

Armed robbery

using a syringe

ss 392 and 393 *Criminal Code*

From 1 January 2014

Transitional Sentencing Provisions: This table is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period
- Transitional provisions period
- Pre-transitional provisions period

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
agg	aggravated
burg	burglary
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
att	attempted
EFP	eligible for parole
TES	total effective sentence
ct	count

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
2.	<p><i>Garraway v The State of Western Australia</i></p> <p>[2015] WASCA 240</p> <p>Delivered 27/11/2015</p>	<p>32 yrs at time of sentence.</p> <p>Significant criminal history, including offences of violence and burglary.</p> <p>Deprived upbringing and limited education. Depressed and suicidal.</p> <p>Lengthy history of illicit drug and alcohol abuse.</p> <p>5 young children from two relationships.</p>	<p>Ct 1: Armed Robbery. Ct 2: Burglary. Ct 3: Stealing.</p> <p>Offences breached an SIO and CBO (for AOBH on partner).</p> <p><u>Ct 1:</u> The appellant approached the victim and used the victim's mobile phone to make a call. After this the victim walked away. The appellant approached the victim again and asked to use his phone. The victim said no. The appellant pulled a syringe from his pocket, took off the protective cap and pointed it towards the victim, saying 'give us your phone or I'll stab you'. The appellant grabbed the phone and walked away.</p> <p><u>Ct 2 and 3:</u> The appellant went to the Broome Boulevard Shopping Centre and smashed the glass fire door to gain entry. The appellant then smashed the glass window of Dick Smith store with a brick. He used the brick to break a glass cabinet and stole 15 mobile phones, to the value of \$11,300.</p>	<p>Ct 1: 2 yrs 10 mths imp. Ct 2: 1 yr 11 mths imp. Ct 3: nil.</p> <p>Breach of SIO: 9 mths imp. To be served cumulatively with cts 1 and 2.</p> <p>TES 5 yrs 6 mths imp.</p> <p>EFP.</p> <p>Sentencing judge not satisfied appellant demonstrated genuine remorse.</p> <p>Ct 1 not at high end scale of seriousness. Ct 2 and 3 characterised as 'significant' as it was planned and premeditated.</p>	<p>Dismissed – on papers.</p> <p>At [27]... the appellant has fallen well short of demonstrating that the total effective sentence imposed upon him infringes the first limb of the totality principle. Having regard to the appellant's total criminality and all of the circumstances of the case, including those factors referable to the appellant personally, the sentence... reflected a sound exercise of his Honour's sentencing discretion.</p>

<p>1.</p>	<p><i>Fisher v The State of Western Australia</i></p> <p>[2015] WASCA 114</p> <p>Delivered 02/06/2015</p>	<p>27 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Minor criminal history including assault, obstructing police officer and trespass.</p> <p>Stable and supportive family.</p> <p>Drug and alcohol addiction.</p> <p>Accumulated significant drug debt immediately preceding the offences; abducted, assaulted and threatened by men seeking repayment of debt.</p> <p>History of depression and anxiety.</p> <p>Appellant completed some programmes in custody prior to sentencing.</p>	<p>Armed robbery x 6.</p> <p>All offences were committed over a 13 hr period.</p> <p>At 8.46pm, the appellant entered a bottle shop and while brandishing an unused syringe, demanded that the attendant give him money from the till. The attendant handed over \$830 (ct 1).</p> <p>At 12.45am, the appellant went to a service station. He placed his right hand under his jumper pretending to be armed with a gun and demanded cash from the attendant, threatening to shoot him if he did not comply. He repeated the threat and the attendant handed over \$900 (ct 2).</p> <p>At 3.55am, the appellant went to another service station. He placed his right hand under his jumper and pretended to be armed with a gun. He demanded cash from the attendant threatening to shoot him if he did not comply. The attendant handed over \$150 (ct 3).</p> <p>Between 3.50am and 4.10am, the appellant attended another service station. He placed his right hand under his jumper pretending to be armed with a gun and demanded that the attendant give him cash</p>	<p>Ct 1: 3 yrs im (cum). Ct 2: 1 yr imp (cum). Ct 3: 2 yrs 9 mths imp (conc). Ct 4: 1 yr imp (cum). Ct 5: 2 yrs 9 mths imp (conc). Ct 6: 2 yrs 9 mths imp (conc).</p> <p>TES 5 yrs imp.</p> <p>Remorseful; low risk of re-offending.</p> <p>Robberies committed on premises that were very vulnerable.</p> <p>Sentencing judge found that the appellant committed the offences out of desperation as a result of the threats made to him.</p>	<p>Dismissed – on papers.</p> <p>At [26] ... the fact that there is no weapon that could be used to inflict harm needs to be seen in the context that an offender who pretends to be armed intends that those he confronts will believe that he is armed and will comply with his demands out of fear for their safety. The appellant clearly had such an intention and reinforced it making verbal threats... The use of a syringe in the first offence was correctly described by the sentencing judge as an aggravating factor.</p> <p>At [29]-[35] Discussion of comparable cases.</p> <p>At [37] In my view it is not reasonably arguable that the TES of 5 yrs imp infringed the totality principle. There is no challenge to the individual sentences imposed in this case and they clearly fell within the range customarily imposed for such offences.</p>
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<i>Transitional Provisions Repealed (14/01/2009)</i>				
<i>Transitional Provisions Enacted (31/08/2003)</i>				

Office of the Director of Public Prosecutions