

# **Burglary**

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
8.	<p><i>Mogridge v The State of Western Australia</i></p> <p>[2016] WASCA 205</p> <p>Delivered 29/11/2016</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Subject to a SIO and CBO at time offending.</p> <p>Lengthy criminal history, including property offences and violent offences. Mogridge has breached every court order previously imposed upon him.</p> <p>Deprived childhood; exposed to domestic violence and chronic illicit drug and alcohol abuse.</p> <p>Diagnosed schizophrenic, with multiple admissions to Graylands Hospital.</p> <p>Antisocial personality disorder.</p> <p>Illicit drug use.</p>	<p><u>Indictment</u></p> <p>1 x Robbery.</p> <p><u>Breach of SIO</u></p> <p>1 x Burg.</p> <p>2 x Burg with intent.</p> <p>2 x Unlawful poss.</p> <p><u>Breach of CBO</u></p> <p>1 x Breach police order.</p> <p>1 x Breach of protective bail condition.</p> <p>1 x Damaging property.</p> <p>1 x Disorderly conduct.</p> <p>4 x Stealing.</p> <p><u>Indictment</u></p> <p>M entered a shop and stole an iPad and two bags belonging to the shop's owner (the victim). The victim's wife and 4 yr-old son were present. The victim tried to prevent M from leaving and during a struggle M punched the victim in the face. M dropped the stolen items and left.</p> <p><u>Breach SIO</u></p> <p>M smashed the rear glass doors of an Indian restaurant and entered with others, but could not find anything to steal (burg with intent).</p> <p>M smashed a window of a pharmacy, entered and smashed an internal wall. Two co-offenders wanted to steal drugs and M</p>	<p><u>Indictment</u></p> <p>3 yrs imp.</p> <p><u>Breach of SIO</u></p> <p>Burg: 3 mths imp (cum).</p> <p>Burg with intent: 6 mths imp (cum).</p> <p>Burg with intent: 3 mths imp (cum).</p> <p>2 x Unlawful poss: 3 mths imp each (conc).</p> <p><u>Breach of CBO</u></p> <p>Breach police order: 3 mths imp (conc).</p> <p>Breach bail: no sentence.</p> <p>Damaging property: 6 mths imp (conc).</p> <p>Disorderly conduct: \$250 fine.</p> <p>3 x Stealing: 3 mths imp each (conc).</p> <p>1 x Stealing: no sentence (s 11).</p> <p>TES 4 yrs imp; \$250 fine.</p> <p>EFP.</p> <p>Sentences for breach of CBO made conc for</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged individual sentence for the Robbery offence, totality, and sentencing judge's failure to state discount provided for PG.</p> <p>At [40] While the robbery offence committed by the appellant was not at the upper end of seriousness of offences of robbery, it was not at the lower end of the scale and involved considerable criminality. The appellant used actual violence upon the victim to steal the iPad and the two bags. The offence was committed in the presence of the victim's wife and young child... The appellant was, at the time, subject to the CBO and the SIO. Specific deterrence and the need to provide public protection were matters of importance.</p> <p>At [41] The appellant ... has a very long and serious</p>

			<p>assisted to receive \$50 (burg with intent).</p> <p>M was found in poss of property worth in excess of \$500 (unlawful poss).</p> <p>M forced entry to a shopping centre and stole 189 SIM cards valued at \$378 from a kiosk (burg). M was found by police in poss of the SIM cards and other items (unlawful poss).</p> <p><u>Breach CBO</u> After the burg on the Indian restaurant subject to SIO, M smashed the glass panel to the doors (damaging property).</p> <p>M smashed a car window and stole property valued at approx. \$700 (stealing).</p> <p>M yelled obscenities and threats at his mother after being issued with a 72-hr police order prohibiting him from entering her house or approaching within 100 m of her (disorderly conduct). M was arrested and released on protective bail. He later hid in his mother's unit in breach of the police order and protective bail conditions (breach offences).</p> <p>M stole property valued at \$50 from a car (stealing). M returned to the same address and stole \$50 in change from another car</p>	<p>totality reasons.</p> <p>Sentencing judge found that Mogridge's mental illness was not at the root of his offending; illicit drug use was the cause of offending.</p> <p>Not a good vehicle for general deterrence because of his mental illness.</p> <p>Very high risk of reoffending.</p> <p>No remorse; inability to accept responsibility for offending behaviour.</p>	<p>criminal history... he suffers from a significant mental illness, but that illness was not causative of his offending, nor will it result in imp being more onerous for him than in the ordinary case. The appellant is not motivated to deal with his illicit drug use, which is the real driver of his offending, and he has no insight into the effects that his offending has on his victims. His prospects for rehabilitation appear to be very poor and he poses a very high risk of reoffending.</p> <p>At [45] Her Honour erred by overlooking to state the extent of the reduction for the PG. However, in this case, the error is not material. It is not reasonably arguable, having regard to all relevant sentencing considerations (including the PG), that different individual sentences, or a</p>
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			(stealing).  M was charged with stealing for the stolen SIM cards he took in the burg subject to SIO (stealing).		different TES should have been imposed...
7.	<i>Garraway v The State of Western Australia</i>  [2015] WASCA 240  Delivered 27/11/2015	32 yrs at time of sentence.  Significant criminal history, including offences of violence and burglary.  Deprived upbringing and limited education. Depressed and suicidal.  Lengthy history of illicit drug and alcohol abuse.  5 young children from two relationships.	Ct 1: Armed Robbery. Ct 2: Burg. Ct 3: Stealing.  Offences breached an SIO and CBO (for AOBH on partner).  <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.  <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	Ct 1: 2 yrs 10 mths imp. Ct 2: 1 yr 11 mths imp. Ct 3: nil.  Breach of SIO: 9 mths imp. To be served cumulatively with cts 1 and 2.  TES 5 yrs 6 mths imp.  EFP.  Sentencing judge not satisfied appellant demonstrated genuine remorse.  Ct 1 not at high end scale of seriousness. Ct 2 and 3 characterised as 'significant' as it was planned and premeditated.	Dismissed – on papers.  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.

			mobile phones, to the value of \$11,300.		
6.	<p><i>Newport v The State of Western Australia</i></p> <p>[2015] WASCA 224</p> <p>Delivered 12/11/2015</p>	<p>32 yrs at time offending.</p> <p>Convicted after PG to ct 1 and 2; convicted after trial for cts 3-5 and 7-11.</p> <p>Offending breached SIO and bail.</p> <p>Prior criminal history of summary offences.</p> <p>Unemployed at time offending.</p> <p>Two children from prior relationship; mother cares for children.</p> <p>Entrenched and significant substance abuse problem.</p> <p>History of poor problem solving, antisocial decision-making and low self-confidence.</p> <p>Failed to comply with prior requirements to undertake counselling and CBO.</p>	<p><u>Indictment</u>  Ct 1: Burg (residential).  Ct 2: Steal motor vehicle.  Cts 3-5 and 7-11: Receiving.</p> <p><u>Section 32 Notice</u>  Ch 1: Reckless driving.  Ch 2: Failure to stop.  Ch 3: No authority to drive.  Ch 4: Steal motor vehicle.</p> <p><u>Cts 1-2</u>  Newport smashed a rear bedroom window and entered the house. The victim was not home. He stole various items to the value of \$5,000.</p> <p>Newport found car keys in the house and used them to steal a car parked at the house. The car was recovered from Newport's house.</p> <p><u>Cts 3-11</u>  The receiving offences committed over a period of approx. one mth.</p> <p>Newport received a 'Stinger' electrical circuit tester, a motorcycle and a 'Toyota Hi-Ace' van (cts 3-5). Newport knew the property had been obtained by a burg.</p>	<p><u>Indictment</u>  Ct 1: 25 mths imp (cum).  Ct 2: 8 mths imp (conc).  Ct 3: 18 mths imp (conc).  Ct 4: 9 mths imp (conc).  Ct 5: 10 mths imp (conc).  Ct 7: 18 mths imp (conc).  Ct 8: 20 mths imp (cum).  Ct 9: 17 mths imp (conc).  Ct 10: 15 mths imp (conc).  Ct 11. 18 mths imp (conc).</p> <p><u>Section 32 Notice</u>  Ch 1: 3 mths imp (conc) and 24 mths driver's licence disqualification (cum).  Ch 2: \$150 fine.  Ch 3: 7 mths imp (conc) and 16 mths driver's licence disqualification (cum).  Ch 4: 10 mths imp</p>	<p>Dismissed.</p> <p>At [42] The burg represented a significant escalation in the seriousness of the appellant's offending; the appellant had a history of persistent offending.</p> <p>At [50] ... the value of the property taken was 'not insignificant' and...some of the stolen items were of 'significant personal value' to the victim...</p> <p>At [58] The appellant's offending occurred over a relatively short period of time. However, the offences did not form a single criminal enterprise, apart from the offences alleged in cts 1 and 2 of the indictment. Rather, the offences constituted a course of persistent offending.</p>

			<p>Newport received from burgs various electrical and personal items (cts 7-11).</p> <p><u>Section 32 Notice</u> Newport drove a stolen motorcycle, without a licence. In order to evade police, Newport reached speeds in excess of 80km per hour in a 50km per hour speed limit zone and drove on the wrong side of the road.</p>	<p>(cum).</p> <p><u>Breach of SIO</u> 3 mths imp (cum).</p> <p>TES 4 yrs 10 mths imp.</p> <p>EFP.</p> <p>Remorseful and empathetic for his victims; some prospects of rehabilitation.</p> <p>Sentencing judge was not satisfied that Newport was shown to have been in the business of a fence (a distributor for reward of unlawfully obtained property).</p>	
5.	<p><i>Harding v The State of Western Australia</i></p> <p>[2015] WASCA 27</p> <p>Delivered 11/02/2015</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Significant prior criminal history including convictions of burg, stealing, stealing motor vehicle and reckless driving.</p> <p>Parents separated when appellant</p>	<p><u>Indictment</u> Burg (residential) x 1.</p> <p><u>Section 32</u> 17 charges.</p> <p><u>Indictment</u> The appellant was inadvertently released from custody for other charges on 21 March 2012.</p>	<p><u>Indictment</u> 2 yrs imp.</p> <p><u>Section 32</u> Various imp terms totalling 4 yrs imp (cum).</p> <p>TES 6 yrs imp.</p>	<p>Dismissed.</p> <p>Error as to maximum penalty not material in this case.</p> <p>At [80] This is undoubtedly a serious offence... At the time he committed the offence he</p>

		<p>was 18 mths old; raised by father; minimal contact with mother; issues relating to abandonment by mother; issues arising from assertion of being sexually abused as a child.</p> <p>Sister died from heroin overdose when appellant was 14 yrs; appellant started performing badly at school and using heroin.</p> <p>Left school in year 10; largely unemployed.</p> <p>History of drug abuse; addicted to heroin at time offending; previous attempts to cure drug addiction failed.</p>	<p>During the day of 29 March 2012 the appellant gained entry to the backyard of a house. He climbed the top of a structure over the patio at the rear of the house and climbed to a balcony at the first floor level. He forced open a partially open window and entered the house. He went systematically through all the rooms of the house, stealing various items to a total value of \$11,837.91.</p> <p><u>Section 32</u> On five dates between 17 October 2011 and 4 April 2013, the appellant committed assault with intent to prevent arrest, obstructing police officers and multiple property, drug and driving offences.</p>	<p>EFP.</p> <p>Repeat offender.</p> <p>Prone to reoffend within a short time of release due to drug addiction; lacks the skills to independently address the core issues of his substance abuse.</p> <p>Remorseful.</p> <p>Erroneously stated offence was agg burg with maximum penalty of 20 yrs imp, when in fact offence committed was burg with maximum penalty of 18 yrs imp.</p>	<p>had been inadvertently released from custody. This situation is analogous to someone who is on bail.</p>
4.	<p><i>McColl v The State of Western Australia</i></p> <p>[2014] WASC 300</p> <p>Delivered 22/08/2014</p>	<p>36 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Significant criminal history.</p> <p>Unfortunate upbringing.</p> <p>Recent tragedy involving his brother.</p>	<p>Burg (residential) x 1. Burg (commercial) x1 No MDL (suspended) x 1.</p> <p>The appellant entered the victim's house by smashing a railing and retrieving a lockbox which contained a copy of the house key. Inside he stole a number of items.</p> <p>The appellant and another were at a Supercheap Auto store. They entered the</p>	<p>20 mths imp. 9 mths imp (cum). 3mths (cum).</p> <p>TES 32 mths imp.</p> <p>Very high risk of re-offending.</p>	<p>Dismissed.</p> <p>Single Judge Appeal.</p>

		<p>Entrenched drug dependency.</p> <p>Tried many drug programs without success.</p> <p>Breached virtually every order he has been on.</p> <p>Five occasions where parole was cancelled.</p> <p>The residential burglary was committed whilst on bail for other offences including the commercial burglary.</p>	<p>store's storage and staff room where the public are not permitted. They took items from the staff room table and left.</p> <p>The appellant was parked in a bus lane. Police identified that the appellant was subject to a surrender notice. In an attempt to speak to the appellant, police in an unmarked car pulled up being the appellant, activated their lights and called for him to stop. The appellant accelerated away heavily.</p>		
3.	<p><i>Burrows v The State of Western Australia</i></p> <p>[2014] WASCA 147</p> <p>Delivered 12/08/2014</p>	<p>28 yrs at time sentencing.</p> <p>Convicted after late PG.</p> <p>Significant prior criminal history including stealing, receiving and steal MV.</p> <p>Poor compliance with court orders.</p> <p>Stable and supportive family.</p> <p>Entrenched history of methyl use.</p> <p>Made efforts towards rehabilitation whilst in custody.</p>	<p>Burg x 5. Steal MV x 5. Receiving x 1.</p> <p>The appellant committed a series of offences in a period of just over three weeks.</p> <p>The appellant used a stolen motor vehicle to commit a series of burglaries on four chemists and a computer store. Property stolen included cold and flu medication, sunglasses cash and laptop computers. In two of the burglaries the appellant used a stolen vehicle to rip off the front of the shops.</p>	<p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>In ROI declined to answer many questions but did answer some; denied all offences except the stealing of one vehicle.</p> <p>Appellant accepted his offending was directly related to his drug use.</p> <p>The appellant was stealing medications</p>	<p>Dismissed – on papers.</p> <p>At [32] Court found that the sentencing judge's failure to quantify the s9AA discount was not a material error and did not invalidate the sentence imposed.</p> <p>At [39] Each of the individual sentences was separate and discrete and in those circumstances some accumulation was appropriate.</p>



			<p>In that time the appellant also stole or used five stolen motor vehicles knowing they were stolen. Whilst in his possession, he had caused or permitted significant damage to them.</p> <p>Furthermore the appellant came into possession of some property from a burglary knowing that the items were stolen.</p>	<p>with ephedrine or pseudoephedrine with a view to exchanging them for methyl.</p>	<p>At [43] Offending conduct of this type is deserving of an appropriately lengthy sentence of imprisonment.</p>
2.	<p><i>Tela v The State of Western Australia</i> [No 2]  [2014] WASCA 103  Delivered 15/05/2014</p>	<p>18 yrs at time offending. 19 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Criminal history including possess controlled weapon.</p> <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><u>Indictment</u> Ct 1: Agg burg.</p> <p>Ct 2: Agg burg.</p> <p>Ct 3: Burg.</p> <p><u>Section 32</u> Ct 1: Drive reckless to escape pursuit. Ct 2: Agg fail to stop. Ct 3: No MDL. Ct 4: AOBH.</p> <p><u>Indictment</u> The appellant 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 &amp; 3:</u> The appellant was riding an off-road</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). Ct 3: Fine \$1000. Ct 4: 3 mths imp (cum).</p> <p>TES 2 yrs 9 mths imp.</p> <p>EFP.</p> <p>Motive was greed.</p> <p>Good future prospects.</p>	<p>Dismissed – on papers.</p> <p>At [19] The indictable offences were undoubtedly serious. They were premeditated and targeted. Substantial amounts of property 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>

			<p>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 the appellant and two others in vehicles &amp; by helicopter. The appellant rode his motorcycle at an excessively high speed, with lights off and drove on the incorrect side of the road. At the time the appellant's licence was cancelled.</p> <p><u>Ct 4:</u> The appellant assaulted the victim in an unprovoked attack. The appellant swung a baseball bat at the victim, narrowly missing the victim's legs. The appellant 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>		
1.	<p><b><i>Gangemi v The State of Western Australia</i></b></p> <p><b>[2014] WASCA 39</b></p> <p>Delivered 20/02/2014</p>	<p>35 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Extensive criminal history of over 100 convictions; including 18 for burglary; spent most of adult life in prison.</p> <p>Entrenched drug problem.</p> <p>Unfavourable record in response to</p>	<p>Burg x 1.</p> <p>The appellant went to Scitech Discovery which is a not-for-profit organisation with the intention of stealing items to purchase drugs.</p> <p>He entered through an unlocked automatic sliding door and entered the office through other unlocked doors. Inside the appellant forced open a cupboard and took a number of electronic devices valued at \$16,220.00.</p>	<p>4 yrs imp.</p> <p>EFP.</p> <p>Full admissions in ROI; traded the stolen property for drugs.</p> <p>Little understanding of the consequences &amp; impact of his offending.</p>	Dismissed.

		<p>court orders.</p> <p>Unsuccessful in a number of drug treatment programmes without success.</p> <p>Committed further offences whilst on bail for this offence.</p> <p>Committed burglary whilst on bail for a large number of other offences.</p>	<p>The appellant put the items in a box and carried them away. He was let out of the complex by a cleaner who unlocked a door which had been locked while the appellant was in the building.</p> <p>Only a small amount of the property was recovered.</p>	<p>Sentencing judge observed the appellant's repeated offending was associated with a long history of illicit drug abuse; Noted that the appellant did not appear to have the alternative social supports which would be necessary in order for him to change his lifestyle.</p> <p>High risk of re-offending.</p>	
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