

Acts or omissions causing bodily harm or danger

s 304 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
agg	aggravated
burg	burglary
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
ct	count
TES	total effective sentence
EFP	eligible for parole
VRO	violence restraining order

s 304(1) Acts/omissions (max penalty 7 yrs imp)

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
<p><i>Transitional provisions repealed (14/01/2009)</i></p> <p>Provisions were held to apply to the offence of s 304(2) despite the offence coming into operation after the enactment of the provisions (21/05/2004) in <i>Yates v The State of Western Australia</i> [2008] WASCA 144 overruling the majority decision in <i>The State of Western Australia v Wallam</i> [2008] WASCA 117 on that point.</p>					

s 304(2) Acts/omissions with intent (max penalty 20 yrs imp)

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
10.	<p><i>McAllister v The State of Western Australia</i></p> <p>[2017] WASCA 183</p> <p>Delivered 12/10/2017</p>	<p>47 at time offending. 49 at time sentencing.</p> <p>Convicted after late PG (5% discount) (ct 1). Convicted after trial (ct 2).</p> <p>Prior criminal history; traffic and alcohol related offences.</p> <p>Born UK; moved to Australia aged 9 yrs; abused and traumatised as a child during time at Fairbridge Farm.</p> <p>Self-employed removalist; good character references; business collapsed after his detention in custody for</p>	<p>Ct 1: Dep lib. Ct 2: With intent to harm did an act likely to endanger life, health or safety.</p> <p>McAllister owned his own business and the victim was a former employee.</p> <p>When McAllister's business was burgled and items stolen he believed the victim to be the offender.</p> <p>With a promise of work McAllister contacted the victim and arranged to meet him at his business premises. The victim attended at the scheduled time. McAllister and two of his associates, Annakin and Bowden, the co-offenders, arrived soon after.</p> <p>McAllister was armed with a baseball bat and the two co-offenders with wooden sticks. They proceeded to assault and verbally abused the</p>	<p>Ct 1: 15 mths imp (cum). Ct 2: 3 yrs 9mths imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the offending involved a degree of premeditation over a sustained period; there were three armed offenders against an unarmed victim; who for part of the assault, had his hands tied behind his back; it was completely unprovoked.</p> <p>The trial judge found the appellants believed the</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence; parity and totality principles.</p> <p>At [44] ... it is not reasonably arguable that the sentence of 15 mths' immediate imp for ct 1 was manifestly excessive. That is, when the sentence is viewed from the perspective of the maximum penalty (10 years' imp), and after taking into account all relevant facts and circumstances and all relevant sentencing factors ...</p>

		<p>these offences.</p> <p>Two adult children previous marriage.</p> <p>Medicated for depression; otherwise in good physical health.</p> <p>No history of illicit substances abuse.</p>	<p>victim for a period of about 30 minutes.</p> <p>During the assault the victim denied any involvement in the burglary. McAllister called the victim a liar and threatened to smash his knee caps if he went to the police.</p> <p>The victim's hands were tied behind his back. He again denied any knowledge of the burglary or location of the stolen property so McAllister struck him on the knee with the bat, while laughing and joking with the co-offenders.</p> <p>At some point a substance, believed to be petrol, was sprayed on the victim's face, mouth and clothes and he was threatened with being set on fire.</p> <p>The victim eventually claimed to know where the stolen property was located and offered to show them. He then managed to escape and call police.</p> <p>The victim suffered a broken eye socket which required surgery. He has ongoing problems with his jaw locking and his face droops on the left side.</p>	<p>victim had committed the burglary and this factor required him to place significant emphasis on general deterrence to remind the community that vigilante behaviour will not be tolerated.</p> <p>The trial judge found the appellant significantly more culpable than his co-offenders having regard to the element of vigilantism in his conduct</p> <p>No significant remorse shown.</p>	<p>At [50] ... it is not reasonably arguable that the sentence of 3 years 9 months' immediate imprisonment was manifestly excessive. That is, when the sentence is viewed from the perspective of the maximum penalty (20 years' imprisonment), and after taking into account all relevant facts and circumstances and all relevant sentencing factors,</p> <p>At [56] ... the trial judge found, and was entitled to find, that the appellant was the instigator of the offending. The appellant lured the victim to the appellant's business premises with a promise of work, the appellant arranged for Mr Annakin and Mr Bowen to be present and there was an element of vigilantism in his conduct. ... the appellant entered a very late PG on ct 1 and went to trial on ct 2 whereas Mr Annakin and Mr Bowen entered early PG on both</p>
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					cts. At [61] The appellant's overall offending was serious. It was necessary for the trial judge to order that the individual sentence for ct 1 be served cum upon the individual sentence for ct 2 in order properly to mark the serious character of the offending on cts 1 and 2 as a whole.
9.	<i>Chikonga v The State of Western Australia</i> [2017] WASCA 34 Delivered 23/2/2017	28 yrs at time offending. 29 yrs at time sentencing. Convicted after PG (10% discount). Lengthy criminal history; including substantial record of violent offences. Refugee from Rwanda; arrived in Australia aged eight yrs. Exposed to extreme violence as a child; witnessed att murder of his mother by his father. Left school yr eight; completed two yrs	1 x With intent to harm did an act likely to endanger life, health or safety. Chikonga and the victims were in a dispute over a motor vehicle and money owed. Driving to the victims home Chikonga deliberately accelerated the car towards the house and into the victims' bedroom. Chikonga's intention was to cause the victims a pecuniary detriment. The victims saw the car on CCTV and ran out of the bedroom. Chikonga went through the victim's home and damaged doors and upturned property in the house.	4yrs 6ths imp. EFP. The sentencing judge found the offending was in the upper range of seriousness; the appellant had an unreasonable belief that no-one home and his actions in targeting the bedroom were deliberate and motivated by a sense of grievance; he used a motor vehicle as a weapon with the intention of causing significant damage to entail significant financial detriment. The sentencing judge found the appellant's conduct as	Dismissed. Appellant challenged length of sentence. At [32] While the appellant did not intend to cause physical harm, his deliberate conduct ... created a real risk of death or serious injury. It created considerable fear for the victims, one of whom has suffered significant psychological impact. ... the risk to health and safety of people may, in some cases, be as important as the actual harm caused. ... the appellant's record of violent offending meant

		bricklaying apprenticeship at time sentencing.		highly dangerous; there was a significant risk that people would be in the home and there could have been death or serious injury to the occupants.	that personal deterrence and the need to protect the community from further violent offending by the appellant were both significant considerations in the sentencing exercise.
8.	<i>Kaokula v The State of Western Australia</i> [2016] WASCA 198 Delivered 28/11/2016	<u>Kaspar Kaokula</u> 24 yrs at time offending. 26 yrs at time sentencing. <u>Kuldar Kaokula</u> 31 yrs at time sentencing. Both convicted after trial. Both had no prior criminal history. Brothers born in Estonia. Unremarkable upbringings; both single without dependants. On a working holiday in Australia. Difficulties with the English language.	1 x s 304(2)(b) - With intent to harm did an act likely to endanger life, health or safety. The complainant worked as a supervisor on a fruit farm. Kaspar felt his girlfriend, who had been employed as a fruit picker, was treated badly by the complainant. The appellants planned revenge. The complainant was driving with his 3 yr-old daughter in the rear of this car when he was stopped by the appellants. Kaspar poured about 2 litres of petrol onto the windscreen, bonnet and roof of the complainant's car. Some of the petrol went into the interior of the car and onto the complainant through his partially open window. Kuldar held a cigarette lighter and lit the car, but the flame was blown out by the wind. The complainant accelerated away. As he did so he saw a spark from a cigarette lighter that Kaspar was holding. The complainant was pursued by the appellants' vehicle. He sought refuge at the farm.	<u>Kaspar Kaokula</u> 6 yrs 2 mths imp. EFP. <u>Kuldar Kaokula</u> 5 yrs 8 mths imp. EFP. The sentencing judge found the offending was carefully planned and agreed between the appellants well in advance and that the complainant was in a vulnerable position, trapped on a lonely road and encumbered by the fact that his daughter was strapped in the back of the car. Neither demonstrated remorse or acceptance of responsibility. The offending had very significant negative psychological consequences on the	Dismissed. Appellants challenged length of sentence. At [65] The risk to the life, health and safety of both the complainant and his daughter was very high. ... The fulfilment of the appellants' plan to ignite the petrol would probably have seriously burnt the complainant and his daughter, and created a real and substantial chance that they would be killed. While the appellants may not have been aware of the presence of the complainant's daughter ... they did not bother to check if anyone was with him. The fact that the petrol did not ignite was not for any want of trying on the appellants' part.

				complainant and his family.	
7.	<p><i>Sophiadakis v The State of Western Australia</i></p> <p>[2016] WASCA 203</p> <p>Delivered 25/11/2016</p>	<p>28 yrs at time offending. 29 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>The appellant was on a pre-sentence order for the two agg AOBH offences at time offending on indictment.</p> <p>Significant prior criminal history, including convictions of unlawful damage, use of prohibited drugs, wounding, AOBH, assault a driver, common assault and breach of bail.</p> <p>Deprived childhood; exposed to violence.</p> <p>Illicit drug addiction at time offending; drug free at time sentencing.</p> <p>Drug-fuelled violence not out of character.</p> <p>Mental health issues; stabilised since the appellant had been in custody and ceased taking illicit drugs.</p>	<p><u>Indictment</u> 1 x With intent to harm did an act likely to endanger life, health or safety.</p> <p><u>Section 32 Notice</u> Ch 1: Agg AOBH. Ch 2: Agg AOBH. Ch 3: Criminal damage. Ch 4: Breach of bail.</p> <p><u>Ch 1 & 2</u></p> <p>A verbal altercation occurred between the appellant and the victim A.</p> <p>After the appellant's children threw sand and grass on A's car, the victim's partner (B) confronted the appellant and flicked the grass at her. The appellant then attacked B, repeatedly punching him to the head (ch 1).</p> <p>A attempted to stop the fight. The appellant grabbed A by the hair and punched her left eye. A fell to the ground and the appellant repeatedly punched her to the head as she lay on the ground (ch 2).</p> <p><u>Indictment and ch 3</u></p> <p>The victim C lived with the appellant. The appellant verbally abused C about a missing television. When C tried to placate the appellant, the appellant became aggressive and irrational. C bent over to pick up food that the appellant</p>	<p><u>Indictment</u> 4 yrs imp.</p> <p><u>Section 32 Notice</u> Ch 1: 15 mths imp (conc). Ch 2: 15 mths imp (cum). Ch 3: 18 mths imp (conc). Ch 4: 3 mths imp (conc).</p> <p>TES 5 yrs 3 mths imp.</p> <p>EFP.</p> <p>The sentencing judge observed that the sentences for the two agg AOBH offences were shorter than the offences deserved because of totality reasons.</p> <p>The sentencing judge accepted for sentencing purposes that C was the appellant's drug supplier.</p> <p>Sentencing judge found that the flicking of grass by B was pretty minor, but probably inflamed the situation; the appellant was in a highly volatile state anyway and may well have overreacted even if B had treated her with kid gloves.</p>	<p>Dismissed.</p> <p>Appeal concerned the facts for Agg AOBH charges and totality.</p> <p>At [27] ...neither the prosecutor nor defence counsel who appeared in the District Court was aware of the negotiations and agreement on the material facts which occurred before the appellant entered her PG in the Magistrates Court ...</p> <p>At [28] ... the facts as stated in the Magistrates Court asserted that Rodney Smith had flicked grass into the appellant's face and that Rodney Smith had raised his fist towards the appellant before she struck him. By contrast, the facts as stated in the District Court ... asserted that Rodney Smith had flicked grass at the appellant and the stated facts did not include the assertion that Rodney Smith had raised his fist towards the</p>

		<p>The appellant had asserted at sentencing that she was upset with C because C had shown her daughter pornography and believed that C was grooming her daughter.</p>	<p>had thrown on the floor. The appellant then raised a hammer, said “I’m going to fucking kill you” and struck C repeatedly to the head. C raised her hands to protect herself and the appellant hit her arms and legs. C suffered bruising to her arms and legs and required 14 staples to her head.</p> <p>The appellant pursued C out of the house and struck the windscreen and door panel of the C’s car (ch 3). \$500 damage was caused to the car.</p> <p>The appellant’s young children witnessed part of the offending.</p> <p><u>Ch 4</u> The appellant failed to appear at the Magistrates Court for the return date of her pre-sentence order.</p>	<p>The appellant's mental health was of limited mitigatory value. The sentencing judge found that illicit drug use was the appellant's predominant problem, but accepted that there was also an underlying mental fragility which was exacerbated by the use of drugs. The appellant had abused illicit drugs knowing that she had a tendency to behave violently when both under the influence of and when coming down from drugs.</p> <p>High risk of violent reoffending if relapses into substance abuse and has further contact with C.</p> <p>No evidence of remorse above PG.</p>	<p>appellant before she struck him.</p> <p>At [33] ... the appellant's response was grossly disproportionate on either version of the facts... even if the appellant should have been sentenced on the basis of the facts as alleged in the Magistrates Court, no different individual sentences should have been imposed for the offences of agg AOBH and no different TES should have been imposed.</p> <p>At [34] ... the level of violence inflicted by the appellant on Samantha Smith, as alleged in the Magistrates Court, was less than the level of violence, as alleged in the District Court, is significant, to the extent it was alleged in the District Court that the appellant struck Samantha Smith to the head after she had fallen to the ground, but less significant, to the extent it was alleged in the District Court that the appellant grabbed</p>
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					Samantha Smith by the hair. However... even if the appellant should have been sentenced on the basis of the facts as alleged in the Magistrates Court, no different individual sentences should have been imposed for ... agg AOBH and no different TES should have been imposed.
6.	<p><i>Penny v The State of Western Australia</i></p> <p>[2016] WASCA 52</p> <p>Delivered 23/03/2016</p>	<p>45 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Lengthy criminal history, including murder, threat to kill, GBH, sex pen without consent, dep lib, and dishonesty and drug offences.</p> <p>Limited education.</p> <p>Antisocial personality disorder.</p> <p>High risk of reoffending.</p>	<p>1 x s 304(2)(b) - With intent to harm did an act likely to endanger life, health or safety.</p> <p>Penny, driving a bus, was stopped by police. When asked if he had anything to declare, including firearms, he responded 'No'.</p> <p>Penny exited the bus through the rear door with a sawn-off 410 shotgun concealed under his clothes and attempted to dispose of the gun.</p> <p>On suspicion he was concealing something Sgt Williams told Penny he was to be searched and repeatedly requested Penny to show his hands. Penny refused and resisted violently causing Sgt Williams to fire his taser twice.</p> <p>Penny pulled the shotgun out of his shorts. Const Needs drew her firearm and shouted for him to drop the gun. Sgt Williams tackled Penny and there was a violent struggle for control of the gun. He was repeatedly told to drop the gun, which was at times pointed at Sgt Williams' face. Const Needs unsuccessfully</p>	<p>9 yrs imp.</p> <p>The sentencing judge found that Penny intended to use the gun to escape from police, but was not satisfied beyond reasonable doubt that Penny intentionally discharged the shotgun.</p> <p>Significant adverse impact on both police officers and the fact that they were performing an important public function.</p> <p>No remorse, victim empathy or insight as to the causes of his offending behaviour.</p>	<p>Allowed – by majority on the basis that the sentencing judge erred in finding that the appellant intended to endanger the life, health and safety of Sgt Williams [30]-[31], [74]-[75].</p> <p>Penny challenged length of sentence.</p> <p>Re-sentenced 6 yrs imp. EFP.</p> <p>At [42] ... In assessing the seriousness of the offence, regard can be had to the potential, as distinct from the actual, consequences to a person's life, health or safety of the offender's conduct... Based on the results of forensic testing,</p>

			<p>tried to stop Penny and attempted to disarm him.</p> <p>Sgt Williams, fearing he would be shot, grabbed the gun and Penny's hand to get him to release his grip. The gun went off near Sgt Williams' face. Const. Needs shot Penny in the stomach with her firearm.</p>		<p>the objective risk of the gun accidentally discharging was significant.</p> <p>At [58] A particularly serious aspect of the offending is that the victim of the offence was a police officer acting in the execution of his duty. The use of a firearm against police officers performing their lawful duty significantly elevates the appellant's criminality.</p>
5.	<p><i>Lawrence v The State of Western Australia</i></p> <p>[2015] WASCA 187</p> <p>Delivered 14/09/2015</p>	<p>34 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Lengthy criminal history, including numerous convictions of violent offences.</p> <p>Offences committed six months after release from prison.</p> <p>Difficult and dysfunctional upbringing.</p>	<p>Ct 1: s 304(2)(b) - With intent to harm did an act likely to endanger life, health or safety.</p> <p>Ct 2: AOBH.</p> <p>Ct 3: Stealing.</p> <p>The appellant and co-offender, Winmar, were highly intoxicated.</p> <p><u>Ct 1</u> The appellant and Winmar were in an aggressive mood and approached the victim's group. A stare-down ensued between Winmar and the victim. Winmar took up a boxing stance and the victim tried to calm the situation down. A fistfight broke out and each landed blows on the other.</p> <p>The appellant punched the victim in the back of the head from behind, causing a cut to his chin.</p>	<p>Ct 1: 5 yrs imp.</p> <p>Ct 2: 1 yrs imp (cum).</p> <p>Ct 3: 3 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge characterised the offending as 'at the high end involving gratuitous violence in company against innocent members of the community'.</p> <p>Sentencing judge found that there was a real potential that harm might have been</p>	<p>Dismissed.</p> <p>At [34] ... his antecedents, offending behaviour, lack of insight and absence of remorse belie genuine rehabilitation.</p> <p>At [41] His criminal history is disturbing... the appellant represents a danger to the community...</p>

			<p>The victim fell to the ground and lapsed in and out of consciousness. The appellant and Winmar kicked and stomped on the victim's upper body and head.</p> <p>The victim received 11 stitches to his chin and sustained a concussion, scalp haematomas, black eye, facial swelling and bruising and soreness to his upper body and neck area.</p> <p><u>Cts 2-3</u> The appellant and Winmar then came across the second victim. The victim attempted to avoid the appellant and Winmar.</p> <p>The appellant and Winmar corralled the victim. The appellant punched the victim's left eye with substantial force, knocking him to the ground. The appellant and Winmar punched and kicked him while on the ground.</p> <p>The victim got to his feet and ran away, leaving his mobile on the ground. Railway police later found the mobile in the appellant's pocket.</p> <p>The victim sustained a black eye, facial bruising and swelling, grazing and abrasions to his knees and hands and extensive bruising to his inner left thigh.</p>	<p>caused to both victims by reason of the force used by the appellant and Winmar.</p> <p>Sentencing judge found appellant had no remorse, no insight into seriousness of his actions and no concern for victims.</p>	
4.	<p><i>De Alwis v The State of Western Australia [No 2]</i></p> <p>[2015] WASCA 42</p>	<p>65 yrs at time offending. 66 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Diagnosed with psychosis.</p>	<p>1 x s 304(2)(a) - Act with intent to cause bodily harm.</p> <p>The appellant and the victim were previously living together and married. Following separation, the victim obtained a violence</p>	<p>4 yrs 9 mths imp.</p> <p>Sentencing judge found the conduct was premeditated, violent and life-threatening.</p>	<p>Dismissed.</p> <p>At [127] It is of no significance that the appellant's breaches were of interim orders rather</p>

	Delivered 10/03/2015	Born in Sri Lanka; two children from an earlier marriage; obtained legal qualifications in Sri Lanka and Australia.	restraining order against the appellant. The victim was standing alone outside of her unit. The appellant ran towards the victim, holding a long-handled shovel and meat cleaver. The appellant struck the victim on the top of her head with the shovel, causing a significant laceration to her forehead, which cut through the skin and soft tissue to the bone. A pedestrian observed the incident, intervened and restrained the appellant until police arrived.	Sentencing judge found a total absence of remorse, lack of judgment and no insight into offending behaviour. Sentencing judge found that the appellant's mental condition was not causative of the offending, but was a contributing factor to an extent which was difficult to quantify.	than final violence restraining orders. At [139] Save for the mitigation arising from the appellant's mental condition, there are no mitigating factors in this case. Of significant concern are the findings that the appellant was unremorseful, lacked judgment and had no insight into his offending, all of which underscore the need for protection of the public and for personal deterrence. Although the sentence is at the high end of the sound sentencing range, it is not manifestly excessive.
3.	<i>Beard v The State of Western Australia</i> [2015] WASCA 74 Delivered 09/04/2015	36 yrs at time sentencing. Convicted after late PG. Significant criminal history including speeding, drink driving, reckless driving and AOBH. Relatively normal childhood; completed yr 12.	Ct 1: s 304(2)(b) - With intent to harm did an act likely to endanger life, health or safety. Ct 2: Manslaughter. The appellant was driving his car heavily intoxicated by methyl. The first victim was driving behind the appellant and, after indicating, he pulled out, intending to pass the appellant's car. As he overtook the car, the appellant suddenly, and without any justification, rammed his car into the side of the victim's car. In an attempt to get his car on the	Ct 1: 3 yrs 1 mth imp. Ct 2: 12 yrs 4 mths imp (to commence 8 mths after ct 1). TES 13 yrs imp. EFP. Sentencing judge found limited victim empathy and prospects of rehabilitation mitigating.	Dismissed. At [42] ... his Honour's characterisation, when read in context, was not a finding that ct 2 was in the worst category of manslaughter cases generally. At [43] It is clear from what his Honour said that he was agreeing with the

		<p>Unemployed at time offending; stressed.</p> <p>Two children from prior relationships.</p> <p>History of drug use.</p>	<p>road, the victim steered his car back into the appellant's car.</p> <p>The victim tried to get away from the appellant. The appellant pursued the victim at high speed, ramming his car into the victim's car another two times. This forced the victim's car sideways into the kerb and to spin onto the wrong side of the road.</p> <p>In a desperate attempt to escape the appellant, the victim sped past a number of cars so that he was in front when the lanes merged into one. With the intention of causing harm to the victim, the appellant drove at a dangerous speed onto the gravel verge. He took over the cars in front of him, causing other motorists to take evasive action.</p> <p>The appellant lost control when at least part of his car was still on the gravel verge. His car suddenly slewed, in a diagonal direction onto the wrong side of the road and into the path of a car being driven by the second victim. They collided head on. The appellant was driving fast enough to stop the second victim's car and push it backwards. The second victim had no opportunity to avoid the collision.</p> <p>The second victim died at the scene. The appellant was pinned in his vehicle with serious physical injuries.</p> <p>The appellant claimed to be the person being pursued.</p>	<p>Criminal history showed disobedience to road traffic laws.</p> <p>Sentencing judge found aggravated by: highly reckless conduct; speed grossly inappropriate for position car was being driven; adversely affected by methyl; victim had no opportunity to take evasive action.</p> <p>Sentencing judge found both cts in the category of the more serious offending of its type; ct 2 in worst category of offending in such cases.</p> <p>Appellant presented with risk factors relating to substance abuse and ability to control emotions.</p>	<p>prosecutor's submission... that ct 2 was 'in the worst category of motor vehicle manslaughter cases'.</p> <p>At [44] Such a conclusion was, having regard to his Honour's findings as to the circumstances of the offending, completely justified.</p> <p>At [50] There is no tariff for manslaughter ...</p> <p>At [53] ...it must be born in mind that both <i>Penny</i> and <i>Brown</i>, and for that matter, <i>Munda</i>, were all decided before the increase in the maximum penalty for manslaughter. Those cases, and the authorities reviewed in them, must be reviewed in that light.</p> <p>At [57] Anyone who drives intoxicated by methyl and in that state commits the offence of manslaughter, must expect to receive a significant custodial penalty.</p> <p>At [61] Ct 1 carries a</p>
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					maximum penalty of 20 years' imp. On any account, the sentence imposed on that ct was lenient, particularly having regard to the persistency of the appellant's attempts to harm (the first victim), the use of his motor vehicle as a weapon, and the terror the appellant inflicted upon (the second victim).
2.	<p><i>Hinkley v The State of Western Australia</i></p> <p>[2014] WASCA 122</p> <p>Delivered 16/06/2014</p>	<p>25 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Minor criminal record; traffic convictions.</p> <p>Left school at 15 yrs.</p> <p>Limited employment history; completed courses whilst on home detention.</p> <p>Close relationship with family.</p> <p>Long history of depression that had been poorly treated.</p> <p>History of marijuana and amphetamine-based substance abuse.</p>	<p>1 x s 304(2)(b) - With intent to harm did an act likely to endanger life, health or safety.</p> <p>The victim was the mother of the appellant's ex partner's two children.</p> <p>Following the breakdown of their relationship, the appellant's ex-partner asked her to remove her belongings from the house they shared. The appellant made threatening comments towards his children and the victim. The ex-partner's children were at the house at the time. The ex-partner contacted the victim and asked her to collect the children. The appellant packed her belongings and left the house.</p> <p>The victim arrived at the house, parked her car and walked towards the house. As she did she noticed the appellant was sitting in the driver's seat of a vehicle parked near the front of the house. The ex-partner was speaking to the appellant through the window.</p>	<p>30 mths imp.</p> <p>EFP.</p> <p>Remorse.</p> <p>Intended as an act of revenge against her ex-partner for asking her to leave the house, rather than as a result of any particular grievance against the victim.</p> <p>Sentencing judge noted actions were deliberate and persistent; seriousness of the appellant's intent to harm was at the high end, and the potential, as distinct from the actual, consequences for her conduct placed the</p>	<p>Dismissed on papers.</p> <p>At [24] The offending in this case was very serious.</p>

		Consumed drugs the day before the offence and was 'coming down' from them at time of offending.	<p>As the victim walked up the driveway towards the house, the appellant deliberately drove at the victim, who managed to evade the vehicle. The appellant then reversed her vehicle and hit the victim's vehicle. The appellant reversed again, this time into the victim's motor vehicle, causing damage. The appellant then drove away.</p> <p>The victim and the appellant's ex-partner went to inspect the damage. The appellant returned and deliberately drove at speed at the victim, who was facing the other way and did not see the vehicle coming. The appellant hit the victim from behind, causing her to flip into the air over the bonnet of the appellant's car vehicle it continued forwards. The victim's shoulder struck the windscreen, causing it to smash. The victim then fell onto the grass verge. The appellant drove away without making any attempt to render assistance.</p> <p>The victim sustained bruising, grazing to her body and continuing back pain.</p>	<p>offending in the serious bracket for this type of offending.</p> <p>Accepted offending was impulsive and opportunistic, and occurred while she was in a highly agitated state; found mental illness had affected her judgment.</p>	
1.	<p><i>Blurton v The State of Western Australia</i></p> <p>[2014] WASCA 61</p> <p>Delivered 21/03/2014</p>	<p>26 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after late PG (PG Cts 1 & 2 in full satisfaction of indictment).</p> <p>Recent violent criminal history; including armed robbery, deprivation of liberty, common assault & unlawful damage.</p>	<p>Ct 1: AOBH. Ct 2: s 304(2)(a) – Acts with intent to cause bodily harm. Ct 3: Unlawful wounding. Ct 4: Criminal damage.</p> <p>The appellant was at a family party at a Caversham Hall. Late in the evening the appellant had an argument with his partner and as a result, he left. Drunk and angry, he walked onto West Swan Road and remained there, posing a hazard to himself.</p>	<p>Ct 1: 12 mths imp. Ct 2: 2 yrs 6 mths imp.</p> <p>TES 3 yrs 6 mths imp.</p> <p>EFP.</p> <p>Little victim empathy.</p> <p>Voluntarily handed himself into Police.</p>	<p>Dismissed.</p> <p>At [38] ... As his Honour rightly said, the offences were unprompted and unprovoked by the victims. The appellant assaulted both men out of anger brought on by self-induced intoxication, a factor which affords no mitigation.</p>

		<p>Father of five young children.</p> <p>Not of good character.</p> <p>Intoxicated and angry on the night of the offence.</p>	<p>The two victims, both off-duty police officers, were passengers in a motor vehicle driving on West Swan Road. The appellant stood in front of their vehicle on the roadway causing the driver to slow down and drive around him. As she did and without reason, the appellant struck the vehicle several times with his fist. The driver stopped the car.</p> <p>One of the victims got out of the car and approached the appellant. The appellant swung a number of punches at him, which missed, but eventually the victim was struck to the left side of the jaw with a clenched fist. At this point, others who had been at the party, including two co-offenders, joined in the attack. The victim as knocked to the ground, kicked and punched by various people.</p> <p>The second victim got out of the car to assist. He made known to the victim that he was a police officer. The appellant approached the second victim and punched him in the face. Others also attacked him. The victim ended up on the ground, struggling with the co-offenders. As a result he sustained a laceration to his lip.</p> <p>The first victim then came to the second victim's aid and pushed his attacker's away. The two men retreated towards their vehicle. As the first victim was retreating, the appellant and co-offenders continued to attempt to strike him. Bottles were thrown, one hitting him on the back of the head. The appellant; armed with a wooden</p>	<p>Appellant and co-offender assisted police in the prosecution of third co-offender.</p> <p>In VROI admitted to fighting with victims but denied using anything as a weapon.</p> <p>Sentencing judge found was principal offender.</p>	
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<i>Transitional provisions repealed (14/01/2009)</i>					
<i>Transitional provisions enacted (31/08/2003)</i>					
<p>Provisions were held to apply to the offence of s 304(2) despite the offence coming into operation after the enactment of the provisions (21/05/2004) in <i>Yates v The State of Western Australia</i> [2008] WASCA 144 overruling the majority decision in <i>The State of Western Australia v Wallam</i> [2008] WASCA 117 on that point.</p>					