

Aggravated Burglary – Home Invasions

s 401 *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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
SIO	suspended imprisonment order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
14.	<p><i>Jolly v The State of Western Australia</i></p> <p>[2017] WASCA 181</p> <p>Delivered 12/10/2017</p>	<p>52 yrs at time sentencing.</p> <p>Convicted after very late PG (10% discount).</p> <p>No prior criminal history.</p> <p>Steady record of employment.</p> <p>Divorced; three children to victim E</p> <p>Substance abuse history; cannabis and methyl but mostly alcohol.</p> <p>Episodes of depression; no history of a major mental illness.</p>	<p>Cts 1 & 3: Agg burg. Ct 2: Wilful damage.</p> <p>The victim E was Jolly's ex-wife. E was now in a relationship with the victim SC, but they did not reside together.</p> <p>Jolly, carrying a knife, went to E's house and entered the home through an unlocked door. Jolly's 18-yr-old daughter, who resided with E, was the only person home at the time.</p> <p>Inside the home Jolly picked up an axe. In E's bedroom he used the knife to stab the mattress and cut up the sheets. Using the axe he caused substantial damage to property. His daughter tried unsuccessfully to stop him, before fleeing the house in terror.</p> <p>The home was uninhabitable, so E and the children went to stay at SC's home.</p> <p>The following night Jolly went to SC's home, carrying the same axe. Unannounced he entered the home. He confronted E and SC in a bedroom. Jolly's 14-yr-old son tried to stop him. Jolly said 'You're dead, you cunt', before punching E in the side of the face. When SC grabbed hold of the axe Jolly punched him in the chin. He eventually let go of the axe and ran off.</p> <p>Jolly surrendered himself to police some days later.</p> <p>The victims suffered relatively minor injuries, and,</p>	<p>Ct 1: 12 mths imp (cum) Ct 2: No penalty. Ct 3: 4 yrs imp (cum).</p> <p>TES 5 yrs imp. EFP.</p> <p>The sentencing judge found the appellant's offending with regard to ct 3 was not a one-off aberration having regard to the commission of ct 1 and it was an escalation of his violent conduct.</p> <p>The sentencing judge decided that accumulation of the individual sentences was necessary 'in order to mark the very serious nature of [the] overall offending and to reflect the important sentencing considerations of personal and general deterrence', but reduced the terms imposed on each ct to accommodate the totality principle.</p>	<p>Dismissed.</p> <p>Appellant challenged finding of late plea and plea discount. Appeal concerned totality principle and length of sentence in respect of ct 3.</p> <p>At [33] The PGs were not entered at the first reasonable opportunity. Accordingly, the appellant could not lay any claim to a 25% reduction pursuant to s 9AA of the SA. The pleas were entered very late.</p> <p>At [36] ... a sentencing judge is not required by s 9AA of the SA to expressly state the head sentence. His Honour's failure to state the head sentence cannot, without more, demonstrate a failure to give the stated s 9AA reduction.</p> <p>At [41] The circumstances of ct 3 were particularly serious. Having already committed a violent home</p>

			along with the children, psychological trauma.	Participated in behavioural change programme on bail; positive improvements noted; sentencing judge expressed difficulty in accepting the finding the appellant 'displayed good insight' into his offending.	burglary upon E's house the day before, the appellant once again armed himself with an axe, entered SC's house at night, threatened SC and then assaulted him and E. He did so in the presence of two of his children ... At [48] We do not regard the appellant's offending ... as constituting a continuing episode of offending. The offences were separate in time and place. Each involved separate and deliberate decisions by the appellant to enter houses occupied by his ex-wife carrying weapons and behaving in a threatening manner. ... To impose wholly or partly conc sentences for cts 1 and 3 would not have been a proper reflection of the appellant's overall criminality.
13.	<i>Atkinson v The State of Western Australia</i> [2017] WASCA 154	45 yrs at time sentencing. 25 and 27 yrs at time offending. Convicted after early PG (25% discount).	Cts 1 & 5: Agg burglary. Cts 2, 6-8: Agg sex pen. Cts 3 & 9: Dep lib. Ct 4: Att agg robbery. The offences arise from two separate incidents.	Ct 1: 7 yrs 6 mths imp (head) Ct 2: 7 yrs imp (conc). Ct 3: 2 yrs imp (conc). Ct 4: 2 yrs imp (conc). Ct 5: 7 yrs 6 mths imp	Allowed. Appeal concerned length of sentence, totality, failure to consider remorse and discount for voluntary

<p>Delivered 17/08/2017</p>	<p>Minor criminal history.</p> <p>Dysfunctional family; parents separated when young adult; eldest sister epileptic; younger brother involved in heavy drug use; mother imprisoned for fraud.</p> <p>Strained relationship with mother for many yrs, now close; maintains some contact with father.</p> <p>Frequently truant at school; expelled in yr 10.</p> <p>Single; no children.</p> <p>Worked many yrs mining industry; currently unemployed.</p> <p>Long history of alcohol and illicit drug use.</p> <p>Diagnosed bipolar disorder; history of non-compliance with medication.</p>	<p>One in 1997 and the other in 1999.</p> <p><u>Cts 1-4 (1997)</u></p> <p>The victim, N, was 18 yrs old and home alone. He forced his way into her home after knocking on her door wearing a balaclava on his face.</p> <p>Atkinson held a knife to N's throat, tied her up and covered her face before sexually penetrating her and demanding money, which she said she did not have.</p> <p>He warned her not to talk, scream or move before leaving the premises.</p> <p><u>Cts 5-9 (1999)</u></p> <p>The victim, E, was 19 yrs old and home alone.</p> <p>Atkinson let himself into her home and covered her face, before tying her up and repeatedly sexually penetrating her.</p> <p>He told her not to phone anyone because he would be watching before leaving the premises.</p> <p>In 2016 Atkinson's DNA was matched to the 1999 offences. During a second police interview he voluntarily disclosed the 1997 offences to police.</p>	<p>(cum ct 1). Ct 6: 7 yrs imp (conc). Ct 7: 3 yrs imp (conc). Ct 8: 7 yrs imp (conc). Ct 9: 2 yrs imp (conc).</p> <p>TES 15 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge noted the offences only came to light following a DNA match to the 1999 offences and it was to the appellant's credit that he made some admissions with respect to the 1997 offences.</p> <p>The sentencing judge found the appellant's cooperation indicated some degree of contrition and acceptance of culpability and that he understood the issues likely to have been confronted by the two victims. He took a neutral stance on the appellant's remorse as the psychologist and psychiatrist had</p>	<p>disclosure of guilt on cts 1-4.</p> <p>Re-sentenced:</p> <p>Ct 1: 5 yrs 6 mths imp. Ct 2: 5 yrs 2 mths imp. Ct 3: 1 yr 6 mths imp. Ct 4: 1 yr 6 mths imp.</p> <p>All other sentences and orders for cum, conc and EFP otherwise unaffected.</p> <p>TES 13 yrs imp.</p> <p>At [61] The offences were extremely serious offences of their type. They involved planning and the use of force to overwhelm young and vulnerable victims at night in their homes. Physical restraints and threats were used, including the use of weapons, in order to obtain the victim's compliance. The offences caused great psychological trauma to the victims and have had long-lasting effects.</p> <p>At [64] ... the appellant's disclosure of the 1997</p>
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				<p>differing views as to whether the appellant had victim empathy and was genuinely remorseful.</p> <p>Moderate to low-risk of reoffending.</p>	<p>offending was significant because it was a disclosure to the authorities of otherwise unknown offences. ... It might be suggested that the appellant made the disclosure because he feared ... other undisclosed DNA evidence that would implicate him. However, there was no suggestion of that ... and in fact it was not the case. Whatever the appellant's motivations, and he said that he was motivated by remorse, the fact is that but for his disclosure there is no reason to think that the appellant would have been charged with the 1997 offences. In these circumstances his disclosure was a significant matter to the credit of the appellant to be taken into account in sentencing on cts 1 to 4.</p> <p>At [65] ... the individual sentences for cts 1 to 4 were the same as those imposed for the similar offending in cts 5 to 9.</p>
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					This cannot be accounted for by any significant difference in the offending. The two groups of offences were of a comparable level of seriousness. Indeed, the respondent accepted before this court that, if anything, the second group of offences were more serious.
12.	<p><i>Ashley v The State of Western Australia</i></p> <p>[2017] WASCA 131</p> <p>Delivered 11/07/2017</p>	<p>26 yrs at time offending.</p> <p>Convicted after early PG (20% discount).</p> <p>No relevant prior criminal history.</p> <p>Parents separated aged 9.</p> <p>Completing a university degree at time of offending.</p> <p>Employed.</p> <p>Health issues at time of sentencing resulting from injuries received; will require significant degree of assistance and life long care.</p> <p>Suffering depression time of offending.</p>	<p>Ct 1: Agg burg.</p> <p>Ct 2: Being armed to cause fear.</p> <p>Cts 3-7: Detained another with intent to compel the doing of an act.</p> <p>Ct 8: Agg assault.</p> <p>Ashley was in a relationship with a woman. Some months after the relationship ended he spoke with a former colleague, now a police constable, about the police response to hostage situations. On the same day he attended various retail outlets and purchased numerous items for the purpose of his plan.</p> <p>Two weeks later Ashley went to the home of his ex-girlfriend and spoke with one of the occupants. The house was for sale and he purported to be a potential buyer and asked to see inside the house, but this was refused.</p> <p>Later that evening Ashley returned to the house armed with weapons, including a replica gun and a baton. When his ex-girlfriend answered the door he pointed the pistol at her and forced his way in, striking her to the shoulder and knocking her to the</p>	<p>Ct 1: 3 yrs imp.</p> <p>Ct 2: 12 mths imp (conc).</p> <p>Cts 3-7: 3 yrs imp each ct (conc).</p> <p>Ct 8: 12 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge accepted it was not the appellant's intention to cause physical harm to the hostages; rather, his intention that day was to end his life by 'cop suicide'.</p> <p>The sentencing judge found the offending extremely serious;</p>	<p>Allowed.</p> <p>Appeal concerned totality.</p> <p>Re-sentenced on ct 3 to 18 mths imp (cum upon ct 1).</p> <p>All other sentences and orders unchanged.</p> <p>TES 4 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [50] ... even allowing for the fact that the appellant's purpose was to bring about his own death, if his injuries were put to one side, the TES of 6 yrs; imp imposed on the appellant would have been well within the available sentencing range and an</p>

			<p>ground.</p> <p>He ordered his ex-girlfriend and the four other occupants of the home into a room and to lie on the floor. When his ex-girlfriend continued to defy his instructions he threatened her, before striking her twice to the elbow with the baton, causing pain and temporary loss of feeling in her hand (ct 8).</p> <p>Ashley bound his victims' hands and feet with flexi cuffs and covered two of the victims' mouths with tape he had brought with him. He turned off their mobile phones.</p> <p>Ashley called 000 and demanded to speak with a police negotiator, threatening to shoot someone if his demands were not met.</p> <p>For three hours Ashley detained the victims', eventually exiting the house with the replica pistol. When he ignored police commands to drop his gun he was shot twice, resulting in serious permanent injury, including paraplegia.</p>	<p>premeditated and accompanied by a considerable degree of planning.</p> <p>The sentencing judge found the appellant's behaviour threatening and the victims vulnerable and extremely intimidated by his actions. The victims were entitled to feel safe in their own home at night.</p> <p>Remorseful; engaged in steps towards rehabilitation; physical disabilities make him a low risk of reoffending.</p>	<p>appropriate reflection of the criminality of his offences as a whole ...</p> <p>At [56] ... in the circumstances of this case, we think the injuries suffered by the appellant were a mitigating factor attracting very significant weight.... The appellant's injuries significantly moderated the importance of punishment, retribution, and personal deterrence.</p> <p>At [59] ... the total sentence imposed exceeded the bounds of sentences available upon a proper exercise of the sentencing discretion in the circumstances of this case.</p>
11.	<p><i>McIntyre v The State of Western Australia</i></p> <p>[2016] WASCA 150</p> <p>Delivered 26/08/2016</p>	<p><u>Appellant H</u> 54 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p> <p>Good employment history and offending out of character.</p>	<p>Ct 1: Agg burg. Ct 2: AOBH.</p> <p>The appellants are father and son. Both attended the victim's house to demand payment of a \$700 debt or the return of a trail bike.</p> <p>M was armed with a wooden axe and H with a tyre iron.</p> <p>The appellants arrived at the front of the victim's house. When told to leave M smashed a window at</p>	<p><u>Appellant H</u> Ct 1: 2 yrs imp. Ct 2: No penalty.</p> <p><u>Appellant M</u> Ct 1: 18 mths imp. Ct 2: No penalty.</p> <p>The sentencing judge accepted that the appellants' plan was to get either the money or</p>	<p>Dismissed.</p> <p>Appellants challenged type and length of sentence.</p> <p>At [17] It has been recognised that agg burgs are prevalent and the sentencing objectives of general deterrence and denunciation are of particular importance in</p>

		<p>No substance abuse issues.</p> <p>Mother terminally ill.</p> <p><u>Appellant M</u> 20 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p> <p>Good employment history and offending out of character.</p> <p>No substance abuse issues.</p>	<p>the rear of the house with the axe handle. H used the tyre iron to smash a window at the front of the house.</p> <p>Both appellants entered the house through the broken front window and demanded the victim give them the trail bike or payment for the bike.</p> <p>H struck the victim to the forehead with the tyre iron. M then pinned down the victim with the axe handle whilst H punched the victim.</p> <p>The victim suffered a laceration near his eye that required two stiches, two broken ribs and abrasions and bruising to various parts of his body. He also suffered panic attacks and lost his job because he was unable to leave the house.</p>	<p>the trail bike, rather than “simply to go there to give him a flogging”.</p> <p>The sentencing judge considered the seriousness of the offence and the need for general deterrence precluded the suspension of the term of imp.</p> <p>H demonstrated little or no remorse.</p> <p>M was remorseful and had empathy for his victim; ashamed by what he had done, offending encouraged by his father.</p>	<p>the exercise of the sentencing discretion.</p> <p>At [19]... it was open to the sentencing judge to conclude that the seriousness of the agg burg offence and considerations of general deterrence outweighed the mitigating factors and made it inappropriate to suspend or conditionally suspend the sentences of imp.</p>
10.	<p><i>Gowan v The State of Western Australia</i></p> <p>[2016] WASCA 98</p> <p>Delivered 15/06/2016</p>	<p><u>Gowan</u> 33 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No criminal history.</p> <p>Good employment record.</p> <p>History of drug use.</p> <p><u>Burnside</u> 30 yrs at time offending.</p>	<p>Ct 1: Agg burg. Ct 2: GBH. Ct 3: Criminal damage. Ct 4: Agg burg. Ct 5: GBH.</p> <p><u>Cts 1 -3</u> The victim owed Gowan money for drugs.</p> <p>The appellants forcibly entered the victim’s home. Gowan was armed with an axe handle and Burnside with a wheelbarrow handle. They repeatedly struck the victim about the head, face, upper arms and</p>	<p>Ct 1: 4 yrs imp. Ct 2: 2 yrs 6 mths imp (conc). Ct 3: 12 mths imp (cum). Ct 4: 4 yrs imp (cum). Ct 5: 2 yrs imp (conc).</p> <p>TES 9 yrs imp each.</p> <p>The sentencing judge characterised the offences as ‘most</p>	<p>Dismissed.</p> <p>Appeals concerned totality.</p> <p>At [52] ... the TES imposed by the sentencing judge were high... the appellants' personal circumstances were unusually favourable for this type of offending. However, I do not consider that the sentences were</p>

		<p>Convicted after trial.</p> <p>Minor prior criminal history.</p> <p>Father of twin daughters and two step-children from a long standing relationship.</p> <p>Good employment record.</p>	<p>legs. Burnside fractured the victim's leg and damaged some of his property.</p> <p><u>Cts 4-5</u> The appellants then went to an address in search of a person whom they did not know, and who they believed was associated with the first victim.</p> <p>Despite being told by the second victim that they had the wrong house, the appellants forced their way in. They assaulted the second victim by repeatedly punching him and striking him with wooden implements. The victim suffered an injury to the left eye that required surgery.</p>	<p>serious', noting that they were planned and involved persistent assaults upon the victims and the use of weapons.</p> <p>The sentencing judge characterised the injuries as 'not as serious as frequently encountered' for GBH.</p> <p>The sentencing judge found the injuries to be inflicted by 'deliberate repeated violence with use of weapons in sustained violent attacks upon the victims'. The attacks being out of revenge and a demand for money.</p>	<p>unreasonable or plainly unjust.</p> <p>At [53] ... the appellants' offending was very serious. It involved two home invasions in company that were planned, undertaken at night and were for the purpose of enforcing a debt. The appellants were armed with weapons. They repeatedly assaulted their victims and the violence involved was significant and gratuitous. They persisted in attacking the victim of cts 4 and 5 even after they must have realised he was not the person that they had been seeking.</p> <p>At [54] The offences that constituted cts 1-3 occurred at a different time and place to the offences alleged by cts 4 and 5. Although the home invasions occurred on the same night, they did not form part of a single criminal episode... it was appropriate to accumulate</p>
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					the sentences for each home invasion and for the criminal damage offence. The home invasion offences were separate offences and the criminal damage offence involved separate acts and damage of a different kind to the assaults that occurred during the first home invasion.
9.	<p><i>Cameron v The State of Western Australia</i></p> <p>[2016] WASCA 92</p> <p>Delivered 08/06/2016</p>	<p>19 yrs at time offending. 20 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount for agg burg and steal motor vehicle offences).</p> <p>Prior criminal history, including multiple offences of stealing; agg common assault; agg burg and breach of bail.</p> <p>Very turbulent, disturbed and difficult childhood. Discipline issues and violent from age 11. History of fire setting and cruelty to animals.</p> <p>Diagnosed with ADHD as a child.</p>	<p>Ct 1: Agg burg (dwelling). Ct 2: Murder (victim 1). Ct 3: Murder (victim 2). Ct 4: Steal motor vehicle.</p> <p>Victim 1 is a female aged 26 yrs; victim 2 is victim 1's mother aged 68 yrs.</p> <p>After seeing victim 2 enter her home the appellant armed himself with a hammer and walked into the house through an open rear door.</p> <p>The appellant went to the bedroom of victim 1, who was naked having just showered. The appellant struck her on the head twice with the hammer.</p> <p>Knowing another person was also in the house the appellant then went to the main bedroom. He struck victim 2 on the head with the hammer, covered her head with a pair of shorts and pulled her T-shirt over her shoulders to expose her bare chest. She was otherwise naked.</p>	<p>Ct 1: 15 yrs imp (conc). Cts 2 and 3: Life imp on each ct (conc). Min non-parole period of 32 yrs on each ct. Ct 4: 5 yrs 3 mths imp (conc).</p> <p>The sentencing judge found the offences were "of the most serious nature and of the worst kind in their categories" and there did not appear to be any clear motive.</p>	<p>Dismissed.</p> <p>Appellant challenged offence characterization (worst category) and length of min non-parole period.</p> <p>At [79] ... the murders were within the range of the 'worst category' of cases of murder.</p> <p>At [80] ... the offence of stealing a motor vehicle was especially egregious in that ... it involved 'stealing from a house where two occupants [had] been killed without any attempt to see to their welfare' ... and, further, the appellant stole the motor vehicle for the purpose of making good</p>

		<p>Long standing drug abuse habit, resulting in mental health issues.</p> <p>Never worked.</p> <p>Three children from three relationships.</p> <p>History of domestic violence and assault.</p>	<p>The appellant returned to victim 1, put on a condom and had sexual intercourse with her until he ejaculated. It is unknown whether the victim was alive or dead, but she was unconscious.</p> <p>At some point he stabbed victim 2 in the chest with a pair of scissors. He also stabbed victim 1 six times in the chest and inflicted penetrating wounds to her throat.</p> <p>The appellant stole victim 1's car and drove it to a number of places around the metropolitan area, eventually parking it in a street, where it was located by police the next day.</p>	<p>his escape and having committed murders within the 'worst category' of cases of that kind.</p> <p>At [123]–[177] Discussion of comparative cases.</p> <p>At [183] ... the extraordinary degree of objective seriousness of the appellant's offending, and the need to protect public safety as a consequence of his significant risk of violent reoffending, required that the mitigating effect of his youth and traumatic childhood be reduced substantially in determining the sentencing outcome.</p> <p>At [187] The objective seriousness of the appellant's offending, and the important sentencing considerations of condign punishment [for the random, intentional and unprovoked killing of two vulnerable people, during an agg home burglary, by brutal and sustained violence], the protection of</p>
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					the public and personal and general deterrence, precluded the imposition of a lesser min non-parole period ... despite the appellant's youth, early PG and traumatic childhood.
8.	<p><i>Stack v The State of Western Australia</i></p> <p>[2016] WASCA 89</p> <p>Delivered 03/06/2016</p>	<p>27 yrs at time offending.</p> <p>Convicted after PG (15% discount).</p> <p>Significant criminal history, including prior offences of agg burg.</p> <p>Parents heavy drug users.</p> <p>Serious drug user from a young age.</p> <p>Under the influence of drugs at time offending.</p> <p>10-year-old son cared for by her elderly father.</p> <p><u>Co-offender Taylor</u> Convicted after PG (10% discount) to steal motor vehicle and agg burg. Sentenced to 3 yrs 4 mths imp.</p>	<p>1 x Steal motor vehicle. 1 x Agg burg.</p> <p>Stack and two male co-offenders (Taylor and the other unidentified) used a stolen car to drive to a townhouse. The unidentified co-offender was armed with a pistol.</p> <p>The two male co-offenders forced entry by smashing through the front door. Stack entered a short time later.</p> <p>Three tenants were inside the townhouse at the time. One escaped. Two locked themselves in a bedroom. The unidentified co-offender smashed the lock and doorhandle to gain entry. Inside he brandished the pistol and demanded the male victim's wallet, striking him five times to the forehead with the pistol. Stack was present when these demands were made.</p> <p>The female victim hid in a wardrobe until the unidentified co-offender yelled at her to get out.</p> <p>The unidentified co-offender found a bankcard and struck the male victim on the back with the pistol when he was unable to provide the PIN on demand.</p>	<p>Steal motor vehicle: 6 mths imp (conc). Agg burg: 4 yrs imp (conc).</p> <p>Conc with sentence of 1 yr 9 mths then serving.</p> <p>TES 4 yrs imp.</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged length of sentence; totality principle and parity.</p> <p>At [12] Taylor was 21 at the time of the agg burg... Taylor did not know or intend that violence would be used to steal from the victims; was not present when the assaults occurred; and was not the instigator of the violence... the appellant and the unidentified co-offender were in control when the offence was committed... the appellant's criminal record was significantly more serious than Taylor's.</p> <p>At [14] The circumstances of the appellant's agg burg offence place it at the serious end of the scale. Having regard to the nature</p>

			<p>Stack and both co-offenders searched the house and stole a bankcard, wallet, camera and mobile phone.</p> <p>As they were leaving police arrived. Stack discarded her stolen items as she ran down the driveway.</p>		<p>and extent of the appellant's record of offending, there is a need for personal as well as general deterrence in her sentencing.</p>
7.	<p><i>Dos Santos v The State of Western Australia</i></p> <p>[2016] WASCA 46</p> <p>Delivered 16/03/2016</p>	<p>34 yrs at time offence. 36 yrs at time sentence.</p> <p>Convicted after trial.</p> <p>Prior criminal history; traffic and minor criminal offences, mostly for public disorder. No previous sentences of imp.</p> <p>Left school after yr 10.</p> <p>Good employment record and highly regarded in his field. Unemployed at time of offence.</p> <p>Two daughters from a previous marriage; 2 yr old son (MJ) with victim.</p> <p>Occasional heavy drinker; no history of substance abuse.</p>	<p>Ct 1: Agg burg, commit offence (Agg AOBH), threats, knew other person in place, habitation. Ct 2: Agg AOBH.</p> <p>The victim, EDS, is Dos Santos' former partner.</p> <p>In a jealous rage he broke into EDS' home. She and her children (B and MJ) were home at the time.</p> <p>Dos Santos confronted and verbally abused EDS as she was holding MJ. He struck her three times in the head with a closed fist and continued to hit her as she tried to escape.</p> <p>B tried to pull Dos Santos away from his mother and begged him to leave her alone.</p> <p>When she fell to the ground Dos Santos grabbed EDS by the hair and banged her head into the floor and threatened to kill her.</p> <p>EDS suffered multiple bruises over her face, head, forearms and down her back.</p>	<p>Ct 1: 5 yrs 6 mths imp. (conc). Ct 2: 3 yrs 6 mths imp. (conc).</p> <p>TES 5 yrs 6 ths imp. EFP</p> <p>The sentencing judge characterised the offending as being 'a very serious example' of its type.</p> <p>The attack was prolonged, sustained and repeated and had police not arrived when they did, the consequences would have been tragic.</p> <p>The offending represented a significant escalation of violence not uncharacteristic of the appellant.</p> <p>Lack of remorse.</p>	<p>Dismissed.</p> <p>Appellant challenged length of sentence for ct 1.</p> <p>At [41] ... The appellant's criminality is particularly elevated by the extreme vulnerability of EDS. Not only was the appellant physically bigger than her; she was unable to protect herself because she was attempting to shield MJ and B from the appellant.</p>

<p>6.</p>	<p><i>McKenzie v The State of Western Australia</i></p> <p>[2015] WASCA 163</p> <p>Delivered 24/08/2015</p>	<p>20 yrs at time offending. 22 yrs at time sentencing.</p> <p>Convicted after PG of cts 1, 2 and 6. Convicted after trial of cts 3, 4 and 5.</p> <p>Criminal history, including convictions for stealing, criminal damage, trespass, agg burg, threats, common assault, breach of pre-sentence order and AOBH.</p> <p>Disadvantaged background; brother committed suicide; father had depression and schizophrenia; parents separated when aged 11 or 12.</p> <p>Never been employed.</p> <p>History of substance abuse.</p> <p>History of suicide attempts and depression.</p> <p>Diagnosed with paranoid personality disorder, borderline personality disorder and antisocial personality disorder.</p>	<p>Ct 1: Steal motor vehicle. Ct 2: Stealing. Ct 3: Agg burg. Ct 4: Agg GBH with intent. Ct 5: Agg GBH with intent. Ct 6: Steal motor vehicle.</p> <p>The appellant and two co-offenders stole a Holden Commodore sedan by taking the keys for the car from a house (ct 1).</p> <p>The offenders then picked up Wells and Akee and drove to BP. The appellant put fuel in the car and the car left without the appellant paying for the fuel (ct 2).</p> <p>The car ran out of fuel and was abandoned. The offenders walked to Mr and Mrs Elliott's property to steal another car. Wells and Akee remained at the front gate of the property. The offenders formed a plan to enter the house and steal the keys to one of the cars. The appellant, armed with a hammer, and a co-offender, armed with a screwdriver, entered the house through an unlocked sliding door (ct 3).</p> <p>Mr and Mrs Elliott were sitting at a table eating dinner. Mr Elliott was aged 71 and Mrs Elliott was aged 67. Mr Elliott stood up when the offenders entered the kitchen. The appellant struck him twice on the head with the hammer (ct 4) and Mrs Elliott, at least once, on the head with the hammer (ct 5). They were rendered unconscious.</p> <p>The appellant and co-offenders then ransacked the house and stole various items, including the keys to</p>	<p>Ct 1: 12 mths imp (conc). Ct 2: \$500 fine. Ct 3: 3 yrs 6 mths imp (cum). Ct 4: 7 yrs 6 mths imp (cum). Ct 5: 5 yrs imp (conc). Ct 6: 12 mths imp (cum).</p> <p>TES 12 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found high risk of reoffending and significant need for protection of the community.</p> <p>Psychiatrist report stated that the appellant's mental state, mood disorder, substance abuse and personality pathology, contributed to the offending.</p>	<p>Dismissed – on papers.</p> <p>At [53] Cts 3, 4 and 5 were especially egregious. Those offences were committed in company; the appellant and his co-offenders were armed with a hammer and a screwdriver; the offences were committed on residential premises; the appellant and his co-offenders knew, before entering the premises, that they were occupied; Mr and Mrs Elliott were viciously assaulted; the appellant personally assaulted them with the hammer; the victims did not confront, provoke or resist the offenders; the offenders were youthful whereas the victims were of an advanced age; the offenders outnumbered the victims; the victims were vulnerable; the victims ...suffered severe injuries and ongoing trauma; and Mr Elliot has been left with distressing residual disabilities.</p>
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			<p>Mrs Elliott's car.</p> <p>The appellant and the co-offenders stole Mrs Elliott's car (ct 6). They stopped at the front gate to pick up Wells and Akee.</p> <p>Mr Elliott suffered four lacerations, a significant depressed fracture to the left and the front of his skull and bruising to his brain. Mrs Elliott suffered three lacerations and a fractured skull.</p>		<p>At [56] ... the weight to be accorded to the appellant's psychological difficulties was decisively overpowered by his risk of violent reoffending.</p> <p>A [57] ... the appellant's reasonably extensive and serious prior criminal record as an adult, together with the facts and circumstances of his current offending and the significant risk he poses to public safety, form a proper basis for deciding that he could not be afforded any leniency in the sentencing disposition for the offences in question.</p>
5.	<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</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</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>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>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>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 she 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. He held the victim by her arms, restraining her from assisting her partner. When the victim stood in front of her partner to protect him 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></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>	
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			The appellant was found in poss of a small bag of cannabis.		
4.	<p><i>Smith v The State of Western Australia</i></p> <p>[2014] WASCA 238</p> <p>Delivered 24/12/2014</p>	<p>23 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Offending breached SIO and CBO.</p> <p>Criminal record including convictions of AOBH.</p> <p>Difficult childhood marred by exposure to substance abuse, violence and mental health problems of father. Current alcohol abuse.</p> <p>Co-offender BM charged with agg burg and 2 x assault. Convicted after PG and sentenced to TES 18 mths imp. EFP.</p> <p>Juvenile co-offender DM charged with a number of serious offences arising out of the incident including agg armed robbery. Convicted after PG and sentenced to a 12 mth CRO and community work.</p>	<p>Ct 2: Agg burg. Ct 3: Criminal damage.</p> <p>Appellant with two co-offenders, BM and DM, attended a party at a residence. Uncertain whether they gatecrashed initially.</p> <p>Guests were unsettled by their behaviour and one called the police. The offenders were asked to leave. Two co-offenders assaulted a guest. BM hit the victim on the head with a pool ball.</p> <p>The appellant and his two co-offenders left the house but later returned. Against the wishes of the guests, they entered through a sliding door. DM threatened the original victim with a splintered pool cue. The appellant attempted to strike the victim with another pool cue but missed. Certain guests barricaded themselves in a bedroom. The appellant kicked open the door, splintering it. Some guests fled, others were frozen in fear.</p>	<p>Ct 2: 4 yrs imp (conc). Ct 3: 6 mths imp (conc).</p> <p>Breach of SIO: 8 mths imp (conc).</p> <p>TES 4 years imp.</p> <p>EFP.</p> <p>Sentencing judge had regard to appellant's prior criminal record. Found present offences not uncharacteristic.</p> <p>Found appellant did not acknowledge the facts of his offending and was unremorseful.</p>	<p>Allowed.</p> <p>Re-sentenced ct 2 2 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [35] It is apt to describe what occurred as a home invasion. The appellant and his co-offenders, without any justification, entered the house knowing that they were unwelcome and set about terrorising the occupants and assaulting some of them with weapons. The experience for all those concerns terrifying. In my opinion, the offence was a serious example of its type.</p> <p>At [40] In my opinion, when all the relevant factors are taken into account, it cannot be said that the imposition of a sentence of 4 years' imprisonment for the aggravated burglary committed in the circumstances of the</p>

					<p>present case was unreasonable or plainly unjust.</p> <p>At [43] The parity principle is not dependent upon the sentence in question being manifestly excessive.</p> <p>At [48] There is no material difference in the ages of the appellant and the adult co-offender. Nor, in my opinion is there any difference in the objective circumstances of the offending. The criminality was, in my view equal.</p> <p>Adult co-offender had mitigation not available to the appellant, namely:</p> <ul style="list-style-type: none"> -early plea of guilty; -remorseful; -no history of violence; -not subject to suspended sentence or other order; -successful self-rehabilitation from alcohol abuse. <p>At [52] In my view, having carefully taken into</p>
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					account all the relevant sentencing factors applicable to the appellant and the adult co-offender, the extent of the disparity was too great and gives rise to an objectively justifiable sense of grievance on the part of the appellant.
3.	<p><i>Knight v The State of Western Australia</i></p> <p>[2014] WASCA 217</p> <p>Delivered 21/11/2014</p>	<p>55 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal record including firearms, traffic, drug sales and possession charges.</p> <p>Father of four children.</p> <p>Constant work record.</p> <p>History of cannabis and amphetamine use.</p> <p>Appellant's son convicted of agg burg; sentenced to 2 yrs 4 mths imp conditionally suspended for 2 yrs.</p>	<p>Ct 1: s401(2) <i>Criminal Code</i> Agg burg (home invasion).</p> <p>Ct 2: s297 <i>Criminal Code</i> GBH.</p> <p>Ct 3: s317(1) <i>Criminal Code</i> AOBH.</p> <p>As a result of an earlier incident involving one of the appellant's sons, the appellant with three others drove to the victim's house to seek revenge. Three of the four men were armed. The appellant picked up a metal weights bar from the outside front porch and all offenders then forced their way into the house. The victim and two of his friends were set upon. The appellant started striking the victim with the metal bar before escaping outside. Outside the victim was restrained by the appellant's son. The appellant then struck the victim again. The appellant also struck a second victim at least twice with the metal bar to the leg.</p> <p>The victim suffered a left tension pneumothorax, bruising to his right ankle and shin and a laceration to his right knee. If not for medical assistance and treatment, the pneumothorax was likely to have endangered his life. The second victim sustained a fractured right ankle and bad bruising and swelling</p>	<p>Ct 1: 3 yrs imp (conc).</p> <p>Ct 2: 3 yrs 6 mth imp.</p> <p>Ct 3: 18 mths imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>No remorse.</p> <p>Principal offender.</p> <p>Sentencing judge described attack as 'a violent and senseless attack' born out of anger from an earlier incident; also found attack was a premeditated and planned 'act of retribution'.</p>	Dismissed – on papers.

			on his thigh.		
2.	<i>Sartori v The State of Western Australia</i> [2014] WASCA 98 Delivered 05/05/2014	20 yrs at time offending. Convicted after early PG. Minor criminal record. Qualified auto electrician; stable employment; unemployed at time of offending. Suffers mild depression. Association with undesirable elements. Occasional user of illicit substances. Favourable character references. Family support.	Ct 1: Agg burg. Ct 2: Att armed robb. The appellant and two others formed a common intention to commit a burglary and steal firearms. The appellant knew from information that he had received that there were firearms in the house. They travelled to the victim's house, a husband and wife aged 66 and 56 years respectively. The appellant went to the front door, leaving his accomplices in a motor vehicle. Wearing a balaclava and armed with a machete, the appellant knocked on the front door which was opened by the male victim. The appellant forced entry and pushed the machete against the chest of the male victim demanding the firearms. The appellant forced the male victim to walk backwards down the hallway with the machete against his chest. He continued to demand the firearms. The male victim fell. The appellant turned his attention to the female victim who was trying to call police. He knocked the phone out of her hand, but was then pushed away from the woman by the male victim. The appellant ran from the house. The male victim sustained soreness to his right hip and shoulder, lacerations to the web space of his right thumb and laceration to his finger.	Ct 1: 3 yrs 3 mths imp. Ct 2: 18 mths imp (conc). TES 3 yrs 3 mths imp. Denied any involvement in ROI. Claims he offended under duress. Some co-operation with Police prior to sentencing. Remorseful; wrote letters to victims apologising. Low risk of re-offending.	Dismissed – on papers. At [31] A consideration of the sentences customarily imposed for the offence of aggravated burglary reveals a significant distinction between burglaries commonly described as a home invasion, which involve forcible entry into residential premises known or suspected to be occupied at the time accompanied by threatened or actual violence, and burglaries which lack those characteristics. At [32] The aggravated burglary committed by Mr Sartori was a home invasion at the more serious end of the spectrum.
1.	<i>Beins v The State of Western</i>	24 yrs at time offending.	1 x Agg burg.	2 yrs 8 mths imp.	Allowed.

<p>Australia [No 2]</p> <p>[2014] WASCA 54</p> <p>Delivered 12/03/2014</p>	<p>Convicted after early PG.</p> <p>Minimal criminal record; traffic, drink driving and drug related convictions.</p> <p>Sad, unhappy and emotionally under-nurtured childhood; a fragmented education.</p> <p>Limited employment history; unemployed for previous 2 yrs.</p> <p>Regular user of amphetamines & ecstasy.</p> <p>Depressive personality features.</p> <p>Sentenced with co-offender Luke James Kelly; early PG; sentenced to 2 yrs 8 mths susp imp for 2 yrs</p>	<p>The appellant had been in an off and on relationship with the victim. Prior to that she had been in a relationship with her co-offender.</p> <p>During the early hours of the morning the appellant and victim had been arguing and fighting with one another, which at times became quite violent. The appellant had suffered a slight puncture wound to her thigh, some bruising to her arm, hip and knee and superficial scratches.</p> <p>The appellant later left and contacted her co-offender to advise what had happened.</p> <p>The co-offender became angry and he and the appellant formed an agreement to assault the victim. The appellant and co-offender went to the victim's house. The victim was asleep. The co-offender; armed with a small pole; kicked the front door open and the appellant followed him into the house. The co-offender approached the victim and swung the pole at his head causing it to split open. The co-offender continued to swing the pole at the victim; hitting him 15 times to the body and arms.</p> <p>Whilst this was happening the appellant looked for property to collect.</p> <p>The appellant later returned and shouted at her co-offender to stop. They then ran from the house, chased by the victim who collapsed outside.</p> <p>The victim's injuries included concussion, loss of consciousness, a laceration to his head requiring 6 stitches and severe bruising to his back and arms.</p>	<p>EFP.</p> <p>Some remorse.</p> <p>Made full admissions in ROI; acknowledged responsibility.</p> <p>Judge found appellant was the ringleader; the motive and plan were hers; the criminal culpability of the appellant and the co-offender was approximately equal.</p> <p>Found that appellant was entitled to be angry and emotionally hurt but that she had not been the victim of entrenched domestic violence.</p> <p>20% discount for PG; judge did not give maximum because very strong state case.</p> <p>Had since ceased taking drugs.</p>	<p>Resentenced to 2 yrs imp.</p> <p>At [80] As to the 'parity principle', the High Court has made it plain that 'systematic fairness' and 'reasonable consistency' in sentencing requires 'consistency in the application of the relevant legal principles'. It does not require numerical or mathematical equivalence ...</p> <p>At [99] It would be affront to the proper administration of justice to impose a suspended sentence for this kind of offence. A sentence of immediate imprisonment was the only appropriate sentence.</p> <p>At [122] ... the State contributed to the imposition of the inadequate sentence on Mr Kelly by making the erroneous concession that it was open to suspend the sentence of imprisonment to be imposed on him.</p>
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					At [127] ... It is sufficient to say that this was a particularly serious instance of this kind of offending that warranted only a substantial custodial sentence particularly to achieve the objects of general deterrence and denunciation.
<i>Transitional Provisions Repealed (14/01/2009)</i>					
<i>Transitional Provisions Enacted (31/08/2003)</i>					