

# **Extortion**

s 397(2) *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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
conc	concurrent
cum	cumulative
PG	plead guilty
agg	aggravated
att	attempted
TES	total effective sentence
SIO	suspended imprisonment order
CBO	community based order
OMCG	outlaw motorcycle gang
UCO	undercover operative

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
3.	<p><i>Stickells v The State of Western Australia</i></p> <p>[2018] WASCA 160</p> <p>Delivered 19/09/2018</p>	<p>34 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Born in South Africa; migrated to Australia aged 23 yrs.</p> <p>Parents separated aged 6 yrs;</p> <p>Schooled to aged 15 yrs; employed catering industry; self-employed own watch business.</p> <p>Married; young daughter born 2014.</p> <p>Commenced methyl use around time of wife's pregnancy; escalated drug use following marriage breakdown and separation; dealing drugs to fund own addiction.</p> <p>Mental health difficulties; prior episodes of depression and anxiety; not treated for any major mental illness prior to offending.</p>	<p>Ct 1: Poss methyl wiss 13.27g at 76%-80% purity.</p> <p>Cts 2 &amp; 3: Extortion.</p> <p>Stickells was arrested in relation to another matter. He was searched and released from custody.</p> <p><u>Ct 1</u> After the search 9.25g of methyl was found on the floor of the police vehicle where he had been sitting. Upon his rearrest a further 0.51g of methyl was found in his clothing and a further 3.5g in his underwear.</p> <p><u>Cts 2 &amp; 3</u> Stickells was owed \$10,000 by the victim MWS. He threatened MWS, telling him he would 'bury him' if he did not pay the money back.</p> <p>MWS failed to repay the debt and in fear he would be killed he suggested Stickells contact his mother KBS. Stickells then contacted KBS and told her to transfer \$10,000 into his account or her son would be killed. In fear for her son's safety she transferred the money as instructed.</p>	<p>Ct 1: 12 mths imp (cum).</p> <p>Ct 2: 18 mths imp (conc).</p> <p>Ct 3: 3 yrs imp (cum).</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge characterised the appellant as a low level user/dealer; nevertheless he played an important role in distributing dangerous drugs into the community and he acted in order to fund his own addiction.</p> <p>The sentencing judge found although the quantity of methyl was not particularly high, the purity was high.</p> <p>The sentencing judge found the offence involving KBS, a 71-yr-old woman living in another State, to be particularly serious.</p> <p>Genuinely remorseful;</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence and totality principle.</p> <p>At [40] ... The appellant's extortion offences had reasonably serious elements. In effect, the appellant threatened to kill the complainant, MWS, if payment of a debt was not made. His threats were plainly conveyed in a manner and tone that led the complainants to take the threats very seriously. ... the making of a threat to a 71-yr-old woman that her son would be killed aggravated the seriousness of the second extortion offence. The appellant exploited the vulnerability of an elderly mother arising from her maternal instinct to protect her child from harm.</p> <p>At [41] The terms of imp imposed for the appellant's extortion offences were not</p>

				steps taken towards rehabilitation; prior history of drug addiction counselling; good prospects of rehabilitation and low risk of reoffending.	manifestly excessive.  At [42] ... the appellant's offence of possession of methylamphetamine is itself a serious criminal offence. In the circumstances, it is amply justified, indeed required, as a term of imprisonment on the sentences for the extortion offences. The appellant was in possession of more than 13.5g of methylamphetamine of a high degree of purity, with the intention to sell or supply it to another.  At [44] ... the appellant ... was within the range of an appropriate exercise of the sentencing discretion.
2.	<b><i>Phan v The State of Western Australia</i></b>  [2016] WASCA 201  Delivered 30/11/2016	<u>Phan</u> 34 yrs at time sentencing.  Convicted after late PG (15% discount).  Prior criminal history including GBH and AOBH.  History of drug use.  <u>Hopes</u> 27 yrs at time sentencing.	1 x Extortion.  The appellants Hopes, Parr and Cross were members of an OMCG. The appellant Phan led an 'Asian gang' and was an associate of some members of the OMCG.  The appellants and other members of the two groups in company extorted money from a business.  Demands for the payment of protection money were made on numerous occasions to a UCO, who they believed was the owner of	<u>Phan</u> 7 yrs 6 mths imp. EFP. <u>Hopes</u> 5 yrs imp. EFP. <u>Parr</u> 9 yrs imp. EFP. <u>Cross</u> 5 yrs imp. EFP.  The sentencing judge	Dismissed.  Appeal concerned plea discount and parity.  <u>Phan</u> At [143] Given that the plea was entered on the fourth day of trial, albeit before any witnesses had given evidence, a reduction of the head sentence by 15% was generous.

		<p>Convicted after late PG (15% discount).</p> <p>Prior criminal history.</p> <p>Supportive relationship.</p> <p>Qualified steel fabrication engineer with good employment history.</p> <p><u>Parr</u> 49 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history.</p> <p>Married, wife pregnant. Two children from a previous relationship.</p> <p>Owner of properties, a business and a fitness gym.</p> <p><u>Cross</u> 28 yrs at time sentencing.</p> <p>Convicted after late PG (15% discount).</p> <p>Prior criminal history.</p> <p>Normal upbringing.</p> <p>Married with young child.</p>	<p>the business.</p> <p>Demands for payment of \$10,000 - \$15,000 per week were made. It was agreed the business would pay \$5,000 per week. Two payments of \$10,000 made by the UCO.</p> <p>Menacing threats to close down the business made, including intimidation and threats of violence against its staff and customers. On one occasion when a deadline for payment was not met a Molotov cocktail was thrown into the business when it was open and patrons and staff were present. It was unlikely to ignite but made a loud noise and smelt of diesel.</p>	<p>noted the victims and their company were vulnerable targets. The offending was planned, premediated and structured. The demands were persistent and continued over an extended period of time and were not in relation to the recovery of a debt owed.</p> <p>Phan, Hope and Cross demonstrated remorse.</p> <p>Parr attempted to minimise his role and shift the blame to his co-offenders and lacked remorse.</p>	<p>At [162] The employment of a large group ... acting in an organised manner to extort significant sums of protection money from a vulnerable business over an extended period of time makes the present case a very serious example of the offence of extortion.</p> <p>At [237] Parr was involved throughout the extortion and was, on the unchallenged findings of the sentencing judge, the mastermind behind the extortion plan. While he was involved in the background ... he was directing his subordinates as to how the extortion was to proceed.</p>
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1.	<p><i>Perry v The State of Western Australia</i></p> <p>[2016] WASCA 139</p> <p>Delivered on 08/08/2016</p>	<p>31 yrs at time offending. 32 yrs at time sentencing.</p> <p>Convicted after late PG (15% discount).</p> <p>Prior criminal history, including stealing and common assault.</p> <p>Born in NZ; raised by relatives after the death of his mother at 13 yrs.</p> <p>Father of 7 yr old; raised another former partner's son aged 10 yr old as his own.</p> <p>Good employment history.</p> <p>History of drug use, not using at time of offending.</p> <p>Degree of contrition.</p>	<p>1 x Extortion.</p> <p>Att debt recovery but no payment made. The victim renovated his restaurant. The builder claimed he was owed \$70,000 and arranged for Perry to contact the victim to extort payment of the debt.</p> <p>Several occasions of threats.</p> <p>Perry went to one of the victim's restaurants, forced him into a room and demanded the \$70,000. The victim refused to write a cheque so Perry threatened him, detailing the location of his house and that there would be problems. Perry slapped the victim across the face, causing him to fall against a wall. He warned the victim not to call police.</p> <p>On another occasion Perry went to another of the victim's restaurants. The victim's son was present, who called his father on his mobile phone. Via live video chat the victim saw and heard Perry tell his son that he now owed \$72,000. In fear his son ran from the restaurant. Perry then made threats directed at the victim to an employee.</p> <p>Some days later Perry demanded \$72,000. When the victim refused Perry told him, 'If you call the police, I will destroy your shop and I will come past your house too'. The next day Perry called and demanded he contact the builder.</p>	<p>3 yrs 2 mths imp.</p> <p>EFP.</p> <p>The sentencing judge characterised the offence as 'an objectively serious case of extortion' with the threats maintained and repeated over an extended period of time. The appellant used his size and appearance to terrorise the victim, victim's family and staff. Used actual violence at the outset.</p> <p>The sentencing judge found the offending calculated and persistent, motivated by a desire for financial gain.</p> <p>Unco-operative and showed little or no remorse.</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged length of sentence.</p> <p>At [26] ... the aggravating factors ... far outweigh the mitigating factors. Moreover, general deterrence was an important sentencing consideration.</p>

Office of the Director of Public Prosecutions