

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
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>A total of \$21,881 was stolen from six of the burgled premises.</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, 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</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 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</p>

				into account the contrition and remorse demonstrated by his cooperation with police.	to justice. 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 ... 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 required to serve.
5.	<i>Taylor v The State of Western Australia</i> [2016] WASCA 38	40 yrs at time offending. 42 yrs at time sentencing. Convicted after late PG (10% discount). Extensive criminal history,	1 x Agg burg (commercial). 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.	4 yrs imp. EFP Sentencing judge noted the agg factors to be; the offence occurred in the	Dismissed. Appellant challenged length of sentence. At [33] ...extensive and serious prior criminal

	<p>Delivered 04/03/2016</p>	<p>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 rehabilitative programmes, including drug and alcohol therapy</p>		<p>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>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 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</p>
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					lengthy abuse of illicit substances. At [36] The appellant was not youthful or inexperienced for sentencing purposes.
4.	<i>Redfern v The State of Western Australia</i> [2014] WASCA 199 Delivered 31/10/2014	28 yrs at time sentencing. Convicted after early PG. Criminal record including numerous road traffic offense, AOBH and common assault. Since childhood, led a chaotic, transient and dysfunctional life; from a young age exposed to substance abuse, criminal activity, sexual abuse and violence. Long term history of alcohol and illicit drug abuse. Mother to 3 young children; some history of post-natal depression. History of resistance to rehabilitative programs and inability to complete them. Co-offender sentenced to 3 yrs 6	Agg burg (commercial). 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.	18 mths imp. Declined to comment in ROI. It was accepted that the co-offender was the more culpable; however appellant was willingly and actively involved. Motive was to steal property to sell in order to buy drugs.	Dismissed – on papers.

		mths imp.			
3.	<i>Anderson v The State of Western Australia</i> [2014] WASCA 167 Delivered 09/09/2014	18 yrs 5 mths at time of offending. Convicted after early PG. Good relationship with mother; father died with 3 or 4 yrs. Exposed to domestic violence at a young age; family life was unsettled; significant involvement by welfare agencies. Spent much of teenage years in juvenile detention; suffered depression and self-harming behaviour. History of substance abuse; using between 1g and 1.5g of amphetamine per day. Uncooperative with preparation of PSR and psychological report.	<u>Indictment</u> Ct 1: Agg burg (dwelling). Ct 2: Stealing. <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. The appellant committed a crime spree over nine days. The spree only stooped when the appellant was apprehended by police. <u>Indictment</u> The appellant in company with another forced entry into a house and stole property and cash valued at \$575,150. <u>Section 32 notice</u> <u>Cts 1-4:</u> The appellant in company with two others forced entry into houses and stole property. <u>Cts 5-6:</u> The appellant in company with another; rode through a Hungry Jacks drive-through on bikes.	<u>Indictment</u> Ct 1: 4 yrs imp. Ct 2: No penalty. <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. TES 4 yrs imp. EFP. Offences committed in order to obtain funds to feed drug addiction. Judge noted offending was very serious.	Dismissed – on papers. At [24] The offending became more serious as it progressed, moving from a commercial premise to homes and with increasing force. 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>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>		
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>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>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 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</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>Made full and frank admissions.</p> <p>Committed the offences in the context of a methyl binge.</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>Entrenched substance abuse problem.</p> <p>Made efforts towards his reformation, however not successful.</p>	<p>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><u>Ct 7:</u> The appellant and his accomplice then drove to a business which was closed. The appellant used a brick to smash a glass door and the two entered. Inside they stole food and drink.</p>	<p>Sentencing judge noted that the only significant matter in mitigation was the plea of guilty.</p>	
1.	<i>McKinley v Edmonds</i>	23 yrs at time sentencing.	Agg burg x 1. Wilful and unlawful damage x 1.	8 mths imp. No penalty.	Dismissed.

<p>[2014] WASC 43</p> <p>Delivered 04/02/2014</p>	<p>Convicted after PG.</p> <p>Criminal history; single traffic conviction.</p> <p>Single; no dependents.</p> <p>Daily user of methyl for over 18 mths; Claims ceased using & been abstinent for 4 mths prior to sentencing.</p> <p>Financial problems.</p> <p>Gainfully employed.</p> <p>Shown no interest in counselling.</p> <p>Disassociated from co-offenders.</p>	<p>Stealing x 1. Stealing x 1.</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>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>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><i>Transitional Provisions Repealed (14/01/2009)</i></p>				
<p><i>Transitional Provisions Enacted (31/08/2003)</i></p>				