

Armed robbery
from an individual eg bag snatch, ATM, car-jacking
ss 392 and 393 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 (from 14/01/2009 31/08/2003)
- Transitional provisions period (between 31/08/2003 and 14/01/2009)
- Pre-transitional provisions period (pre 31/08/2003)

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
conc	concurrent
cum	cumulative
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
EFP	eligible for parole
TES	total effective sentence
ct	count

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
13.	<p><i>Pickett v The State of Western Australia</i></p> <p>[2019] WASCA 178</p> <p>Delivered 12/11/2019</p>	<p>21 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Atrocious juvenile criminal history; including two convictions for manslaughter by motor vehicle aged 14 yrs.</p> <p>Third child of nine children; non-drinking parents; stable home.</p> <p>Struggled at school often in trouble; frequent truancy; expelled aged 11 yrs.</p> <p>Very little employment history.</p>	<p>Ct 1: Agg burglary. Ct 2: Armed robbery. Ct 3: Agg indec assault. Cts 5 & 6: Agg sex pen.</p> <p>The victim, aged 27 yrs, was home alone. In the early hrs of the morning she was woken by the sound of Pickett, in the company of a co-offender, breaking into her home (ct 1).</p> <p>The victim called the police and hid in her bedroom. Pickett entered the room and, pretending to be armed with a knife, demanded money from her. She gave him \$55 in cash (ct 2).</p> <p>Pickett then made the victim remove her nightdress, so she was naked. He then compelled her to touch herself (ct 3). He also made her walk naked outside, past the co-offender who was keeping watch.</p> <p>Pickett also sexually penetrated the victim without her consent (cts 5 and 6).</p>	<p>Ct 1: 3 yrs imp (conc). Ct 2: 5 yrs imp (cum). Ct 3: 3 yrs imp (conc). Ct 5: 4 yrs imp (cum). Ct 6: 3 yrs imp (conc).</p> <p>TES 9 yrs imp.</p> <p>Sentence to be served partly cum upon a TES of 10 yrs 9 mths imp already serving.</p> <p>Indefinite imp order made under s 98 of the <i>Sentence Act 1995</i>.</p> <p>It was accepted the sexual offending was premeditated.</p> <p>No remorse or victim empathy; high risk of reoffending.</p>	<p>Appeal allowed.</p> <p>Appeal concerned indefinite imp order (imposed 23 June 2000).</p> <p>Resentenced:</p> <p>Ct 1: 3 yrs imp (conc). Ct 2: 5 yrs imp (cum). Ct 3: 3 yrs imp (cum). Ct 5: 5 yrs imp (cum). Ct 6: 5 yrs imp (conc).</p> <p>TES 13 yrs imp.</p> <p>TES with other sentences approx. 14 yrs 7 mths imp.</p> <p>At [81] The judge emphasised ... the seriousness of the appellant's offending, the escalation of its seriousness in November and December 1998 and the rapidity with which the appellant offended each time he was released from custody. We accept all of those matters.</p>

				<p>Nevertheless, the combination of ... the fact that most of the offending was committed, when the appellant was a child of less than 14 yrs or ... when he had just turned 14 yrs old; ... the appellant's youth – being just 21 yrs old – when he committed his most recent offences; ... the lengthy horizon – more than 7 yrs – before[he] would be released; and ... the absence of any expert opinion ... means that [his] criminal history could not, in our respectful opinion, on its own justify the making of an indefinite imp order.</p> <p>At [83] In the absence of expert psychiatric or psychological evidence, offences committed at the age of 21 yrs or less (and generally at the age of 14 yrs or less) provide an insufficient foundation to conclude, on the balance of probabilities, that,</p>
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					<p>when released from prison aged almost 30 yrs, the appellant would be such a danger to society or part of it as to reasonably justify the making of an indefinite imp order.</p> <p>At [93] In resentencing the appellant, the starting point is the very serious nature of the appellant's offending, and the effects it has had upon his victim.</p>
12.	<p><i>Krencej v The State of Western Australia</i></p> <p>[2019] WASCA 82</p> <p>Delivered 17/05/2019</p>	<p>38 yrs at time offending.</p> <p>Convicted after trial (ct 1). Convicted after late PG (ct 2).</p> <p>Serious criminal history, prior convictions for armed robbery, dep liberty and sexual penetration.</p> <p>Very difficult family and educational background.</p> <p>Left school yr 8.</p> <p>Some periods of gainful employment.</p> <p>Illicit drug use from age 11-12 yrs.</p>	<p>Ct 1: Armed robbery. Ct 2: Steal motor vehicle.</p> <p>The victim contacted Krencej's girlfriend to purchase drugs. It was arranged for the transaction to take place at a park, with the victim to provide his ring as collateral.</p> <p>Krencej, armed with a replica handgun, attended the park. When the victim arrived he received a message, purportedly from the girlfriend, saying she had sent 'my man down'.</p> <p>The victim was seated in his car with the engine running when Krencej opened the front passenger door and pointed the gun at him. Believing the gun was real the victim complied when instructed to turn off the car's</p>	<p>Ct 1: 3 yrs imp (conc). Ct 2: 12 mths imp (conc).</p> <p>Sentence to be served partly conc with sentence of 2 yr imp imposed in Magistrates Court in respect of other matters.</p> <p>TES 3 yrs 7.5 mths imp.</p> <p>EFP.</p> <p>The trial judge found the victim had previously, either directly or indirectly, supplied</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence on ct 1 and totality principle.</p> <p>At [57] ... neither the individual sentences imposed on the ind, nor the TES, can be regarded as unreasonable or plainly unjust. The individual sentence ... on the armed robbery ct was not manifestly excessive. The TES ... bears a proper relationship to the overall criminality involved in all of those offences, ...</p>

			<p>engine. Krencej then told the victim to take his ring off and give it to him. The gun was still pointed at him so out of fear he gave him the ring. Krencej then demanded he get out of the car and leave. The victim did so, running from the car and hiding in a nearby garden. Krencej drove the car to a nearby cul-de-sac and left it with the keys inside.</p> <p>When arrested two days later, Krencej was observed to be chewing on something. It was found to be the victim's ring.</p>	<p>drugs which had made the appellant and/or his girlfriend very ill; the appellant's motivation for his offending was to obtain payback or to seek restitution for the severe illness which he and/or his girlfriend had endured.</p>	
11.	<p><i>Nikora v The State of Western Australia</i></p> <p>[2018] WASCA 235</p> <p>Delivered 29/07/2019</p> <p>Co-offender of:</p> <p><i>Baynah v The State of Western Australia [No 2]</i> [2019] WASCA 103</p>	<p>20 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p> <p>Stable childhood; born and raised in New Zealand; parents separated aged 3 yrs.</p> <p>Supportive family.</p> <p>Completed yr 11.</p> <p>Three yr relationship; 2 yr old son at time sentencing.</p> <p>Consistent employment history.</p> <p>Good physical and mental health.</p>	<p>1 x Agg robbery.</p> <p>In the early hrs of the morning Nikora, Baynah and a third accused, came across the victims, L and P, walking together.</p> <p>Nikora was under the influence of cocaine and alcohol.</p> <p>The three approached the victims. In Nikora's presence Baynah asked L if he had any cash on him. When told he did not Baynah demanded L's wallet and took his bank card. As this was happening the third accused reached towards P's pockets. P pushed the third accused's hand away and the third accused punched him to the back of the head.</p> <p>Baynah and the third accused then punched L and P multiple times. When L fell to the</p>	<p>20 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant was not the instigator of the attack and he played a lesser physical role; however the appellant played a significant role.</p> <p>The sentencing judge found the appellant participated in a group attack upon the victims who were outnumbered and unknown to him and his co-offenders; the offending occurred over an extended period;</p>	<p>Dismissed.</p> <p>Appeal concerned length and type of sentence.</p> <p>At [69] The facts of the agg robbery are self-evidently serious. While the appellant was not the instigator of the offence, by reason of his actions ... he was an integral part of the offending. The offending was prolonged and persistent. ... It involved a group attack upon two defenceless victims, both of whom were assaulted, harassed and terrorised. ...</p>

		<p>Experimented with various illicit drugs; alcohol use since aged 14 yrs.</p>	<p>ground he was also kicked, including once to the head by Baynah. L eventually handed his wallet to Baynah. During this assault Nikora was in close proximity, aiding Baynah and the co-accused.</p> <p>As P was lying on the ground, Nikora took P's mobile phone, charger and wallet. However, after searching the wallet, returned all of the property to P.</p> <p>Nikora and Baynah then went into a nearby store, where Baynah attempted to use L's bank card. When L alerted staff they were using his card and that the police were on the way Nikora and Baynah left the store and further assaulted him. He was punched numerous times, causing him to fall onto the roadway. During this assault Baynah told L he had a knife and forced him to hand over his mobile phone.</p> <p>P attempted to stop the attack on L but he was thrown to the ground. Nikora and Baynah then kicked and stomped on the two victims. Nikora also threw an unknown item at the victims.</p> <p>The two victims suffered minor physical injuries.</p>	<p>involved acts of violence; the physical acts of punching and kicking the victims involved a continued significant level of violence, some of which occurred when the victims were on the ground and defenceless; characterising these actions as cowardly.</p> <p>Demonstrated genuine remorse; offered to engage in victim mediation; low risk of violent re-offending.</p>	<p>At [70] The offence was, as the sentencing judge said, 'cowardly' and 'a very serious street mugging'. ...</p> <p>At [72] ... the seriousness of the offence justified the conclusions that the only appropriate sentence was a term of imp and that the term must be immediately served.</p>
10.	<i>Woods v The State of Western</i>	<p>21 yrs at time offending. 22 yrs at time sentencing.</p>	<p>Ct 1: Agg robbery. Cts 2 & 12: Burg. Cts 3-5, 7-8, 10-11 & 13: Agg burg.</p>	<p>Ct 1: 3 yrs 6 mths imp (cum). Cts 2 and 12: 1 yr imp</p>	<p>Allowed.</p> <p>Appeal concerned totality</p>

<p>Australia</p> <p>[2017] WASCA 179</p> <p>Delivered 29/09/2017</p>	<p>Convicted after early PG (25% discount).</p> <p>Extensive and persistent criminal history; including serious offences as a child; no prior sentences of imp.</p> <p>Sentenced SGMC further 77 offences, 6 mths imp; conc with each other; conc with TES for offences subject of this matter.</p> <p>Dysfunctional childhood; mother mentally ill; absent father; exposed illicit drugs from young age; sexually abused aged 12 yrs; deeply affected by suicide of a relation; little or no family support.</p> <p>First relationship marred by domestic violence; two young children from union cared for by grandmother.</p> <p>Alcohol and inhalants from 11 yrs; methyl aged 14 yrs.</p>	<p>Ct 6: Agg armed robbery. Ct 9: Att agg burg.</p> <p>The offences were committed over a five week period.</p> <p><u>Ct 1</u> Woods got into the passenger's seat of a car. Snatching the keys from the 83 yr-old driver's hands she ordered her out of the vehicle, before forcibly pulling her from the car and stealing it. The car was extensively damaged and written off.</p> <p><u>Ct 2</u> About a fortnight later Woods forced entry into a home and stole car keys and used them to steal a vehicle.</p> <p><u>Ct 3</u> The next day Woods entered a home and rummaged through a handbag. She fled when disturbed.</p> <p><u>Ct 4</u> The following day Woods forced entered to another home and stole numerous items. The occupant and a friend were home at the time.</p> <p><u>Ct 5</u> Two days later Woods entered a house and stole a wallet. She fled when disturbed. Returning a short time later to steal a car.</p>	<p>each ct (ct 2 cum all other cts conc). Cts 3-5, 7-8, 10-11 and 13: 18 months imp each ct (conc). Ct 6: 5 yrs imp (cum). Ct 9: 2 yrs imp (conc).</p> <p>TES 9 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending demonstrated 'a degree not simply of deliberation but of some calculation' in particular, several of the offences involved the targeting of elderly women.</p> <p>The sentencing judge found the seriousness of the offending 'so great that deterrence and punishment and the protection of the community, particularly vulnerable members of the community who the appellant showed a</p>	<p>principle. Individual sentences were not challenged.</p> <p>Resentenced. Orders in relation to conc, cum and backdating set aside.</p> <p>Cts 2 and 8 cum upon each other, cum upon individual sentences for ct 6.</p> <p>All other counts conc with each other and conc with sentence for ct 6.</p> <p>TES 7 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [50] The appellant's overall offending was very serious. ... Most of the offences involved some premeditation, calculation and planning. ... The appellant specifically and intentionally targeted elderly women.</p> <p>At [53] ... It was</p>
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			<p><u>Ct 6</u> Two days later Woods went to a house and asked the 72 yr-old occupant to use her phone. This was denied so she forced a window to gain entry. Armed with a knife, she raised it in an aggressive manner and demanded jewellery and the car keys. The occupant feared for her life and told Woods she felt unwell and asked her to call for an ambulance. Woods declined and left, stealing a number of items, including a mobile phone and car.</p> <p><u>Ct 7</u> The following day Woods entered a home, but fled when disturbed.</p> <p><u>Ct 8</u> The same day Woods went to a house and asked the 82 yr old occupant for directions. She was permitted into the house. Once inside she stole car keys and a car. The car was extensively damaged.</p> <p><u>Ct 9</u> The next day Woods knocked on the door of another home and asked the occupant to call a taxi. When the occupant was on the phone Woods attempted to enter the house.</p> <p><u>Ct 10</u> The same day Woods ran inside a house after</p>	<p>tendency to target outweighed her individual needs’.</p>	<p>necessary, in order properly to mark the appellant’s overall criminality in committing numerous serious offences, to accumulate some of the individual sentences. However, the TES ... was ... severe having regard to all relevant sentencing factors and all relevant sentencing principles ...</p> <p>At [73] ... the magistrate’s sentencing decision (including the facts and circumstances of the 77 offences with which the decision was concerned) should be taken into account in the application of the totality principle (in particular, in the backdating of the new TES) when this court resentsences the appellant in respect of the 13 cts in the indictment.</p>
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9.	<p><i>Mamkin v The State of Western Australia</i></p> <p>[2017] WASCA 61</p> <p>Delivered 31/03/2017</p>	<p>18 yrs at time offending. 19 yrs at time sentencing.</p> <p>Convicted after PG (25% discount for cts 1 and 7).</p> <p>Current offending are the first convictions as an adult.</p> <p>Extensive prior criminal history as a juvenile, including sanctions of detention.</p>	<p>Ct 1: Armed robbery. Ct 2: Stealing. Ct 3: Agg robbery. Ct 4: Att agg robbery. Ct 5: Agg burg. Ct 6: Steal motor vehicle. Ct 7: Agg armed robbery.</p> <p><u>Ct 1</u> The victim parked his car at a shopping centre and remained in the driver's seat. Mamkin approached the victim, produced a long knife and told him, 'Don't do anything or</p>	<p>Ct 1: 4 yrs 9 mths imp (reduced from 7 yrs imp). Ct 2: 1 mth imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 10 mths imp (conc). Ct 5: 2 yrs 6 mths imp (conc). Ct 6: 12 mths imp (conc). Ct 7: 5 yrs 3 mths imp</p>	<p>Dismissed.</p> <p>Appeal concerned totality and discount for cooperation.</p> <p>At [34] ...the appellant's admissions were not made as a consequence of genuine remorse or contrition. They did not involve the provision of useful information to the</p>

		<p>On bail for cts 1-6 at time offending for ct 7.</p> <p>I'm going to stab you'. Mamkin got into the car, behind the victim, and asked what he had on him. The victim handed a mobile and \$50 cash to Mamkin.</p> <p>On Mamkin's instruction, the victim drove to an ATM to withdraw cash. While holding the knife against the victim's ribs, Mamkin demanded the victim's PIN for his bankcard and said, 'If you lie I will stab you'.</p> <p>On Mamkin's instructions, the victim drove to a cul-de-sac and got out of the car. Mamkin patted the victim's pockets and took his car keys and house keys. Mamkin fled in the car which contained the victim's property.</p> <p><u>Ct 2</u> On the same date as ct 1, Mamkin and his associates stole fuel to the value of \$76.46.</p> <p><u>Cts 3 and 4</u> On the same date as ct 1, Mamkin and his associates parked the stolen car behind the victims who were attempting to withdraw cash at an ATM. Mamkin approached the victims and said 'Do you want to pull some money out or get mobbed?'. Mamkin took a wallet from one victim. The other victim attempted to prevent Mamkin from taking the wallet and Mamkin punched the second victim to the face. A violent confrontation ensued and the victims escaped on foot.</p>	<p>(reduced from 8 yrs imp) (to commence 1 yr 7 mths after commencement of ct 1).</p> <p>TES 6 yrs 10 mths imp. EFP.</p> <p>Sentences on cts 1 and 7 reduced for PG and youth. Sentence on ct 7 also reduced for time in custody.</p> <p>Sentencing judge took into account PG, youth and cooperation with police (admissions to police) for cts 2-6.</p> <p>PSR indicated no real appreciation of the effect which Mamkin's conduct must have had on his victims, or a willingness or real capacity to deal with the issues which led to his offending.</p> <p>Sentencing judge commented that the</p>	<p>police... The admissions were made in confined parts of the video-recorded interview during which the appellant repeatedly, but unsuccessfully, endeavoured to mislead the police as to the truth about the serious offences in which he was involved as a principal offender.</p> <p>At [35] The appellant made no admissions of any significance concerning ct 1. His cooperation with the police when they searched his premises was insignificant. His insubstantial admissions and cooperation were not of any material weight for sentencing purposes. In any event, a different individual sentence for ct 1 should not have been imposed.</p> <p>At [36] His Honour did not state the discount he applied but his Honour</p>
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			<p><u>Cts 5 and 6</u> The following day, Mamkin entered the victim's house while the victim was asleep. He stole the victim's handbag which contained her wallet, car keys and the keys to a vault at her work. Mamkin then stole the victim's car.</p> <p><u>Ct 7</u> The victim was a taxi driver. On another date, Mamkin arranged for the victim to collect him from Bassendean. As Mamkin could not pay a deposit, the victim refused to drive him to his destination but offered to drive him, without charge, to a train station.</p> <p>As the victim drove around the corner, Mamkin produced a long knife and held it at the victim's throat. He threatened to kill the victim if he did not hand over his money, his mobile and the passcode for the mobile. The victim complied with those demands. His wallet contained \$450 cash.</p> <p>Mamkin's two associates approached the taxi, opened the door and told Mamkin to take the mobile and cash and get out of the taxi.</p>	<p>current offences indicate a serious escalation in the level of violence involved in Mamkin's offending.</p> <p>No remorse or contrition.</p> <p>Very serious risk of re-offending.</p>	<p>was not bound to do so. In any event, a different sentence should not have been imposed for any of cts 2, 3 or 4.</p> <p>At [37] The appellant's overall offending was, no doubt, extremely serious... The offences involved some planning... The actual or threatened violence associated with the commission of cts 1 and 7 was significant. The victims must have feared for their lives. They would have suffered emotional trauma... The victim of ct 7 was a taxi driver. People who work as taxi drivers are vulnerable to attacks of this kind.</p> <p>At [48] The egregious character of the appellant's offending, and the very serious risk that he will reoffend, reduced the extent to which he could be given credit in the sentencing process for</p>
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					his youth.
8.	<p><i>Williams v The State of Western Australia</i></p> <p>[2016] WASCA 232</p> <p>Delivered 23/12/2016</p>	<p>31 yrs at time offending (cts 1-7). 34 yrs at time offending (ct 8).</p> <p>Convicted after trial.</p> <p>Lengthy criminal history. Ct 8 committed when on bail.</p> <p>Troubled childhood, father died when very young. Cared for her seriously ill mother until her death several months before offence of ct 8.</p> <p>Abused from age 14 yrs. Left home at 16 yrs.</p> <p>Irregular school attendance.</p> <p>No vocational skills.</p> <p>Four children; all cared for by others.</p> <p>Entrenched history of illicit drug and alcohol abuse.</p> <p>Diagnosed with schizophrenia. Impaired insight into her mental illness and tendency to avoid psychiatric treatment.</p>	<p>Ct 1: Steal motor vehicle. Ct 2: Armed robbery. Ct 3: Att armed robbery. Ct 4: Stealing. Ct 5: Agg armed robbery Ct 6: Robbery. Ct 7: Armed robbery. Ct 8: Att armed robbery.</p> <p>Williams stole a car (ct 1). With her face concealed by a hat, sunglasses and bandana she went to a hotel bottle shop and threatened staff with a knife, yelling for the till be opened. She stole \$500 (ct 2).</p> <p>Armed with a knife Williams went to a petrol station and demanded the keys to a vehicle. The mechanic ran and called police (ct 3). Williams rummaged through the car and took a mobile phone (ct 4).</p> <p>Williams approached a 75 yr-old female and demanded her car keys. Grabbing the keys from the victim's hand she then held a knife to her neck. Pushing the victim aside she got into the car and drove away, narrowly missing the victim, who was pulled from the path of the reversing car by a passerby (ct 5).</p> <p>With her jumper pulled over her head and wearing sunglasses Williams entered a bank. With her hands concealed in her jumper she</p>	<p>Ct 1: 1 yr imp (conc). Ct 2: 4 yrs imp (cum). Ct 3: 2 yrs 6 mths imp (conc). Ct 4: 3 mths imp (conc). Ct 5: 5 yrs imp (conc). Ct 6: 2 yrs imp (conc). Ct 7: 3 yrs imp (cum). Ct 8: 3 yrs imp (conc).</p> <p>TES 7 yrs imp. EFP.</p> <p>The sentencing judge noted the offences as 'extremely serious' but found her judgment was impaired and her ability to control her actions reduced due to mental illness. This reduced her moral blameworthiness.</p> <p>Risk of re-offending 'medium to high'.</p>	<p>Dismissed.</p> <p>Appellant appealed totality principle, individual sentences not challenged.</p> <p>At [36] The existence of a causal relationship between a mental illness and the offences does not automatically result in the offender receiving a lesser sentence. While the existence of a causal connection might reduce moral blameworthiness and the importance of general deterrence, it might also, in some cases, increase the importance of specific deterrence or the need to protect the public. This is such a case.</p> <p>At [37] The protection of the public was an important sentencing factor in this case, having regard to the nature of the offending, its repetitive nature and the risk of</p>

			<p>told a teller to put money into a bag. The teller handed her \$700 (ct 6).</p> <p>With her face concealed by a jumper, sunglasses and a cloth Williams entered a bank. She produced a knife and repeatedly yelled at a teller to give her money. When given money she demanded more and produced another knife. She left taking \$1,450 (ct 7).</p> <p>Holding a knife Williams demanded the victim get out of his vehicle. She tried unsuccessfully to open the car door when the victim refused (ct 8).</p>		reoffending posed by the appellant.
7.	<p><i>Gittos v The State of Western Australia</i></p> <p>[2016] WASCA 7</p> <p>Delivered 13/01/2016</p>	<p>29 yrs at time offending.</p> <p>Conviction after PG (10% discount for indictable offences; 15% for section 32 offences).</p> <p>Criminal history, including violent offences.</p> <p>Dysfunctional childhood; ADHD as a child.</p> <p>Left school at age 14; good employment history.</p> <p>No contact with three children.</p> <p>Supportive new partner.</p>	<p><u>Indictment</u></p> <p>Ct 1: Agg armed robbery. Ct 2: Agg armed assault with intent to rob.</p> <p><u>Section 32 Notice</u></p> <p>Ch 1: Criminal damage. Ch 2: Agg assault. Ch 3: AOBH. Ch 4: Drive MV with number plates not issued for that vehicle. Ch 5: Poss drug paraphernalia containing methyl.</p> <p><u>Ct 1</u></p> <p>The appellant was the front seat passenger in a car that drove up and parked outside the victim's house. The appellant demanded \$150 from the victim, through the open car</p>	<p><u>Indictment</u></p> <p>Ct 1: 4 yrs imp. Ct 2: 3 yrs 6 mths imp to start 6 mths after Ct 1 (conc).</p> <p><u>Section 32 Notice</u></p> <p>Ch 1: 8 mths imp. Ch 2: 6 mths imp. Ch 3: 10 mths imp. Ch 4: \$200 fine. Ch 5: 2 mths imp (cum).</p> <p>Ch 1-3 conc with each other, but cum with sentence on ch 5.</p> <p>TES 5 yrs imp.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p> <p>At [30] Both indictable offences ... involved...an apparent element of premeditation and planning, albeit of a simple kind. They were calculated to force the first complainant to pay to the appellant money he considered he was owed from a drug transaction.</p>

		<p>Substance abuse from age 13.</p>	<p>window. The victim stated that he did not have any money.</p> <p>The appellant pointed a double-barrelled shotgun at the victim at very close range, through the open car window. He demanded the victim give all property he was carrying. The victim complied. The appellant then stated “Bring the \$150 in cash to [a stated address] within the hour, or I’ll blow your fucking head off”.</p> <p><u>Ct 2</u> 40 minutes later, the victim attended the stated address with two others, to give the appellant \$100. The appellant aimed the shotgun at the victim and then pressed the barrels of the shotgun against his head. The appellant demanded an additional \$300 from the victim and made similar threats as earlier.</p> <p>The victims left and reported the incidents to police.</p> <p><u>Section 32 Notice</u> The second victim is the mother of the appellant’s 10-mth-old son.</p> <p>In attempt to gain entry to the victim’s house, the appellant caused substantial damage to the garage door (ch 1). The appellant gained entry through a window and, in the presence of their son, repeatedly punched and kicked</p>	<p>EFP.</p> <p>Sentencing judge found that the appellant’s acceptance of responsibility and remorse for cts 1 and 2 were qualified by the appellant showing little insight into his offending.</p> <p>Sentencing judge found significant qualifications on the appellant’s prospects of rehabilitation.</p>	<p>Both involved the use of a firearm which was not simply brandished by the appellant ... Each act was accompanied by what was, in effect, a threat to kill. .. The fact that a firearm was used, and the manner in which it was used, make these offences particularly serious.</p> <p>At [32] The [section 32] offences ... were also serious offences. Again, these offences were not the result of a momentary aberration ... Given the nature of the assaults, it is only a matter of good fortune that the victims did not suffer more serious injuries.</p> <p>At [33] In relation to these [section 32] offences, there appears on the part of the appellant to have been no acceptance of responsibility, remorse or insight, apart from the pleas of guilty and the appellant's understanding</p>
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			<p>the second victim's mother (ch 2). The appellant then punched the second victim in the face while she was carrying their son (ch 3).</p> <p>On another date, the appellant drove a car with number plates that were not issued for that car (ch 4). A glass pipe containing traces of methyl was found in the car (ch 5).</p>		<p>of his anger management problem.</p> <p>At [34] ... there is cause for concern about the appellant's prospects of rehabilitation and that without substantial change on the appellant's part there is a real risk that he will reoffend.</p>
6.	<p><i>Garraway v The State of Western Australia</i></p> <p>[2015] WASCA 240</p> <p>Delivered 27/11/2015</p>	<p>32 yrs at time of sentence.</p> <p>Significant criminal history, including offences of violence and burglary.</p> <p>Deprived upbringing and limited education. Depressed and suicidal.</p> <p>Lengthy history of illicit drug and alcohol abuse.</p> <p>5 young children from two relationships.</p>	<p>Ct 1: Armed robbery. Ct 2: Burglary. Ct 3: Stealing.</p> <p>Offences breached an SIO and CBO (for AOBH on partner).</p> <p><u>Ct 1:</u> The appellant approached the victim and used the victim's mobile phone to make a call. After this the victim walked away. The appellant approached the victim again and asked to use his phone. The victim said no. The appellant pulled a syringe from his pocket, took off the protective cap and pointed it towards the victim, saying 'give us your phone or I'll stab you'. The appellant grabbed the phone and walked away.</p> <p><u>Ct 2 and 3:</u> The appellant went to the Broome Boulevard Shopping Centre and smashed the glass fire</p>	<p>Ct 1: 2 yrs 10 mths imp. Ct 2: 1 yr 11 mths imp. Ct 3: nil.</p> <p>Breach of SIO: 9 mths imp. To be served cumulatively with cts 1 and 2.</p> <p>TES 5 yrs 6 mths imp.</p> <p>EFP.</p> <p>Sentencing judge not satisfied appellant demonstrated genuine remorse.</p> <p>Ct 1 not at high end scale of seriousness. Ct 2 and 3 characterised as 'significant' as it was</p>	<p>Dismissed – on papers.</p> <p>At [27]... the appellant has fallen well short of demonstrating that the total effective sentence imposed upon him infringes the first limb of the totality principle. Having regard to the appellant's total criminality and all of the circumstances of the case, including those factors referable to the appellant personally, the sentence... reflected a sound exercise of his Honour's sentencing discretion.</p>

			door to gain entry. The appellant then smashed the glass window of Dick Smith store with a brick. He used the brick to break a glass cabinet and stole 15 mobile phones, to the value of \$11,300.	planned and premeditated.	
5.	<p><i>Williams v The State of Western Australia</i></p> <p>[2015] WASCA 16</p> <p>Delivered 22/01/2015</p>	<p>19 yrs at time offending and sentencing.</p> <p>Convicted after PG.</p> <p>Offending breached bail.</p> <p>Significant criminal history, including conviction for aggravated armed robbery.</p> <p>Raised by grandmother after mother received severe injuries from domestic violence.</p> <p>Education to year nine; no employment since stealing from employer in year nine.</p> <p>History of alcohol and substance abuse; counselling failed to rehabilitate him.</p>	<p>Ct 1: Armed robbery. Ct 2: Armed robbery. Ct 3: Armed robbery. Ct 4: Robbery.</p> <p><u>Ct 1:</u> On 18 September 2013, the appellant approached the victim in the street and demanded money two or three times and began to yell at her. He then removed an object from his belt which the victim believed was a knife or a tool. He threatened to harm her if she did not give him the money. The victim gave him \$150.</p> <p><u>Ct 2:</u> At about 1.30pm on 5 October 2013, the appellant blocked the victim's path on the street and asked her to give him money. She said that she did not have any money. He then produced a screwdriver and repeatedly said that he needed her money. The victim gave him \$40. He yelled at her demanding she give him all her money. She showed him her empty wallet. He rode away.</p> <p><u>Ct 3:</u></p>	<p>Ct 1: 4 yrs imp. Ct 2: 4 yrs imp. Ct 3: 4 yrs imp. Ct 4: 2 yrs imp. All conc, but cum on existing term of 3 yrs 10 mths.</p> <p>TES 7 yrs 10 mths imp.</p>	<p>Allowed.</p> <p>Ct 1: 3 yrs imp. Ct 2: 3 yrs imp. Ct 3: 3 yrs imp. Ct 4: 20 mths imp. All conc, but cum on existing term of 3 yrs 10 mths.</p> <p>TES 6 yrs 10 mths imp.</p> <p>EFP.</p> <p>At [20] It is apparent from the sentencing judge's remarks that he did not in fact give the appellant 25% discount. The reduction that he made in the sentences on each count equate to a 20% discount. This appears to be a simple mathematical error. It would also seem that, notwithstanding his Honour's reference to</p>

			<p>At about 3.30pm on 6 October 2013, the appellant approached the victim as he was arriving home. The appellant raised a screwdriver and pointed it at the victim's face and demanded money. The victim said he did not have any money. The appellant made stabbing motions with the screwdriver and repeated his demands. The victim gave the appellant \$20. The appellant demanded all his money. The victim gave another \$10 and then, in compliance with a demand, showed the appellant his empty wallet. The appellant thanked the victim and rode away.</p> <p><u>Ct 4:</u> At about 10.15pm on 6 October 2013, the appellant approached another man as he arrived home. The appellant told the victim that he would 'beat him up' if he did not hand over his money. The appellant became aggressive and continued demands when the money was not handed over. The appellant searched the victim's pants for a wallet or money. The victim gave the appellant \$50 in notes and \$5 in coins. The appellant took the victim's mobile and said that he would give it back if he gave him more money. When the victim demanded his phone back, the appellant told him to lower his voice and not to call the police as he knew where he lived. The appellant gave the phone back to allow the victim to remove the memory card. The appellant fled the scene when the victim's</p>		<p>youth being a factor that would further reduce the sentence, no allowance for that factor appears to have been given.</p>
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			housemate came out of the house.		
4.	<p><i>QJS v The State of Western Australia</i></p> <p>[2015] WASCA 9</p> <p>Delivered 15/01/2015</p>	<p>20 yrs at time of most offending.</p> <p>Conviction after PG.</p> <p>Offending breached ISO.</p> <p>Significant criminal history, including convictions for stealing, burg, breaches of bail, stealing motor vehicle and common assault.</p> <p>Difficult upbringing; attended numerous schools; never had significant employment.</p> <p>Significant substance abuse problem.</p> <p>Offending on indictment occurred shortly after the Department of Child Protection took the appellant's young daughters into their care.</p>	<p><u>Indictment</u></p> <p>Ct 1: Agg burg (dwelling). Ct 2: Steal motor vehicle. Ct 3: Agg armed robbery. Ct 4: Accessory after the fact to agg armed robbery. Ct 5: Agg armed robbery. Ct 6: Agg robbery.</p> <p><u>Section 32 notice</u> 18 charges.</p> <p><u>Indictment</u> <u>Ct 1 -2:</u> At about 3.50am on 17 December 2013 the appellant went to a house in company with a co-offender. He forced the garage door open and used an internal door to access the kitchen. He took a car key from the kitchen and used the keys to steal a car from the garage.</p> <p><u>Ct 3:</u> Approx. one hour later, the appellant and co-offender saw a woman walking along the street. They formed an intention to snatch her bag. The co-offender threatened the victim with a screwdriver. He pushed the tip into her cheek and demanded her handbag. The victim gave her handbag to the co-offender. The appellant drove them away.</p>	<p><u>Indictment</u></p> <p>Ct 1: 1 yr 9 mths imp (conc). Ct 2: 4 mths imp (conc) Ct 3: 3 yrs 3 mths imp (cum). Ct 4: 1 yr 4 mths imp (conc). Ct 5: 3 yrs 3 mths imp (conc). Ct 6: 2 yrs 4 mths imp (conc).</p> <p><u>Section 32 notice</u> The appellant received various imp terms for various charges, 2 yrs 9 mths of which was ordered to be served cum.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Cooperated with police by giving names of co-offenders.</p> <p>Limited insight into offending and effect on victims; remorse; victim</p>	<p>Dismissed – on papers.</p> <p>At [35] The rationale for treating offending whilst on bail or parole as being an aggravating factor applies equally where a person commits offences whilst on some other form of conditional release, such as an ISO... The commission of an offence whilst on an ISO not only exposes the offender to resentencing for the original offence, it is a factor relevant to the sentencing for the breaching offences.</p> <p>At [50] The offences contained on the indictment were serious offences of their type.</p>

			<p><u>Ct 4:</u> At about 3.30pm on the same day the appellant and a co-offender were driving through a shopping centre car park. The co-offender decided to steal the handbag of a passing shopper. The co-offender got out of the car and grabbed the victim's handbag. There was a struggle until the co-offender raised a box cutter knife above the victim's head causing her to let go. The co-offender got back in the car and the appellant drove the co-offender away in order to help him escape.</p> <p><u>Ct 5:</u> About 30 minutes later, the appellant and a co-offender formed an intention to steal a handbag from a shopper at another shopping centre car park. The appellant stopped the car behind the victim who was seated in her parked car. The co-offender opened the victim's car door and, while brandishing a screwdriver, demanded her handbag. The victim handed her bag to the co-offender. The appellant drove them away.</p> <p><u>Ct 6:</u> At about 9.30am on 19 December 2013, the appellant and co-offender formed an intention to steal a handbag from a shopper at a shopping centre car park. The appellant stopped the car in close proximity to the victim. The co-offender got out and pushed</p>	empathy.	
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			<p>the victim from behind causing her to stumble. The co-offender attempted to steal her handbag dragging her as he did so. After a struggle he obtained poss of the bag and ran to the car.</p> <p>The appellant was arrested on the same day. He made admissions to the offences, but denied entering the house in ct 1.</p> <p><u>Section 32 Notice</u> Between 8 August 2012 and 19 December 2013 the appellant committed multiple offences including agg burg on a liquor shop, breach of bail, stealing, wilful damage, trespass, steal motor vehicle, dangerous driving to escape pursuit, traffic offences and poss of a prohibited drug. The appellant made admissions to the section 32 offences when interviewed.</p>		
3.	<p><i>Adams v The State of Western Australia</i></p> <p>[2014] WASCA 191</p> <p>Delivered 28/10/2014</p>	<p>44 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>No relevant criminal history.</p> <p>Parents separated when 3 yrs old; raised by his mother; very difficult upbringing.</p> <p>Previously married; long term relationship; no children.</p>	<p><u>Indictment</u> Deprivation of liberty x 1. Att armed robbery x 1. Armed robbery x 1. Fraud x 9. Attempted fraud x 9. Possess identification material w/i to commit an offence x 1.</p> <p><u>Section 32 Notice</u> Stealing Commonwealth property x 1. Bringing stolen goods into State x 1. Stealing x 2.</p>	<p>TES 10 yrs imp.</p> <p>EFP.</p> <p>\$300 fine.</p> <p>Remorse; victim empathy; acceptance of responsibility.</p> <p>Sentencing judge described robberies and sexual offences as</p>	<p>Allowed – Grounds 3 & 6.</p> <p><u>Section 32 notice</u> Ct 1 varied – release after serving 7 mths of it on recognizance in the sum of \$10,000.</p> <p>At [8] It is very difficult, for the purposes of comparison in the context of the first limb of the totality principle, to</p>

		<p>Former AFP, Customs and Immigration officer.</p>	<p>Poss prohibited weapon x 3. Poss controlled weapon x 1. Unlicensed ammunition x 1. Possess stolen or unlawfully obtained property x 2. Possess false number plates x 1.</p> <p>Sometime before the appellant left the AFP in 2006, he dishonestly appropriated a number of items belonging to his employer, including a police radio, a ballistic vest & a container of OC spray.</p> <p>Between 2006 and 2010 the appellant resided and was employed as a customs officer in Darwin. Whilst his neighbours were on holiday the appellant broke into their unit and stole property and identification. The appellant subsequently transferred to Perth between November 2010 and January 2011 and took with him these items.</p> <p>In 2011 the appellant became and immigration officer. During this time he applied online for credit cards using the stolen identity details as well as incorrect information as to his employment, assets and liabilities. Some of the false information as to his employment came from documents he had accessed through his employment. The applications were approved. The appellant also attempted to apply for further credit cards but when asked for further</p>	<p>involving ‘a significant measure of premeditation, sexual motivation and planning’; described fraud as ‘deliberate, systematic and planned criminality over a significant period’.</p> <p>Low - moderate risk of re-offending in a sexual way; moderate – high risk of committing further dishonesty offences.</p>	<p>identify any relevant total effective sentences imposed in previous cases. The nature, extent and diversity of the appellant’s overall offending, by a person with his antecedents, is very unusual. No previous case is truly comparable.</p> <p>At [61] The past, present and likely future conditions of the appellant’s imprisonment, by reason of his status as a former police officer, were a relevant sentencing consideration that his Honour was bound to take into account.</p> <p>At [138] The appellant’s overall offending was self-evidently very serious. It was varied and substantial. It involved deliberate, systematic and planned criminality executed with considerable sophistication... The appellant used the skills</p>
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			<p>documentation he did not proceed or did not collect the card.</p> <p>In 2011 the appellant stole a cheque from a letterbox and deposited into one of his false accounts, withdrew money from the credit account he had opened and stole cheques from a cheque deposit box at a bank and then deposited the cheque into an access account he had opened.</p> <p>In 2012 the appellant rented a self-storage unit and post office box under the false name and address previously stolen. The box was used as a mailing address for invoices for the rented storage unit and applications for bank accounts.</p> <p>In March 2012 the appellant received two parking infringements for failing to display an unexpired ticket. Affixed to the vehicle were registration plates from another vehicle. The purpose being he would avoid paying the parking fees.</p> <p>On 30 March 2012 the victim, a 19 yr old Finnish national, was at a bus stop waiting for a bus. The appellant approached the victim, armed with a BB gun and demanded money. He forced the victim to a secluded location where he digitally penetrated her and performed cunnilingus. The victim tried to attempt to remove the handgun however the</p>	<p>he had gained in the work he had undertaken in the banking and law enforcement sectors to commit the offences, and went to considerable lengths to avoid detention.</p> <p>Discussion on the scope of section 32 notices and Commonwealth offences.</p> <p>At [174] Ground 3 is capable of affecting the total effective sentence imposed by his Honour. However, having regard to all of the circumstances of the case and particularly to the seriousness of the appellant's overall offending and the need for deterrence, I would not impose a different sentence.</p>
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			<p>appellant produced a large black-handled knife from his backpack and threatened to slash her throat.</p> <p>One month later the appellant approached another female victim. He exposed a handgun tucked into his shorts. Terrified, the victim threw her handbag at the appellant and ran.</p> <p>A search warrant was executed on the appellant's house where police located 38 items of mail stolen by the appellant from addresses in Perth. A further search warrant was executed at the storage facility where nine items of stolen mail was located. Also found were unlicensed registration plates, weapons and unlicensed ammunition.</p>		
2.	<p>Hill v The State of Western Australia</p> <p>[2014] WASCA 150</p> <p>Delivered 19/08/2014</p>	<p>28 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Long and persistent history of serious offending including numerous convictions for burglary and stealing.</p> <p>Highly dysfunctional upbringing exposed to domestic violence, alcoholism and was provided substances to use.</p> <p>Long history of alcohol and illicit</p>	<p><u>Indictment</u></p> <p>Ct 1:Agg armed robbery. Ct 2:Agg armed robbery. Ct 3:Agg Armed robbery. Ct 4:Agg burg (residential). Ct 5:Agg burg (residential).</p> <p><u>Section 32</u> Breach of bail.</p> <p><u>Indictment</u> The appellant, in company with four others were travelling on Tonkin Highway. On seeing a black Audi they decided to steal it</p>	<p><u>Indictment</u></p> <p>Ct 1: 4 yrs imp. Ct 2: 4 yrs imp (conc). Ct 3: 4 yrs imp (conc). Ct 4: 3 yrs imp (conc & cum). Ct 5: 3 yrs imp (conc & cum). <u>Section 32</u> 4 mths imp (cum).</p> <p>TES 7 yrs 4 mths imp.</p> <p>Made full admissions in ROI; co-operation with</p>	<p>Dismissed.</p> <p>At [62] In multiple offending of this kind, comparison with sentences imposed in other cases is difficult because of the very great variations in the number of possible offences and the possible combinations of offences.</p> <p>At [79] the appellant's prospects of rehabilitation</p>

		<p>substances abuse.</p> <p>Four significant dysfunctional personal relationships; Father to one child.</p> <p>Unemployed.</p> <p>Failed to make any positive changes as a result of completing programs in prison.</p> <p>Poor record of compliance and completion of previous orders and parole; failure to engage in no-custodial treatment programs.</p>	<p>and to steal from the Audi's passengers. When stopped at a red traffic light, the driver deliberately drove into the back of the Audi. Both vehicles pulled into a side street where the appellant and co-offender provided false personal details to the driver. The co-offender produced a crowbar and struck the side of the Audi. The offenders demanded money and stole the handbags of passengers. A co-offender then drove off in the Audi.</p> <p><u>Section 32</u> These two offences occurred two months after the agg armed robberies.</p> <p>The appellant and another broke into an unoccupied residence and stole property. They then went to another residence. The appellant acted as a lookout while the co-offender forced his way in. An elderly occupant heard the entry and confronted the co-offender. Both ran from the scene.</p> <p>The appellant breached his bail by not appearing before the Magistrates Court.</p>	<p>police was limited.</p> <p>Remorse and victim insight; acceptance of responsibility to some extent; minimised his level of responsibility.</p> <p>The sentencing judge was not satisfied that the appellant's prospects of rehabilitation were at all substantial.</p> <p>Moderate to high risk of violent re-offending and high risk of 'generalist re-offending'.</p>	<p>through eligibility of parole were outweighed by the need for the protection of the community.</p> <p>At [85] Discussion about determining discount for co-operation.</p> <p>At [91] the offending in this case was very serious.</p>
1.	<p><i>Sinclair v The State of Western Australia</i></p> <p>[2014] WASCA 22</p>	<p>18 yrs at time offending. 20 yrs at time sentencing.</p> <p>Ct 1: Convicted after Trial. Ct 2: Convicted after PG.</p> <p>Extensive criminal record; minor offences of dishonesty and public</p>	<p>Ct 1: Agg armed robbery. Ct 2: AOBH</p> <p>The appellant knew the victim and held a grudge against him.</p> <p>On the night of the incident the appellant was in company with his two co-offenders. The</p>	<p>Ct 1: 3 yrs 11 mths imp. Ct 2: s11 no sentence.</p> <p>EFP.</p> <p>Limited remorse.</p> <p>ADHD was a</p>	<p>Allowed.</p> <p>Re-sentenced to 2 yrs 9 mths imp.</p> <p>At [32] ... a sentence of immediate imprisonment is imposed for an offence</p>

Delivered 29/01/2014	<p>disorder and common assault.</p> <p>Parents separated prior to birth; father shown only intermittent interest in him; mother supportive of him.</p> <p>Diagnosed with ADHD at 8 yrs; untreated since 15 yrs.</p> <p>History of alcohol and substance abuse; efforts so far failed to rehabilitate him.</p> <p>Poor history of Children's Court order compliance.</p> <p>Co-offenders not apprehended and not dealt with.</p>	<p>co-offenders had made an arrangement to meet the victim at a park for a drug transaction. When the appellant and co-offenders got to the park, the appellant recognised the victim.</p> <p>The appellant and co-offenders chased the victim. The co-offenders, who were armed, one with a screwdriver and the other a pole, intended to rob the victim. The appellant, who was armed with a brick and motivated by his grudge, intended to assault him. Each offender used their implements to rob and inflict serious injury on the victim. The appellant came to know his co-offenders were robbing the victim and assisted and encouraged them.</p> <p>The victim received lacerations to his face, a fractured nose and broken elbow. The appellant derived no benefit from the robbery.</p> <p>The sentencing judge was unable to make a finding attributing particular injuries to each offender; however found the appellant's assault 'undoubtedly' contributed to the injuries.</p>	<p>contributor to the offending.</p> <p>Described by judge as 'a serious example of a serious offence'.</p> <p>Found criminal responsibility of appellant was less than his co-offenders although not vast.</p> <p>Moderate risk of future violent offending.</p>	<p>of armed robbery. A non-immediate custodial disposition is exceptional.</p> <p>At [48] [the judge]... having decided that the plea of guilty to count 2 merited some mitigation of the penalty on count 1, needed only to have taken it into account as part of the intuitive synthesis of all of the relevant circumstances of the case... His honour was not required to express the amount of any discount for this factor.</p>
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Transitional Provisions Repealed (14/01/2009)

<i>Transitional Provisions Enacted (31/08/2003)</i>					