

Property Laundering

s 563A 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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>Phan v The State of Western Australia</i></p> <p>[2019] WASCA 163</p> <p>Delivered 21/10/2019</p>	<p>37 yrs at time offending.</p> <p>Convicted after PG (25% discount).</p> <p>Prior NSW criminal history; prior sentence of imp.</p> <p>Born Vietnam; impoverished background; limited education.</p> <p>Migrated to Australia in 2000.</p> <p>Some employment history.</p> <p>Partner; stepfather to two children.</p> <p>Deported on release from prison in NSW; returned to Australia illegally under a false passport.</p>	<p>Ct 1: Property laundering. Ct 2: Poss unlawfully obtained property. Ct 3: Fail to obey data access order.</p> <p>Phan and his co-accused flew to Perth from Melbourne. Over a four-day period Phan made seventy-two cash deposits, totalling \$431,825, into the bank accounts of persons unknown to him.</p> <p>The deposits were made as part of the 'cuckoo smurfing' method and he did so knowing the money was the proceeds of an offence.</p> <p>All except one of the deposits were under \$10,000. Amounts under \$10,000 not requiring the bank to report them.</p> <p>On the final occasion, Phan and his co-accused attended a bank and made numerous structured cash deposits into third party bank accounts. Their suspicious behaviour alerted bank staff who contacted the police. Police attended and the two were arrested.</p> <p>In Phan's bag, wallet and hire car police located \$326,428.30 in cash.</p> <p>Phan refused to provide the access codes for two mobile phones also found in his possession. He failed to comply with a data access order for access to the two devices.</p>	<p>Ct 1: 4 yrs 2 mths imp. Ct 2: 1 yr 4 mths imp (cum). Ct 3: 9 mths (conc).</p> <p>TES 5 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant was not at the top of the syndicate; however he was trusted with well over \$1.5 million; he was to be paid; he knew the money was the profits of criminal enterprise and he was assisting in moving it overseas.</p> <p>The sentencing judge found the appellant's offending while in Australia illegally and operating under a false name an agg feature of the offending.</p> <p>The sentencing judge found the seriousness of the appellant's offending was such that a sentence of imp was the only appropriate sentencing option.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle and length of sentence (ct 1).</p> <p>At [35] The ... case represents a serious example of a property laundering offence. ... He was trusted with well over \$1.5 million in cash. While ... not given any particular authority, he was well aware that he was part of a larger organised operation, and that the money was the proceeds of criminal activity. The offence cannot be regarded as a result of naiveté, and was not an isolated lapse of judgment.</p> <p>At [41] ... we are not satisfied that the sentence imposed for ct 1 was unreasonable or plainly unjust. ...</p> <p>At [42] ... Some degree of accumulation of the individual sentences was</p>

			<p>The co-accused was found in possession of \$42,418.90 in cash. He and Phan were jointly charged with possession of the cash located in the car, being \$292,050.05.</p> <p>Investigations revealed that a number of cash deposits were made by other co-accused during that time. In total, over the four-day period, Phan and others made 254 deposits totalling \$1,278,420.</p>		<p>clearly appropriate in this case, particularly having regard to the refusal to comply with the data access order.</p> <p>At [44] ... the sentencing judge did not impose a cum sentence for the offence of failing to comply with a data access order. ... that offence does add to the overall criminality involved in all of the offences, and remains relevant when considering whether the TES is disproportionate to that overall criminality. ...</p> <p>At [45] The offending the subject of ct 2 was also serious, involving a very significant amount of cash.</p>
2.	<p><i>Tan v The State of Western Australia</i></p> <p>[2019] WASCA 112</p> <p>Delivered 16/08/2019</p>	<p><u>Chee Tong</u> 24 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>No prior criminal history.</p> <p>Born and raised in Malaysia.</p>	<p>1 x Property laundering.</p> <p>The appellants, Chee Tong and Chee Siang, are cousins.</p> <p>Chee Tong came to Australia to work for his brother, assisting him to get money out of Australia to China.</p> <p>Chee Tong collected \$1.5 million in cash, the proceeds of an unknown offence or offences. He</p>	<p><u>Chee Tong</u> 5 yrs 9 mths imp. EFP.</p> <p><u>Chee Siang</u> 4 yrs 6 mths imp. EFP.</p> <p>The sentencing judge found the amount of money involved was significant;</p>	<p>Dismissed.</p> <p><u>Chee Tong</u> Appeal concerned length of sentence.</p> <p><u>Chee Siang</u> Appeal concerned length of sentence and error in finding (failing to find he was not essential to the</p>

		<p>University educated.</p> <p><u>Chee Siang</u> 24 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>No prior criminal history.</p> <p>Educated; diploma Penang college.</p> <p>Good work history.</p> <p>Good health.</p>	<p>and Chee Siang then delivered \$1.347 million to two co-offenders.</p> <p>The two co-accused were later found in possession of \$1,332,110 in cash.</p> <p>Chee Siang delivered a further \$150,000 to a Mr A.</p>	<p>each of the appellant's played a significant and active role in the laundering of the money; however Chee Siang's role was significantly less than Chee Tong's role.</p> <p>There was no evidence the appellants had any involvement in, or specific knowledge of, the offence or offences by which the \$1.5 million in cash was obtained.</p> <p>Both appellants demonstrated acceptance of responsibility; co-operative and remorseful.</p>	<p>success of the enterprise).</p> <p>At [51] ... taking into account ... Chee Tong's place in the hierarchy in the commission of this offence, his sentence is high. ... However, we have not been persuaded that the sentence is so high as to reveal implied error. Serious features included ... The very substantial quantity of cash involved ...; His commercial motive for the offence. ... While he followed the instructions of his brother ... [his] role, and what he did, was nevertheless significant. ... He was the person in charge of the process of moving the cash ... and was entrusted to take possession of it to effect that purpose. ... There was a degree of sophistication in the operation in which he was engaged, ...</p> <p>At [64] ... The judge was not required to make, ... a finding as to whether Chee Siang's role was essential.</p>
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1.	<p><i>Wong v The State of Western Australia</i></p> <p>[2019] WASCA 8</p> <p>Delivered 16/01/2019</p>	<p><u>Chiu</u> 25 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>No prior criminal history.</p> <p>Born Hong Kong; limited English.</p> <p>Positive and normal</p>	<p><u>Chiu</u> Cts 1 & 2: Property laundering. Ct 3: Poss methyl wiss 3.855 kg between 75% - 79% purity. Ct 4: Poss methyl wiss 7.606 kg between 5% - 81% purity. Ct 5: Poss unlawfully obtained property (\$400,938.50).</p> <p><u>Chuen</u> Ct 4: Poss methyl wiss Ct 5: Poss unlawfully obtained property</p>	<p><u>Chiu</u> Ct 1: 6 mths imp (cum). Ct 2: 12 mths imp (conc). Ct 3: 14 yrs imp (cum). Ct 4: 2 yrs imp (cum). Ct 5: 2 yrs imp (conc).</p> <p>TES 16 yrs 6 mths imp. EFP.</p> <p><u>Chuen</u> Ct 4: 13 yrs imp (conc).</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence (ct 3); totality principle and parity principle.</p> <p><u>Chiu</u> Re-sentenced to:</p> <p>Ct 1: 12 mths imp (cum). Ct 2: 12 mths imp (conc).</p>

		<p>upbringing; close family.</p> <p>Completed equivalent of yr 10 in Hong Kong.</p> <p>Married; no children.</p> <p>Employed in Hong Kong.</p> <p>Sound mental and physical health; no history of illicit substance use; rarely consumes alcohol.</p> <p><u>Chuen</u> 26 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>No prior criminal history.</p> <p>Born Hong Kong; limited English.</p> <p>Positive and normal upbringing; close family.</p> <p>Completed equivalent of yr 10 in Hong Kong.</p> <p>No significant relationships; no children.</p>	<p>(\$400,938.50).</p> <p>The appellants Chiu and Chuen are brothers.</p> <p>Chiu was recruited in Hong Kong to come to Australia, to undertake 'errands' involving the sale and supply of illegal drugs. He was paid for the tasks he performed and provided with accommodation and food. In addition, he expected payment of a large sum of money on his return to Hong Kong.</p> <p>Chuen followed his brother to Australia some months later, knowing Chiu was involved in illegal activities.</p> <p><u>Ct 1</u> On instruction from his Hong Kong boss Chiu attended an arranged meeting place, where he delivered a bag containing \$100,000 in cash for the purchase of half a kg of drugs.</p> <p><u>Ct 2</u> On another occasion Chiu was instructed by his Hong Kong boss to deliver money. He was picked up and driven to an address, where he handed \$100,000 in cash to a male in a car.</p> <p><u>Ct 3</u> On another occasion, on instructions from his boss, Chiu attended a meeting point and collected a quantity of methyl from the boot of a motor vehicle.</p> <p>He was arrested before he could deliver the</p>	<p>Ct 5: 2 yrs imp (conc).</p> <p>TES 13 yrs imp. EFP.</p> <p><u>Chiu</u> The sentencing judge found the appellant was not at the very top of the drug hierarchy; however he was towards the top end of the chain of distribution.</p> <p>Responsibility for his offending; lack of insight into seriousness of his offending.</p> <p><u>Chuen</u> The sentencing judge found the appellant was 'acting as a caretaker of the drugs and the money' and although not the mastermind behind the offending his role was important; but different to, and less culpable than that of his brother.</p> <p>The sentencing judge found the appellant's offending was motivated by financial gain.</p>	<p>Ct 3: 11 yrs imp (conc). Ct 4: 12 yrs imp (cum). Ct 5: 2 yrs imp (cum).</p> <p>TES 15 yrs imp. EFP.</p> <p><u>Chuen</u> Re-sentenced to:</p> <p>Ct 4: 10 yrs imp. Ct 5: 12 mths imp (cum).</p> <p>TES 11 yrs imp. EFP.</p> <p>At [77] ... the offending in ct 3 was undoubtedly serious. However, the appellant's role was to take the drugs from the boot of the car, transport them to his house and keep them there until he received instructions from his boss. He did not own the drugs and was not in control of the operation.</p> <p>At [80] When all of the relevant factors and circumstances are taken into account, ... we have come to the conclusion that the sentence of 14 yrs' imp</p>
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