

Children's Court sentence appeals

From 1 January 2014

Glossary:

imp	imprisonment
susp	suspended
PG	plead guilty
att	attempted
ct	count
TES	total effective sentence
EFP	eligible for parole
CRO	conditional release order
AOBH	assault occasioning bodily harm
agg burg	aggravated burglary
PSR	pre-sentence report
TOI	trial of issues
NFP	no further punishment as per s 67 <i>Young Offenders Act</i>
IYSO	intensive youth supervision order
SRO	supervised release order
sex pen	sexual penetration
FASD	foetal alcohol spectrum disorder

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
7.	<p><i>NEDI v The State of Western Australia</i></p> <p>[2018] WASCA 193</p> <p>Delivered 10/10/2018</p> <p>Published 29/10/2018</p>	<p>17 yrs 9 mths at time offending. 18 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal history; including convictions for criminal damage and assaulting custody officers committed whilst in detention.</p> <p>Parents separated when young; troubled relationship with mother's new partner.</p> <p>Later resided with his father who suffered anger management and substance abuse issues; difficulties with father's partner; returned to live with his mother.</p> <p>Difficult education; attended large number of different schools; expelled due to anger management issues.</p> <p>Commenced cannabis and alcohol use aged 11.</p>	<p>Cts 1, 6, 8 & 10: Criminal damage. Ct 2: Being armed in a way that may cause fear. Cts 3, 4, 7, 9 & 11: Agg burg. Ct 5: Trespass. Ct 12: Stealing.</p> <p>NEDI was detained in a juvenile detention centre. He and eight other detainees took part in a riot, causing extensive damage within the grounds of the unit.</p> <p>Holding a plastic chair above his head NEDI ran towards a custody officer in a threatening manner. The group then smashed windows and climbed onto the roof, where antennas and ventilation pipes were broken off and used as weapons.</p> <p>NEDI and the co-offenders broke into workshops and storage sheds, stealing items for use as weapons, including a screwdriver, angle grinder, blowtorch, hammer drill, claw hammer, crowbar, shovels, wrenches, shovel broom handles, steel cap boots, a whipper snipper, cricket bats and fire extinguishers.</p> <p>The angle grinder was used to release a detainee from a secure exercise yard.</p> <p>The group then went around the detention centre damaging windows, doors, gates and other property. In excess of 188 glass windows were damaged. Four sets of gates, wall and roof panels, an exercise yard and sky lights were damaged.</p>	<p>TES 14 mths imp.</p> <p>EFP.</p> <p>The sentencing judge accepted conditions had been very difficult for the appellant at the time of the offending; he had spent 'a very long time having a bigger lockdown than other people' and this had been very hard on the appellant and his family.</p> <p>The sentencing judge found the riot had a 'terrible effect' on the 130 detainees not involved in the riot.</p>	<p>Dismissed.</p> <p>Appeal concerned totality and parity principle.</p> <p>At [39] The fact that the offences were committed in a custodial setting was a very significant aggravating factor. The riot placed other detainees and staff ... at risk of harm, and would have been a traumatic experience for them. In addition to the significant costs which directly resulted from the offences, ... The adverse impacts on the well-being of staff and other detainees who did not participate in the riots were serious and ongoing. ... The courts' approach to sentencing for offences of this kind should send a clear signal that the ordinary response to such conduct will be a significant cumulative custodial sentence which is required to be served.</p> <p>At [40] ... It was</p>

			<p>NEDI drove a buggy through a set of locked glass double doors. The group then forced open and ransacked an office and storeroom area. Thirty one windows and six display cabinet glass panels were damaged. Damage was also caused to internal doors, office furniture and equipment.</p> <p>A recovery room was then broken into, ransacked and property, including a television and locked cupboards, damaged.</p> <p>NEDI and the other offenders also gained entry to the kitchen and stole food and drink. NEDI distributed trays of the stolen food items passed to him by a co-offender.</p> <p>Staffing, repairs and security upgrades was estimated at \$3.5 million, of which about \$500,000 was attributable to property damaged in the riot.</p>	<p>imperative that the sentences imposed for those offences bring home to the appellant the seriousness of his offending and the consequences of continuing with that behaviour.</p> <p>At [41] ... the court recognised that the reasons why an offender is subject to harsher conditions affects the mitigating effect of those conditions. In the appellant's case any mitigating effect must be at least substantially reduced by the fact that the more arduous conditions are a product of his past offending in a custodial setting. They reflect the consequent concerns about the risks which the appellant poses to the safety of staff and prisoners, to public property and to the proper operation of the prison system.</p> <p>At [46] ... the appellant's prior record of offending in</p>
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					a custodial setting, which distinguished his position from that of his sentenced co-offenders, elevated the significance of personal deterrence as a sentencing consideration ...
6.	<p><i>JR v The State of Western Australia</i></p> <p>[2016] WASCA 115</p> <p>Delivered 25/05/2016</p> <p>Published 08/07/2016</p> <p>Co-offenders of <i>TB v The State of Western Australia [2015] WASCA 212</i></p>	<p><u>JR</u> 15 yrs 5 mths at time offending.</p> <p><u>EW</u> 14 yrs 5 mths at time offending.</p> <p>Convicted after trial.</p> <p><u>Co-offenders</u> TB convicted on appeal of unlawful assault causing death and sentenced to 2 yrs detention.</p> <p>DVH convicted on appeal of unlawful assault causing death and sentenced to 2 yrs 8 mths detention.</p> <p>H CJ acquitted of murder and all alternative charges.</p>	<p>1 x Unlawful assault causing death (on appeal).</p> <p>The deceased, aged 28, had been drinking and decided to walk home by himself.</p> <p>JR and EW and seven of their friends (the appellants' group) were walking in the same direction down the same street in close proximity to the deceased.</p> <p>The co-offender DVH attempted to pick the deceased's pocket, so the deceased turned and slapped him across the back of the head. DVH responded, punching the deceased in the jaw causing him to fall backwards into bushes.</p> <p>The deceased got up and ran from the appellants' group. JR and EW, together with the co-offenders, chased the deceased at speed with the intention to catch and assault him. The deceased was threatened and intimidated.</p> <p>The deceased ran through a car park and over a low retaining wall, separating two car parks. The level of the first car park about 1.19m higher than the first. As the deceased went over the wall he fell onto the second car park.</p>	<p>JR convicted of manslaughter and sentenced to 4 yrs 6 mths detention.</p> <p>EW convicted of manslaughter and sentenced to 4 yrs 6 mths detention.</p>	<p>Allowed.</p> <p>Appellants appealed convictions of manslaughter.</p> <p>Convictions for manslaughter set aside and judgment of conviction for unlawful assault causing death entered.</p> <p>JR re sentenced to 2 yrs imp. EFP.</p> <p>EW re sentenced to 2 yrs detention with a minimum 50% to be served before being considered for release under a SRO.</p>

			The deceased suffered a fatal injury as a result of striking the back of his head on the bitumen surface of the car park.		
5.	<p><i>LCM v The State of Western Australia</i></p> <p>[2016] WASCA 164</p> <p>Delivered 07/04/2016</p>	<p>15 yrs 10 mths at time offending.</p> <p>Late PG.</p> <p>Criminal history, including convictions for agg robbery; agg burg and bodily harm.</p> <p>At time offending subject to a 9 month CRO.</p> <p>Severely deprived and dysfunctional childhood. State care from aged 6 yrs. Diagnosed as suffering from FASD.</p> <p>Youngest child; large fragmented family characterised by domestic abuse, neglect, abandonment, substance misuse and involvement in the criminal justice system.</p> <p>Affected by the death of his father as a child.</p> <p>Limited education and literacy skills. Did not complete high school.</p>	<p>1 x Manslaughter.</p> <p>LCM and his 16 yr old girlfriend C had a child, baby L, born 6 wks premature.</p> <p>L required specialist hospital care in the maternity ward and was progressing well.</p> <p>LCM and C were permitted to move L around the nursery and care for him in C's room.</p> <p>When L was 25 days old LCM moved him from the nursery to C's room. He was alone in the room with L for 3 to 10 minutes. During this time LCM deliberately struck L's head against a hard surface with considerable force. He delivered at least two blows to L's head, fracturing his skull and causing severe brain injuries.</p> <p>C returned to the room and saw L in LCM's arms. He had a lump on his head, was pale and had stopped breathing.</p> <p>Attempts were made to resuscitate L. He was stabilised and x-rays revealed the skull fractures and bleeding in the brain. He died from his head injuries.</p>	<p>10 yrs detention.</p> <p>EFP after serving 5 yrs.</p> <p>The sentencing judge described the appellant's conduct as 'cowardly in the extreme' having regard to L's age and extreme vulnerability.</p> <p>The sentencing judge remarked the appellant's personal history provided 'significant mitigation'.</p>	<p>Allowed.</p> <p>Sentence set aside. Re-sentenced to 7 yrs detention.</p> <p>EFP after serving one half of that term.</p> <p>At [143] ... there was significant mitigation in the case, having regard to the appellant's FASD, his dysfunctional upbringing and, of course, his youth. ... the prenatal brain damage suffered by the appellant has left him more vulnerable to the traumas he has suffered. ... If he is provided with appropriate mentoring and care, he has, ... some capacity for learning and positive change.</p>

		Illicit substance use from aged 11 yrs. Regular user of cannabis; occasional use of amphetamines and alcohol.			
4.	<p><i>TB v The State of Western Australia</i></p> <p>[2015] WASCA 212</p> <p>Delivered 27/10/2015</p> <p>Co-offenders of <i>JR v The State of Western Australia [2016] WASCA 115</i></p>	<p><u>TB</u> 14 yrs 2 mths at time offending.</p> <p><u>DVH</u> 15 yrs at time offending.</p> <p>Convicted after trial.</p> <p><u>Co-offenders</u> JR convicted on appeal of unlawful assault causing death and sentenced to 2 yrs imp.</p> <p>EW convicted on appeal of unlawful assault causing death and sentenced to 2 yrs detention.</p> <p>H CJ acquitted of murder and all alternative charges.</p>	<p>1 x Unlawful assault causing death (on appeal) each.</p> <p>The deceased, aged 28, had been drinking and decided to walk home by himself.</p> <p>TB and DVH and seven of their friends (the appellants' group) were walking in the same direction down the same street in close proximity to the deceased.</p> <p>DVH attempted to pick the deceased's pocket, so the deceased turned and slapped the appellant across the back of the head. DVH responded, punching the deceased in the jaw causing him to fall backwards into bushes.</p> <p>The deceased got up and ran from the appellants' group. TB grabbed his shirt when he started to run away. TB and DVH, together with the co-offenders JR and EW, chased the deceased at speed with the intention to catch and assault him. The deceased was threatened and intimidated.</p> <p>The deceased ran through a car park and over a low retaining wall, separating two car parks. The level of the first car park about 1.19m higher than the first. As the deceased went over the wall he fell onto the second car park.</p>	<p>TB convicted of manslaughter and sentenced to 4 yrs 6 mths detention.</p> <p>DVH convicted of manslaughter and sentenced to 5 yrs 6 mths detention.</p>	<p>Allowed.</p> <p>Appellants appealed convictions of manslaughter.</p> <p>Convictions for manslaughter set aside and judgment of conviction for unlawful assault causing death entered.</p> <p>TB re sentenced to 2 yrs detention</p> <p>DVH re sentenced to 2 yrs 8 mths detention.</p> <p>At [296] the primary judge erred in concluding that the State had disproved accident by proving beyond reasonable doubt that, objectively, [the deceased's] death would reasonably have been foreseen by ordinary sober young people (of the age of each of TB and DVH and with his knowledge of the</p>

			The deceased suffered a fatal injury as a result of striking the back of his head on the bitumen surface of the car park.		relevant facts and circumstances) as a possible outcome of his conduct. At [312] The period of detention I would impose on DVH is longer than the period of detention I would impose on TB because of DVH's greater moral culpability in relation to the offending (in particular, as the primary judge found, DVH was 'the instigator' and he committed 'serious acts against [the deceased] in the period before the commencement of the chase: [229], ts 1430) and because DVH was older than TB.
3.	<i>PSS v The State of Western Australia</i> [2015] WASCA 98 Delivered 19/05/2015	15 yrs 11 mths at time offending. 16 yrs 8 mths at time sentencing. Convicted after PG. Committed cts 1-2 while on bail for cts 3-4. No history for violent or	Ct 1: Agg burg. Ct 2: Sex pen. Ct 3: Common assault. Ct 4: Common assault. Ct 5: Poss prohibited dug. <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.	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. TES 3 yrs 9 mths	Dismissed. At [26]-[30] Discussion of comparable cases. 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

		<p>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>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 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</p>	<p>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>exercise of the sentencing discretion.</p>
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			and kicked him repeatedly. <u>Ct 5</u> The appellant was found in poss of a small bag of cannabis.		
2.	<i>HDS v The State of Western Australia</i> [2015] WASCA 69 Delivered 02/04/2015	17 yrs 4 mths at time offending. 18 yrs at time sentencing. Convicted after trial for offences relating to agg burg. Convicted after PG for remaining offences. Long prior criminal history including violence and property convictions. Parents separated when he was 9 yrs; predominantly lived with mother since. Limited education; never been employed. Drug user from young age. Subject to a supervised release order at time offending.	1 x Agg burg. 2 x Agg AOBH. 2 x Agg armed robbery. 1 x Threat to kill. 4 x Stealing. 2 x Common assault. 1 x Unlawful damage. 3 x Poss drug paraphernalia. 1 x Disobeyed a summons. 2 x Poss stolen or unlawfully obtained property. 1 x Breach of protective bail conditions. 1 x Assault with intent to prevent arrest. 1 x Threats to injure, endanger or harm. The appellant's cousin, NL, in company with another woman, LS, went to a house looking for Ms KM. NL and KM were at loggerheads. After some persuasion, LS and NL left the house. In the early hours of the following morning, NL and LS returned, with the appellant and an older man. Their plan was to enter the house and inflict personal violence upon the occupants. The appellant and at least one other were armed with a baseball bat. The appellant and the others forced their way into the house. Two of the offenders seriously assaulted KM and inflicted injuries upon her which constituted bodily harm. The appellant then entered a bedroom where he assaulted the	TES 2 yrs imp and fines totalling \$1,000. EFP. Little or no remorse.	Dismissed – on papers.

			<p>occupant of that room, CR, with the baseball bat. The appellant inflicted bodily harm upon CR. The appellant then grabbed a knife and robbed CR and another occupant of the room of their wallets and mobile telephones. The appellant, while armed with both the baseball bat and the knife, threatened to kill another occupant of the house. Two other occupants of the house were assaulted by the appellant's co-offenders.</p> <p>On another date, police found the appellant with a cannabis smoking implement and a coffee grinder which had been used to grind cannabis.</p> <p>On another date, the appellant failed to appear in the Busselton Children's Court in answer to a summons.</p> <p>On another date, the appellant came into possession of a bicycle reasonably suspected of being stolen.</p> <p>On another date, the appellant entered the victim's unlocked car parked in a driveway and stole his wallet which contained \$400 in cash and a number of cards.</p> <p>The following day, the appellant was at a shopping centre in company with his girlfriend. The appellant and his girlfriend stole clothing from two stores in the shopping centre. A security guard became suspicious of the appellant's behaviour and approached two police officers for assistance. When the police officers began approaching the appellant, he ran away from</p>		
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			<p>them. A bystander stepped into his path to assist the pursuing police officers. The appellant pulled out a pair of scissors and threatened the bystander. The bystander tackled the appellant to the ground and, in doing so, received minor injuries to his face and arms from the scissors.</p> <p>21 After his arrest the appellant verbally threatened the bystander, saying that he knew where the bystander worked and that he would kill him and 'have the bikies come after him' (626, 627, 628 and 629 of 2013).</p> <p>22 A search of the appellant's belongings revealed that he was carrying a smoking implement with detectable traces of tetrahydrocannabinol on it (624 of 2013). The appellant was, at the time, on bail. His presence at the shopping centre was in breach of the conditions of his bail (625 of 2013).</p> <p>23 The search of the appellant also revealed that he was carrying keys and a lanyard which had been stolen during a burglary on 5 November 2013 (318 of 2014).</p>		
1.	<p><i>DC v The State of Western Australia</i></p> <p>[2014] WASCA 121</p> <p>Delivered 13/06/2014</p>	<p>17 yrs 10 mths at time offending. 18 yrs 7 mths at time sentencing.</p> <p>Convicted after PG.</p> <p>No prior convictions.</p>	<p>1 x Attempt to unlawfully kill. 1 x Stealing.</p> <p>The appellant, another juvenile (JTR) and the victim were acquaintances. Each was aged 17 yrs and had been at a party. The appellant had drunk a substantial quantity of alcohol and was intoxicated. He had also used methyl and LSD. Early the next morning the three went to the rear</p>	<p>7 yrs 6 mths imp. 3 mths imp (conc).</p> <p>TES 7 yrs 6 mths imp.</p> <p>EFP.</p> <p>Genuinely remorseful.</p>	<p>Allowed.</p> <p>Re sentenced to 6 yrs imp.</p> <p>EFP.</p> <p>At [70] The length of the sentence imposed upon the appellant was of a severity</p>

		<p>Born and raised in New Zealand; moved to Australia in 2011.</p> <p>Abandoned by his mother at young age; raised by his father and paternal grandparents; lived with his mother for a year at 13 yrs; suffered physical abused; returned to live with his father.</p> <p>Suffered more abuse at 14 yrs old from another male.</p> <p>Left home in February 2013; experienced homelessness.</p> <p>Regular user of cannabis since 13 yrs; recent abuse of alcohol and hallucinogens.</p> <p>Unemployed.</p> <p>Suffers adjustment disorder.</p> <p>Remanded in custody for 294 days; half spent in extremely difficult and extremely harsh conditions at an adult prison.</p> <p>Will serve sentence in adult prison.</p>	<p>of an abandoned house. The appellant sat on a couch with JTR while the victim fell asleep on a couch opposite them.</p> <p>At some stage, JTR fell asleep. At about 5:00am, he woke up and had a conversation with the appellant. The appellant told JTR that he was going to kill the victim. JTR tried to dissuade the appellant.</p> <p>The appellant then told JTR that they should both leave the shed for some fresh air, which they did. A short time later, the appellant went back into the shed himself. The victim was still asleep and had his back to the appellant. The appellant, armed with a fold-out knife with a blade approximately 3 inches long, plunged into the victim's front chest cavity. The appellant struck the victim with the knife at least another three times, arousing the victim from his sleep who pleaded with him to stop.</p> <p>The appellant left the shed and picked up a brick. He returned to the doorway and threw it at the victim's head. The brick missed. The appellant then left the shed and said to JTR, 'There's been a change of plans. [The victim] is still alive and I'm going to let him live'. The appellant went back into the shed and got the victim to call an ambulance. He told the victim not to tell the police that he had stabbed him and to say that a homeless man had caused the injuries.</p> <p>On leaving the shed, the appellant stole the victim's pants, backpack and laptop computer.</p>	<p>President stated the offence was "in the top end range of seriousness for offences of its kind".</p> <p>President characterised the offending as 'vicious, repetitive, callous and remorseless'.</p>	<p>one would have expected to have been imposed upon an adult.</p>
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Office of the Director of Public Prosecutions