

Aggravated burglary

**Residential properties
(excluding home invasions)**
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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
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
DDOBH	dangerous driving occasioning bodily harm
SGMC	Stirling Gardens Magistrates Court

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
22.	<p><i>Humphreys v The State of Western Australia</i></p> <p>[2017] WASCA 208</p> <p>Delivered 09/11/2017</p>	<p>33 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>Lengthy record of prior convictions, including agg burglary. Not previously sentenced to a term of imp.</p> <p>Difficult childhood.</p> <p>Left school year 11.</p> <p>Illicit substances use at a young age. Daily user of methyl by aged 17 yrs.</p> <p>Previous engagement in drug rehabilitation.</p>	<p><u>Indictment</u> 1 x Agg burg.</p> <p><u>Section 32</u> 1 x Agg common assault.</p> <p><u>Breach of ISO</u> 2 x Breach of VRO (4003 and 4006). 1 x Damage.</p> <p>The victim was at home with her two children aged 4 and 9 yrs.</p> <p>Under the influence of methyl Humphreys attended the victim's home to collect money for a drug debt owed to him by the victim's ex-partner.</p> <p>The victim answered the door. Humphreys demanded money and verbally abused her. The victim told him to leave so he threw a drink can in her direction. He then began to walk away.</p> <p>The victim detached a security chain to close the door. As she did so, Humphreys forced entry to the house, body slamming the door with such force it smashed one of its glass panels.</p> <p>Humphreys grabbed the victim by the neck with both hands and demanded money from her.</p>	<p><u>Indictment</u> 3 yrs 6 mths imp.</p> <p><u>Section 32</u> No penalty.</p> <p><u>Breach of ISO</u> 3 mths imp each ct. Breach of VRO (4003) cum with ct on indictment. All other offences conc with each other and agg burglary.</p> <p>TES 3 yrs 9 mths imp.</p> <p>EFP.</p> <p>The sentencing judge described the agg burglary as a very serious offence by use of actual violence against a vulnerable victim whose children were present. It was not an uncharacteristic aberration.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence, agg burglary only.</p> <p>Re-sentenced to:</p> <p><u>Indictment</u> 2 yrs 3 mths imp.</p> <p>All other sentences and cumulacy to stand.</p> <p>TES 2 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [29] The offence committed by the appellant did not have features seen in the more serious cases. The offence was not premeditated and occurred at the spur of the moment. It did not involve the use of a weapon or occur at night and the appellant was not in company. The level of violence used by the appellant was not as</p>

			<p>The victim was able to yell out to her children to leave the house, before breaking free and running out of the house to meet them.</p> <p>Humphreys left the scene.</p> <p>The victim suffered bruising to her neck.</p>		<p>extreme as the violence perpetrated in more serious cases.</p> <p>At [30] ... The victim was vulnerable and the offence was committed with young children present. .. It cannot be overlooked that the appellant was subject to an ISO at the time of the offence ...</p> <p>At [33] ... the length of the sentence was more consistent with one that may have been imposed after trial.</p>
21.	<p><i>Hume v The State of Western Australia</i></p> <p>[2017] WASCA 205</p> <p>Delivered 31/10/2017</p>	<p>21 yrs at time offending.</p> <p>Convicted after early PG (20% discount).</p> <p>Prior criminal history; sentences of imp for offences of agg unlawful wounding.</p> <p>11 mths spent in custody on remand charge of arson; acquitted shortly before sentencing for this offence.</p>	<p>1 x Agg burg.</p> <p>Hume's entered the unit of the 71-yr-old victim late at night, looking for keys with which to steal a vehicle.</p> <p>He was upset and angry with his mother because she would not give him her car keys.</p> <p>He gained access to the home by opening the garage roller door then opening an unlocked internal door leading inside.</p>	<p>18 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offence was, by its nature, very serious.</p> <p>The sentencing judge found the offending agg by being committed at night; against an elderly victim; the risk of confrontation and he was on</p>	<p>Dismissed.</p> <p>Appellant challenged length of sentence.</p> <p>At [37] ... the circumstances in which the offence was committed meant that it was nevertheless offending of a serious kind. The appellant entered the ... home at a</p>

		<p>Aboriginal; raised in WA.</p> <p>Background of considerable deprivation and disadvantage; exposed to domestic violence; childhood disrupted by family dysfunction; parental drug and alcohol abuse.</p> <p>Attended numerous schools.</p> <p>Homeless from aged 17 yrs; unstructured life; no support; unemployed.</p> <p>Family history of mental illness; suffers complex mental health problems, schizophrenia; severe substance abuse disorder; antisocial personality disorder; history of failing to comply with medical advice and prescribed medication.</p> <p>History of illicit substance use; intoxicated and affected by drugs at time of offending.</p>	<p>He stole a mobile phone, a soft drink and a suitcase containing clothes.</p> <p>The victim was asleep and was disturbed by Hume's however he did not confront her.</p> <p>Some, but not all of the stolen property was recovered.</p>	<p>bail at the time of the offence.</p> <p>The sentencing judge found the offending not directly related to his mental illness; he was merely angry and frustrated.</p> <p>Desire to cease drug use and avoid negative family and peer influences.</p>	<p>time, late at night, when it was likely that someone would be home. .. Although there was no confrontation between the complainant and the appellant in this case, the potential for a physical confrontation and the possibility of injury or damage to property as a result, is an inevitable risk of offending of this kind.</p> <p>At [38] ... He committed the offence because he was intoxicated and angry. ... When the time spent in custody on the arson remand is also taken into account, it does not warrant the conclusion that the sentence was manifestly excessive.</p> <p>At [40] ... appellant's circumstances, including his unemployment, homelessness, substance abuse, and the</p>
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					challenges he faced in dealing with his mental health issues, were such that his prospects of rehabilitation remain poor.
20.	<p><i>Jolly v The State of Western Australia</i></p> <p>[2017] WASCA 181</p> <p>Delivered 12/10/2017</p>	<p>52 yrs at time sentencing.</p> <p>Convicted after very late PG (10% discount).</p> <p>No prior criminal history.</p> <p>Steady record of employment.</p> <p>Divorced; three children to victim E</p> <p>Substance abuse history; cannabis and methyl but mostly alcohol.</p> <p>Episodes of depression; no history of a major mental illness.</p>	<p>Cts 1 & 3: Agg burg. Ct 2: Wilful damage.</p> <p>The victim E was Jolly's ex-wife. E was now in a relationship with the victim SC, but they did not reside together.</p> <p>Jolly, carrying a knife, went to E's house and entered the home through an unlocked door. Jolly's 18-yr-old daughter, who resided with E, was the only person home at the time.</p> <p>Inside the home Jolly picked up an axe. In E's bedroom he used the knife to stab the mattress and cut up the sheets. Using the axe he caused substantial damage to property. His daughter tried unsuccessfully to stop him, before fleeing the house in terror.</p> <p>The home was uninhabitable, so E and the children went to stay at SC's home.</p> <p>The following night Jolly went to SC's home, carrying the same axe. Unannounced he entered the home. He confronted E and SC in a bedroom. Jolly's 14-yr-old son tried</p>	<p>Ct 1: 12 mths imp (cum) Ct 2: No penalty. Ct 3: 4 yrs imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending with regard to ct 3 was not a one-off aberration having regard to the commission of ct 1 and it was an escalation of his violent conduct.</p> <p>The sentencing judge decided that accumulation of the individual sentences was necessary 'in order to mark the very serious nature of [the] overall offending and to reflect the important sentencing considerations of personal and general deterrence', but reduced the</p>	<p>Dismissed.</p> <p>Appellant challenged finding of late plea and plea discount. Appeal concerned totality principle and length of sentence in respect of ct 3.</p> <p>At [33] The PGs were not entered at the first reasonable opportunity. Accordingly, the appellant could not lay any claim to a 25% reduction pursuant to s 9AA of the SA. The pleas were entered very late.</p> <p>At [36] ... a sentencing judge is not required by s 9AA of the SA to expressly state the head sentence. His Honour's</p>

			<p>to stop him. Jolly said ‘You’re dead, you cunt’, before punching E in the side of the face. When SC grabbed hold of the axe Jolly punched him in the chin. He eventually let go of the axe and ran off.</p> <p>Jolly surrendered himself to police some days later.</p> <p>The victims suffered relatively minor injuries, and, along with the children, psychological trauma.</p>	<p>terms imposed on each ct to accommodate the totality principle.</p> <p>Participated in behavioural change programme on bail; positive improvements noted; sentencing judge expressed difficulty in accepting the finding the appellant ‘displayed good insight’ into his offending.</p>	<p>failure to state the head sentence cannot, without more, demonstrate a failure to give the stated s 9AA reduction.</p> <p>At [41] The circumstances of ct 3 were particularly serious. Having already committed a violent home burglary upon E’s house the day before, the appellant once again armed himself with an axe, entered SC’s house at night, threatened SC and then assaulted him and E. He did so in the presence of two of his children ...</p> <p>At [48] We do not regard the appellant’s offending ... as constituting a continuing episode of offending. The offences were separate in time and place. Each involved separate and deliberate decisions by the</p>
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					appellant to enter houses occupied by his ex-wife carrying weapons and behaving in a threatening manner. ... To impose wholly or partly conc sentences for cts 1 and 3 would not have been a proper reflection of the appellant's overall criminality.
19.	<p><i>Woods v The State of Western Australia</i></p> <p>[2017] WASCA 179</p> <p>Delivered 29/09/2017</p>	<p>21 yrs at time offending. 22 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Extensive and persistent criminal history; including serious offences as a child; no prior sentences of imp.</p> <p>Sentenced SGMC further 77 offences, 6 mths imp; conc with each other; conc with TES for offences subject of this matter.</p> <p>Dysfunctional childhood; mother mentally ill; absent father; exposed illicit drugs from young age; sexually abused aged 12 yrs; deeply affected by suicide of a relation; little or no</p>	<p>Ct 1: Agg robbery. Cts 2 & 12: Burg. Cts 3-5, 7-8, 10-11 & 13: Agg burg. Ct 6: Agg armed robbery. Ct 9: Att agg burg.</p> <p>The offences were committed over a five week period.</p> <p><u>Ct 1</u> Woods got into the passenger's seat of a car. Snatching the keys from the 83 yr-old driver's hands she ordered her out of the vehicle, before forcibly pulling her from the car and stealing it. The car was extensively damaged and written off.</p> <p><u>Ct 2</u> About a fortnight later Woods forced entry into a home and stole car keys and used them</p>	<p>Ct 1: 3 yrs 6 mths imp (cum). Cts 2 and 12: 1 yr imp each ct (ct 2 cum all other cts conc). Cts 3-5, 7-8, 10-11 and 13: 18 months imp each ct (conc). Ct 6: 5 yrs imp (cum). Ct 9: 2 yrs imp (conc).</p> <p>TES 9 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending demonstrated 'a degree not simply of deliberation but of some calculation' in particular, several of the</p>	<p>Allowed.</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p> <p>Resentenced. Orders in relation to conc, cum and backdating set aside.</p> <p>Cts 2 and 8 cum upon each other, cum upon individual sentences for ct 6.</p> <p>All other counts conc with each other and conc with sentence for ct 6.</p>

		<p>family support.</p> <p>First relationship marred by domestic violence; two young children from union cared for by grandmother.</p> <p>Alcohol and inhalants from 11 yrs; methyl aged 14 yrs.</p>	<p>to steal a vehicle.</p> <p><u>Ct 3</u> The next day Woods entered a home and rummaged through a handbag. She fled when disturbed.</p> <p><u>Ct 4</u> The following day Woods forced entered to another home and stole numerous items. The occupant and a friend were home at the time.</p> <p><u>Ct 5</u> Two days later Woods entered a house and stole a wallet. She fled when disturbed. Returning a short time later to steal a car.</p> <p><u>Ct 6</u> Two days later Woods went to a house and asked the 72 yr-old occupant to use her phone. This was denied so she forced a window to gain entry. Armed with a knife, she raised it in an aggressive manner and demanded jewellery and the car keys. The occupant feared for her life and told Woods she felt unwell and asked her to call for an ambulance. Woods declined and left, stealing a number of items, including a mobile phone and car.</p> <p><u>Ct 7</u> The following day Woods entered a home,</p>	<p>offences involved the targeting of elderly women.</p> <p>The sentencing judge found the seriousness of the offending 'so great that deterrence and punishment and the protection of the community, particularly vulnerable members of the community who the appellant showed a tendency to target outweighed her individual needs'.</p>	<p>TES 7 yrs 6 mths imp. EFP.</p> <p>At [50] The appellant's overall offending was very serious. ... Most of the offences involved some premeditation, calculation and planning. ... The appellant specifically and intentionally targeted elderly women.</p> <p>At [53] ... It was necessary, in order properly to mark the appellant's overall criminality in committing numerous serious offences, to accumulate some of the individual sentences. However, the TES ... was ... severe having regard to all relevant sentencing factors and all relevant sentencing principles ...</p> <p>At [73] ... the</p>
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			<p>but fled when disturbed.</p> <p><u>Ct 8</u> The same day Woods went to a house and asked the 82 yr old occupant for directions. She was permitted into the house. Once inside she stole car keys and a car. The car was extensively damaged.</p> <p><u>Ct 9</u> The next day Woods knocked on the door of another home and asked the occupant to call a taxi. When the occupant was on the phone Woods attempted to enter the house.</p> <p><u>Ct 10</u> The same day Woods ran inside a house after asking her to call a taxi. She stole a handbag and car keys. Using the keys she then stole a car.</p> <p><u>Ct 11</u> The same day Woods entered another home. She was disturbed after stealing car keys, which she used to steal a car.</p> <p><u>Ct 12</u> The same day Woods forced entry into a further home and damaged items inside. She also stole personal items, including a hearing aid and WWII medals and car keys. Using the keys she stole the occupant's car.</p>		<p>magistrate's sentencing decision (including the facts and circumstances of the 77 offences with which the decision was concerned) should be taken into account in the application of the totality principle (in particular, in the backdating of the new TES) when this court resentsences the appellant in respect of the 13 cts in the indictment.</p>
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			<p><u>Ct 13</u> A few days later Woods entered a house and stole jewellery. The occupant was at home at the time.</p>		
18.	<p><i>Burnes v The State of Western Australia</i></p> <p>[2017] WASCA 77</p> <p>Delivered 21/04/2017</p>	<p>28 yrs at time sentencing.</p> <p>Convicted after PG.</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><u>Indictment 861</u> Ct 1: Poss methyl wiss 10.9g at 27% purity.</p> <p><u>Indictment 236</u> Ct 1: Burg. 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 cclipseal bag containing the</p>	<p><u>Indictment 861</u> Ct 1: 1 yr 6 mths imp (cum).</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).</p>	<p>Allowed - error of fact only, otherwise dismissed.</p> <p>Appeal concerned totality principle 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>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 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</p>	<p>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>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 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</p>
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			<p>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 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</p>	<p>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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			(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). 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.		
17.	MacCauley v The State of Western Australia [2017] WASCA 65 Delivered 23/03/2017	23 yrs at time offending. 24 yrs at time sentencing. Convicted after early PG (20%). Short criminal history; prior weapon and breach VRO convictions. Parents separated aged 5 yrs. Born in NZ; moved to Australia with her mother as a child and lived 'a transient life'. Tenuous relationship with her mother, a substance abuser; close to her two sisters. Left home at 14 yrs. In a new relationship at time	<u>Indictment</u> Ct 1: Crim damage. Ct 2: Agg burg (dwelling). Ct 3: Threat to kill. <u>Section 32 notice</u> Ch 1: Agg assault. Ch 2: Breach VRO. Ch 3: Breach bail. MacCauley and victim 2 had been in a relationship. The victim had custody of their young son and lived with his mother, victim 1. A VRO was in place protecting the victim's mother from MacCauley. MacCauley, distressed by difficulties in seeing her son consulted a GP, who diagnosed panic disorder, social anxiety and	<u>Indictment</u> Ct 1: 9 mths imp (conc). Ct 2: 2 yrs imp. Ct 3: 12 mths imp (conc). <u>Section 32 notice</u> Ch 1: No further penalty. Ch 2: No further penalty. Ch 3: 1 mth imp (conc). TES 2 yrs imp. EFP. The sentencing judge described the offending as very serious. He accepted that at the time of the offending the appellant was suffering from an adjustment disorder and was experiencing stress and, on	Allowed. Appeal concerned new psychiatric evidence. Re-sentenced. Ct 1: 6 mths imp (conc). Ct 2: 18 mths imp. Ct 3: 9 mths imp (conc). TES 18 mths imp. EFP. At [42] ... diagnosis of adjustment disorder was incorrect. Rather, the appellant was suffering from a moderately severe major depressive

		<p>sentencing.</p> <p>Commenced abusing alcohol and illicit substances at an early age.</p>	<p>stress/adjustment disorder. She was medicated and placed on a treatment plan.</p> <p>The following day MacCauley, in company with police, attended victim 1's property to take possession of a car. Due to a dispute over ownership of the vehicle police were unable to assist. MacCauley became upset and refused further police assistance.</p> <p>After police left MacCauley smashed six windows and entered victim 1's house. She attempted to strike victim 2 with a mirror and threatened to kill both victims and herself. Picking up a shard of glass she threatened victim 1, lunging at him a number of times. Outside, MacCauley used a shovel to damage a vehicle belonging to victim 1.</p> <p>Restrained until police arrived MacCauley was taken for medical treatment as she displayed and expressed suicidal intent.</p> <p>MacCauley was bailed to appear in the Magistrate's Court but failed to attend.</p>	<p>the balance of probabilities, she found it difficult to make calm and rational choices and was disinhibited in her behaviour due to her heightened emotional state.</p> <p>The sentencing judge found no evidence the appellant suffered any recognised psychiatric disorder.</p>	<p>disorder... 'considerable causal relationship' between the depressive disorder and her offending.</p> <p>At [51] Although the disorder did not deprive the appellant of her ability to discern right from wrong, or of her ability to form an intent, it is now apparent that the appellant's mental state was a mitigating factor of greater significance than the sentencing judge was in the position to assess.</p>
16.	<p><i>Winmar v State of Western Australia</i></p> <p>[2016] WASCA 184</p> <p>Delivered</p>	<p>29 yrs at time sentencing.</p> <p>Convicted after late PG (15% discount – Ind 1049) (20% discount – Ind 494).</p> <p>Subject to an SIO at time offending</p>	<p><u>Indictment 1049 of 2015</u></p> <p>Ct 1: Dangerous driving to escape pursuit. Cts 3 & 5: Assault public officer.</p> <p><u>Indictment 494 of 2015</u></p> <p>Cts 1-4 & 6: Agg burg. Ct 5: Reckless driving.</p>	<p><u>Indictment 1049 of 2015</u></p> <p>Ct 1: 6 mths imp (cum). Ct 3: 9 mths imp (cum). Ct 5: 9 mths imp (cum).</p> <p><u>Indictment 494 of 2015</u></p> <p>Ct 1: 15 mths imp (head</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality principle.</p> <p>At [27] The overall criminality involved in</p>

28/10/2016	<p>for 5 convictions of unlicensed driving.</p> <p>Significant criminal history, including prior convictions for burg and assault.</p> <p>Daily user of methyl at time offending.</p> <p>Dysfunctional upbringing; sexually abused and used illicit drugs from a young age.</p> <p>Completed schooling to yr 9; never worked.</p> <p>Three children; pregnant at time sentencing.</p> <p>Suffers from depression.</p>	<p><u>Indictment 1049 of 2015</u> Winmar was driving with a passenger in a car when police signalled for her to stop. She sped from police, drove on the wrong side of the road and in and out of traffic at about 100km p/h. Caught in traffic she was informed she was under arrest.</p> <p>During an altercation with police Winmar managed to start the car and drive off, throwing two police officers to the ground. They suffered minor injuries.</p> <p><u>Indictment 494 of 2015</u> Winmar entered the 73-yr-old victim's home and rummaged through drawers, stealing jewellery. The victim was outside at the time.</p> <p>Winmar and co-offenders broke a window and entered the victim's home. Stealing a handbag and jewellery. The victim was not at home.</p> <p>Winmar smashed a window and entered the 74-yr-old victim's home, stealing jewellery. The victim came home to see Winmar or a co-offender climbing out a window.</p> <p>Winmar and co-offenders entered the 78-yr-</p>	<p>sentence) Ct 2: 2 yrs imp (conc). Ct 3: 2 yrs imp (cum) Ct 4: 18 mths imp (conc). Ct 5: 18 mths imp (cum) Ct 6: 18 mths imp (conc).</p> <p><u>Breach of SIO</u> 8 mths imp each (conc with each other and other sentences imposed).</p> <p>TES 6 yrs.</p> <p>EFP.</p> <p>The sentencing judge regarded the seriousness of the driving and burg offences and the need to impose a deterrent penalty.</p> <p>The sentencing judge noted positive steps taken towards rehabilitation and engaged in voluntary work.</p> <p>Demonstrated remorse and acceptance of responsibility.</p>	<p>the offences which the appellant committed was high. She drove in a manner which placed police officers and other road users at very high risk of death or serious injury on two occasions. The assaults on the two police officers ... placed them at risk when performing their important public duties and called for a cumulative sentence. The burg offences were agg by the fact that the appellant was in company, and by the impact of the offences on often elderly victims.</p>
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			<p>old victim's home and stole jewellery and a TV. The victim returned home and saw Winmar or one of the co-accused leaving the house.</p> <p>Winmar and her co-offender entered the victim's home and stole her handbag containing cash and other items. The victim, outside the house, saw Winmar and her co-offender flee the house.</p> <p>Winmar drove with false licence plates. Police requested she stop but she accelerated away at high speed, mounting a verge. Police pursued Winmar who drove through a red traffic light and on the wrong side of the road. Other vehicles were forced to brake and swerve and at one point she struck a police vehicle.</p>		
15.	<p><i>Suleiman v The State of Western Australia</i></p> <p>[2017] WASCA 26</p> <p>Delivered 20/09/2016</p>	<p>27 yrs at time offending. 28 yrs time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Minor criminal history; including possess and use of cannabis.</p> <p>Born in Kenya; no history of trauma or abuse; homeless as a child in Africa.</p>	<p>Ct 1: Breach of duty by person in control of ignition source or fire. Ct 2: Agg burg. Ct 3: Damage.</p> <p>Suleiman had been in a relationship with the victim, who lived in a unit with their two children.</p> <p>Suleiman went to the unit and used petrol to set fire to his car that had been parked at the premises for some time. The fire destroyed the car, damaged the carport, and the exterior</p>	<p>Ct 1: 3 yrs imp. Ct 2: 3 yrs imp (to commence 1 yr after the sentence for ct 1). Ct 3: No penalty.</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge took into account the appellant's mental illness, but was not</p>	<p>Allowed.</p> <p>Appeal concerned procedural fairness relating to psychiatric illness.</p> <p>Resentenced: Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: No penalty.</p> <p>TES 2 yrs imp.</p>

		<p>Permanent resident since 2008; facing deportation on completion of sentence.</p> <p>History of on and off casual part-time employment; unemployed at time offending.</p> <p>7 yr relationship with victim; mother of his two daughters, aged 5 and 4 yrs.</p> <p>Homeless at time offending.</p> <p>Diagnosed paranoid schizophrenic; history of admittance to mental health clinic.</p> <p>Psychiatric report stated that the appellant had an acute relapse of his mental illness at the time of offending.</p> <p>Used cannabis since aged 10 and regular user of alcohol.</p>	<p>of the building suffered smoke damage. The fire threatened to spread to the unit, where he knew the victim and his children were inside.</p> <p>When igniting the petrol Suleiman suffered burns to his face and hands.</p> <p>Suleiman then broke a window of the house and climbed inside. The victim and the children took refuge in a bedroom.</p> <p>Inside Suleiman smashed numerous items, before forcing entry into the bedroom that the terrified victim and the children were hiding. He grabbed the victim's phone as she was speaking to police and smashed it. He then forcefully grabbed hold of his youngest daughter and attempted to leave the house with her. Neighbours intervened and persuaded him to hand over his daughter before assisting the victim and his eldest daughter.</p> <p>Suleiman left the scene but was arrested close by a short time later.</p>	<p>satisfied he was suffering an acute relapse of his mental illness to the extent that his judgment was impaired.</p> <p>Remorseful.</p>	<p>EFP.</p> <p>At [35] ... in determining the appellant's mental state ... his Honour relied to a significant extent on his personal assessment of the appellant's appearance, and the manner in which the appellant conducted himself, in the electronically recorded interview</p> <p>At [48] ... the sentencing judge's failure to raise with defence counsel that his Honour was proposing to reject the State's concession in relation to [the psychiatrist's] report; and ... the basis on which he proposed to reject the State's concession, denied the appellant procedural fairness.</p>
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					<p>At [49] ... the diagnosis of a mental illness requires expert evidence from a psychiatrist and is not to be made by the application of a non-expert's common-sense, rationality and experience.</p> <p>At [56] The only conclusion reasonably open, having regard to [the psychiatrist] reports, is that the appellant had suffered an acute relapse of mental illness at the time of the offending and that there was a causal connection between the relapse and the commission of the offences.</p>
14.	<p><i>Rowley v The State of Western Australia</i></p> <p>[2016] WASCA 162</p> <p>Delivered</p>	<p>42 yrs at time sentencing.</p> <p>Convicted after PG (15% discount).</p> <p>Minor traffic and criminal history.</p> <p>No history of domestic violence from current and previous relationships.</p>	<p>Ct 4: Agg burg.</p> <p>Ct 5: Damage.</p> <p>Ct 6: Threat to harm.</p> <p>Ct 7: Agg stalking.</p> <p>Rowley and the victim "A" were in a highly volatile physical relationship.</p>	<p>Ct 4: 18 mths imp (conc).</p> <p>Ct 5: 15 mths imp (conc).</p> <p>Ct 6: 20 mths imp (cum ct 7).</p> <p>Ct 7: 40 mths imp (conc).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>Appeal concerned totality.</p> <p>At [41] The offending was not isolated. Each offence was deliberately</p>

	<p>16/09/2016</p> <p>Single at time offending; three children from previous marriage.</p> <p>History of drug use.</p>	<p>A accused Rowley of stealing a diamond earring from her. As a result of Rowley's aggressive behaviour she went to stay with her mother. During A's absence Rowley entered A's home using a key that he had cut without her knowledge (ct 4). Inside he found some peaches; he crushed and smudged them throughout the home, including the carpets, walls, paintings and bedding. Rowley sent a text message to A telling her he was going to wreck her apartment and clothes. A returned home and found what he had done, along with a "love note" and the missing earring on the kitchen bench. A had the external locks changed and got an interim VRO against the Rowley.</p> <p>In the morning Rowley returned to A's home and cut out the new deadlock from the rear door (ct 5).</p> <p>Rowley and A's relationship ceased, but they continued to see each other. A did not pursue charges in respect of the incidents and did not have the VRO served on him.</p> <p>Rowley was at A's home. When she refused him sex he snatched her mobile phone to examine its contents. A slapped and clawed at Rowley's face to attempt to get her phone back so he threw her onto the couch and pushed her face into it, restricting her</p>	<p>The sentencing judge characterised Rowley's offending behaviour as calculated, deliberate and persistent, some of which was in wilful defiance of a court order. Rowley engaged in frequent verbal, physical and psychological abuse of A. It was hard for A to end the relationship because of his domination of her.</p> <p>The sentencing judge took into account the highly adverse effects the offending had on A and emphasised the duty of the courts to protect victims of domestic violence from harm.</p> <p>Remorseful.</p> <p>Low to moderate risk of reoffending.</p>	<p>carried out with the intention of intimidating A and was a serious example of its kind.</p> <p>At [45] The adverse psychological and economic effects of the appellant's offending ... have been profound.</p> <p>At [49]... the appellant's overall offending involved a high level of criminality. A degree of accumulation was required, having regard to the different offences committed by the appellant, albeit with the same objective to intimidate and terrify A. A sentencing factor which cannot be overlooked here is the need for general deterrence. Stalking offences are often committed against vulnerable persons who suffer greatly as a</p>
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			<p>breathing and telling her ‘That’s it, bitch. You’ve fucking done it now’. Marching A to the laundry he obtained methylated spirits and a lighter and threatened to set her alight. A pleaded with Rowley to stop. He was unable to open the bottle (ct 6).</p> <p>Over the course of several months Rowley sent aggressive, threatening and abusive text messages to A. She took out another VRO. To get her to remove the VRO Rowley stalked her, including forcing her to stop her car whilst she was driving; trespassing onto her property intimidating her with a metal pole and having a female friend telephone her in an attempt to lure her to a vacant block (ct 7).</p> <p>Found in in Rowley car were a baseball bat with metal screws, night-vision goggles, a GPS tracking device, mobile phone, a blood-filled syringe and 17 SIM cards.</p> <p>Rowley was also found to have accessed websites on stalking. He had searched the internet for listening devices, night-vision binoculars, tracking devices and “How to” sites for hacking emails and mobile phones.</p>		<p>consequence of the offending behaviour. Offending of the kind engaged in by this appellant designed ... to cause terror to someone who had the “temerity” to want to cease a relationship requires a sentence with elements of both personal and general deterrence</p>
13.	<i>Dickie v The State of Western Australia</i>	<p>22 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p>	<p><u>Indictment</u> 2 x Agg burg.</p> <p><u>Indictment</u></p>	<p><u>Indictment</u> Ct 1: 3 yrs imp (cum). Ct 2: 1 yrs imp (cum).</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality.</p>

	<p>[2016] WASCA 88</p> <p>Delivered 03/06/2016</p>	<p>Dickie subject to an ISO at time offending.</p> <p>Extensive criminal history, including prior burg convictions.</p> <p>Educated to yr 11.</p> <p>Employed in a variety of jobs, promising football player.</p> <p>Limited support and negative peer associations.</p> <p>Son from a former long term relationship.</p> <p>History of illicit substance use.</p>	<p>The female victim and her children were at home, when Dickie entered through the rear door and stole two handbags containing cash and cards. Dickie left when he was disturbed by the children.</p> <p>Dickie then went to the home of another female and entered the premises through the unlocked front door. He stole a handbag; purse; mobile phone; cash and jewellery.</p>	<p><u>Breach ISO</u> 12 mths imp (conc).</p> <p>TES 4 yrs imp.</p>	<p>At [11] The seriousness of the offences ... is agg by the fact that the appellant was on an ISO at the time. It is clear that the need for personal deterrence was uppermost in the sentencing judge's consideration, which reduced the mitigatory effect of the fact that he was still a relatively young offender.</p>
<p>12.</p>	<p><i>Garlett v The State of Western Australia</i></p> <p>[2016] WASCA 80</p> <p>Delivered 19/05/2016</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, burg (dwelling) and agg burg (dwelling).</p> <p>Significant criminal history.</p> <p>Indigenous.</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. Ch 4 and 10: Failing to stop in circ of agg. Ch 5: Agg reckless driving. Ch 6-7: Reckless driving. Ch 9: Steal motor vehicle.</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). Ch 3: 5 days imp (conc). Ch 4: 3 mths imp (conc). Ch 5: 8 mths imp (cum). Ch 6: 6 mths imp (conc). Ch 7: 6 mths imp (conc). Ch 8: 5 days 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 overall offending was numerous, serious and persistent. The indictable offences and the s 32 notice offences</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 11: Agg burg (dwelling).</p> <p><u>Indictment</u> 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> 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</p>	<p>Ch 9: 9 mths imp (conc). Ch 10: 3 mths imp (conc). Ch 11: 1 yrs imp (cum). Ch 12:4 mths imp (conc).</p> <p><u>Breach ISO</u> Re-sentenced to: Receiving: 1 mth imp (conc). Burg: 1 yr imp (conc). 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 one, but two opportunities and the availability of support.</p>	<p>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</p>
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			<p>forced to abort the 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>entirety and having regard to the circumstances of the case, including those referable to the appellant personally.</p>
11.	<p><i>Worthington v The State of Western Australia</i></p> <p>[2016] WASCA 57</p> <p>Delivered</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.</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>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).</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle, individual sentences not challenged.</p> <p>At [18] ... Given the</p>

	08/04/2016	<p>Repeat offender.</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>Worthington entered a home. The victim and her two-year-old child were home alone. \$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>Ct 8-10 and 13: 3 mths imp (conc). Ct 12: 1 mth imp (conc) 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>number of offences and the multiple occasions upon which offences were committed, it was 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>
10.	<i>QJS v The State of</i>	20 yrs at time most offending.	<u>Indictment</u>	<u>Indictment</u>	Dismissed – on papers.

<p>Western Australia</p> <p>[2015] WASCA 9</p> <p>Delivered 15/01/2015</p>	<p>Conviction after PG.</p> <p>Offending breached ISO.</p> <p>Significant criminal history, including convictions for stealing, burg, breaches of bail, stealing motor vehicle and common assault.</p> <p>Difficult upbringing; attended numerous schools; never had significant employment.</p> <p>Significant substance abuse problem.</p> <p>Offending on indictment occurred shortly after the Department of Child Protection took the appellant's young daughters into their care.</p>	<p>Ct 1: Agg burg (dwelling). Ct 2: Steal motor vehicle. Ct 3: Agg armed robbery. Ct 4: Accessory after the fact to agg armed robbery. Ct 5: Agg armed robbery. Ct 6: Agg robbery.</p> <p><u>Section 32 notice</u> 18 charges.</p> <p><u>Indictment</u> <u>Ct 1 -2:</u> At about 3.50am on 17 December 2013 QJS went to a house in company with a co-offender. He forced the garage door open and used an internal door to access the kitchen. He took a car key from the kitchen and used the keys to steal a car from the garage.</p> <p><u>Ct 3:</u> Approx. one hour later, QJS and the co-offender saw a woman walking along the street. They formed an intention to snatch her bag. The co-offender threatened the victim with a screwdriver. He pushed the tip into her cheek and demanded her handbag. The victim gave her handbag to the co-offender. QJS drove them away.</p> <p><u>Ct 4:</u></p>	<p>Ct 1: 1 yr 9 mths imp (conc). Ct 2: 4 mths imp (conc) Ct 3: 3 yrs 3 mths imp (cum). Ct 4: 1 yr 4 mths imp (conc). Ct 5: 3 yrs 3 mths imp (conc). Ct 6: 2 yrs 4 mths imp (conc).</p> <p><u>Section 32 notice</u> The appellant received various imp terms for various charges, 2 yrs 9 mths of which was ordered to be served cum.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Cooperated with police by giving names of co-offenders.</p> <p>Limited insight into offending and effect on victims; remorse; victim empathy.</p>	<p>At [35] The rationale for treating offending whilst on bail or parole as being an aggravating factor applies equally where a person commits offences whilst on some other form of conditional release, such as an ISO... The commission of an offence whilst on an ISO not only exposes the offender to resentencing for the original offence, it is a factor relevant to the sentencing for the breaching offences.</p> <p>At [50] The offences contained on the indictment were serious offences of their type.</p>
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			<p>At about 3.30pm on the same day QJS and a co-offender were driving through a shopping centre car park. The co-offender decided to steal the handbag of a passing shopper. The co-offender got out of the car and grabbed the victim's handbag. There was a struggle until the co-offender raised a box cutter knife above the victim's head causing her to let go. The co-offender got back in the car and QJS drove the co-offender away in order to help him escape.</p> <p><u>Ct 5:</u> About 30 minutes later, QJS and a co-offender formed an intention to steal a handbag from a shopper at another shopping centre car park. QJS stopped the car behind the victim who was seated in her parked car. The co-offender opened the victim's car door and, while brandishing a screwdriver, demanded her handbag. The victim handed her bag to the co-offender. QJS drove them away.</p> <p><u>Ct 6:</u> At about 9.30am on 19 December 2013, QJS and co-offender formed an intention to steal a handbag from a shopper at a shopping centre car park. QJS stopped the car in close proximity to the victim. The co-offender got out and pushed the victim from behind causing her to stumble. The co-offender</p>		
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			<p>attempted to steal her handbag dragging her as he did so. After a struggle he obtained poss of the bag and ran to the car.</p> <p>QJS was arrested the same day. He made admissions to the offences, but denied entering the house in ct 1.</p> <p><u>Section 32 Notice</u> Between 8 August 2012 and 19 December 2013 QJS committed multiple offences including agg burg on a liquor shop, breach of bail, stealing, wilful damage, trespass, steal motor vehicle, dangerous driving to escape pursuit, traffic offences and poss of a prohibited drug. QJS made admissions to the section 32 offences when interviewed.</p>		
9.	<p><i>Rowell v The State of Western Australia</i></p> <p>[2015] WASCA 2</p> <p>Delivered 09/01/2015</p>	<p>19 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Criminal history including convictions of stealing, burg, drug offences and weapon offences.</p> <p>In a relationship; expecting child.</p>	<p>Agg burg (dwelling) x 1.</p> <p>The victim was a 72-year-old woman.</p> <p>Between 7.00pm and 7.15pm on 26 July 2013, Rowell used a hammer to smash the kitchen window of the victim's unit. The kitchen light was on. On hearing the noises, the victim went into the kitchen to find the appellant entering through the window holding the hammer. The victim ran out her front door to the neighbours unit. Rowell stole \$40 from the victim's purse and left the unit.</p>	<p>30 mths imp.</p> <p>EFP.</p> <p>Repeat offender; no remorse; youth.</p>	<p>Dismissed.</p> <p>At [17] In determining whether an offender is remorseful, a sentencing judge is entitled to have regard to the appellant's conduct as a whole. Remorse, if genuine, will generally be an important consideration in sentencing and a sentencing judge is not bound to take at face value an offender's</p>

			<p>Rowsell cut himself when entering the kitchen window and left droplets of blood. The blood was analysed and was found to match the appellants' reference DNA sample.</p>	<p>statement that he or she is remorseful. Nor will a plea of guilty of itself establish remorse although, together with other relevant evidence, it may be a relevant factor in enabling an inference of remorse to be drawn.</p> <p>At [31] It is arguable that the text of s 7(3)(b) is wide enough to extend to the mandatory minimum penalty for repeat offenders in s 401(4) of the <i>Criminal Code</i>... What is clear is that being a 'repeat offender' for the purpose of s 401(4) is analogous to a circumstance of aggravation and that it too can be taken into account as an aggravating factor under s 7(1) of the <i>Sentencing Act</i>.</p> <p>At [39] Discussion of</p>
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					<p>comparative cases.</p> <p>At [41] In the present case, the offending, while not the most serious kind of agg burg, was nevertheless serious.</p> <p>At [51] Remorse is not to be equated with sorrow for being caught, an acknowledgement that conviction is inevitable or regret on the offender's part that he or she faces some kind of sanction. Remorse, if it is to be mitigating, at least requires a realisation by the offender that what he or she did was morally wrong and some sign of sorrow for the impact of the consequences of the offence.</p>
8.	<p><i>AH v The State of Western Australia</i></p> <p>[2014] WASCA 228</p>	<p>20 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Criminal record including convictions</p>	<p>Ct 1: Att steal motor vehicle.</p> <p>Ct 2: Agg burg.</p> <p>Ct 3: Agg burg.</p> <p>Ct 4: Steal motor vehicle.</p>	<p>Ct 1: 2 mths imp (conc).</p> <p>Ct 2: 12 mths imp.</p> <p>Ct 3: 12 mths imp (cum).</p> <p>Ct 4: 9 mths imp (conc).</p>	<p>Allowed.</p> <p>Re-sentenced – all terms of imp served conc.</p>

<p>Delivered 10/12/2014</p>	<p>for steal motor vehicle and agg burg. Aboriginal.</p> <p>Childhood characterised by dysfunction, dislocation, physical abuse, sexual abuse and exposure to substance abuse.</p> <p>Attended school until year 12; frequent truant; suffers significant intellectual impairment and cognitive disability; almost completely illiterate and innumerate.</p> <p>Never been employed; lacks the skills to obtain employment.</p> <p>Vulnerable to anxiety and stress; whilst imprisoned condition deteriorated to acute psychosis; made an involuntary patient at the Frankland Centre.</p> <p>Occasional user of alcohol and cannabis.</p> <p>History of re-offending on court imposed orders.</p> <p>Offending occurred within a few weeks of being placed on a second</p>	<p>AH entered an unlocked vehicle parked on the verge of a house. She found a key in the centre console and started the vehicle. The owner heard the vehicle start and ran from the back of the house. The vehicle stalled and the owner reached in and removed the keys from the ignition before telling AH to get out of the vehicle. AH left the vehicle and apologised to the owner before leaving.</p> <p>Later that evening, AH, who was intoxicated, entered an unlocked house. She found a spare key to a vehicle and used the key to steal the vehicle. AH drove the vehicle a few hundred metres before crashing into a light pole.</p> <p>A week later and while AH was on bail for those offences, intoxicated, she entered a house through an unlocked door. She found keys to vehicle and used the keys to steal the vehicle.</p>	<p>TES 24 mths imp.</p> <p>EFP.</p> <p>Significant risk of re-offending.</p>	<p>TES 12mths imp.</p> <p>At [8] There was an undue focus upon the preparation of reports and assessments for the court, and far too little focus upon the need to actually provide support and assistance. The conspicuous failure of the justice system to provide any support and assistance which she so clearly needed and which was identified in the various reports and assessments presented to the court not only failed AH, but also failed to protect the communities of Roebourne and Karratha.</p>
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		community based order after breaching the first order.			
7.	<p><i>Ryder v The State of Western Australia</i></p> <p>[2014] WASCA 187</p> <p>Delivered 21/10/2014</p>	<p>24 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Lengthy criminal record of a similar nature.</p> <p>Suffers from a form of schizophrenia; exacerbated by extensive drug use.</p> <p>History of failing to comply with mental health treatment when in the community.</p> <p>Co-offender sentenced to a total of 2 yrs imp.</p>	<p><u>Indictment</u> Ct 1: Agg burg (dwelling). Ct 2: Agg burg (dwelling).</p> <p><u>Section 32 notice</u> x 15 charges</p> <p>Ryder was in a relationship with her co-offender. Ryder was about 4 months pregnant.</p> <p><u>Ct 1:</u> The victim, an 83 yr old female pensioner, was at home cleaning. Ryder distracted the victim while her co-offender entered and searched the master bedroom. When the victim went to get the telephone Ryder left. Property was stolen to the value of \$62,380.</p> <p><u>Ct 2:</u> The victim was a 70 yr old pensioner, who was home alone. Ryder knocked on the front door and asked to use the toilet. The victim refused and threatened to call the police. Ryder brushed past the victim into the house, causing him to lose his balance and stumble into a nearby door. The victim followed Ryder upstairs and she eventually left. While Ryder was with the victim the co-offender entered the house and stole property.</p>	<p><u>Indictment</u> Ct 1: 18 mths imp. Ct 2: 12 mths imp (cum). <u>Section 32 notice</u> 6 mths imp (cum).</p> <p>TES 3 yrs imp.</p> <p>The appellant denied any involvement in count 2.</p> <p>Trial judge found appellant and co-offender deliberately targeted vulnerable elderly people and devised a system involving distraction and sneaking theft of their property.</p> <p>High risk of reoffending.</p>	Dismissed – on papers.

			<p><u>Section 32 charges</u> Included stealing a 14 foot boat and jewellery/</p>		
6.	<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>Anderson committed a crime spree over nine days. The spree only stopped when 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>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 was very serious.</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>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>		
5.	<p><i>Abraham v The State of Western Australia</i></p> <p>[2014] WASCA 151</p> <p>Delivered 21/08/2014</p>	<p>19 yrs at time offending and sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record.</p> <p>Finished school at 15 yrs; poor literacy and numeracy skills; no work experience.</p> <p>User of illicit substances.</p> <p>Subject of a community based order when offence committed.</p>	<p>Agg burg x 1.</p> <p>Abraham and another decided to break into a dwelling. Abraham stood on the verge while his co-offender knocked on the door. The victim was asleep and was awoken by the knocking. She looked through the window and saw the co-offender. She fled and contacted police.</p> <p>The co-offender kicked the front door and both offenders entered stealing property. Abraham was disturbed by police and arrested.</p>	<p>12 mths imp.</p> <p>EFP.</p> <p>Remorseful to some extent.</p> <p>Admitted his involvement in ROI but refused to identify co-offender.</p>	<p>Dismissed – on papers.</p> <p>At [57] Confirmed that the strength of the State case is a relevant consideration in assessing the amount of any sentence discount for a plea of guilty.</p> <p>At [62] The sentencing judge retains a discretion in deciding upon the discount to be given in each case.</p>
4.	<p><i>Hill v The State of Western Australia</i></p> <p>[2014] WASCA 150</p>	<p>28 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Long and persistent history of serious</p>	<p><u>Indictment</u></p> <p>Ct 1: Agg armed robbery.</p> <p>Ct 2: Agg armed robbery.</p> <p>Ct 3: Agg Armed robbery.</p> <p>Ct 4: Agg burg (residential).</p>	<p><u>Indictment</u></p> <p>Ct 1: 4 yrs imp.</p> <p>Ct 2: 4 yrs imp (conc).</p> <p>Ct 3: 4 yrs imp (conc).</p> <p>Ct 4: 3 yrs imp (conc &</p>	<p>Dismissed.</p> <p>At [62] In multiple offending of this kind, comparison with</p>

<p>Delivered 19/08/2014</p>	<p>offending including numerous convictions for burglary and stealing.</p> <p>Highly dysfunctional upbringing exposed to domestic violence, alcoholism and was provided substances to use.</p> <p>Long history of alcohol and illicit substances abuse.</p> <p>Four significant dysfunctional personal relationships; Father to one child.</p> <p>Unemployed.</p> <p>Failed to make any positive changes as a result of completing programs in prison.</p> <p>Poor record of compliance and completion of previous orders and parole; failure to engage in non-custodial treatment programs.</p>	<p>Ct 5:Agg burg (residential).</p> <p><u>Section 32</u> Breach of bail.</p> <p><u>Indictment</u> Hill, in company with four others were travelling on Tonkin Highway. On seeing a black Audi they decided to steal it and to steal from the Audi's passengers. When stopped at a red traffic light, the driver deliberately drove into the back of the Audi. Both vehicles pulled into a side street where Hill and the co-offender provided false personal details to the driver. The co-offender produced a crowbar and struck the side of the Audi. The offenders demanded money and stole the handbags of passengers. A co-offender then drove off in the Audi.</p> <p><u>Section 32</u> These two offences occurred two months after the agg armed robberies.</p> <p>Hill and another broke into an unoccupied residence and stole property. They then went to another residence. Hill acted as a lookout while the co-offender forced his way in. An elderly occupant heard the entry and confronted the co-offender. Both ran from the scene.</p>	<p>cum). Ct 5: 3 yrs imp (conc & cum). <u>Section 32</u> 4 mths imp (cum). TES 7 yrs 4 mths imp.</p> <p>Made full admissions in ROI; co-operation with police was limited.</p> <p>Remorse and victim insight; acceptance of responsibility to some extent; minimised his level of responsibility.</p> <p>The sentencing judge was not satisfied that the appellant's prospects of rehabilitation were at all substantial.</p> <p>Moderate to high risk of violent re-offending and high risk of 'generalist re-offending'.</p>	<p>sentences imposed in other cases is difficult because of the very great variations in the number of possible offences and the possible combinations of offences.</p> <p>At [79] the appellant's prospects of rehabilitation through eligibility of parole were outweighed by the need for the protection of the community.</p> <p>At [85] Discussion about determining discount for co-operation.</p> <p>At [91] the offending in this case was very serious.</p>
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			Hill breached his bail by not appearing before the Magistrates Court.		
3.	<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>Entrenched substance abuse problem.</p> <p>Made efforts towards his reformation, however not successful.</p>	<p>Ct 1: Agg burg (dwelling). Ct 2: Steal motor vehicle. Ct 3: Agg burg (dwelling). Ct 4: Steal motor vehicle. Ct 5: Agg burg (dwelling). Ct 6: Agg armed robbery. Ct 7: Agg burg (place).</p> <p>Pryor went on a crime spree over an eight day period.</p> <p><u>Ct 1 & Ct 2:</u> Pryor entered the victim's house through an unsecured rear door. The victim was home but distracted. Pryor 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 Pryor entered the victim's garage. The victim was home and busy with her 2 small children. Pryor 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. Pryor drove away. During her efforts to stop Pryor the victim fell to the ground and grazed her left leg.</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>Sentencing judge noted that the only significant matter in mitigation was the plea of guilty.</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><u>Ct 5:</u> Pryor 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 Pryor 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. Pryor 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> Pryor and his accomplice then drove to a business which was closed. Pryor used a brick to smash a glass door and the two entered. Inside they stole food and drink.</p>		
2.	<p><i>Tela v The State of Western Australia</i> [No 2]</p> <p>[2014] WASCA 103</p> <p>Delivered</p>	<p>18 yrs at time offending. 19 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Criminal record including possess controlled weapon.</p>	<p><u>Indictment</u> Ct 1: Agg burg. Ct 2: Agg burg. Ct 3: Burg</p> <p><u>Section 32</u> Ct 1: Drive reckless to escape pursuit Ct 2: Agg fail to stop</p>	<p><u>Indictment</u> Ct 1: 1 yr 6 mths imp (cum). Ct 2: 1 yr 6 mths imp (conc). Ct 3: 1 yr imp (conc).</p> <p><u>Section 32</u> Ct 1: 1 yr imp (cum). Ct 2: 3 mths imp (conc).</p>	<p>Dismissed – on papers.</p> <p>At [19] The indictable offences were undoubtedly serious. They were premeditated and targeted. Substantial amounts of property</p>

	15/05/2014	<p>Employed since left school.</p> <p>Positive references.</p> <p>Good and supportive family.</p> <p>Breached 6 mth CRO by committing agg burg.</p>	<p>Ct 3: No MDL Ct 4: AOBH</p> <p><u>Indictment</u> Tela and others committed burglary on homes in order to obtain bicycles, off-road motorcycles and associated equipment.</p> <p><u>Section 32:</u> <u>Ct 1, 2 & 3:</u> Tela was riding an off-road motorcycle with others. Police received a number of calls from members of the public that there were several motorcycles driving around on roads with no lights on. Police pursued Tela and two others in vehicles and by helicopter. Tela rode his motorcycle at an excessively high speed, with lights off and on the incorrect side of the road. At the time his licence was cancelled.</p> <p><u>Ct 4:</u> Tela assaulted the victim in an unprovoked attack. Tela swung a baseball bat at the victim, narrowly missing the victim's legs. Tela continued to swing the bat and eventually struck the victim in the back and the face. The victim suffered a bruised hip, a broken nose and severe swelling to the face.</p>	<p>Ct 3: Fine \$1000. Ct 4: 3 mths imp (cum).</p> <p>TES 2 yrs 9 mths imp. EFP.</p> <p>Motive was greed.</p> <p>Good future prospects.</p>	<p>were taken on each occasion. ... The assault occasioning bodily harm was unprovoked, involved the use of a weapon and inflicted multiple injuries on an innocent victim.</p>
1.	<i>Whitby v The State of Western Australia</i>	<p>25 yrs at time offending. 26 yrs at time sentencing.</p>	<p><u>Indictment 684/13</u> Ct 1: Agg burg.</p>	<p><u>Indictment 684/13</u> Ct 1: 2 yrs imp.</p>	<p>Dismissed – on papers. At [28] The offences</p>

<p>[2014] WASCA 99</p> <p>Delivered 05/05/2014</p>	<p>Convicted after early PG.</p> <p>Significant prior criminal record including convictions for stealing, receiving, agg burg and trespass.</p> <p>Imprisoned on several occasions; poor response to community based dispositions.</p> <p>Long history of illicit substance abuse.</p> <p>No employment history; relied on Centrelink benefits.</p> <p>Suffers depression.</p> <p>On remand participated in several rehabilitation programmes.</p>	<p><u>Indictment 1054/13</u> Ct 1: Agg burg. Ct 2: Stealing. Ct 3: Steal motor vehicle.</p> <p><u>Indictment 684/2013</u> Whitby entered the victim's house by opening a front sliding window and ripping the flyscreen. The victims were asleep. Whitby stole property but was disturbed by the victims and fled from the house.</p> <p><u>Indictment 1054/13</u> Whitby entered the victim's house by removing a flyscreen from the lounge room window and forcing the window open. The victims were asleep. Whitby stole items and left in the appellant's motor vehicle. Whitby was later seen driving the stolen vehicle.</p>	<p><u>Indictment 1054/13</u> Ct 1: 2 yrs 6 mths imp (cum). Ct 2: no penalty. Ct 3: no penalty.</p> <p>TES 4 yrs 6 mths imp.</p> <p>EFP.</p> <p>Remorseful.</p>	<p>committed by the appellant in the present case involved serious offending of its kind.</p> <p>At [29] The appellant's personal circumstances and antecedents were poor.</p>
<p><i>Transitional Provisions Repealed (14/01/2009)</i></p>				
<p><i>Transitional Provisions Enacted (31/08/2003)</i></p>				