

Aggravated burglary

Commercial Premises

s 401 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
Sex Pen	sexual penetration without consent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
Dep Lib	deprivation of liberty
Att	attempted
EFP	eligible for parole
TES	total effective sentence
ISO	intensive supervision order
PSO	pre-sentence order
CBO	community based order
wiss	with intent to sell or supply

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
7.	<p><i>Kolek v The State of Western Australia</i></p> <p>[2017] WASCA 180</p> <p>Delivered 12/10/2017</p>	<p>44 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>No prior criminal history in WA; criminal history in Victoria including convictions for burglary.</p> <p>Father to six children from two previous relationships; young child with current partner (co-accused).</p> <p>Left school aged 16 yrs.</p> <p>Consistent work history until aged 36 yrs age; unemployed since then as a consequence of his serious illicit drug addiction.</p> <p>Came to WA from Victoria with partner to escape drug culture.</p>	<p>Ct 1; 3; 5 & 7: Agg burglary. Ct 2; 4 & 6: Stealing.</p> <p>Kolek and his partner planned and executed burglaries at various Bunnings stores. Prior to the burglaries they went to the stores to look at the safes they used.</p> <p>In the early hours Kolek and his partner went to a Bunnings store. Disguising themselves they forced entry into the store. With tools they carried with them they forced open a machine and stole approx \$5,000 in cash (cts 1 and 2).</p> <p>On another occasion Kolek, in company with two unidentified co-offenders, attended a Bunnings store. They disguised themselves, forced entry into the store and using tools stole \$17,732 cash by breaking into a machine (cts 3 and 4).</p> <p>On another occasion, Kolek, in company with two unidentified co-offenders, went to a Bunnings store. Disguised, they forced entry into the store and, using tools which they brought with them, broke into a machine, stealing \$20,701 in cash (cts 5 and 6).</p> <p>On another occasion Kolek and his partner went to a Bunnings store with an unidentified co-offender. After disguising themselves they forced entry to the store and, using tools they carried with them, attempted to break into a</p>	<p>Ct 1: 2 yrs imp (conc). Ct 2: No penalty. Ct 3: 3 yrs imp (cum). Ct 4: No penalty. Ct 5: 3 yrs imp (cum). Ct 6: No penalty. Ct 7: 2 yrs imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge identified an important aggravating factor was the planning and premeditation involved in the execution of the four burglaries.</p> <p>The sentencing judge noted the appellant did not have the benefit of prior good character.</p>	<p>Dismissed.</p> <p>Appellant challenged length of sentences and TES.</p> <p>At [27] ... each of the agg burglaries committed by the appellant was self-evidently a serious instance of agg burglary on commercial premises.</p> <p>At [32] ... The agg burglaries were well planned. The appellant targeted Bunnings stores which had safes containing cash that he regarded as vulnerable. He assembled co-offenders and obtained the tools necessary to break open the ... machines. Each burg occurred at night and was executed with skill. The first three agg burglaries netted the offenders a substantial sum of money.</p> <p>At [33] ... 6 years' imp was a proper reflection of</p>

			machine. They fled on being interrupted by security guards (ct 7).		the appellant's total criminality, bearing in mind the facts and circumstances of all of the offences as well as the appellant's personal circumstances.
6.	<p><i>BWE v The State of Western Australia</i></p> <p>[2016] WASCA 197</p> <p>Delivered 28/11/2016</p>	<p>19 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior juvenile and adult criminal history.</p> <p>Significantly disrupted upbringing and unsettled at school.</p> <p>Bricklayer at time offending.</p> <p>Regular cannabis and methyl user.</p>	<p>Cts 1-14; 16-18; 20-31: Agg burg. Ct 15: Att agg burg. Ct 19: Dep of liberty.</p> <p>BWE and a juvenile co-offender committed 30 burglaries on small businesses over 10 different nights over a period of about a month. They smashed windows to gain entry and targeted commercial premises, late at night, where safes were likely to be found.</p> <p>The offences were committed when the premises were unoccupied. However, on one occasion BWE and his co-offender entered the premises of a store when they knew a worker was still inside (ct 18). The co-offender stood over the worker armed with a sledgehammer (ct 19) as BWE tried unsuccessfully to open a safe with an angle grinder.</p> <p>On another occasion BWE and his co-offender broke into a store when they were interrupted by the owner responding to the alarm (ct 15). They fled, leaving behind tools and disguises.</p>	<p>Cts 1, 4, 7, 11, 14 & 31: 2 yrs imp each ct (cum ct 31) Ct 2: 6 mths imp (cum). Cts 3, 5-6, 8-10; 12-13; 16-17; 20-30: 18 mths imp each ct (conc). Ct 15: 12 mths imp (conc). Ct 18: 2 yrs 6 mths imp (cum). Ct 19: No penalty.</p> <p>TES 5 yrs imp. EFP.</p> <p>The sentencing judge identified an element of planning in the offences and the repeated targeting of commercial premises late at night and, in one case, causing considerable fear to a person working on the premises,</p>	<p>Allowed.</p> <p>Appeal challenged lack of discount for cooperation; and totality.</p> <p>Re-sentenced: Ct 31 reduced to 15 mths imp for cooperation.</p> <p>TES 4 yrs 3 mths. EFP.</p> <p>At [35] ... the TES of 5 yrs' imp was not disproportionate to the overall criminality involved in the appellant's offences.</p> <p>At [54] The voluntary provision by the appellant to the police of information of value in bringing the juvenile co-offender to justice in</p>

			<p>A total of \$21,881 was stolen from six of the burgled premises.</p>	<p>constitutes a serious example of these kinds of offences. The overall criminality involved in all the offences was significant.</p> <p>The sentencing judge took into account the contrition and remorse demonstrated by his cooperation with police.</p>	<p>respect of these offences is a mitigating factor. ... even if motivated entirely by self-interest rather than contrition, because of the actual or potential utilitarian benefits in bringing another offender to justice.</p> <p>At [57] The significance of the cooperation is limited by the fact that the appellant did not undertake to provide any future assistance ... It is also significant that the appellant did not name other co-offenders whose identities were not then known to police. There is no material suggesting that the appellant is subject to any particular risk ...</p> <p>At [58] ... If known to the sentencing judge, they should have had the effect of reducing the length of the sentence the appellant would otherwise be</p>
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5.	<p><i>Taylor v The State of Western Australia</i></p> <p>[2016] WASCA 38</p> <p>Delivered 04/03/2016</p>	<p>40 yrs at time offending. 42 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Extensive criminal history, including offences of violence; armed robbery and multiple convictions for agg burg; burg and stealing.</p> <p>Five prior releases to parole, compliance with supervision poor.</p> <p>Stable upbringing, left home 16 yrs.</p> <p>Two adult children from previous relationship. Long term current partner and step father to two children.</p> <p>Limited schooling, difficulty with reading and writing.</p> <p>Sporadic employment.</p> <p>Long history of amphetamine and cannabis abuse.</p> <p>Prior to sentencing undertook</p>	<p>1 x Agg burg (commercial).</p> <p>The appellant, in company with another, forced entry to a jewellery shop, causing considerable damage to the premises. Jewellery to the value of approx. \$27,000 was stolen. The appellant was identified by his blood in the premises.</p>	<p>4 yrs imp.</p> <p>EFP</p> <p>Sentencing judge noted the agg factors to be; the offence occurred in the early hours; the appellant was in company; the significant damage to the premises and total value of stolen property was substantial with no indication any jewellery had been recovered.</p> <p>Some level of planning and premises specifically targeted for high value jewellery.</p>	<p>required to serve.</p> <p>Dismissed.</p> <p>Appellant challenged length of sentence.</p> <p>At [33] ...extensive and serious prior criminal record... The previous convictions underscored the importance of personal deterrence.</p> <p>At [35] The mitigating factors were confined to the appellant's late PG, his expressions of remorse ... and his participation in various rehabilitative programmes However, the weight to be given to the expressions of remorse was tempered by the lateness of the appellant's plea and his refusal to reveal the identity of his co-offender. Although the appellant's participation in rehabilitative programmes was commendable and mitigating, the weight to</p>
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		rehabilitative programmes, including drug and alcohol therapy			<p>be given to that consideration was tempered by the serious nature of the current offence in the context of his extensive and serious prior criminal record and his entrenched and lengthy abuse of illicit substances.</p> <p>At [36] The appellant was not youthful or inexperienced for sentencing purposes.</p>
4.	<p><i>Redfern v The State of Western Australia</i></p> <p>[2014] WASCA 199</p> <p>Delivered 31/10/2014</p>	<p>28 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Criminal record including numerous road traffic offense, AOBH and common assault.</p> <p>Since childhood, led a chaotic, transient and dysfunctional life; from a young age exposed to substance abuse, criminal activity, sexual abuse and violence.</p> <p>Long term history of alcohol and illicit drug abuse.</p>	<p>1 x Agg burg (commercial).</p> <p>The appellant, in company with another was at a suburban shopping centre. The co-offender smashed a glass panel near the entry doors of the centre. The co-offender forced open the front door of a jewellery store and broke open a display cabinet. They both stole jewellery. Their activities activated various alarms and they were apprehended by police inside the store.</p>	<p>18 mths imp.</p> <p>Declined to comment in ROI.</p> <p>It was accepted that the co-offender was the more culpable; however appellant was willingly and actively involved.</p> <p>Motive was to steal property to sell in order to buy drugs.</p>	Dismissed – on papers.

		<p>Mother to 3 young children; some history of post-natal depression.</p> <p>History of resistance to rehabilitative programs and inability to complete them.</p> <p>Co-offender sentenced to 3 yrs 6 mths imp.</p>			
3.	<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 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><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>The appellant committed a crime spree over nine days. The spree only stooped when the appellant was apprehended by police.</p> <p><u>Indictment</u> The appellant in company with another forced entry into a house and stole property and cash valued at \$575,150.</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>EFP.</p> <p>Offences committed in order to obtain funds to feed drug addiction.</p> <p>Judge noted offending</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 aberration.</p>

			<p><u>Section 32 notice</u></p> <p><u>Cts 1-4:</u> The appellant in company with two others forced entry into houses and stole property.</p> <p><u>Cts 5-6:</u> The appellant in company with another; rode through a Hungry Jacks drive-through on bikes. The appellant forced open a sliding door. The associate held open the window while the appellant leant through and removed the tray from the cash register.</p> <p><u>Cts 7-8:</u> The appellant drove a motor vehicle from the scene of a burglary knowing the vehicle was stolen. The appellant has never held a licence.</p>	was very serious.	
2.	<p><i>Pryor v The State of Western Australia</i></p> <p>[2014] WASCA 143</p> <p>Delivered 06/08/2014</p>	<p>36 yrs at time offending and sentencing.</p> <p>Convicted after early PG.</p> <p>Extensive criminal record including breach of VRO, assault, AOBH, stalking, drug possession and burglary.</p> <p>Breached various community and suspended imprisonment orders.</p> <p>Unstable childhood.</p>	<p>Ct 1: Agg burg (dwelling). Ct 2: Steal MV. Ct 3: Agg burg (dwelling). Ct 4: Steal MV. Ct 5: Agg burg (dwelling). Ct 6: Agg armed robbery. Ct 7: Agg burg (place).</p> <p>The appellant went on a crime spree over an eight day period.</p> <p><u>Ct 1 & Ct 2:</u> The appellant entered the victim's house through an unsecured rear door. The victim was home but distracted. The appellant took a set of car</p>	<p>Ct 1: 2 yrs imp. Ct 2: 3 yrs imp (conc). Ct 3: 3 yrs imp (conc). Ct 4: 1 yr imp (conc). Ct 5: 2 yrs imp (conc). Ct 6: 4 yrs imp. Ct 7: 1 yr imp (conc).</p> <p>Ct 1 cum on Ct 6.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Remorseful.</p>	<p>Dismissed – on papers.</p> <p>At [27] The aggravated armed robbery committed by the appellant was a serious example of its type.</p> <p>At [32] Although the burglaries were not the most serious cases of their type, they were serious enough.</p>

		<p>Father of 4 children from previous relationship; relationship was marred by domestic violence perpetrated by the appellant.</p> <p>Current partner is supportive of appellant.</p> <p>Entrenched substance abuse problem.</p> <p>Made efforts towards his reformation, however not successful.</p>	<p>keys, left the house and using the keys stole the victim's motor vehicle.</p> <p><u>Ct 3 & 4:</u> Five days later the appellant entered the victim's garage. The victim was home and busy with her 2 small children. The appellant saw the victim had left the keys in her motor vehicle to which he got in and started it. The victim heard this, ran to the garage and attempted to open the car door. The appellant drove away. During her efforts to stop the appellant the victim fell to the ground and grazed her left leg.</p> <p><u>Ct 5:</u> The appellant and another entered the victim's residence through an unsecured door. Inside they searched and located items to take. While committing the offence the victim arrived home. As a result, they fled the scene. No property was taken.</p> <p><u>Ct 6:</u> Early the next day the appellant and his accomplice drove to a service station in the stolen motor vehicle. Carrying a lighter and a plastic bottle which contained petrol, he approached the counter while his accomplice stole a bottle of soft drink. The appellant threatened set fire to the victim if he did not give him money. Fearing for his safety, the victim retreated to the office.</p>	<p>Made full and frank admissions.</p> <p>Committed the offences in the context of a methyl binge.</p> <p>Sentencing judge noted that the only significant matter in mitigation was the plea of guilty.</p>	
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1.	<p>McKinley v Edmonds [2014] WASC 43 Delivered 04/02/2014</p>	<p>23 yrs at time sentencing. Convicted after PG. Criminal history; single traffic conviction. Single; no dependents. Daily user of methyl for over 18 mths; Claims ceased using & been abstinent for 4 mths prior to sentencing. Financial problems. Gainfully employed. Shown no interest in counselling. Disassociated from co-offenders.</p>	<p>1 x Agg burg. 1 x Wilful and unlawful damage. 1 x Stealing. 1 x Stealing.</p> <p>The appellant in company with another; used an angle grinder to cut the rear roller door of a store, smashed a locked door and entered. Inside they attempted to open a safe again using an angle grinder, sledgehammer and crowbar. They were unsuccessful in opening the safe.</p> <p>Damage to the safe was beyond repair. The invoices shown to the court cost in excess of \$12,000 to repair however appellant sentenced on \$4,885.</p> <p>Police conducted a search of the appellant's house and located property in connection with the burglary. Other stolen items were also located.</p>	<p>8 mths imp. No penalty. 3 mths imp (conc). 1 mth imp (conc).</p> <p>TES 8 mths imp.</p> <p>Said he committed the burglary by being talked into it by the co-offender; also it was a way to get out of debt.</p> <p>Risk of further offending.</p> <p>Magistrate considered the offences were serious examples of their type; Drug use had clearly played a part in the offending, but was not something appellant wishing to address.</p>	<p>Dismissed.</p> <p>At [17] ... Whilst the appellant was relatively young and had no prior record of significance, the offences were premeditated, occurred over a period of time, involved property with significant value and had involved a co-offender who the appellant had not identified.</p>
<p>Transitional Provisions Repealed (14/01/2009)</p>					

<i>Transitional Provisions Enacted (31/08/2003)</i>					

Office of the Director of Public Prosecutions