

# Receiving stolen or fraudulently obtained property

s 414 *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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
PG	plead guilty
att	attempted
ct	count
TES	total effective sentence
EFP	eligible for parole
PSR	pre-sentence report
SIO	suspended imprisonment order
circ	circumstances
poss	possess
wiss	with intent to sell or supply
ISO	intensive supervision order
agg burg	aggravated burglary
CRO	conditional release order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
3.	<p><i>Reynolds v The State of Western Australia</i></p> <p>[2017] WASCA 214</p> <p>Delivered 24/11/2017</p>	<p>38 yrs at time sentencing.</p> <p>Convicted after PG (20% discount) (ct 1).</p> <p>Convicted after trial (cts 2-3).</p> <p>Extensive criminal history; offending across four States; no significant gaps since age of 18 yrs.</p> <p>On bail for ct 1 at time of committed offences subject of cts 2 and 3.</p> <p>Abandoned by both parents at a young age; childhood dogged by lack of opportunity and homelessness.</p> <p>Sporadic history of employment as a mechanic.</p> <p>15 yr relationship; two children 13 and 8 yrs; 2015-2016 partner suffered cognitive deficits from brain aneurism.</p> <p>Insular and isolated family life; no friends or support</p>	<p>Ct 1: Receiving. Ct 2: GBH. Ct 3: Unlawful wounding.</p> <p><u>Ct 1</u> Police executed a search warrant at Reynolds' home and located various items, valued at about \$12,800, recently stolen from a home burglary.</p> <p><u>Cts 2 &amp; 3</u> Mr B's home was burgled and some of his CDs were stolen. He believed the CDs were at Reynold's home. Mr B, accompanied by Mr T, decided to go to Reynolds home to retrieve them.</p> <p>Mr B and Mr T went to a locked gate at the rear of Reynolds' property. His partner appeared and they asked for the return of the CDs. Mr B was told to go away.</p> <p>Reynolds came into the backyard and exchanged angry words with the two men, before going back into his unit and asking his partner to call police.</p> <p>Reynolds was already carrying a pocketknife but he armed himself with another and went back outside. As Mr B was looking through a hole in the gate Reynolds stabbed him in the eye with one of the knives (ct 2).</p> <p>As both victims walked away Reynolds jumped</p>	<p>Ct 1: 9 mths imp (cum). Ct 2: 5 yrs imp (cum). Ct 3: 12 mths imp (conc).</p> <p>TES 5 yrs 9 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the overall offending on cts 2 and 3 in the upper range of seriousness by use of a knife and there were two victims. The offences were unprovoked and did not occur in self-defence or defence of his household.</p> <p>Limited capacity for empathy; little remorse; justified his actions.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle and length of sentence.</p> <p>At [36] ... the offence of unlawfully doing GBH committed by the appellant was at the upper end of seriousness. The victim suffered the permanent loss of sight in his right eye. The consequences of this injury to the victim have been serious and profound. ... The use of a weapon is ... an aggravating factor. ... the offence was unprovoked. [Mr B] did not enter or attempt to enter the appellant's premises and posed no threat to the appellant or the appellant's family.</p> <p>At [39] The appellant's overall offending was very serious. Not only did he stab [Mr B] but he also stabbed [Mr T]. Although the injuries that [Mr T] suffered were not as</p>

		<p>within the community.</p> <p>Some mental health issues; illicit drug use from 12 yrs; fluctuated in and out of daily drug use since; time spent on methadone program for heroin addiction.</p>	<p>the fence and came towards Mr T, stabbing him twice in the back (ct 3).</p> <p>As a result of the attack Mr B was blinded in one eye. Mr T's two wounds were able to be sutured and glued.</p>		<p>serious as those suffered by [Mr B], the potential for serious injury is obvious. The receiving charge the subject of ct 1 was a serious example of its type.</p> <p>At [40] ... It was well open to her Honour to impose some additional punishment for [ct 1], bearing in mind that it was committed some time before cts 2 and 3. ... it is aggravating that cts 2 and 3 were committed while the appellant was on bail for ct 1.</p>
2.	<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</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. Newport found car keys in the house and used</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).</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>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>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>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>Ch 2: \$150 fine. Ch 3: 7 mths imp (conc) and 16 mths driver's licence disqualification (cum). Ch 4: 10 mths imp (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>	<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>
1.	<p><b><i>Burrows v The State of Western Australia</i></b></p> <p><b>[2014] WASCA 147</b></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>5 x s 401(2) <i>Criminal Code</i> burglary. 5 x s 371A <i>Criminal Code</i> steal MV. 1 x s 414 <i>Criminal Code</i> receiving.</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</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>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>Stable and supportive family.</p> <p>Entrenched history of methyl use.</p> <p>Made efforts towards rehabilitation whilst in custody.</p>	<p>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>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>Appellant accepted his offending was directly related to his drug use.</p> <p>The appellant was stealing medications with ephedrine or pseudoephedrine with a view to exchanging them for methyl.</p>	<p>At [39] Each of the individual sentences was separate and discrete and in those circumstances some accumulation was appropriate.</p> <p>At [43] Offending conduct of this type is deserving of an appropriately lengthy sentence of imprisonment</p>
<b><i>Transitional provisions repealed (14/01/2009)</i></b>					
<b><i>Transitional provisions enacted (31/08/2003)</i></b>					