be said that his overall criminality was much greater than the appellant's. In our opinion, the differences in their criminality is insufficiently reflected in the disparity of 20 mths imp in the TES they received.
4.	<i>Rini v The State of Western Australia</i> [2015] WASCA 124 Delivered 19/06/2015	36 yrs at time sentencing. Convicted after trial. Criminal history, including assault and dishonesty offences. Bipolar disorder; resists treatment and counselling for this disorder.	1 x Stealing. Rini cut a perimeter fence to gain access to a business premises. Once inside, he stole about 40 separate radio units, 19 spare tyres, six fire extinguishers and two light bars. Most of the cars were unlocked. However, the windows to three cars were smashed and one had a door forced open. Rini's blood was found on the interior door of one car and on a piece of smashed window on the ground. Stolen equipment was valued at in excess \$40,000 and the fitting cost for the radios at \$10,000.	2 yrs 6 mths imp. EFP. Not remorseful; did not accept responsibility for conduct.	Dismissed – on papers.
3.	<i>Adams v The State of Western</i>	44 yrs at time sentencing.	<u>Indictment</u> 1 x Deprivation of liberty.	TES 10 yrs imp.	Allowed – Grounds 3 & 6.

<p>Australia</p> <p>[2014] WASCA 191</p> <p>Delivered 28/10/2014</p>	<p>Convicted after PG.</p> <p>No relevant criminal history.</p> <p>Parents separated when 3 yrs old; raised by his mother; very difficult upbringing.</p> <p>Previously married; long term relationship; no children.</p> <p>Former AFP, Customs and Immigration officer.</p>	<p>1 x Att armed robbery. 1 x Armed robbery. 9 x Fraud. 9 x Attempted fraud. 1 x Possess identification material w/i to commit an offence.</p> <p><u>Section 32 Notice</u> 1 x Stealing Commonwealth property. 1 x Bringing stolen goods into State. 2 x Stealing. 3 x Poss prohibited weapon. 1 x Poss controlled weapon. 1 x Unlicensed ammunition. 2 x Possess stolen or unlawfully obtained property. 1 x Possess false number plates.</p> <p>Sometime before Adams left the AFP in 2006, he dishonestly appropriated a number of items belonging to his employer, including a police radio, a ballistic vest & a container of OC spray.</p> <p>Between 2006 and 2010 Adams resided and was employed as a customs officer in Darwin. Whilst his neighbours were on holiday he broke into their unit and stole property and identification. Adams subsequently transferred to Perth between November 2010 and January 2011 and took with him these items.</p> <p>In 2011 Adams became an immigration officer. During this time he applied online for credit cards using the stolen identity details as</p>	<p>EFP. \$300 fine.</p> <p>Remorse; victim empathy; acceptance of responsibility.</p> <p>Sentencing judge described robberies and sexual offences as involving ‘a significant measure of premeditation, sexual motivation and planning’; described fraud as ‘deliberate, systematic and planned criminality over a significant period’.</p> <p>Low - moderate risk of re-offending in a sexual way; moderate – high risk of committing further dishonesty offences.</p>	<p><u>Section 32 notice</u> Ct 1 varied – release after serving 7 mths of it on recognizance in the sum of \$10,000.</p> <p>At [8] It is very difficult, for the purposes of comparison in the context of the first limb of the totality principle, to identify any relevant total effective sentences imposed in previous cases. The nature, extent and diversity of the appellant’s overall offending, by a person with his antecedents, is very unusual. No previous case is truly comparable.</p> <p>At [61] The past, present and likely future conditions of the appellant’s imprisonment, by reason of his status as a former police officer, were a relevant sentencing consideration that his Honour was bound to take into account.</p> <p>At [138] The appellant’s overall offending was self-evidently very serious. It was varied and substantial.</p>
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2.	<p><i>Anderson v The State of Western Australia</i></p> <p>[2014] WASCA 167</p> <p>Delivered 09/09/2014</p>	<p>18 yrs 5 mths at time of offending.</p> <p>Convicted after early PG.</p> <p>Good relationship with mother; father died with 3 or 4 yrs.</p> <p>Exposed to domestic violence at a young age; family life was unsettled; significant involvement by welfare agencies.</p> <p>Spent much of teenage years</p>	<p><u>Indictment</u> Ct 1: Agg burg (dwelling). Ct 2: Stealing.</p> <p><u>Section 32</u> Ct 1: Agg burg (dwelling). Ct 2: Stealing. Ct 3: Agg burg (dwelling). Ct 4: Stealing. Ct 5: Agg burg (commercial). Ct 6: Stealing. Ct 7: Steal motor vehicle. Ct 8: No MDL.</p> <p>Anderson committed a crime spree over nine days. The spree only stooped when he was</p>	<p><u>Indictment</u> Ct 1: 4 yrs imp. Ct 2: No penalty.</p> <p><u>Section 32</u> Ct 1: 12 mths imp (cum). Ct 2: No penalty. Ct 3: 12 mths imp (conc). Ct 4: No penalty. Ct 5: 9 mths imp (conc). Ct 6: No penalty. Ct 7: 12 mths imp (conc). Ct 8: \$100 fine.</p> <p>TES 4 yrs imp.</p>	<p>Dismissed – on papers.</p> <p>At [24] The offending became more serious as it progressed, moving from a commercial premise to homes and with increasing force.</p> <p>At [26] Having regard to the appellant's personal circumstances and the nature of the offending conduct, the present offences could not be seen as a mere youthful</p>

		<p>in juvenile detention; suffered depression and self-harming behaviour.</p> <p>History of substance abuse; using between 1g and 1.5g of amphetamine per day.</p> <p>Uncooperative with preparation of PSR and psychological report.</p>	<p>apprehended by police.</p> <p><u>Indictment</u> Anderson in company with another forced entry into a house and stole property and cash valued at \$575,150.</p> <p><u>Section 32 notice</u> <u>Cts 1-4:</u> Anderson in company with two others forced entry into houses and stole property.</p> <p><u>Cts 5-6:</u> Anderson in company with another; rode through a Hungry Jacks drive-through on bikes. Anderson forced open a sliding door. The associate held open the window while Anderson leant through and removed the tray from the cash register.</p> <p><u>Cts 7-8:</u> Anderson drove a motor vehicle from the scene of a burglary knowing the vehicle was stolen. Anderson has never held a licence.</p>	<p>EFP.</p> <p>Offences committed in order to obtain funds to feed drug addiction.</p> <p>Judge noted offending was very serious.</p>	<p>aberration.</p>
1.	<p><i>Higgs v The State of Western Australia</i></p> <p>[2014] WASCA 100</p> <p>Delivered 05/05/2014</p>	<p>24 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Significant criminal record including stealing, steal motor vehicle, steal motor vehicle and drive reckless and fraud.</p>	<p><u>Indictment</u> 1 x Stealing.</p> <p><u>Section 32 notice</u> Trespass. Driving under suspension. Unlicensed vehicle. Drive unroadworthy vehicle. Breach of bail.</p> <p>Higgs and an unknown associate entered a</p>	<p><u>Indictment</u> 2 yrs 6 mths imp.</p> <p><u>Section 32 notice</u> No penalty. 4 mths imp (cum). \$80.85 fine. \$50 fine. 1 mth imp (conc).</p> <p>9 mths MDL</p>	<p>Dismissed – on papers.</p>

	<p>Parents separated at an early age; ongoing exposure to illicit substance abuse.</p> <p>User of methyl and cannabis.</p> <p>Sentenced to terms of imprisonment on numerous occasions.</p> <p>Poor compliance with previous community based orders.</p> <p>No co-operation with PSR.</p> <p>Co-offender convicted after PG to possess stolen property and sentenced to 3 mths imp.</p>	<p>equipment rental business by cutting and removing a section of fence surrounding the premises. Higgs used a drill on the door locks of a Bobcat excavator and a Bobcat skid steer loader to break the locks. He then used the drill on the ignitions to start the equipment. Higgs then drove the equipment from the premises.</p> <p>He parked the excavator and the loader in bushland and later used his vehicle and a trailer he had hired to transport the equipment to his home. There he sold it to a third party for \$1,000.</p> <p>The equipment was valued at \$80,000.</p> <p>The equipment was recovered.</p>	<p>disqualification (conc).</p> <p>TES 2 yrs 10 mths imp.</p> <p>EFP.</p> <p>Admitted the offence in ROI and explained he needed money.</p>	
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