

Sexual Assaults – Home Invasions

ss 325 and 326 *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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
sex pen	sexual penetration without consent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
ct	count
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
1.	<p><i>PSS v The State of Western Australia</i></p> <p>[2015] WASCA 98</p> <p>Delivered 19/05/2015</p>	<p>15 yrs 11 mths at time offending. 16 yrs 8 mths at time sentencing.</p> <p>Convicted after PG.</p> <p>Committed cts 1-2 while on bail for cts 3-4.</p> <p>No history for violent or sexual offending. Criminal history, including agg burgs, stealing, trespass, poss a prohibited weapon, breach of bail and IYSO.</p> <p>Turbulent childhood.</p> <p>Extensive cannabis use from age 13.</p> <p>Commenced sexual relations from age 12.</p>	<p>Ct 1: Agg burg. Ct 2: Sex pen. Ct 3: Common assault. Ct 4: Common assault. Ct 5: Poss prohibited dug.</p> <p><u>Ct 1 and 2</u> The victim was 24 yrs old. The appellant was taller and heavier than the victim. He committed the offences under the influence of alcohol and cannabis.</p> <p>Between 2.00am and 3.00am, the appellant climbed through a window into the victim's house. The victim was alone and asleep in bed. She woke from noises. The appellant crawled into her bed, held her down with his left leg and said "I want sex". She began to cry loudly and replied that she could not as she was a Christian. The victim pushed the appellant on the chest but he stood his ground. He forcefully demanded that the appellant hug him. She was crying and shaking with fear, but agreed. The appellant kissed the victim, forcing his tongue into her mouth. He forced the victim on her knees and forced his erect penis into her mouth. He took hold of her head with both hands and pulled her towards him while thrusting his hips forward and back. He ejaculated in the victim's mouth and then left the house.</p> <p><u>Ct 3 and 4</u> The appellant was with two others at a train station. The appellant approached the victim, who was standing with her partner. The victim's partner had</p>	<p>Ct 1: 3 yrs detention (conc). Ct 2: 3 yrs 9 mths detention. Ct 3: 3 mths detention (conc). Ct 4: 4 mths detention (conc). Ct 5: NFP.</p> <p>TES 3 yrs 9 mths detention.</p> <p>Eligible for supervised release after 22.5 mths.</p> <p>Sentencing judge classified sex pen as a very serious offence of its kind. Penetration was violent, frightening, humiliating and degrading. Impact of offending on victim was serious and profound.</p> <p>Sentencing judge found appellant had some remorse and empathy.</p>	<p>Dismissed.</p> <p>At [26]-[30] Discussion of comparable cases.</p> <p>At [35] Having regard to the seriousness of the circumstances of the sex pen offence, the sentence imposed by the sentencing judge was within the sound exercise of the sentencing discretion.</p>

			<p>been assaulted by a co-offender. The appellant held the victim by her arms, restraining her from assisting her partner. When the victim stood in front of her partner to protect her partner from being assaulted further, the appellant grabbed her by the arms and pulled her down to the ground.</p> <p>The second victim had seen the appellant attacking a person on the platform and ran down the stairs to try and prevent the assault. The appellant ran at the second victim and punched and kicked him repeatedly.</p> <p><u>Ct 5</u> The appellant was found in poss of a small bag of cannabis.</p>		
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Transitional Provisions Repealed (14/01/2009)

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Transitional Provisions Enacted (31/08/2003)

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