

Possess methylamphetamine/amphetamine with intent to sell or supply

s 6(1)(a) and 6(1)(c) *Misuse of Drugs Act*

From 1 January 2014

Transitional Sentencing Provisions: Each of the two tables is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period (after 14/01/09)
- Transitional provisions period (31/08/03 to 14/01/09)
- Pre-transitional provisions period (before 31/08/03)

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

PCJ	pervert the course of justice
conc	concurrent
cum	cumulative
EFP	eligible for parole
imp	imprisonment
methyl	methylamphetamine
MDMA	3,4-Methylenedioxy-n, Alpha Dimethylphenylethylamine (Ecstasy)
PG	plead guilty
susp	suspended
TES	total effective sentence
UCO	undercover officer
wiss	with intent to sell or supply
SIO	suspended imprisonment order
att	attempt
TOI	trial of issues
VRO	violence restraining order
CBO	community based order

Weight of methyl/amphetamine: above 65 grams

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
95.	<i>Musulin v The State of Western Australia</i> [2020] WASCA 18 Delivered 17/02/2020	<p>36 yrs at time offending and sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Lengthy criminal history; prior convictions for poss drugs; numerous convictions for breaching bail; CBOs; on parole for serious drug offences at time offending; offences committed four months 22 days after release to parole.</p> <p>Parents involved with drug use; nevertheless stable upbringing; provided with love and support; positive peer groups.</p> <p>Completed yr 10; boilermaker apprenticeship.</p> <p>Not in a relationship at time of sentencing; no children.</p> <p>Fairly consistent employment history; primarily in construction industry.</p> <p>Ongoing health condition; managed by medication; no</p>	<p>Ct 1: Poss methyl wiss 178.2 g at 68%-82% purity. Ct 2: Poss unlawfully obtained property (\$125,305).</p> <p>A search warrant was executed at Musulin's home. He was located in his bedroom throwing items out of the window into the rear yard. On the floor of the bedroom a clipseal bag containing a quantity of methyl was located; along with a tin containing two further clipseal bags of methyl.</p> <p>The total amount of methyl seized was 178.2 g; 27.5 g (68% pure); 111 g (82% pure) and 39.7 g (80% pure).</p> <p>A large quantity of cash was located on the bedroom floor and three bundles of \$50 notes were found in the yard. The total amount of cash seized amounted to \$125,305.</p> <p>Musulin claimed the drugs and money located did not belong to him; he was storing them for others as a means of repaying a drug debt.</p>	<p>Ct 1: 7 yrs imp. Ct 2: 1 yr imp (cum).</p> <p>TES 8 yrs imp.</p> <p>EFP.</p> <p>Sentence conc with term of imp already serving.</p> <p>The sentencing judge found the appellant's criminality was high; he was an important and trusted member of a distribution network; his participation was for commercial purposes, even if limited to extinguishing a pre-existing debt.</p> <p>The sentencing judge found the appellant was aware he was storing a considerable amount of drugs and money and he would have appreciated he was part of a large-scale drug distribution network; he was an indispensable link in the distribution of drugs into the community and his actions allowed those higher up in the chain of</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (ct 1) and totality principle.</p> <p>At [54]-[57] ... the appellant's offending constituted a very serious example of an offence of the kind in ct 1, for three reasons. ... the appellant was in poss of over six times the trafficable quantity of methyl, and most of it was of 80% purity or more. While the quantity of the drugs involved is not determinative, it is nevertheless a highly relevant factor in assessing the seriousness of the offending. While ... sentenced on the basis that he was storing the drug for others, that role, in respect of such a large quantity of drugs and at a very high level of purity, sustained the finding made by the learned sentencing judge that he was clearly a trust member of a distribution network. ... the appellant engaged in the</p>

		<p>mental health issues.</p> <p>History of illicit substance use; cannabis from aged 20 yrs; daily user of methyl; drug free after release to parole.</p>		<p>distribution to avoid detection.</p> <p>Appellant remorseful.</p>	<p>offending for commercial reasons. His culpability is not reduced by the fact that those reasons were limited to extinguishing a pre-existing drug debt. ... the appellant engaged in the offending shortly after commencing parole for earlier drug offences, including poss of methyl wiss. ... The fact that [he] committed the present offences whilst on parole for earlier offences, including an offence for poss of methyl wiss, added significantly to the overall criminality of the offending ...</p> <p>At [84] The offending the subject of ct 2 added to the overall criminality of the appellant's conduct. A large sum of money was involved, which, by his plea, the appellant accepted was reasonably suspected of being unlawfully obtained. That offence was committed whilst he was on parole. ...</p> <p>At [85] ... it was well open to the learning sentencing judge to order that the sentence for ct 2 be served cum with that for ct 1, so that the TES properly reflected the additional criminality involved in ct 2.</p>
94.	HSV v The State of	30 yrs at time offending.	Ct 1: Sold methyl 27.8 g at 72% purity.	Ct 1: 3 yrs 6 mths imp	Dismissed.

<p>Western Australia</p> <p>[2020] WASCA 5</p> <p>Delivered 15/01/2020</p>	<p>31 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>No significant criminal history.</p> <p>Supportive family; very close siblings.</p> <p>Educated to yr 11.</p> <p>Single; no children; acrimonious breakdown of 6 yr relationship.</p> <p>Good employment history; violently assaulted in 2017; unable to work 6 mths due to injury.</p> <p>No ongoing substance abuse issues; ecstasy use from aged 19 yrs; progressed to methyl and cocaine use; \$20,000 drug debt.</p>	<p>Ct 2: Poss cocaine wiss 630.07 g. Ct 3: Poss MDA wiss 183.3 g (527 tablets). Ct 4: Poss methyl wiss 977.82 g Ct 5: Poss unlawfully obtained property.</p> <p>HSV drove to a car park. A woman approached his vehicle and got into the front passenger seat. HSV handed her a quantity of methyl.</p> <p>Later that day HSV was stopped driving his motor vehicle. He was conveyed to his home address where a search warrant was executed. Police located a 5.57 g package of cocaine (85% purity); three packages each containing 100 MDA tablets weighing 26.3 g (12% purity), 26 g (15% purity) and 26.4 g (13% purity). A further package containing 227 MDA tablets weighing 59.6 g (14% purity) was also found.</p> <p>Three bundles of cash totalling \$33,075 were also located, along with a further 3.72 g of methyl (80% purity).</p> <p>Clip seal bags, elastic bands, digital scales, paper towels with printed logos and a vacuum sealing machine were also found.</p> <p>A search of the vehicle parked at the premises located a sophisticated secret compartment, activated by hydraulic rams, containing 499 g of cocaine (88% purity) and four individually wrapped packages of cocaine, weighing 27.8 g, 28.1 g, 27.8 g and 27.9 g each (83–86% purity). The vehicle was registered in his brother's name to avoid drawing attention to himself.</p> <p>Two further vacuum-sealed bags containing</p>	<p>(cum). Ct 2: 5 yrs 6 mths imp (conc). Ct 3: 3 yrs imp (conc). T 4: 9 yrs 6 mths imp (cum). Ct 5: 18 mths imp (conc).</p> <p>TES 13 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending very serious; it involved a large quantity of drugs and he was dealing for substantial profit in a large-scale commercial drug dealing operation and he had engaged a sophisticated system to avoid detection in the form of the secret compartment.</p> <p>The sentencing judge noted the variety of drugs involved was an agg factor.</p> <p>Appellant remorseful.</p>	<p>Appeal concerned totality. Individual sentences were not challenged.</p> <p>At [46] The overall criminality involved in all of the appellant's offending was high. He was operating a commercial drug dealing business involving significant quantities of drugs. He was in possession of about a kg of methyl with intent to sell at least most of it to others as part of his regular business. He was dealing with a range of other different kinds of prohibited drugs. There was a significant element of planning and sophistication involved in the appellant's steps to conceal the drugs. He was engaged in a commercial operation for profit. While the appellant was acting as agent for another person, his payment of \$5,000 per week plus drugs for his own use was a significant personal benefit for the appellant. It indicates the importance of his role in the particular drug dealing enterprise. The offending was not fleeting, isolated or out of character. The quantity, purity and variety of the drugs, and the value of</p>
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			<p>395 g of methyl (69% purity) and 496 g of methyl (80% purity) were also located.</p> <p>The vehicle was seized for further examination. Another hidden compartment in the front dashboard, operated by remote control, was located and found to contain four packages of methyl, two weighing 13.8 g (77% and 78% purity) and the other two weighing 27.8 g (76% purity) and 27.7 g (74% purity).</p> <p>A further search of the first secret compartment revealed an additional package containing 13.9 g (67% purity) of cocaine.</p>		<p>the cash, found in the appellant's possession, together with the sophistication of the steps taken to conceal the drugs and the payment the appellant was receiving, indicate that the appellant was more than the mere 'foot soldier' suggested by his counsel's submission.</p> <p>At [47] ... Some degree of accumulation was clearly required in respect of the ... offending, particularly having regard to the additional criminality involved in ct 2 ... and ct 5 ...</p>
93.	<p><i>Ramsden v The State of Western Australia</i></p> <p>[2019] WASCA 179</p> <p>Delivered 15/11/2019</p>	<p>27 yrs at time offending. 30 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Appellant one of four children; parents separated when aged 4 yrs.</p> <p>Completed Year 10.</p> <p>Regularly employed in various occupations; work injury and later surgery led to online gambling habit.</p> <p>Prior traffic related offences.</p>	<p>Ct 1: Poss MDMA wiss 309.71g of 11-24% purity. Ct 2: Poss unlawfully obtained money. Ct 3: Poss methyl wiss 49.98g of 78-80% purity.</p> <p>Ramsden was stopped by police driving his motor vehicle. A search of his car revealed clipseal bags containing small amounts of methyl and ecstasy. He was also found to be carrying \$5,085 cash in his pocket.</p> <p>A search of Ramsden's home located a total of 309.71g of ecstasy in both tablet and powder form. Empty capsules were also located. Estimated value was between \$36,054 and \$51,950.</p> <p>A further quantity of methyl in three clipseal bags were discovered inside a hot water unit</p>	<p>Ct 1: 6 yrs 3 mths imp. Ct 2: 15 mths imp (conc). Ct 3: 4 yrs imp (cum).</p> <p>TES 7 yrs 6 mnths imp.</p> <p>EFP.</p> <p>The trial judge found it was clear from the amount and purity of the drugs; the circumstances of their location, together with the large sum of money in the appellant's possession that he was involved in the distribution of drugs at least at the mid-level.</p> <p>The trial judge noted that</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence and sentencing on an incorrect factual basis.</p> <p>At [43] ... the appellant was engaged in the commercial dealing of significant quantities of both methyl and ecstasy ... while there were a number of mitigating factors personal to the appellant, those factors carry less weight in light of the significance of general deterrence as a relevant sentencing consideration.</p> <p>At [45] ... it is not</p>

			<p>in a locked storage room. Estimated value was between \$19,600 and \$24,500.</p> <p>Digital scales, clipseal bags, a food saver machine, money counting machine and multiple mobile phones were also found. A further \$40,850 in cash was located in his bedroom.</p>	<p>the appellant's 'participation was for commercial reasons'. And further 'You may well have used drugs, but your profits, no doubt, went some considerable way to funding, not only your gambling habit, but also your lifestyle'.</p>	<p>reasonably arguable that either the individual sentences or the TES imposed on the appellant were unreasonable or plainly unjust. Inferred error is not able to be established.</p>
92.	<p>Higgins v The State of Western Australia</p> <p>[2019] WASCA 78</p> <p>Delivered 21/05/2019</p>	<p>27 yrs at time offending. 29 yrs at time sentencing.</p> <p>Convicted after late PG (15% discount) (cts 10, 11, 37, 38 and 40). Convicted after PG (18% discount) (other 35 counts).</p> <p>Born in England; moved to Ireland aged 12 yrs; no family in WA.</p> <p>Completed yr 12 in Ireland.</p> <p>Employed construction industry on leaving school; lost job during Irish recession; struggled financially; commenced drinking heavily.</p> <p>Moved to Australia 2012-2013; gained work; reduced alcohol consumption; commenced bodybuilding.</p> <p>Problematic use of performance enhancing drugs; injecting six-seven</p>	<p>Cts 1-3; 9-11; 13-14; 17; 21; 26: Offer to sell MDMA. Cts 4-5; 8; 12; 15-16; 18-19; 24; 28; 31-32; 35-36: Offer to sell anabolic steroids. Cts 6-7; 25; 30: Offer to sell testosterone. Ct 20; 22-23; 27; 29; 33-34: Offer to sell human growth hormones. Cts 37 & 38: Sold methyl 13.6g at 75% purity & 55.7g at 75% purity. Ct 39: Offer to sell cocaine 255g (for \$67,500). Ct 40: Sold methyl 89.3g at 82% purity & 900g at 84% purity.</p> <p>Intercepted mobile telephone calls revealed Higgins offered to sell quantities of MDMA, anabolic steroids, testosterone and human growth hormones to others. Higgins was also seen meeting a customer and receiving money for the sale of MDMA pills (cts 1-36).</p> <p>Higgins began communicating with an UCO and supplied him with methyl and cocaine on four separate occasions (cts 37-40).</p> <p>Higgins communicated with a co-accused Mr MacDonald, knowing he was able to source very large quantities of methyl.</p> <p>The UCO informed the appellant he was</p>	<p>Ct 1: 12 mths imp (cum). Ct 2; 21 & 37: 2 yrs imp (conc). Cts 3; 9-11; 13; 17 & 26: 12 mths imp (conc). Cts 4-7; 14; 16; 20; 27; 33 & 35: 3 mths imp (conc). Ct 8: 6 mths imp (cum). Cts 12; 15; 18-19; 22-25; 28-32; 34 & 36: 6 mths imp (conc). Ct 38: 3 yrs imp (conc). Ct 39: 3 yrs imp (cum). Ct 40: 8 yrs imp (cum).</p> <p>TES 12 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending very serious; he dealt with large volumes of various prohibited drugs for commercial gain.</p> <p>The sentencing judge found the appellant's actions were 'deliberate, repeated and persistent'; the quantity,</p>	<p>Dismissed.</p> <p>Appeal concerned error in law (plea discount) and parity principle.</p> <p>At [181] ... bearing in mind the extent of the delay in the pleas, ... the discount of 18% was well within the range of an appropriate exercise of discretion. ...</p> <p>At [133] ... bearing in mind the strength of the state case, the discount of 16% applied to cts 10, 11, 37, 38 and 40, to which the appellant PG only after committal for trial ... can fairly be said to be generous.</p> <p>At [187]-[188] ... Mr Woodcock's role in the sale of the methyl was undoubtedly higher in the chain of supply hierarchy than the appellant's. In that respect, Mr Woodcock's offence reflected a high</p>

		<p>times per day; cost of habit increasing to thousands of dollars per week; resulting financial stress; began offending as a means of making up the shortfall between his income and expenses.</p> <p>Ceased drug use following arrest.</p>	<p>interested in purchasing 1 kg of methyl. Mr MacDonald informed the UCO his supplier could provide the 1 kg of methyl for \$192,500. Higgins was present during this discussion and he discussed this proposed purchase with the UCO on further occasions. Higgins acted as the go-between between the UCO and Mr MacDonald. When the deal did not come to fruition Higgins indicated to the UCO he may be able to source the drug elsewhere.</p> <p>Higgins then contacted the co-accused Mr Costa Ramirez. Mr Costa Ramirez and the UCO discussed the purchased of methyl, along with a co-accused Mr Perlin. Some days later Mr Costa Ramirez and Mr Perlin sold 989.3 g of methyl to the UCO in exchange for \$180,000. A further co-offender Mr Woodcock supplied the methyl and was present during this transaction.</p>	<p>purity and value of the drugs involved significant and some involved substantial quantities; others were involved in the offences and he was motivated by commercial gain.</p> <p>Demonstrated remorse; cooperative; steps taken towards rehabilitation.</p>	<p>degree of culpability and yet the appellant received a higher sentence ... Against this, however, is the appellant's offending in relation to ct 40 involved a high degree of persistence over a lengthy period of time. ... the appellant engaged in discussions with the UCO with a view to a sale of 1 kg of methyl. ... the appellant pursued and facilitated the sale that ultimately was ct 40. ...</p> <p>At [191] ... While Mr Costa Ramirez's offending might fairly be seen as somewhat more serious than the appellant's, that is comfortably accommodated by the 1 yr higher sentence imposed on Mr Costa Ramirez.</p>
91.	<p><i>Carlucci v The State of Western Australia</i></p> <p>[2019] WASCA 37</p> <p>Delivered 22/02/2019</p>	<p>38 yrs at time offending. 40 yrs at time sentencing.</p> <p>Convicted after PG (15% discount).</p> <p>Minor criminal history; prior drug offences incurring fine penalties.</p> <p>Three siblings; subjected to traumatic incidents aged 7-8 yrs; discovered not her father's biological daughter aged 20 yrs.</p>	<p>Cts 1 & 4: Poss methyl wiss 108.7 g and 123.9 g (total 232.6 g) at 71-89% purity.</p> <p>Ct 2: Poss MDMA wiss 2.72 g</p> <p>Ct 3: Poss unlawfully obtained property (\$33,690).</p> <p><u>Ct 1</u> A search warrant was executed at an address, where Carlucci was living in an old bus.</p> <p>Inside the bus three bags of methyl bundled together were located. The bags contained 27.4 g, 27.3 g and 27.4 g of methyl. A further bundle containing 26.6 g of methyl was also found.</p>	<p>Ct 1: 3 yrs imp (cum). Ct 2: 1 yr imp (conc). Ct 3: 2 yrs 6 mths imp (conc). Ct 4: 5 yrs imp (cum).</p> <p>TES 8 yrs imp. EFP.</p> <p>The sentencing judge found the offending a serious example of its type; the appellant was dealing in high quantities of methyl of high purity; she was mid to</p>	<p>Allowed.</p> <p>Appeal concerned totality principle.</p> <p>Individual sentences not disturbed. Resentenced:</p> <p>Ct 1: 3 yrs imp (cum). Ct 2: 1 yr imp (conc). Ct 3: 2 yrs 6 mths imp (conc). Ct 4: 5 yrs imp (cum). To commence after serving 18 mths of sentence for ct 1.</p>

		<p>Completed yr 10; good work history.</p> <p>One long-term relationship; married 6 yrs; separated aged 28 yrs; one child from union.</p> <p>History of recreational methyl use; increased drug use in att to cope with imp of sister; eventually smoking methyl daily; commenced selling methyl to pay drug debts.</p> <p>Unemployment and living in a car at time offending.</p> <p>No history of mental illness.</p>	<p>Carlucci admitted during the search she had obtained the methyl 'on tick' and she believed the drug was worth about \$40,000.</p> <p>The accused was charged and released on bail.</p> <p><u>Cts 2 - 4</u> Approximately 7 months later Carlucci was stopped by police driving a motor vehicle. A search of the vehicle located bundles of \$50 and \$100 notes, totalling \$33,690 in cash.</p> <p>Smoking implements, mobile phones, sets of scales and clipseal bags were also found inside the vehicle.</p> <p>The next day a further search of Carlucci's vehicle was undertaken. Drug detection dogs located a box, secreted in the driver's door, containing 123.9 g of methyl in twelve clipseal bags, along with 0.5 g of MDMA powder and eight MDMA tablets, weighing a total of 2.72 g.</p>	<p>high level in the drug hierarchy and was motivated principally by commercial gain.</p> <p>The sentencing judge found an aggravating feature was the offences the subject of cts 2 - 4 were committed while she was on bail for the offence the subject of ct 1.</p> <p>Some demonstrated remorse and acceptance of responsibility.</p>	<p>TES 6 yrs 6 mths imp. EFP.</p> <p>At [50] The appellant's offending was undoubtedly very serious. She persisted in conducting a drug-dealing business involving the sale of significant quantities of methyl for commercial gain. The sentencing judge correctly regarded the fact that cts 2 – 4 were committed while on bail as a significant aggravating feature of the offence. ...</p> <p>At [52] ... the TES ... is disproportionate ... While the scale of her business was significant, the appellant's parlous circumstances at the time of the offending indicated that the cash which is generated for her personal benefit was limited. Her drug dealing, conducted from her car, did not have the level of sophistication of the operations in a number of the cases to which we have referred. It was relevant to note that the appellant had pleaded guilty, and the psychiatrist assessed her amphetamine use disorder as being in extended remission. She did not have a serious prior record, and there</p>
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					appeared to be some prospect of rehabilitation. Having regard to all of the circumstances ... it was not open to the sentencing judge to conclude that a sentence of 8 yrs' imp bore a proper relationship to the overall criminality involved in all of the offences. ...
90.	<p><i>Gakis v The State of Western Australia</i></p> <p>[2019] WASCA 25</p> <p>Delivered 05/02/2019</p> <p>Co-offender of:</p> <p><i>Bull v The State of Western Australia</i></p> <p>[2019] WASCA 24</p>	<p>31 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Extensive criminal history; including poss of drugs and offences of violence; prior sentences of imp.</p> <p>Supportive family.</p> <p>Learning difficulties; diagnosed with ADHD; completed yr 10.</p> <p>Employed labouring roles; unemployed since suffering serious injury in 2012.</p> <p>History of methyl use.</p>	<p>1 x Poss methyl wiss 2.137 kg at 67-77% purity.</p> <p>Gakis and the co-offender Bull were close friends.</p> <p>Gakis was hospitalised and on his instruction Bull obtain a quantity of high-purity methyl from an unknown source. He then told Bull to secrete the drug at a property owned by his partner. Bull did as he was instructed.</p> <p>A search warrant executed at the property located three packages of methyl, two buried near a swimming pool and a third hidden in the ceiling recess inside the house.</p> <p>One package contained 986 g of 77% pure methyl, another 988 g of 77% pure methyl and the third 163 g of 67% methyl.</p> <p>The methyl if sold by the kilogram was worth approx \$500,000.</p> <p>A search of Gakis' home found CCTV security surveillance and other security measures consistent with, and supporting, the inference that he was dealing in illicit drugs. Also located were a vacuum-sealing machine and vacuum-seal bags, similar to or the same</p>	<p>14 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's drug dealing was solely for the purpose of commercial gain; the offending on the part of the appellant involved extensive planning, organisation and coordination; he and Bull were each involved towards the upper end of the distribution chain close to the supply or source of the methyl; the community could have suffered significant harm had the drugs not been seized; the appellant manipulated and instructed others and he would have been involved in the distribution of the drug into the community.</p> <p>The sentencing judge found the quantity and purity of the methyl meant the drug</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [33]-[44] Discussion of comparable cases.</p> <p>At [46] ... the quantity of methyl was very substantial and its purity was high. The appellant orchestrated the acquisition of the methyl and directed that it was to be secreted on a property which he, in effect, controlled. He carried out the offence with persistence. Even while incapacitated in hospital, he, through Mr Bull, directed the operation. The offending was committed for commercial gain. The appellant would have been involved in distributing the drug into the community.</p> <p>At [48] It is clear that the appellant was at the upper end of the drug distribution</p>

			as, the packages of methyl found. A roll of paper towels similar in appearance to the paper towels in which the drugs in the ceiling recess had been wrapped was also located.	would have been reduced into smaller quantities and 'cut', thereby 'significantly increasing' the profit to be made.	chain and was close to the supply or source of the drugs. The appellant was the principal offender and told Mr Bull what to do. At [50] ... we have not been persuaded that the sentence imposed upon the appellant was unreasonable or plainly unjust. It is not manifestly excessive. ...
89.	<p><i>Bull v The State of Western Australia</i></p> <p>[2019] WASCA 24</p> <p>Delivered 05/02/2019</p> <p>Co-offender of:</p> <p><i>Gakis v The State of Western Australia</i></p> <p>[2019] WASCA 25</p>	<p>31 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Prior criminal history; prior sentence of imp for drug offending.</p> <p>Completed yr 10; completed apprenticeship; good work history.</p> <p>De facto relationship; expecting his first child.</p> <p>Heavy user of methyl; long standing drug debt.</p>	<p>1 x Poss methyl wiss 2.137 kg at 67-77% purity.</p> <p>Bull and the co-offender Gakis were close friends.</p> <p>Gakis was hospitalized. On his instruction Bull obtained a quantity of high-purity methyl from an unknown source and secreted it at a property owned by Gakis' partner.</p> <p>A search warrant executed at the property located three packages of methyl, two buried near a swimming pool and a third hidden in the ceiling recess inside the house.</p> <p>One package contained 986 g of 77% pure methyl, another 988 g of 77% pure methyl and the third 163 g of 67% methyl.</p> <p>The methyl if sold by the kilogram was worth approx \$500,000.</p>	<p>11 yrs 4 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found although the appellant's role was less significant than that of Gakis, it was nevertheless important and without his involvement and assistance the drug would not have been able to be buried or secreted; his role was greater than that of a courier; he was trusted to source, transport and hide the methyl; he had access to large quantities of the drug and both he and Gakis were involved towards the upper end of the distribution chain close to the original supply or source of the methyl.</p> <p>The sentencing judge found the appellant was to be paid \$10,000 for his role in</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence; parity principle; error in plea discount and error in finding of fact (appellant continued to retain control over the drugs).</p> <p>At [54] ... The appellant willingly sourced the methyl and hid it at the property. He did so purely for commercial gain. It is not mitigating that at the time of the commission of the offence he had a drug debt, or that he was a user of methyl. His culpability, while less than Mr Gakis', was significant and important. The fact that he was able to source such a large quantity of high-purity methyl shows that he was, ... towards the upper end of the drug distribution chain and close to the source of the drug. The appellant's</p>

				<p>sourcing and hiding the drug and the quantity and purity of the methyl meant the drug would have been reduced into smaller quantities and ‘cut’, thereby ‘significantly increasing’ the profit to be made.</p> <p>Some demonstrated remorse and acceptance of responsibility to his offending.</p>	<p>participation in the offence was not fleeting, but was persistent and multifaceted. Although the appellant was not to be involved in the sale or supply of the drug into the community, he knew, ultimately, that is where it would end up. As his Honour found, the drug was likely to be cut, so the potential for harm to the community, as great as it was when the appellant obtained it, would have been more widespread once it had been diluted.</p> <p>At [57] ... The sentence was not unreasonable or plainly unjust....</p>
88.	<p><i>Wong v The State of Western Australia</i></p> <p>[2019] WASCA 8</p> <p>Delivered 16/01/2019</p>	<p><u>Chiu</u> 25 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>No prior criminal history.</p> <p>Born Hong Kong; limited English.</p> <p>Positive and normal upbringing; close family.</p> <p>Completed equivalent of yr 10 in Hong Kong.</p> <p>Married; no children.</p> <p>Employed in Hong Kong.</p>	<p><u>Chiu</u> Cts 1 & 2: Property laundering. Ct 3: Poss methyl wiss 3.855 kg between 75% - 79% purity. Ct 4: Poss methyl wiss 7.606 kg between 5% - 81% purity. Ct 5: Poss unlawfully obtained property (\$400,938.50).</p> <p><u>Chuen</u> Ct 4: Poss methyl wiss Ct 5: Poss unlawfully obtained property (\$400,938.50).</p> <p>The appellants Chiu and Chuen are brothers.</p> <p>Chiu was recruited in Hong Kong to come to Australia, to undertake ‘errands’ involving the sale and supply of illegal drugs. He was paid for the tasks he performed and provided</p>	<p><u>Chiu</u> Ct 1: 6 mths imp (cum). Ct 2: 12 mths imp (conc). Ct 3: 14 yrs imp (cum). Ct 4: 2 yrs imp (cum). Ct 5: 2 yrs imp (conc).</p> <p>TES 16 yrs 6 mths imp. EFP.</p> <p><u>Chuen</u> Ct 4: 13 yrs imp (conc). Ct 5: 2 yrs imp (conc).</p> <p>TES 13 yrs imp. EFP.</p> <p><u>Chiu</u> The sentencing judge found the appellant was not at the</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence (ct 3); totality principle and parity principle.</p> <p><u>Chiu</u> Re-sentenced to:</p> <p>Ct 1: 12 mths imp (cum). Ct 2: 12 mths imp (conc). Ct 3: 11 yrs imp (conc). Ct 4: 12 yrs imp (cum). Ct 5: 2 yrs imp (cum).</p> <p>TES 15 yrs imp. EFP.</p> <p><u>Chuen</u> Re-sentenced to:</p>

		<p>Sound mental and physical health; no history of illicit substance use; rarely consumes alcohol.</p> <p><u>Chuen</u> 26 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>No prior criminal history.</p> <p>Born Hong Kong; limited English.</p> <p>Positive and normal upbringing; close family.</p> <p>Completed equivalent of yr 10 in Hong Kong.</p> <p>No significant relationships; no children.</p> <p>Stable employment history.</p> <p>Gambling addiction; offending a means to repay gambling debts.</p>	<p>with accommodation and food. In addition, he expected payment of a large sum of money on his return to Hong Kong.</p> <p>Chuen followed his brother to Australia some months later, knowing Chiu was involved in illegal activities.</p> <p><u>Ct 1</u> On instruction from his Hong Kong boss Chiu attended an arranged meeting place, where he delivered a bag containing \$100,000 in cash for the purchase of half a kg of drugs.</p> <p><u>Ct 2</u> On another occasion Chiu was instructed by his Hong Kong boss to deliver money. He was picked up and driven to an address, where he handed \$100,000 in cash to a male in a car.</p> <p><u>Ct 3</u> On another occasion, on instructions from his boss, Chiu attended a meeting point and collected a quantity of methyl from the boot of a motor vehicle.</p> <p>He was arrested before he could deliver the drug.</p> <p>The drugs were valued at between \$720,000 and \$1 million.</p> <p><u>Cts 4 & 5</u> On the same date as ct 3 Chuen and another male left an address in a vehicle, with a number of suitcases, two of which belonged to his brother Chiu.</p>	<p>very top of the drug hierarchy; however he was towards the top end of the chain of distribution.</p> <p>Responsibility for his offending; lack of insight into seriousness of his offending.</p> <p><u>Chuen</u> The sentencing judge found the appellant was ‘acting as a caretaker of the drugs and the money’ and although he was not the mastermind behind the offending his role was important; but different to, and less culpable than that of his brother.</p> <p>The sentencing judge found the appellant’s offending was motivated by financial gain.</p> <p>Lack of insight into seriousness of his offending.</p>	<p>Ct 4: 10 yrs imp. Ct 5: 12 mths imp (cum).</p> <p>TES 11 yrs imp. EFP.</p> <p>At [77] ... the offending in ct 3 was undoubtedly serious. However, the appellant’s role was to take the drugs from the boot of the car, transport them to his house and keep them there until he received instructions from his boss. He did not own the drugs and was not in control of the operation.</p> <p>At [80] When all of the relevant factors and circumstances are taken into account, ... we have come to the conclusion that the sentence of 14 yrs’ imp was manifestly excessive. ...</p> <p>At [88] Chiu’s position in the international criminal organisation in which he had involved himself was higher than his brother’s.</p> <p>At [97] Chiu’s overall criminality was substantially greater than Chuen. ... it is evident that Chiu, over a substantial period of approx eight months, played a vital role in the ongoing illegal</p>
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			<p>The vehicle was stopped by police and in the suitcases various quantities of methyl were found, along with multiple mobile phones, unused cipseal bags, gloves, SIM cards, rubber bands and foreign currency.</p> <p>Cash and coins totalling \$400,938.50, as well as \$13,500 worth of casino chips were also located in the vehicle.</p>		<p>activities being undertaken in WA by his superiors in Hong Kong. While Chuen's role in cts 4 and 5 was important, his role was restricted to his participation as a driver in those cts and his overall role was subservient to that of his brother.</p>
87.	<p><i>LAT v The State of Western Australia</i></p> <p>[2018] WASCA 215</p> <p>Delivered 07/12/2018</p>	<p>43 yrs at time offending. 44 yrs at time sentencing.</p> <p>Convicted after relatively early PG (20% discount).</p> <p>Very limited criminal history; no prior sentences of imp.</p> <p>Left school yr 10.</p> <p>Completed apprenticeship; mostly self-employed; hardworking successful business owner until downturn in building industry; commenced methyl use and dealing drugs.</p> <p>Partner facing deportation; expecting first child together at time of sentencing; suffered death of partner's daughter in 2017.</p> <p>History of methyl use.</p>	<p>Ct 1: Att poss methyl wiss 483.36g. Ct 2: Att to wilfully destroy evidence. Ct 3: Poss methyl wiss 15.65g.</p> <p>LAT negotiated the purchase of 0.5kg of methyl for \$67,000 from his co-offender Ms G. Ms G arranged for her supplier to provide the drug.</p> <p>A few days later LAT arranged for a co-offender, Mr N, to obtain cash to facilitate the purchase of the drug. Late that day, LAT and the two co-offenders attended a pre-arranged meeting point where the supplier provided a quantity of white crystal material, later identified as sucrose (ct 1).</p> <p>LAT was arrested at the scene. Whilst being apprehended he threw the bag containing the white crystal material onto the road, causing it to break and spill (ct 2).</p> <p>A search of LAT's home located a quantity of methyl in four separate cipseal bags (ct 3).</p>	<p>Ct 1: 7 yrs imp (conc). Ct 2: 6 mths imp (conc). Ct 3: 1 yr 6 mths imp (conc).</p> <p>EFP.</p> <p>The sentencing judge found the appellant a commercial drug dealer; he was operating at mid-level or even higher and was not selling at street level.</p> <p>The sentencing judge found the appellant stood to profit \$40,000 - \$118,000; he did not accept that any significant proportion of the drug the subject of ct 1 would have been for the appellant's own use.</p> <p>The sentencing judge found the appellant's att to destroy evidence opportunistic and spontaneous; a very serious offence warranting a term of imp.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle on basis of post-sentencing cooperation.</p> <p>At [39] The sole ground of appeal is fundamentally flawed, as it relies on events occurring after the completion of the sentencing process.</p> <p>At [40] ... In exercising the power to admit additional evidence, ordinarily at least, a distinction is drawn between matters which existed at the time of sentencing, but were not known, and matters which have come into existence since the time of the sentence. ...</p> <p>At [40]-[43] Discussion of comparable cases.</p>

				No demonstrated real remorse.	
86.	<p><i>Trajkoski v The State of Western Australia</i></p> <p>[2018] WASCA 176</p> <p>Delivered 12/10/2018</p>	<p>46 yrs at time sentencing.</p> <p><u>Ind 2015</u> Convicted after PG (15% discount cts 1-2; 25% discount cts 3-5).</p> <p><u>Ind 2016</u> Convicted after trial.</p> <p>Lengthy prior criminal history; including drug convictions; prior terms of imp.</p> <p>Offences the subject of ind 2016 committed while on bail for cts 3-4 on ind 2015.</p> <p>Daughter aged 12 yrs.</p> <p>Long history of drug use.</p>	<p><u>Ind 2015</u> Cts 1 & 2: Sold methyl 13.86g at 73-76% purity and 55.6g at 72-73% purity. Ct 3 & 4: Poss heroin wiss 2.09g at 76% purity and 8.33 g at 65% purity. Ct 5: Cultivation cannabis wiss 12 plants.</p> <p><u>Ind 2016</u> Ct 1: Poss methyl wiss 133g at 64-85% purity. Ct 2: Poss heroin wiss 175g at 84-88% purity.</p> <p>Trajkoski had regular access to and was dealing in drugs. The offences were committed on five separate occasions, spanning a period of almost four months.</p> <p><u>Ind 2015</u> Trajkoski sold methyl to an UCO for \$7,000 cash (ct 1).</p> <p>A week later Trajkoski sold a further quantity of methyl to the same UCO for \$25,000 (ct2).</p> <p>Some days later Trajkoski was found in possession of a quantity of heroin and \$7,000. During a strip-search a further quantity of heroin was found in his underwear (cts 3-4).</p> <p>Several weeks later Trajkoski cultivated hydroponic cannabis, involving 12 cannabis plants and nine clones (ct 5).</p> <p><u>Ind 2006</u> A search of Trajkoski's home located quantities of methyl (ct 1) and heroin (ct 2) concealed in the ceiling. Also found was</p>	<p><u>Ind 2015</u> Ct 1: 15 mths imm (conc). Ct 2: 2 yrs 6 mths imp (head). Ct 3: 9 mths imp (conc). Ct 4: 12 mths imp (conc). Ct 5: 9 mths imp (conc).</p> <p><u>Ind 2016</u> Ct 1: 4 yrs imp (cum). Ct 2: 4 yrs imp (cum).</p> <p>TES 10 yrs 6 mths imp.</p> <p>The sentencing judge found the appellant was at the time a 'professional drug dealer for commercial gain specialising in methyl and heroin and had been for some time'; he was towards the top of the hierarchy of distribution and had benefited to a significant extent from his drug dealing.</p> <p>The sentencing judge described the commission of the offences committed while on bail a 'seriously agg factor showing a flagrant disregard for the law'.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [33] The appellant's offending had many serious elements: ...</p> <p>At [34] There is no merit in the appellant's assertion that the failure to order some concurrency between the two offences the subject of the 2016 ind reveals implied error. ...</p> <p>At [36] ... The sentence ... bears a proper relationship to the overall criminality involved in the appellant's offending, viewed in its circumstances as a whole, and taking into account his personal circumstances. ...</p>

			<p>\$39,900 in cash. A further \$21,050 cash was found in his girlfriend's handbag.</p> <p>Other items associated with drug dealing were found at the home, which was fitted with a sophisticated CCTV security surveillance system.</p>		
85.	<p><i>Nguyen v The State of Western Australia</i></p> <p>[2018] WASCA 162</p> <p>Delivered 19/09/2018</p>	<p>48 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Lengthy prior criminal history; convictions for drug offending; previous sentences of imp.</p> <p>Born in Vietnam; arrived in Australia aged 15 yrs.</p> <p>Completed schooling in Australia; employed fishing and building industries.</p> <p>Long term relationship; two children aged 9 and 6 with health and behavioural difficulties.</p> <p>Two adult children from previous relationship.</p> <p>History of alcohol and methyl use; at time sentencing had not used illicit drugs for 3-4 yrs.</p>	<p>1 x Poss methyl wiss 164g at 82%.</p> <p>Nguyen and his co-offender were stopped by police in a motor vehicle. A search of their car located the methyl.</p>	<p>5 yrs 10 months imp.</p> <p>EFP.</p> <p>The trial judge found the appellant and the co-offender were both in poss of the methyl and they both played some role in the packaging of the drug.</p> <p>The trial judge found although the appellant and co-offender were not the beneficial owners of the drug they were delivering it to an unknown person or persons for 'significant' financial reward.</p> <p>Risk of further drug-related offending.</p> <p>No demonstrated remorse or responsibility for his offending.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence and parity principle.</p> <p>At [18] ... taking into account: ... the maximum penalty for the offence; the serious nature of the offending; ... the sentences imposed in previous cases ...; the place which the appellant's criminal conduct occupies on the scale of seriousness of offences of this kind; ... the importance of appropriate punishment and personal general deterrence ...; the sentence ... was not unreasonable or plainly unjust.</p> <p>At [24] ... The most significant factors in the sentencing of the appellant and the co-offender were appropriate punishment and personal and general deterrence. The differences between their respective prior criminal records were not, in all the circumstances, of any significance for</p>

					<p>sentencing purposes. ... His Honour was entitled to afford the co-offender the discount of three months to recognise his 'particularly difficult start in life'.</p> <p>At [25] ... We are satisfied that the disparity cannot be characterised as marked or unjustified. ...</p>
84.	<p><i>Rowson v The State of Western Australia</i></p> <p>[2018] WASCA 82</p> <p>Delivered 24/05/2018</p>	<p>31 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Lengthy prior criminal history; including convictions for poss prohibited drugs with intent; no prior sentences of imp.</p> <p>Stable upbringing.</p> <p>Left school yr 9; completed apprenticeship; never worked consistently.</p> <p>Three significant relationships; child with first partner; loss of second partner to suicide; two young sons with current partner; custody of 11 yr old son at time offending.</p> <p>Severely assaulted aged 24 yrs; involved in motorcycle groups; incurred drug debts; protective custody at time sentencing.</p>	<p>Ct 1: Poss methyl wiss 2.131kg at 80% purity. Ct 2: Poss methyl wiss 35.97g. Ct 3: Having ready access simultaneously to weapons and prohibited drugs.</p> <p>Rowson's home contained an extensive CCTV monitoring system and combination locks on some doors. He also had a signal jammer, camera detector and radio frequency detector.</p> <p><u>Ct 1</u> SM attended Rowson's home with high-purity methyl to cut and package for sale.</p> <p>Police raided the premises during the drug processing operation. The CCTV system alerted the appellant to the police and SM was able to dump the drug into a spa. Methyl was located in and about the spa, together with an unascertained additional quantity dissolved in spa water and disposed of on the lawn.</p> <p>The value of the drug at street level exceeded \$2 million.</p> <p><u>Ct 2</u></p>	<p>Ct 1: 15 yrs imp (conc). Ct 2: 3 yrs 6 mths imp (conc). Ct 3: 12 mths imp (conc).</p> <p>TES 15 yrs imp.</p> <p>The trial judge found the appellant was close to the source.</p> <p>The sentencing judge found the appellant was in possession of a significant quantity of methyl for the purposes of processing it and the end product was intended by the appellant to find its way into the community.</p> <p>The sentencing judge found the appellant was in joint poss of methyl with the intention of selling or supplying it primarily for commercial gain; described as a high-end dealer-user.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (ct 1) and error in finding appellant high-end dealer-user.</p> <p>At [31] ... his Honour's focus was appropriately on what the appellant did rather than the label to be attached to his involvement. ...</p> <p>At [32] The label 'high-end dealer-user' does not have any precise meaning. ... It is a reasonable way of describing a person addicted to methyl whose house is equipped in a sophisticated manner for drug dealing, who has been photographed with over \$400,000 derived from or utilised in dealing in drugs, who was preparing over 2 kg of methyl worth well over \$2 million for sale or supply and who acts primarily for commercial</p>

		<p>Suffers anxiety and depression.</p> <p>Commenced substance abuse aged 12 yrs; daily user of methyl most of adult life; past drug treatment programmes undertaken.</p>	<p>35.97g of methyl was located in a wardrobe.</p> <p><u>Ct 3</u> Weapons were also on and about the premises, including an air rifle, a double-bladed sword, a heavy steel baton, a neck knife, knuckledusters, a credit card knife, knuckleduster knife and start gun. A fold out knife was also located inside a vehicle parked at the premises.</p> <p>Photographs on Rowson's phone showed him with a large quantity of cash totalling at least \$400,000.</p> <p>MSM, digital scales, mixing bowls, clip-seal bags, latex gloves, acetone and a vacuum sealer were also located. Rowson's DNA was recovered on some gloves.</p>		<p>gain. ...</p> <p>At [48] The appellant's offence represents a very serious offence against s 6(1) of the <i>Misuse of Drugs Act</i> in respect of a significant quantity and value of methyl. His house was set up for the drug dealing operation in a sophisticated manner ... He clearly formed a central part of a large commercial operation. ...</p>
83.	<p><i>Jneid v The State of Western Australia</i></p> <p>[2018] WASCA 67</p> <p>Delivered 11/05/2018</p>	<p><u>Z Jneid</u> 40 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Prior criminal history; convictions for drug possession and assault.</p> <p>Born in Lebanon at time of war; traumatic and disadvantaged background as child.</p> <p>Parents divorced; mother re-married; migrated to Australia 1989.</p> <p>Married; five young children; wife serious medical</p>	<p><u>Z Jneid</u> 1 x Supplied methyl to another 1.988kg at 74% and 76% purity.</p> <p><u>R Jneid</u> 1 x Supplied methyl to another 990g at 78% purity.</p> <p><u>Obradovic</u> 1 x Poss methyl wiss.</p> <p>Z Jneid and R Jneid are brothers who operated a drug-dealing enterprise. They engaged two others, JR and AS, who worked for them as 'middle men'.</p> <p><u>J Zneid</u> AS drove to a prearranged location whereby he took delivery of a package of methyl, handed to him by J Zneid through the window of the vehicle.</p>	<p><u>Z Jneid</u> 14 yrs 6 mths imp. EFP.</p> <p><u>R Jneid</u> 15 yrs imp. EFP.</p> <p><u>Obradovic</u> 7 yrs imp. EFP.</p> <p>The sentencing judge found the offending of Z Jneid and R Jneid at 'the very high end of the scale having regard to the roles played and the seriousness of the offending'; they operated a drug-dealing business on a very significant scale;</p>	<p>Dismissed.</p> <p><u>Z Jneid</u> Appeal concerned error of fact (drug-dealing on a significant scale that reaped significant financial reward); parity principle and length of sentence.</p> <p><u>R Jneid</u> Appeal concerned errors of fact (drug-dealing on a significant scale that reaped significant financial reward and finding of element of concert); parity principle and length of sentence.</p> <p><u>Obradovic</u> Appeal concerned length of</p>

	<p>condition; substantial support for his wife and children.</p> <p>Elderly mother of poor health.</p> <p><u>R Jneid</u> 42 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Prior criminal history; convictions for poss drugs and hindering police; prior custodial sentence for poss drugs wiss.</p> <p>Born in Lebanon at time of war; traumatic and disadvantaged background as child.</p> <p>Parents divorced; mother re-married; migrated to Australia 1989.</p> <p>Married; three children; family emotionally and financially dependent on him.</p> <p>Elderly mother of poor health.</p> <p>Financial difficulties at time offending.</p> <p><u>Obradovic</u> 35 yrs at time sentencing.</p>	<p>Police immediately arrived at the scene. AS fled and was pursued by police. Before his arrest AS threw the package of methyl into a nearby garden. It was later recovered.</p> <p><u>R Jneid and Obradovic</u> Z Jneid was overseas so R Jneid assumed control of the drug supply operation.</p> <p>R Jneid agreed to supply AS, through JR, with a quantity of methyl at a price of \$280,000 cash.</p> <p>By prior arrangement AS met JR. When he arrived at the prearranged location JR and Obradovic were waiting. A package containing the methyl, supplied by R Jneid, was placed into AS's vehicle by JR, who then took \$5,000 cash as part payment for the drugs.</p> <p>AS later gave JR the balance of the \$280,000 cash.</p> <p>In breach of their bail Z Jneid and R Jneid absconded to QLD, they were located and extradited to WA approx 17 months later.</p>	<p>motivated by 'pure and simple greed'; they had reaped significant financial rewards from the business; were 'at the top of or very close to the top of the chain of distribution'; the offending was not mitigated by having been an isolated, one-off supply or a momentary aberration.</p> <p>The sentencing judge accepted Obradovic's involvement in the drug supply operation was a 'single, one-off transaction'.</p> <p><u>Z Jneid</u> No remorse shown; no demonstrated insight into the seriousness of his offending.</p> <p><u>R Jneid</u> No remorse or contrition into his offending; no insight into seriousness of his offending.</p> <p><u>Obradovic</u> No genuine remorse or insight into seriousness of his offending; programmes undertaken to address his substance abuse.</p>	<p>sentence.</p> <p>At [70] ... Mr [Z] Jneid, in association with Mr [R] Jneid, operated a drug dealing business on a very significant scale and reaped significant financial rewards. His Honour was entitled, on the information before him, to make those findings. No error is apparent.</p> <p>At [88] ... we are satisfied that the sentence ... imposed on Mr [Z] Jneid is broadly consistent with the sentencing pattern revealed by the prior cases.</p> <p>At [89] The very serious nature of Mr [Z] Jneid's offending is apparent ... The substantial quantity (1.988 kg) and the high degree of purity (74% to 76%) ... The substantial value of the methyl ... he was very close to the top of the hierarchy of distribution. ... The offending involved planning and management by Mr [Z] Jneid in that he gave instructions to others who were lower in the hierarchy of distribution ... The supply of the methyl was a commercial activity and Mr [Z] Jneid was motivated purely by financial gain.</p>
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		<p>Convicted after PG (15% discount).</p> <p>Extensive prior criminal history; including poss prohibited drugs; no prior sentences of imp.</p> <p>Gainfully employed father's business.</p> <p>Stable relationship; close family support.</p> <p>Longstanding illicit drug use.</p>			<p>At [114] ... the disparity between the sentence imposed on Mr [Z] Jneid and the sentence imposed on [JR] was objectively justifiable by reference to the greater seriousness of Mr [Z] Jneid's offence and his greater culpability.</p> <p><u>R Jneid</u> At [151] We are satisfied that: ... the sentencing judge's findings that Mr [R] Jneid, in association with Mr [Z] Jneid, operated a drug dealing business on a very significant scale and reaped significant financial rewards. His Honour was entitled, on the information before him, to make those findings.</p> <p>At [159] ... His Honour did not invoke the legal principle of 'acting in concert' in the sense of taking into account Mr [Z] Jneid's offending for the purpose of sentencing Mr [R] Jneid for his offence ...</p> <p>At [160] ... the sentencing judge was entitled to make the general finding that there was 'an element of concert in the commission of your separate offences' in the sense that Mr [R] Hneid and Mr [Z] Jneid were engaged</p>
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					<p>in a drug dealing business.</p> <p>At [169] The very serious nature of Mr [R] Jneid's offending is apparent from ... the substantial quantity (990g) and the high degree of purity (78%) of the methyl ... The substantial value of the methyl. ... he was very close to the top of the hierarchy of distribution. ... The offending involved planning and management by Mr [R] Jneid in that he gave instructions to others who were lower in the hierarchy of distribution ... The supply of the methyl was a commercial activity and Mr [R] Jneid was motivated purely by financial gain.</p> <p>At [198] ... The disparity between the sentences was not such as to give rise to a legitimate or justifiable sense of grievance of Mr [R] Jneid's part, or to give the appearance in the mind of an objective observer that justice was not done as between Mr [R] Jneid and [JR] or generally.</p> <p><u>Obradovic</u></p> <p>At [211] The serious nature of Mr Obradovic's offending is apparent from ... The substantial quantity (900 g)</p>
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					<p>and the high degree of purity (78%) of the methyl ... The substantial value of the methyl. ... Mr Obradovic deliberately involved himself in the drug transaction with [JR]. ... he had engaged in the transaction with the expectation of receiving some credit in some way at some future time.</p> <p>At [217] ... the sentence ... was not unreasonable or plainly unjust.</p>
82.	<p><i>Tago v The State of Western Australia</i></p> <p>[2018] WASCA 59</p> <p>Delivered 02/05/2018</p> <p>Co-offender of:</p> <p><i>Kezkiropoulos v The State of Western Australia</i> [2018] WASCA 58</p>	<p>44 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Minor prior criminal history.</p> <p>Born New Zealand; came to Australia as a teenager.</p> <p>Good and strict upbringing; 'disturbed youth'.</p> <p>Average student; completed yr 11.</p> <p>Consistent employment.</p> <p>Married; four children.</p> <p>Excessive use of alcohol at time offending.</p> <p>In financial difficulties at time offending.</p>	<p>1 x Poss methyl wiss 21kg at high purity.</p> <p>Tago agreed to drive a vehicle from Sydney to Perth with a quantity of methyl. He was to be paid \$1,500-\$2,000.</p> <p>Tago immediately flew from Brisbane and the following day he left Sydney in a hired vehicle. Following in a second vehicle were Simons and Walker.</p> <p>On arrival in Perth all participants went to a resort where the drugs were unpacked.</p> <p>That same day 11kg of the drug was delivered by Simons and Tago to Kezkiropoulos.</p> <p>Later that evening the unit Tago was occupying at the resort was searched and the remaining 10kg of methyl located.</p>	<p>9 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge described the events as a very serious example of this type of offence.</p> <p>The sentencing judge accepted the appellant did not know the quantity or chemical composition of the drugs but he must have assumed it to be methyl and must have been aware from the scale of the operation that it was a significant quantity.</p> <p>The sentencing judge found the appellant only played a minor part in the operation; he had no financial interest in the drugs or in any</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence and error in finding the appellant knew there was significant quantity of drugs.</p> <p>At [30] The amount the appellant was to be paid is a relevant act to be taken into account, but not in isolation. When viewed in the context of all of the other circumstances it does not prevent an inference of knowledge that the amount of drugs was significant being drawn.</p> <p>At [31] There were other circumstances relevant to determining the appellant's state of knowledge. These include the fact that the appellant knew that he was to</p>

		<p>No significant health problems; no history of drug addiction.</p>		<p>profits that might have been made from them; he was a courier.</p> <p>Positive efforts made towards rehabilitation; low risk of re-offending.</p>	<p>drive together with three other people in two cars ... and that all fuel, accommodation and food expenses would be paid for by others. The appellant also knew that there was a degree of urgency and the arrangements included having him met at Sydney Airport by a limousine driver holding a sign with a false name. It is inconceivable that such efforts would be made for a small quantity of drugs.</p> <p>At [49] As to the seriousness of the offending in this case, the role of the appellant was at the lower end of the hierarchy, but he nonetheless played an important and willing part in the transportation of a very large quantity of drugs to WA. His involvement was not brief, rather it continued over a period of some 5 days. The quantity and purity of the drugs were both very high and the value was estimated to be approx \$4 million.</p> <p>At [50] ... on a proper exercise of the sentencing discretion a higher sentence might have been imposed, and Her Honour's sentencing ... can fairly be described as</p>
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					lenient. The sentence imposed properly reflected the objective features of the offending, ...
81.	<p><i>Kezkiropoulos v The State of Western Australia</i></p> <p>[2018] WASCA 58</p> <p>Delivered 02/05/2018</p> <p>Co-offender of:</p> <p><i>Tago v The State of Western Australia</i></p> <p>[2018] WASCA 59</p>	<p>52 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Prior criminal history; including custodial sentence for drug offences.</p> <p>Born Melbourne; lived in Greece 2-3 yrs as a child; experienced language related learning difficulties on his return.</p> <p>Helped with care of younger brother with mental health issues as teenager and young adult.</p> <p>Married; two young children.</p> <p>Employed; part-owner of business; fell into debt and suffered financial pressures.</p> <p>Recreational use of cannabis as a teen; otherwise no history of drug abuse.</p>	<p>1 x Poss methyl wiss 11kg at 75%-79% purity.</p> <p>Kezkiropoulos drove to a carpark where he met with two men, Tago and Simons. The two cars then drove in convoy before pulling over to the side of the road.</p> <p>Kezkiropoulos got out of his car and placed a bag containing \$89,650 in cash into the rear of the other car, before collecting a bag containing the methyl, which he placed into the boot of his own car.</p> <p>A short time later Kezkiropoulos' vehicle was stopped and searched. The bag containing the methyl was located, along with \$5,500 in cash.</p> <p>The value of the drug was estimated to be between \$2.75 million (if sold in kg lots) and \$11 million (if sold on the street in lots of 0.1g).</p>	<p>17 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant was involved in the distribution of drugs within the community for reward; he was not at the top of the tree but that didn't mean he wasn't an important part of the drug distribution network; he played a significant role</p> <p>Motivation for offending entirely financial gain.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence and parity principle.</p> <p>Re-sentenced to 13 yrs imp. EFP.</p> <p>At [30] ... Clearly he played an important and trusted role but there is nothing to suggest that he was in a high position in the hierarchy of distribution. On the other hand, his involvement was not confined to this instance and needed to be seen in the context of the evidence that he had received similar parcels on two previous occasions.</p> <p>At [40] As serious as the appellant's role was, his level of criminality was significantly less than that of either <i>Quaid</i> or <i>Milenkovski</i>. Unlike those offenders, he was not at or close to the top of a major drug distribution enterprise.</p> <p>At [44] [Simons] and [Tago] were not strictly speaking co-offenders with the appellant but there is sufficient overlap</p>

					<p>to engage the norm of equal justice that animates the parity principle.</p> <p>At [50] The discount of 20% given by the sentencing judge was unduly generous. ... In our view the appropriate discount is one of 10%.</p> <p>At [52] It is necessary for parity reasons to take into account the sentences imposed on [Tago] and [Simons].</p>
80.	<p><i>Mussarri v The State of Western Australia</i></p> <p>[2018] WASCA 46</p> <p>Delivered 06/04/2018</p>	<p>64-65 yrs at time offending. 67 yrs at time sentencing.</p> <p><u>Ind 1261</u> Convicted after late PG (5% discount).</p> <p><u>Ind 461</u> Convicted after late PG (full satisfaction of ind) (5% discount).</p> <p>Extensive criminal history; prior convictions for drug dealing.</p> <p>Born Sicily; migrated to WA with family at young age.</p> <p>Left school yr 8.</p> <p>Completed apprenticeship and TAFE course.</p>	<p><u>Ind 1261</u> 1 x Att to poss heroin wiss 361g at 75%-81% purity.</p> <p><u>Ind 461</u> 4 x Sold methyl (cts 4-7) 351.1g at 55%-76% purity.</p> <p>Police conducted an investigation into an interstate drug syndicate.</p> <p><u>Ind 1261</u> Mussarri and a co-offender, Kelly, arranged to purchase a large quantity of heroin from the co-offender Le. Le attended Kelly's home. He was arrested and found in poss of heroin. A search of the home located \$130,800 cash (approx value of the heroin in the poss of Le) and drug-dealing items, including digital scales, clipseal bags and tick lists.</p> <p><u>Ind 461</u> A covert operative 'Vinnie' contacted</p>	<p><u>Ind 1261</u> Ct 1: 5 yrs 8 mths imp (cum).</p> <p><u>Ind 461</u> Ct 4: 5 mths imp (conc). Ct 5: 2 yrs 10 mths imp (conc). Ct 6: 5 mths imp (conc). Ct 7: 4 yrs 9 mths imp (cum with ind 1261).</p> <p>TES 10 yrs 5 mths imp. EFP.</p> <p>The sentencing judge found cts 5 and 7 involved significant quantities of methyl with a high degree of purity; involved transactions at a high level in the scale of distribution and represented 'a continuing course of</p>	<p>Dismissed.</p> <p>Appeal concerned plea discount and parity principle.</p> <p>At [94] The appellant's overall offending was ... very serious having regard ... to the repetitive and persistent nature of the overall offending; the quantity and purity of the prohibited drugs ...; and the offending the subject of ind 461 having occurred while the appellant was on bail for the offence charged in ind 1261.</p> <p>At [100] ... it was necessary, in order properly to mark the seriousness of the appellant's overall offending, to order that the sentence for ct 7 in</p>

		<p>Several relationships; number of children; close to some of his children.</p> <p>Number of medical issues; including diabetes; gastritis; haemorrhoids; chronic back pain; heart disease; diagnosed and successfully treated for cancer 2014.</p>	<p>Mussarri to purchase methyl from him.</p> <p>Mussarri supplied Vinnie with 0.37g of methyl with a purity of 75% (ct 4).</p> <p>On another occasion Mussarri agreed to sell or supply Vinnie with 168g of methyl. Mussarri ordered the drug from a Mr Phan. When this amount of the drug was not able to be obtained a further quantity was agreed upon. Mr Phan collected 126g of methyl from a Mr Pham and delivered it to Mussarri's home. Mussarri gave the drug to Vinnie in exchange for \$45,000 cash (ct 5).</p> <p>On another occasion Mussarri supplied Vinnie with 0.73g of methyl (ct 6).</p> <p>On another occasion Mussarri, and his co-offenders, Kelly, Mr Phan, Mr Pham and Ms Mussarri, were involved in the sale of 224g of methyl to Vinnie. Mussarri met with Vinnie to discuss the purchase. Mr Phan then collected the drug from Mr Pham and went to Mussarri's home. Later that day Vinnie went to the house to purchase the drug. At Mussarri's direction Ms Mussarri retrieved the drug from a truck parked at the home and placed it in Vinnie's car, before Vinnie handed her \$80,000.</p>	<p>conduct in the commercial distribution of the drug.</p>	<p>ind 461 be served cum upon the sentence for the ct in ind 1261. Further, it was appropriate for the other sentences to be ordered to be served conc with each other and conc with the accumulated sentences.</p>
79.	<p><i>Abbott v The State of Western Australia</i></p> <p>[2018] WASCA 45</p> <p>Delivered 06/04/2018</p>	<p>46 yrs at time offending. 48 yrs at time of sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; including poss prohibited drugs; cultivate cannabis.</p> <p>Loving and supportive</p>	<p>Ct 1: Offer to supply cannabis. Cts 2-5: Offer to supply methyl. Ct 6: Poss methyl wiss 68.7g at 73-86% purity. Ct 7: Poss methyl wiss 1.61kg at 78-80% purity. Ct 8: Poss unlawfully obtained property (\$41,750 cash).</p> <p>Police were investigating Abbott and Mr B in</p>	<p>Ct 1: 3 mths imp (conc). Ct 2: 6 mths imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 2 yrs imp (cum). Ct 5: 2 yrs imp (conc). Ct 6: 4 yrs imp (conc). Ct 7: 9 yrs imp (cum). Ct 8: 18 mths imp (conc).</p> <p>TES 11 yr imp.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (cts 6-7), parity and totality.</p> <p>At [67] ... it was necessary, in order properly to mark the seriousness of the appellant's overall offending, for the</p>

		<p>family.</p> <p>Left school aged 12 yrs.</p> <p>Completed 5 yr jockey apprenticeship; employed many yrs horse racing industry. Worked hospitality industry and own petrol station.</p> <p>No form of legitimate employment since 2015; receipt of Centrelink benefits.</p> <p>Two serious relationships; currently single; no children.</p> <p>Illicit drug use; increased use after death of his father in 2014.</p>	<p>connection with drug dealings. During an intercepted telephone call Mr B informed Abbott he had buried some drugs on his property. At Mr B's request Abbott dug up and retrieved the drugs.</p> <p>An unidentified woman asked Abbott if she could get her a stick of cannabis for her. He agreed to do so 'on tick' (ct 1).</p> <p>Abbott received a text message from an unidentified male asking for a 'half weight' (0.5g) of methyl. Abbott agreed to sell or supply him with the drug (ct 2).</p> <p>During a telephone conversation with an unidentified male Abbott agreed to sell him a 'quart' (7g) of methyl. (ct 3).</p> <p>During a telephone conversation with an unidentified male Abbott offered to sell or supply him with half an ounce of methyl for \$5,250 (ct 4).</p> <p>During a telephone conversation with an unidentified female Abbott offered to sell or supply her with half ounce of methyl for \$5,500 (ct 5).</p> <p>Police conducted a search of Abbott's premises. In his bedroom eight bags of methyl were located. The value of the drug, if sold as packaged, was about \$34,000 (ct 6).</p> <p>Later, buried under a water tank on the property police found a large container containing two sealed packages of methyl. One contained 1.05 kg at 80% purity, the other 560g of methyl with a purity of 78% (ct 7).</p>	<p>EFP.</p> <p>The trial judge found the appellant was not merely aiding Mr B by permitting him to store illegal drugs under his rainwater tank; he was 'actively involved in the stashing of those drugs under that tank'. All evidence led to the irresistible conclusion the appellant was dealing in drugs on a very regular basis and in amounts of half ounces and quarter ounces.</p> <p>The trial judge was satisfied the appellant and Mr B were in joint possession of the methyl; whilst the appellant's ultimate expected benefit in relation to the drugs may have been less than Mr B's, the appellant would have acquired a benefit.</p> <p>The trial judge found the drugs in the appellant's bedroom were solely for the purpose of dealing commercially in methyl and he was 'certainly more than a user/dealer'.</p> <p>The trial judge found the 1.61kg of methyl, if sold in one ounce lots, was worth nearly \$650,000 and if sold</p>	<p>individual sentences imposed on each of cts 4 and 7 to be served cum.</p> <p>At [69] The TES bears a proper relationship to the overall criminality involved in all of the offences, viewed in their entirety, and after having regard to all relevant circumstances, including those referable to the appellant personally, and the TES imposed in reasonably comparable cases.</p> <p>At [71] ... none of the individual sentences of imp imposed on the appellant is manifestly excessive. ...</p> <p>At [75] ... the appellant was not jointly charged with [Mr B] in relation to any of the cts on which the appellant was convicted.</p> <p>At [78] ... The appellant and [Mr B] were not co-offenders. There was no evidence before the trial judge and there is no evidence before this court that the offences of which the appellant was convicted and the offences of which [Mr B] was convicted related to their participation in a common criminal enterprise. ... the overall seriousness of the</p>
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			Also found in his bedroom was the sum of \$11,700 cash in a box that could be locked, along with \$100 in a draw. Police later seized a bag belonging to Abbott containing \$29,950 cash (ct 8).	in 1g lots it was worth nearly \$1.3 million. Remorseful in way he has treated his family; however no indication of more general remorse.	offences of which the appellant was convicted was significantly greater than the overall seriousness of the offences of which [Mr B] was convicted. At [86] ... it is not reasonably arguable that the appellant should have received any different individual sentences or a different TES, having regard to all the facts and circumstances of the case ...
78.	<i>Separovic v The State of Western Australia</i> [2018] WASCA 36 Delivered 19/03/2018	43 yrs at time offending. 45 yrs at time sentencing. Convicted after trial. Minor criminal history, prior convictions for poss of methyl and cannabis. Good work history; 20 yrs in hairdressing trade. Highly regarded in the community. Minor problem with methyl use.	Ct 1: Poss methyl wiss 221.68g at 80% purity. Ct 2: Poss methyl wiss 1.042kg at 80% purity. Ct 3: Poss cannabis wiss 828.2g. Separovic and her boyfriend, the co-offender, were jointly involved in the business of selling methyl and cannabis. On 22 February 2015 police located the methyl (ct 1) and cannabis inside their home, along with firearms, other weapons, cash, scales, cryovac machines and tick lists. The quantity of methyl (ct 2) was found in a car parked in the driveway of the house.	Ct 1: 18 mths imp (cum). Ct 2: 8 yrs 6 mths imp (cum). Ct 3: 12 mths imp (conc). TES 10 yrs imp. EFP. The trial judge found that the appellant (and co-offender) was a commercial drug dealer. They were in joint possession of the drug which constituted their stock in trade and the drugs were of significant value, even if sold in bulk. The trial judge found the fact the appellant was in possession of methyl and cannabis for commercial gain was an aggravating factor.	Dismissed - on papers. Appeal concerned length of sentence and totality principle. At [34] The very serious nature of the appellant's overall offending ... is apparent from ... the quantity, purity and value of the methyl ... and the quantity of the cannabis Also, at [35] The appellant's offending ... was not isolated or an aberration. The trial judge's unchallenged finding was that in 2015 the appellant was a commercial drug dealer. Also, at [36] The appellant was not youthful or inexperienced for sentencing purposes.

					<p>At [42] ... the very serious nature of the offending, viewed as a whole, including the unchallenged agg factor that the appellant was in possession of the methyl and the cannabis for commercial gain ...</p> <p>At [43] The TES bears a proper relationship to the overall criminality ...</p> <p>At [45] ... none of the individual sentences of imp imposed on the appellant is manifestly excessive. ...</p>
77.	<p><i>Gaskell v The State of Western Australia</i></p> <p>[2018] WASCA 8</p> <p>Delivered 18/01/2018</p>	<p>33 yrs at time offending. 35 yrs at time sentencing.</p> <p>Convicted after PG (12% discount).</p> <p>Prior criminal history; no relevant history of offending; no prior sentences of imp.</p> <p>Parents separated aged 11 yrs; death of close friend aged 14 yrs.</p> <p>Sound education; completed yr 10 and trade apprenticeship.</p> <p>Married; relationship involving mutual drug use.</p> <p>Recreational drug user;</p>	<p>Ct 1: Poss methyl wiss 21.74kg at 73.5%-80.3% purity. Cts 4 & 9: Poss unlawfully obtained property. Cts 5 & 6: Poss firearm. Cts 7 & 8: Poss ammunition.</p> <p>A search warrant was executed at Gaskell's home and at the address of a co-accused. A contract for a storage unit was located in the co-accused's car.</p> <p>A search warrant was executed at the storage unit.</p> <p>CCTV footage obtained from the storage unit showed Gaskell, the co-accused and a third male transporting tubs into the unit.</p> <p>In the storage unit in a tub police located disposable gloves, large clip-seal bags, a notebook containing a 'record of account'</p>	<p>Ct 1: 18 yrs 6 mths imp. Ct 4: 4 yrs imp (conc). Ct 5: 1 yr imp (conc). Ct 6: 18 mths imp (cum). Ct 7: 3 mths imp (conc). Ct 8: 1 mth imp (conc). Ct 9: 6 mths imp (conc).</p> <p>TES 20 yrs imp. EFP.</p> <p>The sentencing judge found the appellant intended to distribute the drugs and the distribution was at the very highest level of commercial activity; accepted there was someone higher than the appellant in the hierarchy.</p> <p>The sentencing judge found the purity and volume of</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence ct 1 and totality principle.</p> <p>Re-sentenced:</p> <p>Ct 1: 16 yrs imp (cum). Ct 4: 4 yrs imp (conc). Ct 5: 1 yr imp (cum). Ct 6: 1 yr imp (cum). Ct 7: 3 mths imp (conc). Ct 8: 2 mths imp (conc). Ct 9: 6 mths imp (conc).</p> <p>TES 18 yrs imp. EFP.</p> <p>At [142] ... A range of sentences for very serious offending involving very</p>

		<p>cannabis and alcohol from early teens; ecstasy and methyl early twenties; cocaine late twenties;</p>	<p>relating to the distribution of drugs, a computer hard drive and a money counting machine.</p> <p><u>Ct 1</u> Inside two tubs police also found methyl. More than 16.6 kg of pure methyl was contained in the 21.74 kg seized. The value of the methyl if sold in 1 kg parcels was approx \$4.3 million. If sold by the ounce, uncut, it would be worth approx \$6.2 million.</p> <p><u>Ct 4</u> In the unit \$569,000 in cash in vacuum sealed bags was also found. Gaskell's initials were on many of the parcels of cash.</p> <p>Inside Gaskell's home heat sealing bags were also located, including one signed with his initials.</p> <p><u>Ct 5</u> A sawn off double-barrel shotgun was located in the storage unit.</p> <p><u>Cts 6 & 7</u> A six-shot revolver handgun with the serial number removed was also found, along with 13 hollow-point .38 rounds for the handgun.</p> <p><u>Ct 8</u> Four 12-gauge shotgun rounds were found.</p> <p><u>Ct 9</u> A search warrant executed at a unit sublet by Gaskell located \$39,950 in cash inside a safe.</p>	<p>the drug suggested the appellant was close to the source of the drug and that he was instrumental in the distribution into the community of great quantities of the drug which he sold for commercial gain.</p> <p>The sentencing judge found the money was unlawfully obtained and derived from drug trafficking and represented the fruits of very substantial quantities of drugs sold; while the firearms and ammunition were assets of a drug trafficking business kept to protect that business from the greed and violence of others.</p> <p>Appellant accepted responsibility; given 'slight credit for remorse'.</p>	<p>large quantities of one drug has not yet emerged.</p> <p>At [147] There is no doubt that the appellant's offending was very serious. He had possession of an extremely large quantity of drugs of high purity valued in the region of \$4 million to \$6 million. As the packaging of the drug indicated, he was commercially selling large quantities of drugs. His motivation was financial gain. ...</p> <p>At [148] ... the appellant was not at the top of the drug dealing hierarchy. <i>Milenkovski</i> and <i>Quaid</i> are illustrative of cases in which (leaving aside the volume of drugs involved) the offender's role, and what the offender did, involved greater criminality, to a not insignificant degree, than that of the appellant in this case.</p> <p>At [149] ... evaluated against the yardstick of the maximum penalty of 25 yrs, locating the offence on the spectrum that extends from the least serious instances of the offence to the worst category and taking into account his PG ..., it must be concluded that the sentence</p>
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					imposed for ct 1 reveals implied error.
76.	<p><i>Lenton v The State of Western Australia</i></p> <p>[2017] WASCA 224</p> <p>Delivered 04/12/2017</p>	<p>47 yrs at time sentencing.</p> <p>Convicted after very late PG; first day of trial (5% discount).</p> <p>Long criminal history; prior drug and firearm related offences; prior sentences of imp.</p> <p>Unsettled childhood during period of parents separation aged 2 yrs. Close and supportive family.</p> <p>Attended numerous schools; completed yr 12; completed first yr of university degree.</p> <p>Employed various roles; including intermittent work in family business prior to imp for present offences.</p> <p>Divorced; no dependents.</p> <p>Long history of illicit substance abuse; methyl and cocaine from age 29; periods of abstinence with gradual relapsed into drug use; little effort made to address his substance abuse problems.</p> <p>Medicated and counselled for post-traumatic stress disorder.</p>	<p>Ct 1: Reckless driving. Ct 2: Poss MDMA 2.09g. Ct 3: Poss methyl wiss 84.15g at 37%-52% purity. Ct 4: Poss cocaine wiss 1.98g. Ct 5: Poss MDA 0.5g (2 tablets). Ct 6: Agg poss firearm. Ct 7: Fail to obey data access order.</p> <p>Lenton was driving a motorcycle when police signalled for him to pull over. He did not do so and instead accelerated and fled from police. The pursuit continued for several km, during which he travelled at high speed and through two red traffic lights.</p> <p>When attempting to evade a second police vehicle he lost control of the motorcycle and was apprehended.</p> <p>Lenton's backpack and satchel were searched. Clipseal bags containing various quantities of MDMA were located (ct 2), along with a container holding various quantities of methyl (ct 3). A clipseal bag of cocaine (ct 4) and two MDA tablets were also found (ct 5).</p> <p>An unlicensed .32 calibre five-shot revolver containing one round of live ammunition was also found (ct 6).</p> <p>Lenton was also found in possession of \$767 cash, \$4,000 cash, a flick knife, four mobile phones; tick lists; a set of electronic scales and a laptop computer. The tick lists listed names, amounts owing (in excess of \$100,000) and references to pounds and</p>	<p>Ct 1: 12 mths imp (cum). Ct 2: 1 mths imp (conc). Ct 3: 6 yrs imp (head). Ct 4: 6 mths imp (conc). Ct 5: 1 mths imp (conc). Ct 6: 12 mths imp (cum). Ct 7: 6 mths imp (conc). TES 8 yrs imp.</p> <p>The sentencing judge found ct 3 the most serious offence and based on the cash; tick lists; weapons; scales and mobile phones found the appellant was actively engaged in commercial drug dealing and that his involvement was at a much higher level than that of a street dealer or person selling drugs to pay for their own consumption.</p>	<p>Dismissed.</p> <p>Appeal concerned totality. Individual sentences were not challenged.</p> <p>At [61] The possession of a variety of drugs and a relatively large quantity of cash together with tick lists and a firearm led to the inevitable conclusion that the appellant was playing a significant role in the sale and delivery of prohibited drugs and that this involvement had occurred in the context of a continuing commercial criminal enterprise.</p> <p>At [62] The possession of a loaded firearm was a particularly serious feature of his overall offending ... A cumulative sentence for this offence was necessary to properly reflect the criminality involved in the drug and firearm offences.</p> <p>At [63] The reckless driving also entailed additional criminal behaviour and put the safety of other road users, and the police officers involved, at risk. ... His attempt to explain this</p>

			<p>ounces.</p> <p>The four mobile telephones and laptop were locked and he failed to obey a data access order to reveal the PIN or pass codes for the devices (ct 7).</p>		<p>conduct as caused by PTSD was rightly viewed as secondary to his desire to avoid discovery of the drugs. A cumulative sentence for this offence was also appropriate.</p> <p>At [64] ... The finding of four mobile telephones and a laptop computer in the appellant's possession was consistent with these items being used in connection with the sale of drugs. Data contained on such items may provide evidence of other offences. There is often a strong incentive for offenders in the appellant's position not to comply with a data access order. That incentive should be countered by appropriate deterrent sentences. ...</p> <p>At [71] The TES ... imposed on the appellant bears a proper relationship to the overall criminality involved in all of the offences ...</p>
75.	<p><i>Chadburne v The State of Western Australia</i></p> <p>[2017] WASCA 216</p> <p>Delivered 23/11/2017</p>	<p>45 yrs at time offending. 48 yrs at time sentencing.</p> <p>Convicted after trial (cts 1-4). Convicted after PG (ct 5) (5% discount).</p> <p>Minor NSW criminal history.</p>	<p>Ct 1: Poss MDMA wiss 8.4153kg (34,475 tablets) at 30% purity. Ct 2: Poss methyl wiss 2.046kg at 66%-82% purity. Ct 3: Poss cocaine wiss 482.76g at 76%-77% purity. Ct 4: Poss cocaine wiss 275g at 58% purity. Ct 5: Fail to obey data access order.</p>	<p>Ct 1: 14 yrs 6 mths imp. Ct 2: 12 yrs imp (conc). Ct 3: 5 yrs imp (conc). Ct 4: 1 yr 6 mths imp (cum). Ct 5: 6 mths imp (cum). TES 16 yrs 6 mths imp.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (ct 1) and totality principle.</p> <p>At [60] The appellant was more than a mere courier of the drugs. ... The appellant</p>

		<p>Raised and lived NSW.</p> <p>Disadvantaged background; father physically and psychologically abusive.</p> <p>Difficulties at school; expelled yr 9.</p> <p>Strong work ethic; consistently employed as a van/truck driver since aged 20.</p> <p>9 yr relationship; three adult children together; primary carer of his children after separation.</p> <p>Suffered severe depression and stress as a result of his apprehension.</p> <p>Very heavy drinker; occasional user of methyl; denied ongoing use.</p>	<p>Chadburne was a member of a syndicate involved in the transportation and supply of large quantities of prohibited drugs from NSW into WA.</p> <p>On several occasions Chadburne attended the motor works business of one of the syndicate members. He facilitated the concealment of 15 sealed packages containing drugs into motor vehicle gear transmissions (cts 1-3).</p> <p>The engine transmissions, containing the prohibited drugs, were placed on a pallet into the tray of a utility vehicle, which Chadburne commenced to drive to WA. During the journey he collided with a kangaroo causing substantial damage to the utility. He arranged a replacement vehicle and hire trailer.</p> <p>During the change of vehicles Chadburne located a sixteenth package left on the rear seat of the utility, which unknown to him could not be accommodated into the transmissions. He was given permission to keep this drug so he hid the package inside the wheel arch panelling of the replacement vehicle (ct 4).</p> <p>Chadburne continued his journey and eventually arrived in WA where he was stopped by police. The vehicle was seized and the sealed packages hidden within the transmissions located.</p> <p>Chadburne's Blackberry was also seized and he failed to obey a data access order to reveal its pass code. As a result it remained encrypted and inaccessible to police.</p> <p>The drug secreted in the wheel arch remained</p>	<p>EFP.</p> <p>The trial judge found the offending very serious; it involved a high level of criminality; the appellant's role was integral to the operation and the crime syndicate of which he was a part of and working with and the offending was committed out of greed and purely for commercial gain.</p> <p>The trial judge found the appellant more than that of a mere courier and it was not a one-off opportunistic attempt.</p> <p>No demonstrable evidence of remorse or insight.</p>	<p>participated in packing the drugs He held face to face discussions with the apparent head of the syndicate. He organised the vehicles used to transport the drugs. This was done as part of an ongoing operation, and could not be regarded as behaviour which was aberrant or out of character for the appellant. The appellant expected to make a substantial profit from the operation.</p> <p>At [64] ... the appellant's actions after the collision with the kangaroo showed that he was able to respond to an unexpected setback with adaptability and initiative. He demonstrated a relatively sophisticated understanding of the implications of finding the package of cocaine on the rear seat ...</p> <p>At [65] ... While the appellant may have been vulnerable to exploitation by others due to his social vulnerability and difficulties with emotional regulation, he knew what he was doing was illegal and appreciated the risks involved.</p> <p>At [66] ... The amount and quality of MDMA in the</p>
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		<p>undetected. The vehicle was eventually repossessed for sale by auction. On bail and aware the drug had not been located he called the auction company a number of times, rousing suspicions. A drug detection dog inspected the vehicle and the package was discovered.</p> <p>Information from intercepted telephone calls revealed Chadburne expected to earn \$40,000- \$50,000 from the venture. It was also not the first occasion he had participated in the distribution of illicit drugs, having previously travelled to WA on behalf of the syndicate.</p> <p>The package of cocaine (ct 4) had an estimated street value of \$98,000 - \$206,000.</p> <p>Evidence at trial indicated an individual MDMA pill sold for \$15 - \$35, giving a potential value of the MDMA tablets discovered at between \$517,125.00 - \$1,206.625.00.</p>	<p>appellant's possession was greater than in many of those cases [referred to]. He was an active member of the syndicate which brought the drugs into WA, whose involvement extended beyond the mere provision of transport. The appellant expected to obtain a significant financial reward from the activity.</p> <p>At [67] ... The circumstances of the ... offending, particularly that which was the subject of cts 4 and 5, increased the overall criminality of the appellant's conduct in a manner that warranted some accumulation of the sentences.</p> <p>At [68] ... The seriousness of [ct 4] was agg by the fact that these drugs were to be sold wholly for the appellant's personal benefit, and by the attempts after his arrest to regain possession of the drugs.</p> <p>At [69] ... Cumulacy of this sentence [ct 5] was called for in order to avoid the result that a person apprehended in the course of committing serious offences might refuse to comply with an order that</p>
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					<p>will produce evidence of the offending without any practical adverse consequences ...</p> <p>At [70] The appellant's overall criminality is also agg by the substantial quantities of methyl and cocaine which were the subject of cts 2 and 3.</p>
74.	<p><i>Bees v The State of Western Australia</i></p> <p>[2017] WASCA 202</p> <p>Delivered 27/10/2017</p>	<p>62 yrs at time offending. 63 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Prior criminal history; mostly poss of prohibited drugs; dishonesty and traffic offences. No previous sentences of imp.</p> <p>Two children from a previous relationship which ended 19 yrs ago.</p> <p>Completed apprenticeship; worked many yrs in construction and hairdressing industries. Unemployed at time offending.</p> <p>History of illicit drug use; regular user of amphetamines.</p> <p>In good health; no mental health issues.</p>	<p>Ct 1: Poss methyl wiss 1.480kg at 80.7% average purity. Ct 2: Poss methyl wiss 147.87g at 73.1% average purity. Ct 3: Poss cocaine wiss 8.53g at 79% purity.</p> <p><u>Ct 1</u> Police stopped Bees driving his motor vehicle. A search of the vehicle located a large amount of a crystalline substance in two clip seals bags within a plastic bag, inside a plastic container.</p> <p><u>Cts 2 and 3</u> The same day police executed a search warrant at Bees home, where numerous quantities of methyl in clipseal bags were located, along with the quantity of cocaine.</p> <p>The cutting agent MSM and numerous empty clipseal bags of varying sizes, a 'tick list' and several mobile phones were also located.</p> <p>The 'tick list' revealed Bees had been selling prohibited drugs on credit on a regular basis between April 2014 and July 2015.</p> <p>The total value of the drugs he sold was about \$135,000.</p>	<p>Ct 1: 10 yrs imp (cum) Ct 2: 2 yrs imp (cum). Ct 3: 1 yrs imp (conc).</p> <p>TES 12 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant had a large quantity of drugs of fairly high purity and of significant value.</p> <p>The sentencing judge found the appellant's role towards the top of the hierarchy and that the drug dealing indicia found in the appellant's home showed he had been distributing large quantities of drugs for commercial benefit.</p> <p>Limited remorse; cooperative with police; but limited admissions made in relation to ct 1; risk of re-offending.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence and first limb of totality principle and error in finding of fact on ct 1 (only available inference was the appellant's role involved distributing large quantities of drugs for commercial benefit).</p> <p>At [62] ... the sentencing judge's finding that the appellant intended to sell into the community the overwhelming majority of the 1.480 kg of methyl ... was not the only reasonable inference open on the material before his Honour.</p> <p>At [65] ... a different individual sentence should not have been imposed in respect of ct 1 and ... a different TES should not have been imposed in respect of cts 1, 2 and 3.</p>

					<p>At [70] The various serious nature of the appellant's offending on ct 1 is apparent from ... The quantity, purity and value of the methyl. ... The appellant's role in taking poss of a significant part of the 1.480 kg ... for the purpose of delivery to another person who would in turn sell and supply the drug into the community. ... The appellant's intention to retain a significant but lesser quantity ... for sale by him in the course of his thriving drug dealing business.</p> <p>At [71] The appellant's offending on ct 1 was not isolated or an aberration.</p> <p>At [73] ... The sentence is broadly consistent with the sentencing range that is discernible from reasonably comparable cases.</p> <p>At [76] ... it was necessary, in order properly to mark the seriousness of the appellant's overall offending, for the individual sentences imposed on each of cts 1 and 2 to be served cumulatively. ...</p>
73.	<p><i>Sheriff v The State of Western Australia</i></p> <p>[2017] WASCA 185</p>	<p><u>Sheriff</u> 27 yrs at time sentencing.</p> <p>Convicted after trial.</p>	<p>1 x Att poss methyl wiss 978.7g at 78.9%, 79.1%, 78.4% and 79.1% purity.</p> <p>Customs officers intercepted two packages,</p>	<p><u>Sheriff</u> 10 yrs imp. EFP.</p>	<p>Dismissed.</p> <p><u>Sheriff</u> Appeal concerned error in</p>

Delivered 16/10/2017	<p>No prior relevant criminal history.</p> <p>Child refugee; fled civil war in Liberia with mother and siblings; father died in Liberia; troubled and difficult background.</p> <p>Completed yr 11; obtained trade certificates.</p> <p>Employed various casual positions.</p> <p>Contributed to the local community.</p> <p><u>Bamba</u> 27 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; two prior non-drug related offences.</p> <p>Traumatic childhood; separated from his parents in civil war as a baby; raised in Sierra Leone refugee camp; no contact with his mother; later reunited with his father, now deceased.</p> <p>Stable relationship; two children.</p> <p>Employed various positions;</p>	<p>coming through a courier depot at the Perth International Airport. The packages consisted of two cardboard boxes containing a number of items. A white power was found hidden inside four bicycle helmets.</p> <p>The white power was replaced with a benign substance and the packages reconstructed.</p> <p>A mobile telephone number ending in 832 was listed on the address label. This number was used to call the courier company and enquiries made as to when the packages would be delivered.</p> <p>Several days later a police officer posing as a courier attempted to deliver the packages to the labelled address. Nobody was at the home.</p> <p>The following day Sheriff phoned the courier company and changed the delivery address for the packages.</p> <p>The next day a controlled delivery of the packages was made to the new delivery address. Sheriff, Bamba and Omereonye were present at the address and Sheriff signed for the packages.</p> <p>A short time later the three left the premises and drove to Omereonye's home, taking the packages with them. In the carport they took the packages from the car and Bamba kept watch whilst Sheriff and Omereonye opened them and removed the contents.</p> <p>The three then left, stopping to dispose of the empty boxes.</p>	<p><u>Bamba</u> 8 yrs 6 mths imp. EFP.</p> <p><u>Omereonye</u> 8 yrs 6 mths imp. EFP.</p> <p>The trial judge found Sheriff's involvement in bringing the drugs into the country must have been 'at a reasonably early stage', but was not satisfied Omereonye's and Bamba's involvement occurred at the same stage.</p> <p>The trial judge found the appellants engaged in a commercial activity and that the drugs were being obtained for financial gain and not for personal use. Each appellant knew and actively participated in the attempt to obtain the prohibited drugs. It was not a spur of the moment decision and was reasonably sophisticated.</p>	<p>finding of fact (832 phone number attributed to him) and disparity with sentences of co-offenders.</p> <p><u>Bamba and Omereonye</u> Appeals concerned length of sentence.</p> <p><u>Sheriff</u> At [166] We are not satisfied that the trial judge made the factual error alleged [as to the phone] or that the factual errors, if established, would be material to the sentencing exercise.</p> <p>At [170] ... Sheriff's higher sentence is explicable by the greater role which he played in the offence. Sheriff was ... involved at an earlier stage than the other two offenders. He was also the principal organiser, having arranged for the parcels to be delivered ...</p> <p><u>Bamba and Omereonye</u> At [176] ... Omereonye and Bamba deliberately involved themselves in the drug transaction for financial gain ...</p> <p>At [177] The value of the methyl was significant.</p> <p>At [178] ... each of the</p>
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		<p>productive member of community.</p> <p><u>Omereonye</u> 40 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal convictions.</p> <p>Stable relationship; two children.</p>	<p>They were arrested the same day.</p> <p>The mobile phone with the 832 number was found in the possession of Sheriff at the time of his arrest.</p>		<p>appellants acted in concert to att to possess about a kilogram of high purity methyl. The offence which they jointly committed was objectively serious by reason of its planned nature, as well as by reason of the weight, purity and value of the methyl which they attempted to possess in a commercial operation.</p>
72.	<p><i>Mather v The State of Western Australia</i></p> <p>[2017] WASCA 148</p> <p>Delivered 11/08/2017</p>	<p>35 yrs at time sentencing.</p> <p>Convicted after PG (15% discount).</p> <p><u>Breach of SIO</u> Subject to SIO at time offending; 9 mths imp susp 15 mths for one count of poss methyl wiss (3g).</p> <p>Lengthy criminal history; mostly traffic and minor drug offences; convictions for agg burg and AOBH.</p> <p>Raised by grandmother until aged 7 yrs; stepfather physically abusive.</p> <p>Supportive family and friends.</p> <p>Educated to yr 10.</p> <p>Reasonably consistent and productive work history;</p>	<p>1 x Poss methyl wiss 2.131kg at 79%-82% purity.</p> <p>Mather was seen by police to purchase a quantity of methyl. At a house, in a room protected by a combination lock, he and two others processed the drug. It was cut with the additive MSM and packaged into clipseal bags for sale.</p> <p>The same day a search warrant was executed at the premises. Mather att to dispose of the methyl by dumping it into a spa. Some dissolved in the water but a quantity of solid methyl was recovered, along with some methyl that had spilled onto the floor.</p> <p>Police also found a large mixing bowl, MSM, boxes of clipseal bags, digital scales, mixing spoons, disposable gloves, a bottle of acetone, a vacuum sealer and other drug-related paraphernalia. Police also found mobile phones, four of which belonged to Mather.</p> <p>The street value of the methyl was estimated to be 'well in excess of \$2 million'.</p>	<p><u>Indictment</u> 12 yrs 6 mths imp.</p> <p><u>Breach of SIO</u> 6 mths imp (cum).</p> <p>TES 13 yrs imp.</p> <p>EFP.</p> <p>Mather sentenced on the basis that he possessed 2.131 kg of methyl and that there was some additional methyl in the residual spa water.</p> <p>The sentencing judge found the appellant played 'an essential role' and one 'more significant than that of a courier'. He not only paid for and picked up over 2 kg of high purity methyl, but he then played a role in processing the drug, knowing that it was to be</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence and discount for PG.</p> <p>At [35] The case against the appellant was truly overwhelming. He was caught 'red-handed'. Although the plea was entered at a relatively early stage, it was not entered at the first reasonable opportunity.</p> <p>At [39] The appellant played an important role in the commission of the offence. He handed over the money in exchange for the large quantity of high purity methyl In addition to obtaining the drug ... he participated in its 'processing'. ... he acted to dispose of the drug in a way</p>

		<p>unemployed time offending.</p> <p>7 yr old son from former partner.</p> <p>Regularly user of methyl since aged 19-20; dealing small quantities approx 12 mths; commenced selling and supplying bigger quantities.</p>		<p>distributed into the community.</p> <p>The sentencing judge found the appellant was 'a high-end dealer user' actively involved in the business of selling methyl and he committed the offence for personal gain.</p> <p>Remorseful; drug free; rehabilitative courses undertaken in prison.</p>	<p>which would prevent the police from seizing it.</p> <p>At [40] The quantity and purity of the methyl was significant. So too was its value.</p> <p>At [41] The appellant's participation in the offence was far more than being a mere 'foot soldier'. He committed the offence in the context of already being involved in significant drug dealing. He accepted the obvious risk of apprehension and imp in order to obtain a substantial commercial benefit without regard to the human cost of his conduct [and] while subject to the SIO.</p>
71.	<p><i>NG v The State of Western Australia</i></p> <p>[2017] WASCA 124</p> <p>Delivered 23/06/2017</p>	<p>26 yrs time offending. 27 yrs time sentence.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p> <p>Born in China; lived in Hong Kong from aged 5 yrs.</p> <p>Father died when aged 12 yrs; mother seriously ill; moved to Australia to help support her.</p> <p>Limited English language</p>	<p>Ct 1: Poss methyl wiss 4.983.2kg at 77-78% purity and 75-79% purity.</p> <p>Ct 2: Poss unlawfully obtained property.</p> <p>NG agreed to store drugs. He would be paid his daily living expenses, rent and HK\$10,000.</p> <p>NG and a co-offender rented an apartment, from which the drugs were to be delivered, stored and collected.</p> <p>On two occasions methyl was delivered to the apartment. He exchanged some of the methyl for \$385,000 cash.</p> <p>About six weeks later NG was told trouble</p>	<p>Ct 1: 12 yrs imp (conc). Ct 2: 18 mths imp (conc).</p> <p>TES 12 yrs imp.</p> <p>EFP.</p> <p>The judge found seriousness of the offence aggravated by amount and purity of the methyl he possessed. The methyl was able to be significantly diluted by cutting agent.</p> <p>The judge found appellant aware he was engaging in</p>	<p>Dismissed.</p> <p>Appellant challenged length of sentence on ct 1.</p> <p>At [32] The appellant was not merely the holder of the drugs. ... As well as taking custody of the drugs, he exchanged a portion of the drugs ... for the sum of \$385,000. When a warning came that 'trouble' was expected ... the appellant hired a hotel room and moved the drugs and cash to the alternative location. The</p>

		<p>skills.</p> <p>Struggled academically at school; educated equivalent of yr 11.</p> <p>Single.</p> <p>No history of illicit drug use; physical or mental health issues.</p>	<p>was expected. So he moved to a room in a hotel, taking most of the methyl and the money with him. That day police searched the room and found \$385,000 in cash and 4.941kg of methyl in five clipseal bags.</p> <p>That same day a search warrant also executed at the apartment. Two clipseal bags containing 42.2g of methyl, which NG had left behind and intended to recover and sell himself, were located. Scales, a scoop and large empty clipseal bags containing traces of a crystalline power, a number of unused clipseal bags and a note of numbers were also found.</p> <p>.</p>	<p>serious criminal conduct. In holding the drugs he still performed a very important role in the drug dealing syndicate's operations.</p> <p>Genuine acceptance of responsibility and remorse.</p>	<p>appellant's involvement had continued for almost a month after he leased the ... unit. It may be inferred that it would have continued, had police not intervened.</p> <p>At [33] The appellant knowingly played an important role in a significant drug dealing enterprise involving the dissemination of a large quantity of methyl into the community. The appellant acted as a crucial conduit between the suppliers and wholesale purchasers of the drug, enabling the suppliers to remain one step removed from the drugs and significantly reduce their risk of apprehension.</p> <p>At [34] There is also the irresistible inference that the appellant 'skimmed' about 42g of the methyl from the larger packages, with the intention of selling that portion ... for his own benefit. The appellant was acting purely for financial gain ...</p>
70.	<p><i>Chen v The State of Western Australia</i></p> <p>[2017] WASCA 114</p> <p>Delivered</p>	<p>25 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after PG (15% discount).</p>	<p>Ct 1: Poss methyl wiss 3.426kg at 80-81% purity. Ct 2: Poss unlawfully obtained property.</p> <p>The appellant and co-offender Chen came to Perth from Melbourne and took a taxi to a</p>	<p>Ct 1: 11 yrs 10 mths imp. Ct 2: 6 mths imp (cum).</p> <p>TES 12 yrs 4 mths imp.</p> <p>The judge found the</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned length of sentence on ct 1.</p> <p>At [34] As to the seriousness</p>

	<p>22/06/2017</p> <p>Co-offender of</p> <p><i>Chen v The State of Western Australia</i> [2017] WASCA 99</p>	<p>No prior criminal history.</p> <p>Born in rural China; lived with grandparents until 4 yrs; physically abusive father; emotionally harsh life.</p> <p>In Australia on student visa; studied English.</p> <p>Qualified welder in China; worked long hours low pay in Australia.</p> <p>Married; 2 mth old son; \$10,000 wedding debt.</p> <p>Not a drug user; no history of drug or gambling problems.</p>	<p>unit leased by co-offender Ms Yu.</p> <p>On the same day the co-offender Mr Yuan brought the methyl to Perth in a suitcase, travelling from NSW by train.</p> <p>The appellant met Mr Yuan and together they walked to the carpark at the rear of the unit complex. Here appellant took possession of a backpack containing the methyl.</p> <p>The appellant returned to the unit with the backpack before leaving with Ms Yu in a taxi. They travelled to an address where appellant entered a house and returned carrying a bag.</p> <p>A short time later the taxi was stopped and the bag, containing \$92,850 in cash, was located. A further \$10,000 was found in appellant's wallet.</p> <p>A search warrant was executed at the unit and the methyl was located. 16g in a clipseal bag and remainder inside a shoebox. Items consistent with handling and repackaging of drugs, including disposable gloves, further clipseal bags and digital scales were also found.</p> <p>Methyl valued between approx \$1.22 million and \$3.4 million, depending on whether it was sold in large quantities or single doses, sold in its existing form or cut with a dilution agent.</p>	<p>appellant and co-offenders had been in a drug dealing relationship for some months and the offending could not be viewed as isolated or one-off and it involved a significant degree of planning, organisation and coordination.</p> <p>The judge found approx \$300,000 had been deposited into the appellant's bank account when there was no obvious legitimate source for the money.</p> <p>The judge found appellant and co-accused each played an important role in the offending and that he could not differentiate between their culpability.</p> <p>Limited remorse shown.</p>	<p>of this offence, it involved a large quantity of methyl that was clearly intended for commercial sale. This was a reasonably sophisticated drug dealing operation ... The high purity of the drugs indicated that the appellant and his co-offenders were close to the source of manufacture. The appellant played a significant role in receiving, repackaging and weighing the drugs. Whilst not a principal in the sense of being at the head of this criminal arrangement, the appellant was no mere functionary. He was trusted to receive a very large quantity of drugs ... and to receive a large amount of cash. His role could not readily fall into any distinct category, but what he did was significant and he was a party to a criminal relationship involving drugs that extended beyond the day of the offence.</p> <p>At [38] ... the sentence imposed on ct 2 of 6 mths' imp cum was reduced from 2 yrs for totality reasons. The sentence imposed for ct 1 needs to be understood in that context.</p>
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<p>69.</p>	<p><i>Chen v The State of Western Australia</i></p> <p>[2017] WASCA 99</p> <p>Delivered 30/05/2017</p> <p>Co-offender of</p> <p><i>Chen v The State of Western Australia</i> [2017] WASCA 114</p>	<p>27 yrs at time offending. 29 yrs time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Born in China; youngest of three; in Australia on a student visa; expired at time of arrest.</p> <p>Parents in China; both in poor health; poor; supportive.</p> <p>Performed well at school.</p> <p>Unmarried; no dependants.</p> <p>Worked part-time to support himself in Australia.</p>	<p>1 x Poss methyl wiss 3.426kg at 80-81% purity.</p> <p>The appellant and the co-offenders Chen and Yu were involved in a drug dealing operation.</p> <p>The appellant and Chen travelled together by plane from Melbourne to Perth. On arrival they took a taxi to a 'safe house', a unit leased by Yu. The same morning a Mr Yuan arrived in Perth by train from NSW. Chen met Mr Yuan in the unit carpark and took delivery of a backpack containing methyl and returned to the unit.</p> <p>The appellant and co-offenders repacked the methyl. The appellant was involved, or at least present, when some of the methyl was weighed using scales.</p> <p>About ½ hour later the co-offenders left the unit and caught a taxi to another address. Yu remained in the taxi while Chen entered the house and returned carrying a bag.</p> <p>A short time later the taxi was stopped by police. The bag was found to contain \$92,850 in cash in \$10,000 bundles. A further \$10,000 cash was found in Chen's wallet.</p> <p>A search warrant was executed at the unit. The appellant was found sleeping in a bedroom. A search located the methyl in clipseal bags.</p> <p>The drug had an estimated value of between \$1.22 million and \$3.4 million.</p>	<p>14 yrs imp. EFP.</p> <p>The sentencing judge found he could not make any specific finding as to exactly the appellant's role in the drug dealing, but was satisfied he was fully aware and involved in what was happening and his offending was not at the lower end of the drug distribution chain.</p> <p>The sentencing judge found all three offenders were in joint poss of the drugs and each of them knew of the drugs; each had physical custody or control over the drugs and each had the intention to sell or supply the drugs.</p> <p>The sentencing judge found the appellant frequently travelled to and from Perth, staying for only short periods, and had unexplained sums of money in his bank account, leading him to the only reasonable conclusion the appellant was involved in drug dealing and had been for some time.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence and error in role of appellant's offending.</p> <p>At [37] As to the seriousness of this offence, it involved a large quantity of methyl that was clearly intended for commercial sale. This was a reasonably sophisticated drug dealing operation that involved using a courier to bring drugs from interstate and the repackaging of those drugs at a safe house leased for that purpose, with the intention of on-selling them ... The high purity of the drugs indicated that the appellant and his co-offenders were close to the source of manufacture. As the trial judge found, the appellant played a significant role in the unpacking and weighing of the drugs and in the guarding of them.</p>
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<p>68.</p>	<p><i>The State of Western Australia v Nillson</i></p> <p>[2017] WASCA 68</p> <p>Delivered 18/04/2017</p>	<p>23 yrs at time offending. 24 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>No relevant prior criminal history. This offence was the first serious offending.</p> <p>Previously of good character.</p> <p>Supportive family.</p> <p>Excellent work history until made redundant.</p> <p>Drug user following redundancy; drug dealing to fund habit and lifestyle.</p> <p>Determined efforts at rehabilitation while remanded in custody.</p>	<p>Ct 1: Att poss of methyl 129g at 77% purity. Ct 2: Poss methyl wiss 121.41g at 47-81% purity. Ct 3: Poss MDMA wiss 9.74g. Ct 4: Poss cannabis wiss 96.9g. Cts 5 & 10: Poss unlawfully obtained money. Ct 6: Poss methyl wiss 127.24g at 68-74% purity. Ct 7: Poss 25C-NBOMe wiss 7.74g. Ct 8: Poss MDA wiss 0.84g. Ct 9: Poss MDMA wiss 0.37g.</p> <p><u>Ct 1</u> Police inspected an envelope containing methyl which was addressed to James Willson at a post office box registered to Nillson. Police replaced the methyl with an inert substance and the envelope was delivered to Nillson's post office box. Nillson collected the envelope and returned home.</p> <p><u>Cts 2-5</u> Later that day, police executed a search warrant at Nillson's address and found Nillson attempting to dispose of the inert substance in the shower.</p> <p>Police found 26 containers of methyl ranging from 0.05g to 32.7g (ct 2), 8.52g of MDMA and 5 MDMA pills weighing 1.22g (ct 3), cannabis (ct 4), \$23,635 cash (ct 5), unused clipseal bags and plastic containers, digital scales, a brass weight, a tick list and approx. 200g of cutting agent.</p> <p><u>Cts 6-10</u> Police searched Nillson's car at a self-storage unit and found 16 containers of methyl (ct 6), 25C-NBOMe (ct 7), MDA (ct 8), MDMA (ct</p>	<p>Ct 1: 30 mths imp (cum). Ct 2: 30 mths imp (conc). Ct 3: 9 mths imp (conc). Ct 4: 6 mths imp (conc). Ct 5: 12 mths imp (conc). Ct 6: 2 yrs imp (cum). Ct 7: 9 mths imp (conc). Ct 8: 3 mths imp (conc). Ct 9: 3 mths imp (conc). Ct 10: 12 mths imp (conc).</p> <p>TES 4 yrs 6 mths imp.</p> <p>EFP.</p> <p>Sentencing judge found Nillson to be an active retail and midlevel drug dealer and the sole proprietor of the drug dealing business; there was evidence of a very organised, large-scale polysubstance drug dealing operation; Nillson's culpability was high; the set-up pointed to widespread retailing and deep market penetration and that Nillson must have been an important player in the Geraldton drug distribution business.</p> <p>Sentencing judge found good prospects of rehabilitation and that Nillson would not reoffend in a similar way.</p>	<p>Allowed.</p> <p>Appeal concerned length of individual sentences for cts 1, 2 and 6, and totality.</p> <p>Nillson re-sentenced on cts 1, 2 and 6 only:</p> <p>Ct 1: 4 yrs 6 mths imp (cum). Ct 2: 4 yrs 6 mths imp (conc). Ct 6: 2 yrs imp (reduced from 4 yrs 6 mths imp for totality reasons) (cum on ct 1).</p> <p>TES 6 yrs 6 mths imp.</p> <p>Other sentences and orders remain.</p> <p>At [32] The sentencing judge was...mistaken in concluding that there had been a softening of approach... such a conclusion was not one that could ordinarily be reached on the basis of an inference drawn from a comparison of three cases and it was not one that could be reached in this instance, not least because it was based upon an erroneous analysis of those cases.</p> <p>At [35] The offending...was very serious. The respondent was aptly described by the sentencing judge as the sole</p>
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			9), \$12,150 cash (ct 10), unused clipseal bags, digital scales and cutting agent.	Remorse and acceptance of responsibility.	<p>proprietor of a 'very organised, large-scale polysubstance drug dealing operation'. The amount of methyl involved in each of cts 1, 2 and 6 was substantial and at a high level of purity. The drug dealing was a commercial operation carried on for profit to fund both the respondent's drug habit and his lifestyle, in circumstances where... the respondent was 'overwhelmed with greed' ... Apart from the PG...the only mitigating factor was the respondent's favourable personal circumstances, which was not a factor of great weight in the context of the offending.</p>
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<p>67.</p>	<p><i>Rinaldi v The State of Western Australia</i></p> <p>[2017] WASCA 48</p> <p>Delivered 17/03/2017</p>	<p>37 yrs at time offending. 39 yrs at time sentencing.</p> <p>Convicted after very late PG (5% discount).</p> <p>Minor criminal history.</p> <p>Traumatic childhood; supportive family.</p> <p>Left school midway through yr 11.</p> <p>Obtained a trade; good employment history and strong work ethic.</p> <p>History of illicit drug use; escalated after his marriage break down.</p>	<p>Ct 1: Poss MDMA wiss 888.01 grams of 25%-73% purity. Ct 2: Poss methyl wiss 1650.67g of 45%-77% purity. Ct 3: Poss cocaine wiss 7.29g of 68% purity. Cts 4-17: Poss firearm. Cts 18-38: Poss ammunition. Ct 39: Poss GPS jamming device.</p> <p>Police executed a search warrant at Rinaldi's home and discovered a 'wine cellar' accessible via a retractable trapdoor. The home was protected by a security system, comprising a steel reinforced front door, outside sensor lights and monitored CCTV cameras.</p> <p>Large quantities of drugs and ammunition, 14 unlicensed firearms and cash were found, along with the GPS jamming device.</p> <p>The unlicensed firearms comprised five rifles, one shotgun and eight handguns. Three of the weapons had their serial numbers removed and two of the rifles were unable to be lawfully owned in WA. Compatible magazines, silencers and shoulder holsters were also found in the house.</p> <p>In total 2,386 rounds of ammunition were found.</p> <p>\$337,220 in cash was found in bundles in various locations in the house, including in a washing machine and the roof cavity.</p>	<p>Ct 1: 18 mths imp (reduced from 5 yrs for totality reasons) (cum). Ct 2: 8 yrs imp (cum). Ct 3: 2 yrs imp (conc). Ct 4: 18 mths imp (cum). Ct 5: 18 mths (conc). Cts 6, 8-11, 15-17: 12 mths imp (conc). Ct 7: 12 mths (cum). Ct 12: 14 mths imp (cum). Cts 13-14: 14 mths imp (conc). Cts 18, 21 and 31: 6 mths imp (conc). Ct 19: 8 mths imp (cum). Ct 20: 3 mths imp (conc). Ct 22-23: 2 mths imp (conc). Cts 24-25: 8 mths imp (conc). Cts 26-27 and 30: 3 mths imp (conc). Cts 28-29 and 32-33: 1 mths imp (conc). Ct 34-36: 3 mths imp (conc). Ct 37: 4 mths imp (conc). Ct 38: 2 mths imp (cum). Ct 39: \$1000 fine.</p> <p>TES 14 yrs imp. EFP. Fine \$1000.</p> <p>The sentencing judge described the premises as a 'fortified drug house' used for the purpose of storing and warehousing illicit drugs, firearms and cash. It</p>	<p>Dismissed.</p> <p>Appeal concerned totality and PG discount.</p> <p>At [54] ... the sentencing judge did not err by failing to make a finding that the appellant's PG to cts 1-33 and ct 39 were entered at the first reasonable opportunity. Very plainly, they were not made at the first reasonable opportunity. ... The reduction of 5% was, in all of the circumstances, open to his Honour.</p> <p>At [55] ... in respect of the five ex officio charges (cts 34 to 38). ... the appellant's PG in respect of these cts were made at the first reasonable opportunity. This concession was properly made and should be accepted. In our opinion, a reduction of 25% ... should have been made for these offences. However, having regard to all relevant circumstances ... exercising the sentencing discretion afresh, we would not have imposed different sentences for cts 34 to 38.</p> <p>At [66] ... the appellant's overall criminality was extremely serious. While...</p>
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				<p>was in a large scale distribution network for drugs and guns as part of an illegal, commercial enterprise and from which the appellant would have derived 'some commercial gain or benefit'.</p>	<p>not directly involved in the sale of the drugs, firearms and ammunition, he voluntarily participated in what was clearly a large-scale commercial enterprise aimed at distributing into the community a large quantity of dangerous illicit drugs and firearms. The appellant's willing complicity in these offences is well illustrated by the modifications to his residence, most notably the wine cellar in which the drugs and most of the firearms and ammunition were stored. The large quantities of drugs, firearms, ammunition and cash show the scale of the operation. It is true that the appellant was not in command, but it is also true that a high degree of trust had been reposed in him.</p> <p>At [67] A significant aggravating feature of the appellant's overall criminality are the firearms offences, which involve a quantity and variety of weapons not previously seen by this court. Their number and type are very sinister. The amount of ammunition, including ammunition suitable for use in the firearms present at the house, is concerning.</p>
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<p>66.</p>	<p><i>Nguyen v The State of Western Australia</i></p> <p>[2017] WASCA 35</p> <p>Delivered 27/2/2017</p>	<p>61 yrs at time offending. 62 yrs at sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>No prior criminal history.</p> <p>Born in Vietnam.</p> <p>Limited English and education.</p> <p>Married twice; six children.</p> <p>Good work history; unemployed for some months prior to offending.</p> <p>Commenced using methyl at aged 60.</p>	<p><u>Indictment</u> Ct 1: Poss methyl wiss 437g of 77-80% purity. Ct 2: Poss heroin wiss 201g of 69-80% purity. Ct 3: Poss unlawfully obtained property.</p> <p><u>Section 32 Notice</u> Ch 1: Poss methyl wiss 1.85g. Ch 2: Poss paraphernalia.</p> <p>Police conducted a search of a house occupied by Nguyen. A clipseal bag containing a small quantity of methyl and a smoking implement, which he admitted using, were located.</p> <p>In a locked room, quantities of methyl, heroin and \$153,475 in cash were found. Along with scales, empty clipseal bags, artificial sweetener and sucrose.</p>	<p><u>Indictment</u> Ct 1: 6yrs 6 mths imp. Ct 2: 2yrs 6 mths imp (reduced for totality reasons) (cum). Ct 3: 2yrs imp (conc).</p> <p><u>Section 32 Notice</u> Ch 1: 6 mths imp (conc). Ch 2: 1 mth imp (conc).</p> <p>TES 9 yrs. EFP.</p> <p>The sentencing judge found the appellant was more than a mere caretaker with limited knowledge of what was at the house; he was a trusted member of the drug organisation and given the quality and quantity of the drugs and the significant amount of cash it was a large scale drug enterprise.</p> <p>Remorseful; willing to address his drug problem; low risk of re-offending.</p>	<p>Dismissed.</p> <p>Appeal concerned totality.</p> <p>At [23] ... This was clearly a serious example of offences ... albeit not in the most serious category.</p> <p>At [32] The appellant's sentence appropriately took into account the difficulties which the appellant's age and language difficulties will present for the appellant in the prison environment.</p>
<p>65.</p>	<p><i>Barton v The State of Western Australia</i></p> <p>[2016] WASCA 196</p> <p>Delivered 18/11/2016</p>	<p>37 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history; multiple offences of poss prohibited drugs; no previous sentences of imp.</p> <p>Two long-term relationships, including a prior marriage.</p>	<p>Cts 1 & 2: Poss stolen property. Ct 3: Poss methyl wiss 33.6g of 68% purity and 25.4% purity. Ct 4: Poss MDMA wiss 5.57g. Ct 5: Poss cocaine wiss 6.29g of 69% purity. Ct 6: Poss methyl wiss 5.6g. Ct 7: Poss thing reasonably suspected to be unlawfully obtained. Ct 8: Poss methyl wiss 61.46g of 82% and 81% purity.</p> <p>Police recovered from Barton's home two</p>	<p>Cts 1 & 2: 6 mths imp each ct (conc). Ct 3: 2 yrs 7 mths imp (conc). Ct 4: 10 mths imp (conc). Ct 5: 10 mths imp (conc). Ct 6: 10 mths imp (conc). Ct 7: 6 mths imp (conc). Ct 8: 3 yrs 3 mths imp (cum with ct 3).</p> <p>TES 5 yrs 10 mths imp.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality principle. Individual sentences not challenged.</p> <p>At [38] ... the appellant's drug dealing offences were, no doubt, serious. ... The quantity and purity of the drugs the subject of cts 3 and 8 were significant.</p>

		<p>Self-employed; unlikely to be able to continue working as a mortgage broker.</p> <p>Illicit drug user.</p> <p>History of anxiety and ADHD; prescribed medication.</p>	<p>stolen iPads (cts 1 & 2). A search located two clipseal bags containing 26.7g and 6.9g of methyl (ct 3), along with 23 MDMA tablets and power (ct 4). In addition 5.24g and 1.05g of cocaine were found (ct 5).</p> <p>Barton was on bail for the above offences when he was stopped driving a vehicle. A search of the car located a quantity of methyl (ct 6); \$1,185 in cash (ct 7) and two mobile phones containing messages relating to prohibited drugs. A further search of his home located two clipseal bags, each containing 27.5g of methyl, and an additional 6.46g of methyl (ct 8). Digital scales, plastic straw scoops, spoons, clipseal bags in various sizes and 'tick lists' were also located.</p>	<p>The sentencing judge found the appellant was a willing and motivated vendor of drugs into the community and his offending was for 'commercial gain' based on the presence of the tick lists, cash and phone messages.</p> <p>The appellant accepted responsibility for his offending and was addressing his drug addiction.</p>	<p>At [43] ... it was necessary, in order properly to mark the appellant's overall criminality in committing eight offences on two disparate occasions, to accumulate the individual sentences for cts 3 and 8.</p>
64.	<p><i>Kobeissi v The State of Western Australia</i></p> <p>[2016] WASCA 188</p> <p>Delivered 02/11/2016</p>	<p>42 yrs at time sentencing.</p> <p>Convicted after early PG (20% discount).</p> <p>Long criminal history, including convictions for agg armed robbery; agg assault with intent to rob and poss of prohibited drugs and unlicensed firearms.</p> <p>Senior member of outlaw motorcycle gang.</p> <p>Illicit drug user.</p> <p>Heart condition.</p>	<p>Ct 1: Selling methyl 138.79g of 76%-87% purity.</p> <p>Ct 2: Selling methyl 964g of 68% purity.</p> <p><u>Ct 1</u> Kobeissi and a co-offender supplied an undercover police officer with methyl for the sum of \$52,500.</p> <p><u>Ct 2</u> Kobeissi and a co-offender supplied an undercover police officer with methyl for the sum of \$270,000.</p> <p>A search of Kobeissi's home located the \$270,000 cash.</p> <p>Small quantities of methyl and cocaine, a smoking implement; capsicum spray; a bulletproof vest and a knife disguised as a credit card were also found.</p> <p>\$257,375 cash was also located in the roof</p>	<p>Ct 1: 3 yrs imp (cum).</p> <p>Ct 2: 9 yrs imp (cum).</p> <p>TES 12 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant was 'at the higher level of the drug distribution ladder' and his offending was 'in the upper level of seriousness' and that he was caught 'red-handed'.</p> <p>Difficulty accepting full responsibility for his offending behaviour and entrenched antisocial attitudes and beliefs. High risk of reoffending without significant personal change.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality principle and s 9AA.</p> <p>At [28] Although the appellant sold methyl to the same undercover officer, the transactions were separate and distinct and warranted cumulacy. Each sale ... involved the sale of significant quantities of high purity methyl. The quantities were capable of being 'cut' down further. While the appellant was a user of illicit substances, the object of each sale was very plainly to make money. The appellant was no underling. He was able to source methyl in large quantities and was able to</p>

			lining of a vehicle and in a safe at the house. This money was not taken into account at sentencing.		negotiate the sale price in each transaction.
63.	<p><i>Yiu v The State of Western Australia</i></p> <p>[2016] WASCA 172</p> <p>Delivered 22/09/2016</p> <p>Published 29/09/2016</p>	<p>24 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p> <p>Chinese national.</p> <p>Engaged; fiancé pregnant at time offending; miscarried while Yiu on remand.</p> <p>Diploma in accounting; intelligent man.</p> <p>Sound physical and mental health.</p> <p>Not an illicit drug user.</p>	<p>1 x Att to poss methyl wiss 987g of 79.6% purity.</p> <p>Yiu travelled from Hong Kong to Perth on a tourist visa and gave a Cloverdale address to authorities.</p> <p>The following day, Australian Border Force officers intercepted a glass aquarium with a false bottom containing the methyl. The package had been sent from Hong Kong to a recipient named Andy Lo at Yiu's Cloverdale address. Yiu contacted Australia Post under the name Andy Lo and sought to make arrangements to collect the aquarium.</p> <p>Police executed a search warrant at Yiu's address and found kitchen scales, a box-cutter, latex gloves, and a dustpan and brush in the appellant's bedroom.</p> <p>Yiu admitted to attempting to collect the aquarium, but denied knowledge of its contents.</p> <p>The methyl was valued at being between \$846,020 and \$1,208,600.</p>	<p>9 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found Yiu was plainly not merely a courier; he would have been involved in repackaging the drugs.</p> <p>Sentencing judge found that someone else in Hong Kong was involved in sending the drugs, but Yiu played a pivotal role in the transaction and was trusted by the person who dispatched the drugs.</p> <p>Sentencing judge found that Yiu was to be paid \$8,500 for his role.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned length of sentence.</p> <p>At [23] The offence ... was a serious one of its kind. The appellant travelled from Hong Kong to Perth specifically to play a pivotal role in the distribution of a large quantity of high purity methyl into the community. While the appellant may not have been involved directly in the sale and supply of the methyl, he was no mere courier. The offence was committed solely for commercial gain...the money he was to be paid would have been used to pay his fiancée's debts and for her medical care.... these matters... do not detract from the commercial purpose of the offence. The offence was executed with some ingenuity, persistence and commitment. The appellant's conduct exhibited a high degree of criminality.</p> <p>At [24] The most significant mitigating factor was the appellant's PG. The other mitigating factors... could</p>

					not be accorded much weight, having regard to the need to appropriately punish the appellant and provide appropriate personal and general deterrence.
62	<p><i>Kalbasi v The State of Western Australia</i></p> <p>[2016] WASCA 144</p> <p>Delivered 17/08/2016</p>	<p>Convicted after re-trial.</p> <p>From a good background and provided with opportunity.</p> <p>Strong work ethic; previously owned and ran various successful businesses.</p> <p>Kalbasi was previously convicted after trial and the conviction set aside and retrial ordered (see <i>Kalbasi v The State of Western Australia</i> [2013] WASCA 241). Sentence imposed following first trial was 14 mths more than current sentence.</p> <p>Co-offender Lothian convicted after PG to att poss methyl wiss and sentenced to 10 yrs imp. EFP.</p>	<p>1 x Att poss methyl wiss 4.981kg at 84% purity.</p> <p>A cardboard box, containing methyl inside 10 heat-sealed bags, within two padlocked tool cases, was to be sent from Sydney to Perth using a freight company.</p> <p>NSW police intercepted the consignment and delivered the box to Perth. The drug was substituted with rock salt and a listening device was placed in the box.</p> <p>Co-offender Lothian collected the box from the freight company in Perth. Kalbasi attended Lothian's home and took poss of the drug, believing it to be methyl. The box was opened, the padlocks cut from the tool case and the 10 packages removed. Kalbasi and Lothian added MSM to what they thought was methyl. Kalbasi then sampled the substance.</p> <p>Police searched the house and located the opened cardboard box and tool cases and the bags of rock salt. The cutting agent MSM and bowls, pairs of disposable gloves, digital scales, a lighter and bolt cutters were also located. Kalbasi's DNA was found on one of the pairs of gloves.</p>	<p>14 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found that Kalbasi played a higher role with respect to responsibility for the control and dissemination of the drug than Lothian. Kalbasi was higher up in the chain of drug distribution.</p> <p>Sentencing judge found that Kalbasi had control and say over Lothian and that Lothian was used as the mule to collect the drugs at the point of greatest risk. Lothian was plainly more than just a courier and warehouse; he was very high in the drug distribution chain.</p> <p>The sentencing judge found the appellant committed the offence for financial gain.</p>	<p>Dismissed.</p> <p>Appeal concerned the sentencing judge's assessment of the appellant's role in the offending, and the failure to take into account the non-parole period in imposing the fixed term of imp.</p> <p>At [250] ...it was open to his Honour to be satisfied beyond reasonable doubt that, compared with Mr Lothian, the appellant was higher up the chain of drug distribution...</p> <p>At [254] ... Mr Lothian came from much less fortunate circumstances than the appellant. Mr Lothian, unlike the appellant, was an entrenched drug addict who had a difficult childhood and no apparent family support.</p> <p>At [262] It was open to his Honour to be satisfied beyond reasonable doubt that the appellant's role in the commission of the offence was 'higher' than that of Mr</p>

					Lothian. At [293] His Honour did not take into account the non-parole period to be served by the appellant when imposing a fixed term of imp upon him...he was not required to do so...
61.	<p><i>The State of Western Australia v Charles</i></p> <p>[2016] WASCA 108</p> <p>Delivered 29/06/2016</p>	<p>26 yrs at time offending. 27 yrs at time sentencing.</p> <p><u>Indictment 1</u> PG (20% discount).</p> <p><u>Indictment 2</u> Early PG (25% discount).</p> <p>Previous criminal history, no previous sentences of imp.</p> <p>Supportive family and friends.</p> <p>Parents separated when a child and left home at 16 yrs.</p> <p>Young child from former partnership.</p> <p>Good employment history; opportunities to work upon release.</p> <p>Illicit substance abuse, escalated on relationship breakup and loss of employment. Undertook drug rehabilitation on remand.</p>	<p><u>Indictment 1</u> Ct 1: Poss methyl wiss 2.31g, 1.73g at 78% purity and 0.58g at 80% purity. Ct 2: Poss methyl wiss 54.3g at 72% purity.</p> <p><u>Indictment 2</u> Ct 1: Poss methyl wiss 9.95g, 3.37g at 46% purity; 3.47g at 52% purity and 2.88g at 65% purity. Ct 2: Poss cash reasonably suspected to have been unlawfully obtained.</p> <p><u>s32 Notice</u> Ct 1: Poss prohibited weapon. Ct 2: Poss cannabis 1g. Ct 3: Poss drug paraphernalia. Ct 4: Driving disqualified MDL.</p> <p>TES 22 mths imp. EFP.</p> <p><u>Indictment 1</u> Charles' car was stopped and searched by police. Two small cipseal bags containing methyl (ct 1) and a cooler bag containing methyl (ct 2), along with digital scales and cipseal bags were located. At his home a further quantity of cipseal bags containing MSM were also found.</p> <p><u>Indictment 2</u></p>	<p><u>Indictment 1</u> Ct 1: 18 mths imp. Ct 2: 18 mths imp (conc).</p> <p><u>Indictment 2</u> Ct 1: 4 mths imp (cum). Ct 2: 1 mths imp (conc).</p> <p><u>s32 Notice</u> Ct 1: 1 mths imp (conc). Ct 2: \$200 fine Ct 3: \$200 fine Ct 4: 9 mths MDL disqualification; \$1,000 fine.</p> <p>TES 22 mths imp. EFP.</p> <p>The sentencing judge observed the purity of the drugs was "at or near what is commonly called the theoretical maximum purity for methyl".</p>	<p>Allowed.</p> <p>Appeal against length of sentence and involved totality principle.</p> <p>Sentences in respect of ct 2 on first indictment set aside and ct 1 on second indictment set side. Orders for cumulacy set aside.</p> <p>Re-sentenced to: <u>Indictment 1</u> Ct 2: 3 yrs imp. <u>Indictment 2</u> Ct 1: 1 yr 6 mths imp (cum with 3 yr term above).</p> <p>TES 4 yrs 6 mths imp. EFP.</p> <p>At [36] ... the respondent had in his possession a substantial quantity of high purity methyl. ... was no mere bailee or courier – he had far more of the drug than was required to feed his addiction, and this disparity</p>

			<p>Underneath a mattress at Charles' home four clipseal bags containing methylamphetamine (ct 1) and \$500 cash (ct 2) was located. Two sets of electronic scales, various clipseal bags, some containing traces of a crystal substance or mixing agent, and a smoking implement were also found.</p> <p><u>s.32 Notice</u> At the time Charles was stopped he was driving under demerit point suspension (ct 4). At his home a taser (ct 1), a clipseal bag of cannabis (ct 2) and three glass smoking implements (ct 3) were found.</p>		<p>is even greater when the high likelihood that the 54.3 g would be cut is considered. The respondent was primarily motivated by commercial gain. His addiction to the drug affords no mitigation.</p> <p>At [48] The high purity of the methyl, and the fact that the respondent committed the offence whilst on bail for identical offences, were seriously aggravating circumstances.</p>
60.	<p><i>Santos v The State of Western Australia</i></p> <p>[2016] WASCA 107</p> <p>Delivered 29/06/2016</p>	<p>41 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history, including drug convictions.</p> <p>Engaged in the cultivation of cannabis at time of offending and later sentenced to a term of imp in NSW for this offence.</p> <p>Resident of NSW.</p> <p>An undischarged bankrupt at time offending.</p> <p>Co-offender Micalizzi sentenced to TES 15 yrs imp. EFP.</p>	<p>Ct 1: Poss MDMA wiss 8kg of 23-26% purity. Ct 2: Poss methyl wiss 22kg of 8-12% purity.</p> <p>Santos piloted a light plane from NSW to WA. His only passenger, the co-offender. Stowed in the cargo hold of the aircraft was a quantity of MDMA and methyl which Santos and the co-offender were jointly transporting from Sydney to Perth, as part of a larger drug distribution enterprise.</p> <p>Shortly after landing in WA the aircraft was intercepted and searched and the drugs located.</p> <p>Santos was found in possession of just over \$9,000 in cash and two mobile phones not in his name.</p>	<p>Ct 1: 13 yrs imp (conc). Ct 2: 15 yrs imp (conc).</p> <p>TES 15 yrs imp. EFP.</p> <p>The sentencing judge found the appellant's role as 'critical to the enterprise'. Despite having committed drug-related offences in the past, he was prepared to fly an aircraft, aware that illicit drugs were on board.</p>	<p>Dismissed.</p> <p>Appellant appealed length of sentence and challenged under parity and totality principle.</p> <p>At [45] As the learned sentencing judge recognised, there were differences in the roles played by the appellant and Mr Micalizzi in the commission of the offences. He regarded the role played by Mr Micalizzi as being more important than that played by the appellant. By itself, that may have justified Mr Santos receiving lesser sentences. However, the appellant's antecedents are worse than Mr Micalizzi's.</p> <p>At [52] ... the TES,</p>

					including the sentence imposed in NSW, was proportionate to the criminality involved in all of the offences, viewed in their entirety and having regard to the circumstances of the case, including those referable to the appellant personally.
59.	<p><i>Ye v The State of Western Australia</i></p> <p>[2016] WASCA 103</p> <p>Delivered 24/06/2016</p>	<p>20 yrs at time offending. 21 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Born in China. Parents separated when aged 8 and largely raised by his grandparents.</p> <p>In Australia on a student visa, since expired.</p> <p>Prior good character.</p>	<p>Ct 1: Supplying methyl to another 137g at 80% purity. Ct 2: Poss methyl wiss 1.014kg</p> <p><u>Ct 1</u> The co-accused and another drove to Ye's home and collected methyl. The vehicle was stopped and the methyl found.</p> <p><u>Ct 2</u> Numerous used and unused clipseal bags; latex gloves, some with traces of crystal residue; digital scales; multiple mobile phones and travel documents in his name were found at Ye's home.</p> <p>Three clipseal bags containing 24g of methyl at 74% purity; 494g of methyl at 78% purity and 496g of methyl at 88% purity were also found.</p> <p>Ye claimed he was paid \$27,000 and provided with accommodation to commit the offences and the money was to be used to pay his grandfather's medical expenses.</p>	<p>Ct 1: 5 yrs imp. Ct 2: 8 yrs imp (conc). TES 8 yrs imp. EFP.</p> <p>The sentencing judge found the offences related to significant amounts of high grade methyl and concluded the appellant knew he was involved at a high level of dealing and that he was "more culpable than a mere courier". The airline boarding passes indicated travel on multiple occasions consistent with courier activity and it was clear that the offences were not isolated instances.</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged length of sentence.</p> <p>At [21] The quantity and high level of purity of the drugs in this case indicated ... the appellant was engaged at the high end of the chain of distribution. While he was not the owner of the drugs or the organiser of their distribution, he nevertheless played an important role in facilitating their distribution and he did so for commercial gain.</p> <p>At [25] ... the appellant's offending was more than that of a courier and his offending was not a one-off involvement in the drug trade.</p>
58.	<p><i>Tresnjo v The State of Western Australia</i></p> <p>[2015] WASCA 193</p>	<p><u>Crews</u> Convicted after trial. 62 yrs at time sentencing.</p>	<p><u>Crews</u> Ct 1: Poss methyl wiss. Ct 2: Poss methyl wiss 860.9g of 46-75% purity.</p>	<p><u>Crews</u> Ct 1: 3 yrs imp. Ct 2: 6 yrs imp (cum). TES 9 yrs imp.</p>	<p>Dismissed.</p> <p>At [68] Mr Neumann's personal circumstances were unfavourable. At the time he</p>

<p>Delivered 18/09/2015</p> <p>Co-offenders of <i>Neumann v The State of Western Australia</i> [2013] WASCA 70</p>	<p>No relevant criminal history.</p> <p>Previously married for 23 yrs; two adult children.</p> <p>Good employment history; creditable charitable works.</p> <p>Good health; not a drug user.</p> <p><u>Tresnjo</u> Convicted after trial.</p> <p>33 yrs at time offending; 36 yrs at time sentencing.</p> <p>No relevant criminal history.</p> <p>Difficult upbringing; left school in yr 11.</p> <p>Four children with former de facto partner; in a relationship with an associate to co-offender Neumann.</p> <p>Long-term user of illicit drugs.</p> <p>Co-offender Neumann convicted after PG to one ct of conspiracy to poss methyl wiss and three cts of poss methyl wiss. Sentenced to TES 15 yrs imp. EFP.</p> <p>Co-offenders Cameron and Cookson died prior to trial.</p>	<p><u>Tresnjo</u> Ct 2: Poss methyl wiss 860.9g of 46-75% purity.</p> <p>Neumann was engaged in a business that imported methyl into WA, where it was sold for profit. Crews was romantically involved with Neumann and was the trusted executive assistant. Tresnjo later assisted Neumann in sourcing and purchasing methyl. Cameron assisted Neumann by transporting cash and drugs interstate. Cookson assisted Neumann by distributing imported drugs and collecting drug debts.</p> <p><u>Ct 1</u></p> <p>Cameron transported a large quantity of cash from Perth to Sydney. Neumann used that cash to purchase a substantial quantity of methyl somewhere between 10 ounces and a pound. Cameron flew from Sydney to Perth carrying the methyl, where it was sold to a buyer.</p> <p>Crews acted as an intermediary to facilitate dealings between Neumann and Cameron. Her credit card was used to purchase flights for Neumann and Cameron. She was involved in counting and bundling the cash used to purchase the drugs, and helped Cameron carry cash through airport security.</p> <p><u>Ct 2</u></p> <p>Crews called most of the shots in the days leading up to ct 2. Neumann and Crews packaged \$140,000 cash. Cameron carried \$140,000 from Perth to Sydney. Tresnjo travelled to Sydney on a separate plane and sourced methyl from her contacts.</p>	<p>EFP.</p> <p><u>Tresnjo</u> Ct 2: 10 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found that each appellant was part “of a crime organisation that was involved in a transaction or transactions for the commercial wholesale distribution of a dangerous drug, although admittedly Ms Tresnjo’s involvement was for a lesser time”.</p> <p>Sentencing judge described the organisation as being “at the topmost level of distribution in this State”.</p> <p><u>Crews</u> Sentencing judge found Crews to have a very good understanding of Neumann’s operation and that she was “fully committed to” and an “integral part of” Neumann’s enterprise.</p> <p>No remorse.</p> <p><u>Tresnjo</u> Sentencing judge found that Tresnjo was “the moving</p>	<p>was sentenced, he was 57 yrs of age. He was a long-term user of illicit drugs and had two prior convictions for drug dealing. His pleas of guilty were entered late and in the face of a strong State case. Nevertheless, Goetze DCJ said that the pleas demonstrated remorse and acceptance of responsibility.</p> <p>At [70] ... Ms Crews' culpability was less than Mr Neumann's, but nevertheless it was 'still very high' ... As to Ms Tresnjo... her culpability was at least equal to Mr Neumann's .</p> <p>At [84] ... the sentence imposed upon Ms Crews for ct 1 is low, no doubt because of totality.</p> <p>At [85] Although her role was behind the scenes, Ms Crews used her considerable organisational skills to assist in the commission of each offence. She did so for nakedly commercial purposes. She well appreciated the magnitude and scale of the offences and played a significant role in their commission. The persistent and determined way in which she executed her role in the offences belies</p>
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			<p>Cameron purchased first quantity of methyl from Tresnjo's acquaintance using the \$140,000. The following day, using money provided by Tresnjo, he purchased a second quantity from a friend of Tresnjo's. Cameron flew back to Perth with the methyl and met Crews at Neumann's apartment.</p> <p>Neumann's apartment was searched and police seized 860.9g methyl and drug paraphernalia. Tresnjo was found to be carrying five mobile phones and \$19,800 in cash. Police searched Crews' apartment and found \$29,500 in cash and a money counting machine.</p>	<p>force that enabled the Neumann organisation to purchase first the one and then the second pound" the subject of ct 2.</p> <p>Sentencing judge found that Tresnjo's "ability to source illicit drugs and arrange transactions had actually outperformed that of Mr Neumann".</p> <p>No remorse.</p>	<p>any notion that she was somehow under the romantic spell of Mr Neumann.</p> <p>At [88] Ms Tresnjo played a pivotal role in the organisation and importation into Western Australia of a large quantity of methyl. She did so for commercial purposes. She stood to gain financially from both ends of the transactions. The offence was committed against the backdrop of her already selling quantities of the drug. General and personal deterrence was an important sentencing factor.</p> <p>At [105] Although Ms Crews committed two offences, and her involvement in Mr Neumann's organisation spanned a longer period of time, Ms Crews' role was not at the same level as Ms Tresnjo's. Once Ms Tresnjo joined the enterprise, she used her contacts in Sydney to source larger quantities of better quality methyl than before and became a principal offender. Ct 2 itself was, having regard to the quantity of methyl involved, clearly more serious than ct 1. Ms Tresnjo's role in the commission of ct 2 was substantially more important</p>
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					than Ms Crews' and would not have happened without her.
57.	<p><i>Hughes v The State of Western Australia</i></p> <p>[2015] WASCA 164</p> <p>Delivered 24/08/2015</p> <p>Co-offender of</p> <p><i>Guler v The State of Western Australia</i> [2014] WASCA 83</p>	<p>Convicted after trial.</p> <p>28 yrs at time sentencing.</p> <p>No relevant criminal history.</p> <p>Two children from prior relationship; educated to yr nine.</p> <p>Owens a struggling roofing business.</p> <p>Co-offender Rizeq convicted after trial and sentenced to TES 10 yrs imp.</p> <p>Co-offender Guler convicted after early PG and sentenced to TES 8 yrs imp.</p> <p>Co-offender Sumner convicted after late PG and sentenced to TES 6 yrs imp.</p>	<p>Ct 1: Poss MDMA wiss 509g of 18% purity (2,035 tablets).</p> <p>Ct 2: Poss methyl wiss 403ml of 80% purity.</p> <p>The appellant organised and coordinated an operation for the drugs to be driven from Sydney to Perth.</p> <p>In Sydney, Hughes secreted the drugs in the compartment of the bull bar of the vehicle, along with 1.063kg of the cutting agent MSM. Rizeq prepared the vehicle mechanically. Guler assisted in re-installing the bull bar on the vehicle.</p> <p>Guler and Sumner drove the vehicle from Sydney to Perth. Hughes and Rizeq flew to Perth and stayed at a hotel.</p> <p>Police executed search warrants at the hotels that the appellant and his co-offenders were staying. They seized the vehicle and found the drugs and MSM in the bull bar.</p>	<p>Ct 1: 3 yrs imp (cum).</p> <p>Ct 2: 9 yrs imp (cum).</p> <p>TES 12 yrs imp.</p> <p>Sentencing judge found that the appellant hid the drugs in the bulbar; knew the exact composition of the drug consignment; had ready access to a significant commercial supply of prohibited drugs; and was in sole executive control of the enterprise.</p> <p>Sentencing judge found that the appellant was the organiser, coordinator and entirely autonomous leader and principal of the operation.</p> <p>Sentencing judge found that the appellant was at a high risk of reoffending in a similar way.</p>	<p>Dismissed.</p> <p>At [9] The liquid methyl would have been further processed and mixed with the MSM and was capable of producing at least a kilogram of good user-level methyl.</p> <p>At [83] Mr Hughes' involvement in, and culpability for, the offending was the highest of all the co-offenders.</p> <p>At [92] The individual sentences and the TES imposed on Mr Hughes are broadly consistent with the sentences customarily imposed in this jurisdiction.</p>
56.	<p><i>Sathitpittayayudh v The State of Western Australia</i></p> <p>[2015] WASCA 152</p> <p>Delivered 04/08/2015</p>	<p>34 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Criminal history, including convictions for poss prohibited weapons, drugs and explosives.</p> <p>Born in Thailand; parents</p>	<p>Ct 1: Supply methyl 27.8g.</p> <p>Ct 2: Poss handgun, whilst not being the holder of a licence or permit.</p> <p>Ct 3: Poss methyl wiss 358g.</p> <p>Ct 4: Poss MDMA wiss 71.6g.</p> <p><u>Ct 1</u></p> <p>The appellant supplied Evans with approx. 27.85g of methyl. Later that day Evans sold the drugs to an UCO for \$12,000. Some of</p>	<p>Ct 1: 3 yrs imp (cum).</p> <p>Ct 2: 12 mths imp (cum).</p> <p>Ct 3: 7 yrs imp (cum).</p> <p>Ct 4: 3 yrs imp (conc).</p> <p>TES 11 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found</p>	<p>Allowed.</p> <p>TES set aside.</p> <p>Resentenced to:</p> <p>Ct 1: 3 yrs imp (conc).</p> <p>Ct 2: 12 mths imp (cum).</p> <p>Ct 3: 7 yrs imp (cum).</p> <p>Ct 4: 2 yrs 6 mths imp (cum).</p>

		<p>separated when aged three; raised by paternal grandmother until age 11; travelled to Australia at age 11 to join his mother.</p> <p>Completed school to yr 11; completed civil engineering course at TAFE and computer engineering.</p> <p>Worked as courier driver and powder coater.</p> <p>History of illicit drug use, including cannabis, methyl and MDMA; admitted to dealing commercially.</p>	<p>that cash formed part of approx. \$600,000 located during a search of a property owned by the appellant's parents.</p> <p><u>Cts 2-4</u> Police executed a search warrant at the appellant's house and located a loaded .32 calibre Beretta handgun. The appellant made some admissions regarding poss and ownership of the gun.</p> <p>Police also located 245g of methyl of more than 50% purity in a glass Pyrex tray, 113g methyl in a large clipseal bag and 71.6g of MDMA rolled up inside a newspaper.</p>	<p>appellant was involved in commercial drug dealing and in the upper half of the pyramid of drug trafficking criminality, at quite a high level.</p>	<p>TES 10 yrs 6 mths imp.</p> <p>At [26] ...the sentencing judge made a factual error when including ct 4 in comments regarding lateness of the plea.</p> <p>At [27]... the appellant was caught red-handed and the prosecution case against him in respect of cts 2 to 4 was very strong. In these circumstances an appropriate discount for ct 4 is 20%.</p> <p>At [36]-[39] Discussion of comparable cases.</p> <p>At [40] Whilst the other cases referred to involved larger quantities of methyl this needs to be seen in the context that the appellant admitted he was involved in commercial dealing in the drug... In these circumstances the methyl and MDMA located at his premises ... must be viewed as merely his stock in trade. Whilst he is not to be punished on the basis that he had more than this amount in his poss cts 3 and 4 need to be seen in the context of a continuing commercial enterprise. It was clear that the appellant was a principal in this enterprise and that it</p>
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55.	<p><i>Harvey v The State of Western Australia</i></p> <p>[2015] WASCA 146</p> <p>Delivered 28/07/2015</p>	<p>41 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Significant criminal history, including convictions for supplying methyl and dishonesty offences.</p> <p>Three adult children.</p> <p>History of using illicit substances.</p> <p>History of depression; normal at time sentencing.</p> <p>Poor emotional and stress resilience skills.</p> <p>On bail at time offending for ct 3.</p>	<p>Ct 1: Poss LSD wiss 34 tabs. Ct 2: Poss methyl wiss 59.7g of 60% purity. Ct 3: Poss methyl wiss 11g. Ct 4: Att to PCJ.</p> <p><u>Cts 1-2</u> Police executed a search warrant at the appellant's home and found 34 LSD tabs, a clipseal bag containing 47.5g of methyl at 60% purity and 11 clipseal bags containing a total of approx. 12g of methyl.</p> <p>Police also found electronic scales with a calculator, empty clipseal bags, a taser gun, 22g of cutting agent, CCTV security system, several mobile phones with text messages about purchasing and sourcing drugs and tick lists.</p> <p><u>Ct 3</u> Four months later, police executed another search warrant at the appellant's home and found three clipseal bags containing a total of 11g of methyl.</p> <p><u>Ct 4</u> After ct 3, the appellant was refused bail. For the purpose of persuading a court to release her on bail, the appellant submitted to the Magistrates Court a letter prepared with her daughter N's name on it stating that the drugs were 'possibly hers'. The letter was untrue, unsigned and had not been prepared by N. Bail was refused.</p> <p>The appellant then emotionally and financially pressured her daughter L to swear a false statutory declaration taking responsibility for the drugs. L was 17 yrs old</p>	<p>Ct 1: 12 mths imp (conc). Ct 2: 4 yrs 10 mths imp. Ct 3: 2 yrs 6 mths imp (conc.) Ct 4: 2 yrs 6 mths imp (cum).</p> <p>TES 7 yrs 4 mths imp.</p> <p>EFP.</p> <p>Sentencing judge noted the purity of the 47.5g of methyl and found that appellant must have been reasonably close to a source of the methyl.</p> <p>Sentencing judge found that the appellant intended to cut the large quantity of methyl; appellant was a user of methyl and was selling drugs to make money.</p>	<p>was a highly successful one.</p> <p>Dismissed – on papers.</p> <p>At [32] ...the appellant was engaged in drug dealing, primarily for profit...It is clear that the appellant intended to cut the larger quantity of methyl. Many of the typical accoutrements of a commercial drug dealer were present. The smaller quantities of methyl were already packaged for sale or supply.</p> <p>At [33] The commission of ct 3 shows that the appellant was a persistent and determined dealer in drugs, thus underscoring the need for personal deterrence.</p> <p>At [36] The learned sentencing judge was correct to impose a substantial and wholly cum term of imp for the offence of att to PCJ. That offending was separate from, and of a different nature to her drug offences.</p>
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			and had substance and mental health issues. The appellant also offered L rewards. The false statutory declaration was tendered to the Magistrates Court and the appellant was released on bail.		
54.	<p><i>Hoang v The State of Western Australia</i></p> <p>[2015] WASCA 130</p> <p>Delivered 26/06/2015</p>	<p>48 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>No criminal history.</p> <p>Deprived background; little education.</p> <p>Reasonable but inconsistent employment history.</p> <p>Anxiety and depression.</p> <p>Gambling addiction.</p> <p>Has a partner with 2 small children.</p>	<p>Ct 1: Poss methyl wiss 130.5g of 73-75% purity.</p> <p>Ct 2: Poss methyl wiss 349.4g of 69-81% purity.</p> <p><u>Ct 1</u> Police stopped and searched the appellant's vehicle. They located five cipseal bags; each contained approx. 26g of methyl. Police also located \$6,200 cash in the appellant's wallet.</p> <p><u>Ct 2</u> On the same day, police searched the house where the appellant was staying. They located three cipseal bags under the stairwell, containing a total of 349.4g of methyl. Police also located \$34,000 cash concealed in a sofa.</p>	<p>Ct 1: 2.5 yrs imp (cum).</p> <p>Ct 2: 6.5 yrs imp (cum).</p> <p>TES 9 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found that the appellant's role was not that of a courier but was, in effect, facilitating sales by someone above him in the hierarchy and that he was close to the source of the drugs.</p>	<p>Dismissed.</p> <p>At [55]... the appellant played a role, beyond mere courier, in relation to the sale of drugs in Perth prior to his arrest. It is not possible to determine beyond reasonable doubt the precise role which he played. That is, it is not clear, to the criminal standard of proof, whether he actually effected sales himself, or facilitated sales by someone else. However, I am satisfied beyond reasonable doubt ...that he warehoused the drugs found at the Maylands house, and also, he either effected sales himself or facilitated sales by another.</p> <p>At [56] I agree with the learned sentencing judge that the quantity and quality of drugs found in the appellant's possession support the conclusion that he was close to the source of the drugs.</p> <p>At [73] ...while the penalty imposed upon the appellant lies near the top of the range</p>

					<p>of a sound sentencing discretion, it does not fall outside that range.</p> <p>At [75]-[80] Discussion of comparable cases.</p>
53.	<p><i>The State of Western Australia v Wilson</i></p> <p>[2015] WASCA 119</p> <p>Delivered 10/06/2015</p>	<p>39 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Lengthy prior criminal history, including drug offences.</p> <p>Has a de facto partner; young daughter.</p> <p>Entrenched illicit drug abuse.</p>	<p><u>Indictment</u></p> <p>Ct 1: Attempt to poss methyl wiss 71.4g of 76% purity.</p> <p>Ct 2: Poss methyl wiss 303.7g of 64-77% purity.</p> <p>Ct 3: Poss cannabis wiss 2.677kg.</p> <p>Ct 4: Poss methyl wiss 371.3g of 73% purity.</p> <p><u>Section 32 Notice</u></p> <p>19 offences.</p> <p>Through inquiries, police identified four envelopes containing 71.4g of methyl addressed to a PO box believed to be controlled by the respondent and his partner (co-accused). The methyl was substituted and the envelopes were placed in the PO box for collection. The co-accused collected the envelopes.</p> <p>The co-accused then attended the respondent's home. Police executed a search warrant at the respondent's home and found the four envelopes (ct 1), 303.7g methyl in a hidden compartment of a coffee table (ct 2), 2.677kg dried cannabis throughout the house (ct 3), firearms and \$196,600 cash (section 32 notice).</p> <p>The respondent arrived home during the search and fled in his car to evade arrest. He was arrested at another property a week later. Police searched this property and found 371.3g methyl (ct 4).</p>	<p><u>Indictment</u></p> <p>Ct 1: 2 yrs imp (cum).</p> <p>Ct 2: 4 yrs imp (conc).</p> <p>Ct 3: 2 yrs imp (conc).</p> <p>Ct 4: 4 yrs imp (cum).</p> <p><u>Section 32 Notice</u></p> <p>Various imp sentences, TES 6 mths imp (cum), and two fines.</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>Sentencing judge found appellant offended for commercial gain.</p> <p>Remorse; suffered difficulties at the hands of other prisoners while in custody.</p>	<p>Allowed.</p> <p>Re-sentenced to a TES 8 yrs 6 mths imp.</p> <p>Set aside orders for cum and conc on indictment.</p> <p>Ordered ct 2 and ct 4 to be served cum, and ct 1 and ct 3 to be served conc.</p> <p>At [30] Upon the material before the learned sentencing judge, it appeared that the respondent was not at the pinnacle of the drug distribution hierarchy. Clearly, someone else was supplying him with the drugs. However, given the quantities and the purity of the methyl he possessed and the very substantial quantity of cash found at the Cathryn Street address, the respondent must have been close to the source of the drugs. Further, the respondent must have been a trusted associate of whomever was above him in the drug hierarchy.</p>

					<p>At [36] ...each sentence, had it stood alone, would have been manifestly inadequate. However, the sentences did not stand alone.</p> <p>At [38] The very large sum of cash found there showed that the respondent's drug dealing was both substantial and lucrative.</p> <p>At [44] ... the TES was not merely lenient. Having regard to all of the relevant circumstances of this case, I have been persuaded that the TES of 6 yrs 6 mths immed imp infringed the first limb of the totality principle...</p>
52.	<p><i>Lear v The State of Western Australia</i></p> <p>[2015] WASCA 90</p> <p>Delivered 07/05/2015</p>	<p>49 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal history, including attempted manufacture of methyl and other drug offences.</p> <p>Separated from wife; four children, including two dependent children aged 14 and 15yrs.</p> <p>Stable work history; financially vulnerable.</p> <p>Addicted to methyl; ceased using methyl in 2012.</p>	<p>Ct 1: Sold methyl 13.8g of 61% purity. Ct 2: Sold methyl 40.1g of 61-67% purity. Ct 3: Conspiracy to sell methyl 112g. Ct 4: Sold methyl 69.4g of 69% purity. Ct 5: Sold methyl 41.7g of 44% purity. Ct 6: Sold methyl 149.4g of 6-46% purity.</p> <p>Over three and a half months, the appellant sold to an UCO 14g of methyl for \$8,000 (ct 1), 40.1g for \$24,000 (ct 2), 69.4g for \$40,000 (ct 4), 41.7g for \$24,000 (ct 5) and 149.4g for \$88,000 (ct 6).</p> <p>In relation to ct 3, the appellant arranged to sell 112g for \$66,000. After attempts over two weeks, he was unable to source the methyl. He told the UCO that he couldn't supply the drugs.</p>	<p>Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: 4 yrs imp (conc). Ct 4: 3 yrs 6 mths imp (cum). Ct 5: 3 yrs 6 mths imp (conc). Ct 6: 5 yrs 6 mths imp.</p> <p>TES 9 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found offending motivated by financial difficulties; dealing for financial gain.</p> <p>Sentencing judge characterised appellant's</p>	<p>Dismissed – on papers.</p> <p>At [27] Having regard to the quantity and quality of the drug sold by the appellant, it is clear that, although the appellant was not at the top of the hierarchy, he was the person who dealt directly with the customers and must have been trusted by those above him.</p> <p>At [28] While the appellant's motivation for his offending was to pay his living expenses, the fact remains that he offended for commercial gain.</p>

				role as being 'not at the top of the hierarchy'.	At [29] ...I do not regard the TES imposed in the present case as being outside of the range customarily imposed.
				Not out of character.	
51.	<p><i>MSO v The State of Western Australia</i></p> <p>[2015] WASCA 78</p> <p>Delivered 14/04/2015</p>	<p>Convicted after PG.</p> <p>Favourable antecedents.</p>	<p><u>Indictment</u></p> <p>Ct 1: Poss methyl wiss 10.54kg of 46-75% purity.</p> <p>Ct 2: Poss heroin wiss 2.46kg of 41-59% purity.</p> <p>Ct 3: Poss cocaine wiss 599g of 52-62% purity.</p> <p>Ct 4: Poss MDMA wiss 1.09kg of 5-10% purity.</p> <p><u>Section 32 Notice</u></p> <p>Poss stolen or unlawfully obtained property x1.</p> <p>The appellant provided warehousing and related services to two drug traffickers, A and B, for one year from his legitimate retail business. The appellant collected, weighed, checked, stored, made up orders and delivered drugs on behalf of A and B as instructed by coded text messages. The appellant, when instructed, added cutting agents to the drugs supplied to him on behalf of B and then repackaged the resulting product. The appellant was paid in cash for his services.</p> <p><u>Ct 1</u></p> <p>Police found a total of 10.54kg of methyl in 18 packages. Each package ranged in size from between 26.6g and 575g and 1kg, of 46%-75% purity. Police also found scales, clip seal bags, cutting agent, heat sealing equipment and an envelope with handwritten names and quantities on it. Street value was estimated at \$4.7-\$5.2 million (if sold in 28g</p>	<p><u>Indictment</u></p> <p>Ct 1: 8 yrs 3 mths imp.</p> <p>Ct 2: 7 yrs 6 mths imp (conc).</p> <p>Ct 3: 5 yrs imp (conc).</p> <p>Ct 4: 6 yrs imp (conc).</p> <p><u>Section 32 Notice</u></p> <p>12 mths imp (conc).</p> <p>TES 8 yrs 3 mths imp.</p> <p>EFP.</p> <p>Sentencing judge found that motivation for offending was a combination of beliefs arising from B's implied threat and a desire to make a significant financial gain.</p> <p>Remorseful; fully accepted responsibility for conduct; low risk of reoffending.</p> <p>Letter of recognition; appellant provided very substantial assistance.</p>	<p>Dismissed.</p> <p>At [28] ...the judge viewed the appellant's conduct as extremely serious, because the appellant played an integral role in the success of what was obviously a sophisticated large-scale drug distribution network.</p> <p>At [69] Although it is common to speak of discounts for cooperation with authorities in terms of percentages, as Gleeson CJ observed in <i>R v Gallagher</i>, the court must have regard to the TES imposed after the discount so as to ensure that the sentence is not so far out of touch with the circumstances of the offending conduct that it...would contravene the requirement of s 6(1) of the <i>Sentencing Act</i> which requires the sentence imposed on an offender to be commensurate with the seriousness of the offence.</p> <p>At [70] In this case the appellant received a reduction in the sentence that would otherwise have been</p>

			<p>lots) and at \$10.5 million (if sold in 0.1g lots).</p> <p><u>Ct 2</u> Police found three packages of heroin, two of which were a little under 1kg with 41% purity and the third containing a little less than 500g with 59% purity. Street value was estimated at \$1.1 million (if sold in 1 oz lots) and \$1.2-\$2.5 million (if sold in 0.1g lots).</p> <p><u>Ct 3</u> Police found three packages containing 109g of cocaine of 52% purity, 190g of cocaine of 56% purity and 300g of cocaine of 62% purity, respectively. Street value estimated at \$450,000 (if sold in 1g lots) and \$214,000 (if sold in 1 oz lots).</p> <p><u>Ct 4</u> Police found 3,815 ecstasy tablets, which belonged to B and had been at the factory for a year. They ranged in purity between 5% and 10%. Street value estimated at \$152,600 (if sold individually) and \$53,000-\$57,000 (if sold in lots of 1,000).</p> <p><u>Section 32 Notice</u> Police found \$232,000 cash during the search.</p> <p>The appellant cooperated fully with police.</p>		<p>imposed upon him of 8 yrs and 3 mths in recognition of the assistance which he provided to law enforcement agencies. On any view, that is a very substantial discount.</p>
50.	<p><i>Le v The State of Western Australia</i></p> <p>[2015] WASCA 73</p> <p>Delivered 09/04/2015</p>	<p><u>Le</u> 34 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Extensive irrelevant criminal history.</p>	<p>Le: 1 x Offer to supply methyl 953.8g of 63-70% purity.</p> <p>Ngo: 1 x Offer to supply methyl 953.8g of 63-70% purity.</p> <p>The appellant Ngo met with an UCO and agreed to facilitate the supply of 1kg of</p>	<p>Le: 11 yrs imp.</p> <p>Ngo: 11 yrs imp.</p> <p>Sentencing judge found Le had real and positive prospects of rehabilitation</p>	<p>Dismissed.</p> <p>At [47] There was no information before the sentencing judge as to whether Mr Ngo and Mr Le were principals (that is, acting on their own account)</p>

		<p><u>Ngo</u> 35 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal history, including cultivate cannabis and supply a commercial quantity of cannabis.</p> <p>Co-offender Pham convicted of poss methyl wiss and sentenced to 7 yrs 6 mths imp.</p>	<p>methyl for \$370,000 on 9 July 2013. The appellant Le was present at the meeting.</p> <p>Le escorted Pham from Sydney to Perth. Pham had secreted in her underpants and bra four bags of methyl. The bags contained 56.6g of 63% purity, 51.2g of 69% purity, 131g of 62% purity and 715g of 70% purity respectively.</p> <p>Ngo texted the UCO and arranged the location for the transaction to take place. Le met with the UCO and confirmed the agreement of the sale of approx. 1kg of methyl for \$370,000. Le checked that the UCO had the money. Le then co-ordinated with Pham to show the UCO the methyl.</p> <p>Le was arrested in the UCO's hotel room and denied the offences.</p> <p>Pham was arrested at the front of the hotel in poss of 953.8g of methyl. She admitted she had been offered \$10,000-\$15,000 to bring drugs from Sydney to Perth as a courier.</p> <p>Ngo was apprehended the following day in Sydney trying to board a one way flight overseas.</p>	<p>Sentencing judge found that, having regard to the quantity and purity of the methyl, Le and Ngo were close to source of drugs and motivated by desire for financial gain.</p>	<p>or were acting at the behest of unknown third parties above them in an organisational hierarchy.</p> <p>At [50] I infer Ms Pham's culpability was less because she was the courier who received a flat fee for her participation, which in any view was extensive and crucial.</p> <p>At [52] The sentencing judge declined to find that 'facilitator' meant that Mr Ngo had organisational seniority or authority over Mr Le and Ms Pham. When the focus shifts from their respective positions in the hierarchy to the actual conduct of each, Mr Le's involvement in the offence is greater.</p> <p>At [58] Their criminal conduct is at the high end of the scale of seriousness of offences of this type. They offered to supply a large quantity of high purity methyl for a wholesale price of \$370,000. Both men were close to the source of the prohibited drug. As is apparent from the agreed facts, they both knew all of the salient features of the transaction. It was a</p>
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					commercial transaction motivated by financial gain. A very lengthy sentence was inevitable and it had to be significantly higher than that imposed on the courier, Ms Pham.
49.	<p><i>RIN v The State of Western Australia</i></p> <p>[2015] WASCA 51</p> <p>Delivered 17/03/2015</p> <p>Subject to a confidentiality order.</p>	<p>Convicted after PG.</p> <p>Prior criminal history including 2 x poss methyl wiss and 2 x poss heroin wiss.</p>	<p><u>Indictment X of 2012</u> Ct 1: Sold methyl 55.7g of 49% purity. Ct 2: Sold methyl 55.6g of 76% purity. Ct 3: Sold methyl 116.6g of 73% purity. Ct 4: Sold heroin 13g of 65% purity.</p> <p>About a month before ct 1, the appellant called Crime Stoppers with vague information about another man. The appellant then sold methyl and heroin to an undercover police officer on three occasions.</p> <p><u>Indictment Z of 2013</u> Ct 1: Poss methyl wiss 13.7g of 83% purity. Ct 2: Poss methyl wiss 55.5g of 86.9% purity.</p> <p>Appellant claimed that she was directed by her husband to pick up one of the amounts of methyl and the other amount of methyl was in the car. When police arrived, the appellant ran away and threw the drugs into the bushes.</p> <p>Appellant was on bail for other serious drug offences at time of offending.</p> <p>Appellant claimed she was offending to assist police by getting more concrete information.</p> <p>The appellant later drove around and pointed out drug related houses to police, but this did not result in any direct arrest or convictions.</p>	<p><u>Indictment X of 2012</u> Ct 1: 3 yrs 9 mths imp (conc). Ct 2: 3 yrs 9 mths imp (conc). Ct 3: 5 yrs 8 mths imp. Ct 4: 1 yr 4 mths imp (conc).</p> <p>TES 5 yrs 8 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant was selling as a representative of her husband at the least; drug dealing for personal gain; acting under some pressure from husband, but was actively involved.</p> <p>Appellant deflected blame; elevated risk of reoffending.</p> <p>PG demonstrated remorse and acceptance of responsibility for offending.</p> <p><u>Indictment Z of 2013</u> Ct 1: 4 yrs imp (conc with indictment X of 2012).</p>	<p>Dismissed.</p> <p><u>Indictment X of 2012</u></p> <p>At [64] On my findings of fact, the nature and extent of any assistance or cooperation given by the appellant to the authorities ...was not of any significance for sentencing purposes.</p> <p>At [65] The sentences imposed by his Honour were well within the range open on a proper exercise of the sentencing discretion.</p> <p><u>Indictment Z of 2013</u></p> <p>At [73] On my findings of fact, the nature and extent of any assistance or cooperation given by the appellant to the authorities ...was not of any significance for sentencing purposes.</p> <p>At [74] The sentences she received were well within the range open to his Honour on a proper exercise of the sentencing discretion.</p>

				<p>Ct 2: 1 yr 4 mths imp (cum with indictment X of 2012).</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge did not accept appellant acting with a view to gaining information for police; appellant's assistance was not of great assistance in practical terms to investigations.</p>	
48.	<p><i>Ly v The State of Western Australia</i></p> <p>[2015] WASCA 18</p> <p>Delivered 30/01/2015</p>	<p>46 yrs at time of sentencing.</p> <p>Convicted after trial.</p> <p>No criminal record.</p> <p>Born in rural Vietnam. Little education. Settled in Australia in 1987. Very interested in welfare of family and Vietnamese people in Australia.</p>	<p>Ct 1: Poss methyl wiss 495g of 67-71% purity.</p> <p>Ct 2: Poss methyl wiss 145g of 0.2-63% purity.</p> <p>Ct 3: : Poss heroin wiss 485g of 48-60% purity.</p> <p>Two co-offenders. First co-offender was living with appellant as spouse. He was charged in relation to all counts.</p> <p>Second co-offender was elderly and charged only in relation to Ct 1.</p> <p>\$115,500 cash alleged to be drug proceeds found at appellant's house.</p> <p>Appellant operating towards the top end of the chain of distribution purely for commercial reward.</p> <p><u>Methyl</u></p> <p>Joint enterprise to source methyl in Sydney, and transport it to Perth for commercial</p>	<p>Ct 1-2: 9 yrs imp conc</p> <p>Ct 3: 4 yrs imp cum</p> <p>TES 13 yrs imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>At [78-79] His Honour found the appellant to be a 'key and active player' and a 'sophisticated and experienced drug dealer'. There was abundant evidence to support his Honour's findings.</p> <p>Second co-offender sentenced to 5 yrs imp on Ct 1 was distinguished.</p> <p>At [95-96] Appellant did not evince any remorse or contrition. By contrast, co-offender pleaded guilty at the first reasonable opportunity... The appellant was middle aged and apparently in good health. By contrast, co-offender was sick and elderly.</p>

			<p>distribution.</p> <p>Ct 1 – Second co-offender in possession of 495g of methyl of approximately 70% purity when apprehended at airport.</p> <p>Ct 2 - Search of appellant's house discovered methyl - 145g, varying degrees of purity.</p> <p><u>Heroin</u></p> <p>Ct 3 - Search of appellant's house discovered heroin - 485g of 48-60% purity.</p>		<p>At [97] The disparity between the sentences was not such as to give rise to a legitimate or justifiable sense of grievance.</p> <p>At [103] The total effective sentence of 13 years' imprisonment was not beyond the range open to the primary judge on a proper exercise of his discretion.</p> <p>At [108] The total effective sentence of 13 years imprisonment was appropriate in all of the circumstances. It cannot reasonably be said that the appellant has been left without any reasonable prospect of useful life after release.</p>
47.	<p><i>Jenkin v The State of Western Australia</i></p> <p>[2014] WASCA 226</p> <p>Delivered 04/12/2014</p> <p>Co-offender of</p> <p><i>Pittard v The State of Western Australia</i> [2013] WASCA 126</p>	<p>29 yrs at time offending. 34 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history including drug-related convictions.</p> <p>History of substance abuse.</p> <p>After being charged stopped using illicit drugs; disassociated himself from adverse influences and resumed employment.</p>	<p>Ct 1: Poss methyl wiss 54.8g of 20-21% purity. Ct 2: Poss MDMA wiss 58.7g of 23% purity.</p> <p>The appellant and another (Forman) were involved in the routine distribution of drugs in Geraldton for profit. The appellant had established a relationship with a drug dealer in Perth (Pittard).</p> <p>The appellant arranged for Pittard to supply Forman with methyl and MDMA. Forman drove from Geraldton to Perth, collected from Pittard methyl and 199 MDMA tablets and returned to Geraldton. On his return he was stopped by Police who seized the drugs.</p>	<p>Ct 1: 5 yrs 6 mths imp.</p> <p>Ct 2: 6 mths imp (cum).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Judge found appellant was involved in the planning and organising of the 'drug run' carried out by Forman, who acted at the appellant's direction.</p>	Dismissed.

		<p>Co-offender Forman charged with 11 Cts on indictment and 6 Cts on s32 notice. PG to all and sentenced to TES 6 yrs imp. EFP.</p> <p>Co-offender Pittard charged with 2 x sell/supply methyl and MDMA and poss cannabis wiss. Convicted after trial and sentenced to TES 7 yrs imp. EFP.</p>			
46.	<p><i>Seeto v The State of Western Australia</i></p> <p>[2014] WASCA 221</p> <p>Delivered 28/11/2014</p>	<p>38 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Significant criminal record including drug convictions.</p> <p>Studied as a chef, and Diploma in Community Services; Studying Diploma in Occupational Health and Safety.</p> <p>Employment in youth work, aged care and disability services.</p> <p>One child from a former relationship.</p> <p>Drug user on an 'on and off' basis since 13 yrs; heavy user of drugs when offences occurred.</p> <p>The appellant committed Cts 5 - 8 whilst on bail for Cts 1 and 2.</p>	<p>Ct 1: Used identification material to facilitate the commission of an indictable offence.</p> <p>Ct 2: Poss methyl wiss 21.21g of 64-79% purity.</p> <p>Ct 3: Poss MDMA wiss 2.01g.</p> <p>Ct 4: Poss cocaine wiss 2.51g of 10% purity.</p> <p>Ct 5: Poss methyl wiss 431.8g of 57.4% purity.</p> <p>Ct 6: Conspire to sell/supply methyl 454g.</p> <p>Ct 7: Poss methyl wiss 279g of 70% purity.</p> <p>Ct 8: Poss methyl wiss 1.78g.</p> <p>The appellant was involved purchasing in Sydney large quantities of high purity methyl and importing to WA and then arranging for its distribution. The offending involved a considerable degree of preparation and planning and the appellant recruited others to assist him in his operation.</p> <p>During a search of a rented storage unit police also located cocaine, MDMA and drug paraphernalia.</p>	<p>Ct 1: 8 mths imp (conc).</p> <p>Ct 2: 2 yrs imp (conc).</p> <p>Ct 3: 8 mths imp (conc).</p> <p>Ct 4: 8 mths imp (conc).</p> <p>Ct 5: 6 yrs imp.</p> <p>Ct 6: 6 yrs imp (cum).</p> <p>Ct 7: 3 yrs imp (cum).</p> <p>Ct 8: 6 mths imp (conc).</p> <p>TES 15 yrs imp.</p> <p>Declined to be interviewed.</p> <p>Sentencing judge noted the appellant was engaged in a commercial drug distribution business and was at the upper level in the chain of distribution.</p>	<p>Allowed.</p> <p>Resentenced to 5 yrs imp on Cts 5 and 6 and 2 yrs on Ct 7.</p> <p>TES 12 yrs imp.</p> <p>Discusses a number of observations concerning s9AA of the <i>Sentencing Act</i>.</p> <p>At [76] The total sentence imposed in this case was very significantly higher than sentences imposed in comparable cases... The total effective sentence imposed here is not merely high, it is inconsistent with standards of sentencing customarily observed in cases of this kind.</p>

45.	<p><i>Stoysich v The State of Western Australia</i></p> <p>[2014] WASCA 208</p> <p>Delivered 10/11/2014</p>	<p>39 yrs at time of offending. 40 yrs at time of sentencing.</p> <p>Convicted after late PG.</p> <p>Some prior irrelevant convictions.</p> <p>Strong work ethic.</p> <p>Illicit drug addiction.</p> <p>Following his arrest participated in a rehabilitation programme and ceased using drugs.</p> <p>Co-offender Noakes PG and sentenced to 5 ½ yrs imp.</p> <p>Co-offender Duthie PG and sentenced to 2 ½ yrs imp.</p>	<p>Ct 1: Sold methyl 26.8g of 40-42% purity. Ct 2: Sold methyl 56.4g of 34-36% purity.</p> <p>The appellant provided services as a driver and surveillance for his co-offenders to meetings with an undercover officer where methyl was sold on two occasions for \$32,000.</p>	<p>Ct 1: 6 mths imp. Ct 2: 3 yrs 6 mths imp (cum).</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>Some insight into his offending; degree of remorse.</p> <p>Made limited admissions to police.</p> <p>Sentencing judge noted the appellant had 'some knowledge of the scale and the extent of the criminality'.</p> <p>No commercial gain; but given methyl.</p>	<p>Dismissed.</p> <p>Discusses parity principle.</p>
44.	<p><i>Rossi v The State of Western Australia</i></p> <p>[2014] WASCA 189</p> <p>Delivered 21/10/2014</p>	<p>38 yrs at time sentencing.</p> <p>Convicted after PG (12.5% discount).</p> <p><u>Indictment 1182/12</u> Cts 1 & 3 accepted in full satisfaction of indictment.</p> <p><u>Indictment 790/13</u> Subject to negotiations, 3 charges discontinued.</p> <p>Significant criminal history including AOBH, poss drugs, poss smoking utensil, stealing, traffic offences and</p>	<p><u>Ind 1182/12</u> Ct 1: Possess methyl wiss 12.19g of 56% purity. Ct 3: Possess methyl wiss 48.91g of 0.3-82% purity.</p> <p><u>Section 32 notice 1182/12</u> Ch 1: Possess stolen or unlawfully obtained property. Ch 2: Possess unlawfully obtained property. Ch 3: Possess smoking utensil. Ch 4: Possess cannabis. Ch 5: Possess MDMA.</p> <p><u>Ind 790/13</u> Ct 1: Offer to sell methyl 28g. Ct 2: Offer to sell methyl 1g.</p>	<p><u>Ind 1182/12</u> Ct 1: 2 yrs 2 mths imp (cum). Ct 3: 3 yrs 6 mths imp (head sentence).</p> <p><u>Section 32 notice 1182/12</u> Ch 1: 5 mths imp (conc). Ch 2: 7 mths imp (conc). Ch 3: 1 mth imp (conc). Ch 4: 1 mth imp (conc). Ch 5: 1 mth imp (conc).</p> <p><u>Ind 790/13</u> Ct 1: 2 yrs 4mths imp (cum) Ct 2: 6 mths imp (conc).</p>	<p>Dismissed.</p> <p>Discusses scope of s9AA <i>Sentencing Act</i>, <i>Criminal Procedure Act</i> and appearance framework.</p> <p>At [77] The appellant pleaded guilty at the fourth or fifth disclosure/committal hearing. The sentencing judge did not err by failing to make a finding that the appellant's pleas of guilty to the charges in Indictment 790 were entered at the first reasonable opportunity. They</p>

		<p>breach of susp imp.</p> <p>Lengthy history of prohibited drug use.</p> <p>In a de facto relationship for 2 yrs.</p> <p>Diagnosed with systemic sclerosis and severe pulmonary arterial hypertension.</p> <p>Despite twice being arrested, charged and bailed the appellant continued to engage in drug dealing. Some of the offending occurred when he was on a susp term of imp.</p>	<p>Ct 3: Sold methyl 6.98g of 44% purity. Ct 4: Offer to sell methyl 1g. Ct 5: Offer to sell methyl 3.5g. Ct 6: Offer to sell methyl 3.5g.</p> <p><u>Section 32 notice 790/13</u> Ch 1: Possess smoking utensil. Ch 2: Possess prohibited weapon. Ch 3: Possess methyl 0.5g.</p> <p><u>Breach of CSIO</u> No authority to drive.</p> <p><u>Ind 1181/12 & associated offences</u> Police executed a search warrant at Rossi's home and located methyl in a safe. Police also located cash, drug paraphernalia and a notepad recording Rossi's drug dealing activities. Rossi was arrested and released on bail. About 4 mths later police executed a search warrant where Rossi was residing. Methyl was located in the master bedroom. Police also found cash, two smoking implements with traces of methyl, a small quantity of cannabis, 1 MDMA tablet and drug paraphernalia.</p> <p><u>Ind 790/13 and associated offences</u> Whilst on bail for those offences police intercepted calls where, with the exception of Ct 3, Rossi offered to sell methyl. In one instance Rossi sold 6.98g of methyl to another. The purchaser was stopped by police immediately after leaving Rossi's home. Police executed a search warrant at Rossi's house and located a smoking utensil and a taser disguised as a torch. Rossi had 0.5g of methyl in his pocket.</p> <p><u>Breach of CSIO</u></p>	<p>Ct 3: 12 mths imp (conc). Ct 4: 6 mths imp (conc). Ct 5: 9 mths imp (conc). Ct 6: 9 mths imp (conc).</p> <p><u>Section 32 notice 790/13</u> Ch 1: 1 mth imp (conc). Ch 2: 1 mth imp (conc). Ch 3: 3 mths imp (conc).</p> <p><u>Breach of CSIO</u> 8 mths imp (conc).</p> <p>TES 8 yrs imp.</p> <p>The sentencing judge found the appellant was a 'significant operative in the commercial distribution of methyl in the community' and that the offending was driven by his drug addiction.</p> <p>The sentencing judge concluded that the ill health of partner did not have any significant impact on the sentencing process.</p>	<p>were not.</p> <p>At [87] ... The need for personal deterrence was a very weighty sentencing consideration for this case. The only significant mitigating factor was the appellant's plea of guilty. The sentencing judge was correct to conclude that any hardship to the appellant's partner should have no significant impact on the length of the sentence.</p>
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			Rossi drove whilst disqualified/suspended for which a term of 8 mths susp for 12 mths was given. The commission of offences subject of Cts 5 & 6 in indictment 790/13 and associated s32 notice was a breach of this order.		
43.	<p><i>Bui v The State of Western Australia</i></p> <p>[2014] WASCA 168</p> <p>Delivered 09/09/2014</p>	<p>42 yrs at time of sentencing.</p> <p>Convicted after early PG.</p> <p>Born in Vietnam; lived in Malaysia; spent 3 years in refugee camp before entering Australia.</p> <p>Full time employment.</p> <p>Amphetamine addiction; at time of offending was a heavy user of methyl.</p> <p>Twice married; presently single; four children.</p> <p>Family support.</p> <p>Participated in prison programmes addressing offending behaviour and drug and alcohol.</p>	<p>Ct 1: Sell methyl 26.4g of 40% purity. Ct 2: Sell methyl 53.3 grams of 30% purity.</p> <p><u>Ct 1:</u> An undercover operative (UCO) arranged a meeting with the appellant to purchase methyl. The UCO met with the appellant at his house and offered to sell him an ounce of methyl for \$13,000. The UCO handed \$13,000 cash and received the methyl in returned.</p> <p><u>Ct 2:</u> In the following days the UCO and appellant arranged a further meeting. On arrival there was discussion about the UCO meeting the appellant's supplier. The appellant produced a smoking implement and smoked some methyl in the presence of the UCO. A short time later another person arrived and the appellant collected a bag from that person. Inside the bag was a cigarette packet which contained a clip seal bag. The UCO handed \$26,000 to the appellant and received the clip seal bag of drugs in return.</p> <p>On both occasions the appellant was paid for his role by way of a small amount of methyl that was taken from the quantity to be sold to the UCO. The appellant did not receive any of the money paid by the UCO, all of which went to a third party supplier.</p>	<p>Ct 1: 3 yrs imp. Ct 2: 3 yrs imp (conc).</p> <p>TES 6 yrs imp.</p> <p>Offered assistance to police that had no practical use; sentencing judge's assessment was that whilst offer made, appellant declined to provide further information when asked.</p> <p>Sentencing judge said had facilitated sales of significant quantities of drugs and could not be described as a low level intermediary.</p>	<p>Dismissed – on papers.</p> <p>At [24] Discounts for cooperation can be given even when the information is of limited value and sometimes where it is of no value.</p> <p>At [25] In this case the offer of assistance did not produce any information of value to the authorities.</p> <p>At [23] The sales were clearly commercial in nature.</p>
42.	<i>Doherty v The State</i>	50 yrs at time sentencing.	Ct 1: Possess MDMA wiss 6.84 grams of 19% purity.	Ct 1: 12 mths imp.	Dismissed – on papers.

<p><i>of Western Australia</i></p> <p>[2014] WASCA 142</p> <p>Delivered 06/08/2014</p>	<p>Convicted after PG.</p> <p>Minor criminal record including some drug offences.</p> <p>Whilst on bail for possession of MDMA and methyl wiss the appellant committed Cts 3 – 6.</p> <p>Stable employment history.</p> <p>Commenced using methyl two years prior; soon began using on a daily basis.</p> <p>Significant steps taken to rehabilitate himself whilst in custody.</p> <p>Character references spoke well of the appellant.</p>	<p>Ct 2: Possess methyl wiss 95.2 grams of 51-73% purity.</p> <p>Ct 3: Possess methyl wiss 16.03 grams of 48% purity.</p> <p>Ct 4: Agg possess firearm.</p> <p>Ct 5: Agg possess firearm.</p> <p>Ct 6: Agg possess firearm.</p> <p><u>Cts 1 & 2:</u> Police executed a search warrant at the appellant's house and found a carry bag in which were a number of clip seal bags containing methyl. The amounts ranged from 1.71 grams and 3.62 grams. Another larger bag contained 57.6 grams. The total quantity seized was 95.2 grams.</p> <p>Also located in the carry bag were four bags containing various quantities of MDMA. The total weight being 6.84 grams.</p> <p>Also located were a number of items indicative of drug dealing. They included two electronic digital scales, numerous unused clip seal bags, mobile telephones, SIM card packets and notebooks containing names and amounts.</p> <p><u>Cts 3 – 6</u> About six months later police again attended the appellant's house and conducted a search warrant. Police located two clip seal bags containing a total of 16.03 grams of methyl, \$7000 was also found together with a number of unused clip seal bags and a quantity of bulking agent, electronic scales, more clip seal bags, three mobile telephones and \$5420 cash.</p>	<p>Ct 2: 3 yrs 9 mths imp (conc).</p> <p>Ct 3: 12 mths imp (cum).</p> <p>Ct 4: 6 mths imp (cum).</p> <p>Ct 5: 6 mths imp (conc).</p> <p>Ct 6: 6 mths imp (conc).</p> <p>TES 5 yrs 3 mths imp.</p> <p>Some remorse.</p> <p>Appellant claimed drug use had caused him to incur a drug debt and he was pressured into selling drugs to repay the debt – Judge said that this was not a mitigating factor and did not lessen his culpability.</p> <p>Sentencing judge characterised offences as serious and as indicating a significant commercial enterprise.</p> <p>Only mitigating factor was that the appellant had pleaded guilty at an early stage.</p>	<p>At [24] It is very difficult for an appellant to succeed on a ground that alleges that too little weight was given to a particular factor.</p> <p>At [25] Any delay between being charged and being sentenced is not, in itself, a mitigating factor. However, progress towards rehabilitation that occurs in such a period should be taken into account.</p> <p>At [27] Progress towards rehabilitation is a factor personal to an offender. Personal factors have less weight in regard to drug trafficking offences because of the importance of general deterrence.</p>
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41.	<p><i>Phan v The State of Western Australia</i></p> <p>[2014] WASCA 144</p> <p>Delivered 06/08/2014</p>	<p>19 yrs at time offending. 20 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>No prior criminal record.</p> <p>Raised by his mother in impoverished circumstances.</p> <p>Well supported by family and friends; references spoke of his positive personal qualities.</p> <p>Suffers a depressive illness.</p>	<p>Police also located a number of firearms.</p> <p>Possess methyl wiss 1.0507kg of 73.9% purity.</p> <p>The appellant flew from Sydney to Perth. As he walked to the taxi rank at Perth Airport, he was stopped by police. A search of his luggage revealed that he was carrying four professionally-sealed tins of what appeared to be jasmine tea. Secreted beneath the tea leaves in each tin were bags of methyl. Altogether, 5 bags of methyl were discovered.</p> <p>The appellant admitted in ROI:</p> <ul style="list-style-type: none"> • He suspected he was carrying drugs; • He had been given the drugs in their sealed contained in Sydney and had been instructed to bring them to Perth; • He expected to receive instructions as to where to deliver them after his arrival; • He expected to be paid \$5000 for his work; • He had taken the drugs from Sydney to Perth twice before and on each occasion he was paid \$5000. • He was not a drug user. • He had couriered the drugs for the money. 	<p>7 yrs 4 mths imp.</p> <p>EFP.</p> <p>Remorseful.</p> <p>Good prospects of rehabilitation.</p> <p>Told author of PSR he had approached a drug dealer through friends in Sydney, offering to act as a courier.</p> <p>Judge found part of the motivation for the offending was to provide his mother with financial support. He also wanted money for himself.</p> <p>Depressive illness was, to some extent, causative of his behaviour.</p> <p>Judge found that although the appellant did not precisely know what drug he was carrying, he knew that the tins contained a significant and valuable quantity of a prohibited drug.</p> <p>Could not be sentenced on basis that the offence was a 'one-off isolated incident'.</p> <p>Low to moderate risk of re-</p>	<p>Dismissed.</p> <p>At [33] Although the appellant's subjective circumstances were favourable, these factors carry less weight because of the importance that must be attached to general deterrence.</p>
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40.	<p><i>Le v The State of Western Australia</i></p> <p>[2014] WASCA 120</p> <p>Delivered 13/06/2014</p>	<p>31 yrs at time offending. 33 yrs at time sentencing.</p> <p>Convicted after late PG (first day of trial).</p> <p>Extensive prior criminal record; including possess prohibited drugs wiss, possess prohibited drugs and carried a prohibited weapon.</p> <p>Family from Vietnam; appellant born in Australia.</p> <p>Childhood marred by domestic violence; parents later separated.</p> <p>Seven yr old daughter from previous relationship.</p> <p>Completed Year 12.</p> <p>Regularly employed in various occupations.</p> <p>Long history of illicit drug abuse; commenced using cannabis at 14 years; heroin at 18 yrs; methyl at 20 yrs; occasional user of ecstasy.</p>	<p>Ct 1: s19(1), 19(1ac) <i>Firearms Act</i> poss altered firearm W/O licence.</p> <p>Ct 2: Poss methyl wiss 16.46g of 78-85% purity.</p> <p>Ct 3: Poss cannabis wiss 14.7g.</p> <p>Ct 4: Poss MDPV wiss 6.64g.</p> <p>Ct 5: Poss methyl wiss 56.17g of 69-72%.</p> <p>Ct 6: Att poss MDMA wiss 46.65g.</p> <p>Ct 7: Poss cannabis wiss 55.3g.</p> <p>Ct 8: Poss methyl wiss 11.6g of 80%.</p> <p>The appellant's mother contact police after discovering a firearm and a bag containing white powder in his bedroom in her house. Police searched and discovered a 410 gauge shotgun with a shortened barrel; 16.46g of methyl; 14.7g of cannabis and 6.64g or MDPV, a derivative of methyl. Police also discovered \$36,000 cash in two shotgun cartridges. The appellant was arrested, charged and released on bail.</p> <p>The prosecution conceded that the firearm and drugs were owned by another person and that the appellant was holding them for that person. Also conceded \$36,000 cash was the same owner and that the appellant was holding the cash for the owner.</p> <p>About six months later, police searched a house where the appellant as living with his girlfriend. Police located 56.17g of methyl; 14.65g of tablets which resembled MDMA but later analysis revealed they did not contain any illicit substances and 55.3g of cannabis.</p> <p>Later on that same day, police again searched the home of the appellant's mother and</p>	<p>offending.</p> <p>Ct 1: 12 mths imp.</p> <p>Ct 2: 2 yrs 4 mths imp.</p> <p>Ct 3: 6 mths imp.</p> <p>Ct 4: 18 mths imp.</p> <p>Ct 5: 4 yrs 2 mths imp.</p> <p>Ct 6: 2 yrs 4 mths imp.</p> <p>Ct 7: 12 mths imp.</p> <p>Ct 8: 2 yrs 6 mths imp.</p> <p>Ct 2 cum on Ct 5.</p> <p>All other sentences conc with Ct 5.</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>The appellant had been engaging in the distribution of illicit drugs for at least a month before his second arrest.</p> <p>Sentencing judge accepted that Cts 1-4 the appellant had been acting as a bailee for a friend, he had received no benefit for holding the firearm, drugs and cash.</p> <p>Judge accepted Cts 5-8 that five men had demanded that the appellant repay the value of the property seized by the police (earlier</p>	<p>Dismissed.</p> <p>At [42] s 6(1)(a) applies to a person who is in possession of a prohibited drug merely as a bailee for another.</p> <p>At [45] His primary motivation in dealing with the drugs was to repay a debt to the owner of the drugs seized during the first search.</p> <p>At [51] The appellant's role in relation to the drugs was important. He was concealing a significant quantity of an illicit drug on behalf of a person who wanted to distance himself from the drugs. The appellant knew the drugs were intended for distribution into the community.</p> <p>At [65] At two different times and in two different ways, the appellant was prepared to facilitate the dissemination into the community of substantial quantities of illicit drugs.</p>
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			located 11.6g of methyl and other items associated with drug dealing.	charges) had threatened him and his family with violence if he did not comply.	
39.	<p><i>The State of Western Australia v Hunter</i></p> <p>[2014] WASCA 87</p> <p>Delivered 24/04/2014</p>	<p>42 yrs at time of sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history; mostly dishonesty and drug offences.</p> <p>At aged 3 was placed in care of friends; also spent time with mother and family; left home at 15 yrs.</p> <p>Limited formal education.</p> <p>Has grown up child.</p> <p>In relationship for 11 yrs; partner currently incarcerated; also user of illicit substances.</p> <p>Habitual user of illicit substances including heroin and methyl.</p> <p>Long term alcohol problem.</p> <p>Prior to sentencing undertaken some psychological treatment.</p>	<p><u>Indictment</u></p> <p>Ct 1: Poss methyl wiss 110g of 42-53% purity.</p> <p>Ct 2: Poss methyl wiss 5.22g of 27-82% purity.</p> <p><u>Section 32</u></p> <p>Ct 1: Poss cannabis.</p> <p>Ct 2: Poss smoking implement.</p> <p>Ct 3: Poss smoking implement.</p> <p>Police executed a search warrant on the respondent's house and found in the walk – in robe of the master bedroom, a plastic tub. In the tub was methyl split into 4 plastic bags – 27.7g, 27.8g, 27.7g and 27.7g respectively. The value of each bag was \$14,000.</p> <p>Police also found a safe in the walk-in wardrobe. Inside Police found \$38,500 in cash and 2 plastic bags containing 2.13g and 3.09g of methyl respectively.</p> <p>In addition Police also located a number of items commonly associated with drug dealing. This included the cutting agent MSM, 2 tick lists, CCTV cameras installed around the house, 2 sets of scales and numerous plastic clip seal bags.</p>	<p><u>Indictment</u></p> <p>Ct 1: 3 yrs 8 mths imp.</p> <p>Ct 2: 12 mths imp (conc).</p> <p><u>Section 32 notice</u></p> <p>Ct 1: 2 mths imp (conc).</p> <p>Ct 2: 2 mths imp (conc).</p> <p>Ct 3: 2 mths imp (conc).</p> <p>TES 3 yrs 8 mths imp.</p> <p>EFP.</p> <p>Prepared to engage in rehabilitation.</p> <p>Took over as the principal in the drug business after her partner's incarceration.</p> <p>Primary motive was profit.</p>	<p>Allowed.</p> <p>Re-sentenced to 5 yrs 6 mths imp.</p> <p>At [29] The respondent's offending was not a 'one-off' aberration. It was an offence committed in the context of an ongoing drug dealing business which had been in existence for some months.</p> <p>At [32] A consideration 'of the cases' reveals that the sentence here is inconsistent with the range of sentences imposed in those cases and points towards manifest inadequacy.</p> <p>At [38] The sentence was not just merely lenient. It was substantially outside the range open to the trial judge to impose on a proper exercise of her discretion.</p>
38.	<p><i>Guler v The State of Western Australia</i></p> <p>[2014] WASCA 83</p>	<p>28 yrs at time of offending.</p> <p>Convicted after early PG.</p> <p>NSW criminal history of no</p>	<p>Ct 1: Poss MDMA wiss 509g of 18% purity (2,035 tablets).</p> <p>Ct 2: Poss methyl wiss 403ml of 80% purity.</p> <p>The appellant was recruited for the operation</p>	<p>Ct 1: 2 yrs imp.</p> <p>Ct 2: 6 yrs imp (cum).</p> <p>TES 8 yrs imp.</p>	<p>Dismissed.</p> <p>At [24] The venture was planned and well organised. The offence is a serious</p>

	<p>Delivered 22/04/2014</p> <p>Co-offender of <i>Hughes v The State of Western Australia</i> [2015] WASCA 164</p>	<p>relevance.</p> <p>Qualified spray painter.</p> <p>Very good references.</p> <p>Not a user of illicit substances.</p> <p>Model prisoner whilst on remand.</p>	<p>several days before departing from Sydney.</p> <p>The appellant and two others drove from Sydney to Perth with the MDMA and methyl secreted inside the vehicle's bull bar, along with 1.063kg of the cutting agent MSM.</p> <p>A search warrant was later conducted on a hotel the appellant and his co-offenders were staying where the drugs and MSM were found in the bull bar.</p>	<p>EFP.</p> <p>Deliberately lied in his record of interview, although did make some admissions to Police including he was promised \$5,000 for his efforts.</p> <p>Judge accepted was not principal offender and that offending was out of character.</p> <p>Purely motivated by commercial gain.</p> <p>Low risk of re-offending.</p>	<p>example of its type and the appellant bears substantial criminal culpability.</p> <p>At [25] Although the appellant has good antecedents and poses little or no risk of further similar offending, general deterrence remains a very important sentencing factor.</p> <p>At [37] The so-called one transaction rule is not a rule at all. It is a handy rule of thumb. It does not have to be applied whenever an offender commits a number of offences which form part of one transaction. In the context of drug offending, it will not necessarily be the case that an offender who is found in possession of a number of different types of drugs at the one time will receive wholly concurrent sentences.</p>
37.	<p><i>Goddard v The State of Western Australia</i> [2014] WASCA 59</p> <p>Delivered 21/03/2014</p> <p>Co-offender of <i>Ruvinski v The State of Western</i></p>	<p>22 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal record; minor offending.</p> <p>Stable background; in a positive & supporting relationship.</p>	<p>1 x Conspiracy to sell/supply prohibited drug (Methyl) 435g of 7% purity.</p> <p>Janakievski, Ruvinski & Williams, conspired to transport methyl from NSW to WA and sell it.</p> <p>Janakievski was in NSW and had regular contact with Ruvinski who lived in Perth. They both discussed Williams going to Sydney to collect methyl, which was to be transported back to WA and sold. Williams</p>	<p>6 yrs 6 mths imp.</p> <p>EFP.</p> <p>Appellant aware Williams smuggled the drug into WA; and that Williams was a courier for others.</p> <p>Trial judge observed appellant had a lower level of participation in the</p>	<p>Allowed – in part.</p> <p>Re-sentenced to 5 yrs 6 mths imp.</p> <p>At [42] ... There was such an insufficiently marked disparity in sentences to amount to error.</p> <p>At [69] ... Although the appellant was involved in the</p>

	<p><i>Australia</i> [2013] WASCA 204</p>	<p>History of illicit drug use; using illicit substances at time of offence.</p> <p>Suffers from ADHD.</p> <p>Williams sentenced to 8 yrs 6 mths imp.</p> <p>Janakievski died before trial.</p> <p>Ruvinovski was discontinued as part of a plea negotiation.</p> <p>Jasa was acquitted.</p>	<p>flew to Sydney and returned with 435g of methyl. Williams provided a sample to Ruvinovski who complained about the low purity.</p> <p>Williams was set the task of finding a local distributor to sell the drug. Williams and the appellant met on two occasions to discuss the distribution; giving him the first opportunity to find a buyer. Unbeknown to both, they were under surveillance.</p> <p>The appellant made one attempt to find someone who would purchase the drug but withdrew two days later. Williams then made contact with Jasa with a view to recruit him to sell the methyl. Police raided William's house while Jasa was present and the methyl was seized.</p>	<p>offence than Williams.</p> <p>Trial judge noted appellant's behaviour was part of a significant drug enterprise, and that his involvement was important in the sense that he was to supply it to a third party, and that he would have done so if the drug had been of sufficient purity; appellant was involved for monetary reward, although he was a drug user.</p>	<p>conspiracy for only two days, his role was nevertheless important.</p>
36.	<p><i>Milenkovski v The State of Western Australia</i></p> <p>[2014] WASCA 48</p> <p>Delivered 28/02/2014</p> <p>Co-offender of <i>Kitis v The State of Western Australia</i> [2013] WASCA 34</p> <p>Co-offender of <i>Ozan v The State of Western Australia</i> [2011] WASCA 27</p>	<p>32 yrs at time offending. 34 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal record of any relevance.</p> <p>Father died when about 15 yrs; otherwise unremarkable childhood.</p> <p>Completed school; part completion of university studies.</p> <p>Variety of occupations.</p> <p>No physical or mental health issues; occasional social drinker; experimented with</p>	<p>Ct 1: Poss methyl wiss 2.675kg of 17-19% purity. Ct 2: Att Poss methyl wiss 4.983kg of 53-69%.</p> <p><u>Ct 1:</u> During the weeks preceding 4 December 2009, the appellant negotiated with another; whom was a member of an illicit drug distribution organisation in NSW; to purchase a quantity of methyl. The negotiations were conducted by coded communications on prepaid mobile phones.</p> <p>The appellant was the principal of a drug distribution organisation in WA. He used other people to carry out the 'hands-on work' of obtaining illicit drugs and paying for them.</p> <p>On or about 16-17 November 2009, negotiations between the two concluded. The</p>	<p>12 yrs imp. 14 yrs 6 mths imp.</p> <p>To serve 2 yrs 6 mths of Ct 1 before Ct 3 commences.</p> <p>TES 17 yrs imp.</p> <p>EFP.</p> <p>No remorse; unwilling to accept responsibility.</p> <p>Offences were not isolated incidents; had for some time prior been a regular top-end dealer in illicit drugs.</p> <p>Ct 1: Trial judge found that the total value of the drugs</p>	<p>Dismissed (Buss dissenting in Ground 3).</p> <p>At [62] The appellant's conduct in committing count 3 demonstrated his determination to engage in serious criminal conduct for his own benefit, despite the possible consequences for others.</p> <p>At [63] In summary, his Honour was of the view that the appellant's criminality in relation to counts 1 and 3 involved an extremely high degree of culpability. His offences were close to the top end of the range of seriousness for offences of</p>

		<p>cocaine; denied any current illicit substance use.</p> <p>‘Patched member’ of an outlaw motorcycle gang – Comancheros.</p>	<p>appellant ordered 6 pounds (2.688kg) of methyl at \$45,000 a pound. The total purchase price was \$270,000.</p> <p>The methyl was hidden in an internal panel in a car and transported on a truck from Sydney to Perth. Arrangements were made whereby the drugs were ultimately hidden in co-offender Da San Martino’s barbecue in the garage of his house. About 2 hours after, police executed a search warrant and found 2.675 kg of methyl, \$47,300 cash, clip seal bags, a set of electronic scales with traces of MDMA, cocaine and methyl on its surfaces, a heat sealer and a money counter.</p> <p><u>Ct 2:</u> Despite the police having scuttled the transaction the subject of Ct 1; in February 2010 the appellant negotiated with the same drug distribution organisation to purchase another quantity of methyl.</p> <p>The appellant agreed to purchase 5kg of methyl for \$280,000 per kg. The purchase price was \$1.4 million. The methyl was provided on credit. The appellant was to pay the purchase price after he had received and on-sold the drugs.</p> <p>Almost 5kg of methyl was concealed in the spare tyre of a car. The car was transported from Sydney on route to Perth however was intercepted by police while it was at the Transport’s depot in Adelaide. Police removed the methyl and replaced it with rock salt.</p> <p>Analysis of the methyl revealed it weighed 4.983kg and had a purity ranging from 53% -</p>	<p>in the Perth market at the time of seizure was about \$1.15 million, however found the appellant intended to sell the drugs for at least \$80,000 a pound for a total of about \$480,000.</p> <p>Ct 2: Trial judge found that the total value of the methyl in the Perth market at that time was about \$2.49 million, however found the appellant intended to sell the drugs for an amount considerably in excess of \$1.5 million.</p> <p>Trial judge found appellant committed the offences solely for very significant commercial gain.</p> <p>Judge satisfied beyond reasonable doubt that the appellant was at the top of the chain of distribution in WA; well organised operations; numerous people working for him at different levels; had a network of associates & contacts; dealt directly with importer of illicit drugs from overseas.</p> <p>Offences ‘close to the top end of the range of seriousness for offences of</p>	<p>their types.</p> <p>At [212] What clearly emerges from the case law is that the issues of whether any mitigation may be given to the conditions in which an offender is held in custody and the weight that may be attached to this factor are very fact sensitive. Further, whether it is submitted that an offender’s detention has or will be more arduous, it is necessary for the submission to be supported by appropriate evidence.</p>
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			69%.	their type’.	
			The vehicle was later collected by associates and subsequently searched by police where the spare tyre was found.		
35.	<p><i>The State of Western Australia v Tran</i></p> <p>[2014] WASCA 26</p> <p>Delivered 31/01/2014</p>	<p>22 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Substantial criminal record including convictions of doing an unlawful act with intent to harm and burglary.</p> <p>Good upbringing; supportive family.</p> <p>At time of offending was employed in family bakery and friend’s restaurant.</p> <p>Influenced by his negative peer associations including with two known street gangs.</p> <p>Had incurred \$12,000 criminal injuries compensation liability for a prior offence – facilitated the sale of methyl on behalf of supplier in return for the supplier to pay the debt.</p>	<p>Ct 1: Sell methyl 41g of 57-62% purity. Ct 2: Offer to sell methyl 3 ounces (85g).</p> <p>The respondent sent a text message to an undercover police officer (unbeknown to him). A series of coded text messages followed and as a result the respondent sold to the officer; in a car park; two clip seal bags of methyl totalling 41g.</p> <p>A few days later, the same undercover police officer contacted the respondent by text message. The two communicated in code. They discussed the purchase of 3 ounces of methyl.</p> <p>Two days later the respondent and undercover police officer were due to meet however the respondent did not attend. A couple of hours later the respondent was arrested at a café, close to where he was supposed to meet with the undercover officer. At the time of his arrest no illicit drugs were found in his possession. A subsequent search of the respondent’s house found no illicit drugs or drug dealing paraphernalia.</p>	<p>Ct 1: 2 yrs imp. Ct 2: 15 mths imp (conc).</p> <p>TES 2 yrs imp. EFP.</p> <p>State characterised appellant as a ‘mid-range drug dealing for commercial profit’.</p> <p>Sentencing judge found was close to the supplier ‘of large quantities of reasonably pure methylamphetamine’; respondent’s actions were not just a one-off transaction.</p>	<p>Allowed.</p> <p>Re-sentenced to : Ct 1: 3 yrs imp. Ct 2: 2 yrs imp.</p> <p>Ct 2 to commence 18 mths after the commencement of Ct 1.</p> <p>TES 3 yrs 6 mths imp.</p> <p>At [30] ... The notion that someone is not a drug dealer because that person’s commercial activities occurred over a short period of time cannot be accepted. A person may deal in a commodity such as illicit drugs even if the dealing occurs in a brief space of time...</p> <p>At [45] ... The circumstances of each offence were serious, the sentences imposed were inconsistent with established sentencing patterns by some way, and the respondent’s personal circumstances could not reasonably justify the lenient nature of the sentences. ... the individual sentences were not</p>

					proportionate to the gravity of the offending and did not properly reflect the seriousness of what the respondent did ...
<i>Transitional Provisions Repealed (14/01/2009)</i>					
<i>Transitional Provisions Enacted (31/08/2003)</i>					

Weight of methyl/amphetamine: 3 – 65 grams

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
34.	<i>Wright v The State of Western Australia</i> [2019] WASCA 183 Delivered 15/11/2019	27 yrs at time offending. 28 yrs at time sentencing. Convicted after early PG (25% discount). Criminal history; minor drug offences. Positive upbringing; happy childhood.	Ct 1: Poss methyl wiss 46.18g. Ct 2: Escaping lawful custody. Ct 3: Poss methyl wiss 2.89g. Ct 4: Poss stolen or unlawfully obtained property. Ct 5: Poss methyl wiss 7.97g. Ct 6: Poss stolen or unlawfully obtained property. Wright's car was stopped and searched by police. Two small clipseal bags containing 4.94g and 0.14g of methyl (ct 1) were	Ct 1: 3 yrs imp. Ct 2: 12 mths imp (cum). Ct 3: 12 mths imp (cum). Ct 4: 18 mths imp (cc). Ct 5: 12 mths imp (cum). Ct 6: 18 mths imp (cc). TES 6 yrs imp. EFP. The sentencing judge found that the appellant was	Dismissed. Appeal against length of sentence and totality principle. At [37] ... the appellant willingly agreed to deliver, on behalf of his supplier, 41g of methyl to another, thereby significantly assisting the distribution of a reasonably

		<p>Completed Yr 12; trade certificate.</p> <p>Work related injury; increased methyl use while receiving worker's compensation; escalated drug use on breakdown of parent's marriage.</p> <p>Completed counselling and drug and alcohol program to address substance abuse and addiction.</p>	<p>located, along with a smoking implement, further clipseal bags, electronic scales and \$2,150 cash. He was arrested and handcuffed, however escaped and fled when police discovered a further 41.1g of methyl in a metal lockbox in the footwell of the vehicle (ct 2).</p> <p>Wright remained on the run for two wks until located in a shack at a caravan park. A search of his person located \$2,310 in cash and 0.19g of methyl.</p> <p>A search also revealed 2.7g of methyl in a bedroom, along with unused clipseal bags. Also located were small quantities of cannabis and MDMA, half a tablet of LSD mixed with methyl, a smoking implement and digital scales containing traces of methyl (cts 3 & 4).</p> <p>Whilst on bail for the above offences he was stopped riding a bicycle. He was seen dropping a bag next to a bush. It was recovered and found to contain 7.97g methyl, digital scales, a smoking implement, empty clipseal bags and \$2,000 cash (cts 5 & 6).</p>	<p>engaged in selling drugs for commercial purposes, even though he was selling to fund his own methyl habit or to reduce the debt he had to his supplier.</p> <p>The sentencing judge considered that while the appellant had undertaken counselling and made efforts towards rehabilitation, she was unable to conclude that he did not present any risk of reoffending.</p> <p>The sentencing judge observed that the appellant's escape from police after arrest was a 'serious thing to do', even if he did so out of panic and did not assault anyone or damage police property.</p>	<p>substantial quantity of the drug into the community. He then, in an act involving distinctly different criminality, escaped legal custody...</p> <p>At [38] ... the TES imposed ... bore a proper relationship to the overall criminality involved in all of the offences, viewed in their entirety and having regard to all relevant facts and circumstances, including those referable to the offender personally ...</p>
33.	<p><i>Lovell v The State of Western Australia</i></p> <p>[2019] WASCA 169</p> <p>Delivered 01/11/2019</p>	<p>60 yrs at time offending. 62 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Significant prior criminal history; including drug offending.</p>	<p>Cts 1 & 7: Att poss methyl wiss 0.2 g. Ct 2: Poss methyl wiss 0.5 g. Cts 3-4 & 12: Att poss methyl wiss 0.5 g. Cts 5 & 11: Att poss methyl wiss 0.3 g. Ct 6: Att poss methyl wiss 0.8 g. Ct 8: Poss methyl wiss 0.8 g. Ct 9: Att poss methyl wiss 0.8 g. Ct 10: Att poss methyl wiss 1 g. Ct 13: Selling methyl 1.5 g. Ct 14: Poss methyl wiss 1 g.</p>	<p>Cts 1-5; 10-12 & 14: 15 mths imp (conc). Ct 6; 8 & 9: 18 mths imp (cum). Ct 7: 17 mths imp (conc). Ct 13 & 15: 18 mths imp (conc). Ct 16: 2 yrs imp (conc). Ct 17 & 18: 18 mths imp (conc).</p>	<p>Appeal dismissed.</p> <p>Appeal concerned totality and length of sentence.</p> <p>At [31] ... The TES bore a proper relationship to the overall criminality involved in all of the offences, having regard to all of the</p>

		<p>Single; two adult children.</p> <p>Work related injury; resulting in nerve damage: receipt of unemployment benefits.</p> <p>History of ongoing drug use; methyl addiction.</p>	<p>Ct 15: Att poss methyl wiss 3.5 g. Cts 16-17: Receiving. Ct 18: Poss stolen property.</p> <p>For a period of two mths, Lovell was involved in the supply of drugs into a regional community, encouraging the theft of goods to pay for drugs.</p> <p>Police intercepted Lovell's mobile telephone service. He ordered drugs from his supplier, and then supplied them to his own customers.</p> <p>The offending involved small quantities of methyl, generally less than one gram at a time; with the exception of the sale of 1.5 g of methyl and an att to poss 3.5 g of methyl.</p> <p>Lovell acted as a 'fence for stolen property' which he used in payment for drugs including receiving stolen jewellery worth \$1,200. On numerous occasions, he and another discussed receiving and exchanging stolen property for methyl.</p>	<p>TES 5 yrs imp. EFP.</p> <p>The sentencing judge found the appellant played a very active and important role in the distribution of the drugs; with the smaller quantities revealing dealing at a street level facilitating the distribution of drugs imported by others.</p>	<p>circumstances...</p> <p>At [33] ... the sentencing Judge's remarks make it plain that the appellant was sentenced for his criminal conduct in relation to the supply of drugs to the community and his receipt of stolen property as payment for the drugs he supplied... The appellant's history of serious drug offending was properly recognised as elevating the significance of personal deterrence as a sentencing consideration.</p>
32.	<p><i>Dinh v The State of Western Australia</i></p> <p>[2019] WASCA 167</p> <p>Delivered 29/10/2019</p>	<p>56 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Born in Vietnam; came to Australia with her family 1982.</p> <p>Resides with her family; involved in an agricultural operation in rural area.</p>	<p>1 x Poss methyl wiss 24.2g at 67% purity.</p> <p>Dinh was the passenger in a car being driven by the co-accused, her son, Tran.</p> <p>During a random police stop Dinh was seen leaning down and attempting to conceal a handbag underneath her seat.</p> <p>A search of the vehicle located Dinh's handbag. Inside the handbag was a pouch containing a clipseal bag, containing a quantity of methyl.</p>	<p>2 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the individual involvement and roles the appellant and her co-offender each played in the offending was not known precisely; they continued to maintain their silence and denial of the offence.</p>	<p>Dismissed.</p> <p>Appeal challenged type, not length, of sentence.</p> <p>At [35] ... the imposition of a term of immediate imp was not unreasonable or plainly unjust. ... immediate imp was not merely open, it was the only appropriate sentencing outcome.</p>

		No history of drug use; suffers a skin condition; at time sentencing undergoing diabetic testing.	Also found inside the vehicle were two methyl smoking pipes. One of those pipes returned a positive match to Tran's DNA. When interviewed Dinh and Tran denied knowledge of the drug.	The sentencing judge found some or all of the methyl was for sale and would have been supplied and disseminated into the regional community in which they both lived; there must have been some personal gain for each offender by reason of their willingness to be in poss of a substantial quantity of methyl valued at approx \$10,000. No remorse or insight into the seriousness of her offending.	
31.	<i>ANM v The State of Western Australia</i> [2019] WASCA 155 Delivered 02/10/2019	34 yrs at time sentencing. Convicted after PG (20% discount). Prior criminal history; multiple drink driving and poss of prohibited drug convictions. Supportive family and friends. Completed mechanical apprenticeship on leaving school; working life spent in arboriculture; successful tree-logging business. Alcohol use from aged 14 yrs; heavy user of methyl; described himself as a 'fully functional addict'.	<u>Indictment</u> Ct 1: Poss methyl wiss 24.69g at 66% and 79% purity. Ct 2: Poss diphenidine wiss (43 tables, 6.77g). Ct 3: Poss unlawfully obtained property (\$5,205 cash). Ct 4: Poss methyl wiss 11.53g 82% purity. <u>Breach of CSIO</u> Poss of methyl wiss 7.06g. <u>Indictment</u> A search warrant executed at ANM's home found numerous clipseal bags containing a crystal substance. Analysis determined the bags contained methyl (ct 1). Several clipseal bags containing 43 tablets and fragments were also located. The tablets were determined to be diphenidine (ct 2).	Ct 1: 3 yrs imp (cum). Ct 2: 1 yr imp (conc ct 1). Ct 3: 1 yr 6 mths imp (conc ct 1). Ct 4: 2 yrs imp (cum). Breach: 8 mths imp (cum). TES 5 yrs 8 mths imp. EFP. The appellant's convictions on the indictable charges also breach a further susp imp order imposed by the Magistrates Court for a variety of offences, including a further offence of poss methyl wiss. The sentencing judge found	Dismissed. Appeal concerned length of sentence and totality principle. At [30] The appellant was engaged in selling dangerous prohibited drugs to fund his own drug use and, as such, his motive was commercial in nature. The quantity of methyl the subject of ct 1 was reasonably significant and its purity was reasonably high. At [34] ..., the sum of \$5,205 was a reasonable sum of money which was derived from drug dealing.

		No psychiatric conditions.	<p>Also found was \$5,205 in cash, being the proceeds of sales of prohibited drugs (ct 3).</p> <p>While on bail for the above offences police observed ANM in a carpark and tried to speak with him. He walked away, dropping a small tin out of his hand. He then kicked it under a nearby vehicle in an attempt to conceal the object. The tin was recovered and was found to hold clipseal bags containing methyl. One bag contained 11.5g of the drug with a purity of 82% and another 0.03g (ct 4).</p> <p><u>Breach of CSIO</u> ANM was driving a vehicle when he was stopped by police. The vehicle was searched, during which he admitted poss of methyl. In a bag five clipseal bags containing the drug were discovered, along with scales, cash and some empty clipseal bags.</p> <p>ANM was sentenced in the District Court to 12 mths imp, sups for 12 mths on conditions (CSIO).</p>	<p>an aggravating feature of the offending was that it was committed while the appellant was subject to susp imp orders and also (ct 4) whilst on bail.</p> <p>The sentencing judge found the quantity of methyl the subject of ct 1 was significant and of relatively high purity; the appellant's drug dealing, while motivated to enable him to purchase drugs for his own use, was nevertheless commercial in nature.</p> <p>Remorseful and some insight into his offending; efforts taken towards rehabilitation; wants to undertake drug rehabilitation upon release from prison.</p>	<p>At [35] A significant agg feature was that cts 1, 2 and 4 were committed in breach of not one, but two susp imp orders, and the appellant committed ct 4 while he was on bail for similar offending.</p> <p>At [37] We are not persuaded that any of the individual sentences imposed upon the appellant were manifestly excessive. ...</p> <p>At [38] ... Some accumulation of the individual sentences was required in order to reflect that the appellant's offending was not isolated. In other words, the appellant possessed prohibited drugs on a number of occasions over a reasonably extended period of time, with an intention to sell or supply them to others. Further, his offending was persistent and committed, ... in the face of two susp imp orders ... Moreover, a cumulative sentence was required in respect of the offence the subject of the CSIO which he breached.</p>
30.	<p><i>Wellstead v The State of Western Australia</i></p> <p>[2019] WASCA 130</p>	<p>50 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal history.</p>	<p>1 x Poss methyl wiss 27.1 g at 82% purity.</p> <p>Wellstead was engaged in the business of dealing methyl. The co-offender was one of his regular customers.</p>	<p>4 yrs 10 mths imp.</p> <p>EFP.</p> <p>Co-accused: Convicted</p>	<p>Dismissed.</p> <p>Appeal concerned miscarriage of justice (sentence on incorrect factual</p>

	<p>Delivered 28/08/2019</p>	<p>No family support; resulting in isolation since imp.</p> <p>Good work history; employed young age to support family.</p> <p>Marriage collapsed 2-3 yrs prior to offending; two adult children and 15 yr old.</p> <p>Casualty user of methyl.</p>	<p>Wellstead asked the co-offender to accompany him to obtain more methyl in Perth. They attended a pre-arranged location and collected the drug.</p> <p>Wellstead hid the drugs under his shirt. During the return journey the co-offender tore open the package containing the methyl. They both smoked some of the drug as they drove.</p> <p>Police had cause to stop their vehicle. Wellstead removed the methyl where he had secreted it, holding it so as not to come into contact with the bag directly. He then threw the bag of drugs to his co-offender, telling him to hide it. The drugs and the glass pipe they had been using were placed in a cavity behind the glovebox.</p> <p>A search of the vehicle quickly located the methyl.</p> <p>Analysis of Wellstead's phone, seized by police, indicated he was engaged in the commercial supply of methyl and that he was making threatening demands for money owed to him by his customers.</p>	<p>after late PG (5% discount). 2 yrs imp, susp 20 mths.</p> <p>The trial judge found the appellant obtained the drugs as part of his business of dealing in methyl; his motivation was commercial; he owned the drugs and expected to sell them; he may have used some of the drugs, but the vast bulk of it was to be stock-in trade for his commercial business.</p> <p>The trial judge found the drugs were not the co-offender's and he was not to obtain any commercial benefit from the drugs; his benefit was receiving some of the drug itself.</p> <p>No demonstrated remorse or insight into seriousness of offending; no evidence of rehabilitation.</p>	<p>basis as to role in the offence) and parity principle.</p> <p>At [113] ... The trial judge cannot be held to have committed any error by making factual findings without regard to material not before him. The appellant's trial counsel clearly had the recorded interview, ... There is no miscarriage of justice involved in the absence of evidence of parts of the recorded interview which was in the possession of the appellant's trial counsel, who chose not to adduce the evidence.</p> <p>At [120] ... the significant differences between the sentence imposed on the appellant and the co-offender are explained by the following matters found by the trial judge: ... The offenders played very different roles in the offending ... The co-offender provided assistance to police by giving evidence in the appellant's trial ... The co-offender PG ... was remorseful and had taken positive steps towards his rehabilitation ... The co-offender received a small amount of mitigation for his</p>
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					youth ... At [121] ... the disparity in the sentencing outcomes is not capable of giving rise to a legitimate or justifiable sense of grievance, ...
29.	<p><i>Slade v The State of Western Australia</i></p> <p>[2019] WASCA 65</p> <p>Delivered 24/04/2019</p>	<p>22 yrs at time offending. 24 yrs at time sentencing.</p> <p>Convicted after trial (cts 4; 6; 8-9 & 11). Convicted after PG (cts 1-3; 517 & 10) (5% discount).</p> <p>Prior criminal history; no prior convictions involving dealing in drugs.</p> <p>Troubled childhood; parents separated aged 12 yrs; mother struggled to cope and abused prescription drugs; difficult relationship with her son; led him to live with his aunt.</p> <p>Supportive family; relationship with mother now improved; close relationship with his father.</p> <p>Single; no dependents.</p> <p>Completed trade apprenticeship; prior work history.</p> <p>Undertook drug counselling; no serious problem with drug addiction.</p>	<p>Ct 1: Offer to sell cannabis (1 kg). Ct 2: Offer to sell cannabis (\$4,000 worth). Ct 3: Offer to sell cannabis (907 g). Ct 4: Offer to sell methyl (28 g). Ct 5: Offer to sell cannabis (454 g). Ct 6: Sell methyl (28 g). Ct 7: Poss cannabis wiss (4.99 kg) Ct 8: Poss methyl wiss (under 10 g). Ct 9: Poss unlawfully obtained property (\$3,179 cash). Cts 10-11: Failing to comply with data access order.</p> <p>Slade was engaged in the sale of cannabis and methyl on a wholesale basis. Intercept warrants were obtained for the telephone services he was using.</p> <p><u>Cts 1-3</u> Slade received a telephone call and agreed to supply a kilo of cannabis, saying he had it 'right here now'. During another telephone call the same day he agreed to supply to another person a quantity of cannabis for \$4,000. A few days later he called another person and offered to deliver 2 lb (907g) of cannabis for \$4,200 per pound.</p> <p><u>Ct 4</u> On another occasion Slade received a request for ½ ounce of methyl. In response he offered a full ounce and tried to persuade</p>	<p>Cts 1-3 & 5: 10 mths imp (conc). Ct 4: 2 yrs 10 mths imp (cum). Ct 6: 3 yrs 6 mths imp (cum). Ct 7: 2 yrs 6 mths imp (conc). Ct 8: 18 mths imp (conc). Ct 9: 2 mths imp (conc). Ct 10: 5 mths imp (conc). Ct 11: 6 mths imp (cum) (reduced from 10 mths imp on totality grounds).</p> <p>TES 6 yrs 10 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant was trafficking cannabis and methyl in a reasonably sophisticated enterprise for a commercial purpose; his activities were highly profitable; the substantial amount of cannabis in the self-storage locker was kept for the purpose of commercial distribution; the methyl found on him was also intended for</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality principle.</p> <p>At [46] ... the appellant's offending involved a reasonably sophisticated commercial enterprise supplying both methyl and cannabis for substantial profit. The appellant supplied both users and lower-level suppliers.</p> <p>At [47] ... his offending was far from isolated, persisting over several months and reflecting an ongoing enterprise.</p> <p>At [48] ... the appellant's offending was aggravated by the fact that he committed cts 8 and 9 while he was on bail for other drug-dealing offences.</p> <p>At [49] ... the judge was satisfied that the cash found in the appellant's possession was the proceeds of his drug dealing.</p>

			<p>the person this was a better deal.</p> <p><u>Ct 5</u> The following day Slade called a person and offered to supply them with a pound of cannabis for \$4,000.</p> <p><u>Ct 6</u> On a further occasion a co-accused and another attended Slade's apartment and collected an ounce of methyl. This offence was part of a regular process of supply of methyl by Slade to the co-accused.</p> <p><u>Ct 7</u> In a self-storage locker used by Slade, but in the name of a co-accused, police found 11 lb of cannabis in vacuum-sealed individual one-pound bags. A money-counting machine was also located.</p> <p><u>Cts 8-9</u> While on bail for some of the drug offences outlined above Slade was stopped by police. He was found in possession of \$3,179 in cash, an iPhone; a BlackBerry and just under 10g of high-purity methyl.</p> <p><u>Cts 10-11</u> Without reasonable cause Slade failed to comply with data access orders by refusing to provide police with the PIN numbers for both the iPhone and BlackBerry.</p>	<p>commercial distribution, allowing for the possibility that a small amount may have been for personal use.</p> <p>No demonstrated remorse or genuine steps taken towards rehabilitation; courses completed by appellant on remand considered by sentencing judge to be a cynical att to mislead the jury and for the purposes of sentencing; not satisfied the appellant was a person who needed assistance with respect to drug and alcohol issues.</p>	<p>At [50] ... the appellant committed two offences of unlawfully disobeying a data access order. ... those offences rightly attracted a degree of accumulation. ...</p>
28.	<p><i>Nguyen v The State of Western Australia</i></p> <p>[2019] WASCA 56</p> <p>Delivered 05/04/2019</p>	<p>49 yrs at time offending, 52 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; convicted and sentenced to</p>	<p>Ct 1: Poss methyl wiss 12.81g at 73%-81% purity. Ct 2: Poss money suspected of being unlawfully obtained.</p> <p>Police approached a motor vehicle, containing three people, stopped by the side</p>	<p>Ct 1: 2 yrs 8 mths imp (cum). Ct 2: 4 mths imp (cum). TES 3 yrs imp. EFP.</p>	<p>Dismissed.</p> <p>Appeal concerned length and type of sentence ct 1 and totality principle.</p> <p>At [34] The appellant's</p>

		<p>term of imp in Victoria for cultivating cannabis.</p> <p>Medicated for high blood pressure; may require treatment for PTSD.</p> <p>History of prohibited drug use; ceased using drugs since offending.</p>	<p>of the road. Nguyen was in the driver's seat. In response to a question from police he produced \$4,800 cash from his pockets.</p> <p>A search of the vehicle located 3.13g of methyl at 81% purity; 3.13g at 79% purity and 6.55g at 73% purity.</p> <p>Two mobile telephones; digital scales and empty plastic bags were also located.</p>	<p>The trial judge found the appellant a low-level drug dealer involved in 'street dealing' and that he sold drugs to finance his drug addiction.</p> <p>The trial judge found the offending too serious to enable suspension.</p>	<p>offending in relation to ct 1 was serious. It involved the possession, wiss, of 12.81 g of methyl with a high degree of purity. The appellant was a low-level drug dealer as well as a user. Dealers in a prohibited drug who are addicted to the drug are not treated more leniently merely because the motive for their dealing is the need for money to finance the addiction or to reduce drug debts. ... Although the appellant was to be punished only for the offence in question, his status as a drug dealer indicated that ct 1 did not involve an isolated transaction.</p> <p>At [38] ... The fact that the appellant anticipated receiving only a 'modest reward' from the sale of the drugs in question, the appellant's medical conditions and his efforts to overcome his drug addiction were appropriately reflected in the sentence ... imposed.</p> <p>At [40] ... The sentence imposed on the appellant for ct 1 is broadly consistent with the sentencing pattern for offences of the kind he committed, having regard to the comparable and distinguishing features</p>
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					<p>between the prior cases and the appellant's case.</p> <p>At [49] ... The offences charged in cts 1 and 2 were separate and distinct. A custodial term of 3 yrs was necessary in order properly to reflect the serious character of the appellant's offending, ...</p>
27.	<p>EDU v The State of Western Australia</p> <p>[2019] WASCA 55</p> <p>Delivered 05/04/2019</p>	<p>42 yrs at time sentencing.</p> <p><u>Ind X</u> Convicted after PG (20% discount).</p> <p><u>Ind Y</u> Convicted after PG 25% discount).</p> <p>Extensive prior criminal history; substantial record for drug; dishonesty and traffic offences.</p> <p>Reasonably good childhood; father died when aged 9 yrs.</p> <p>Performed well at school; completed Yr 12; tertiary studies.</p> <p>Regularly employed when not in prison.</p> <p>Single at time sentencing; no dependants.</p> <p>Heavy drug user; entrenched addiction.</p>	<p><u>Ind X</u> Ct 1: Poss methyl wiss 24.87g at 40%-44% purity.</p> <p><u>Ind Y</u> Ct 1: Poss methyl wiss 27.4g at 63% purity. Ct 2: Poss MDA wiss 3.6g (20 tablets) at 9% purity.</p> <p><u>Ind X</u> Police stopped EDU driving a motor vehicle. A search revealed clipseal bags containing methyl hidden in a sock down the front of his pants.</p> <p><u>Ind Y</u> The offences the subject of this indictment were committed when on bail for the offence the subject of Ind X.</p> <p>Police approached EDU carrying a bag. He att to hide the bag and then fled. He was apprehended after a chase.</p> <p>The bag was found to contain quantities of methyl and MDA tablets. Also found in the bag was 97g of the cutting agent MSM; digital scales, clipseal bags and a 'tick list' on his mobile phone.</p>	<p><u>Ind X</u> 2 yrs 3 mths imp.</p> <p><u>Ind Y</u> Ct 1: 3 yrs imp (cum sentence on ind X). Ct 2: 12 mths imp (conc).</p> <p>TES 5 yrs 3 mths imp. EFP.</p> <p>The sentencing judge found the appellant was actively involved in the sale or supply of methyl on a wide and regular basis; he engaged in the offending for commercial purposes; he had ready access to significant quantities of methyl and he was a user/dealer in the upper mid-level of the drug distribution chain.</p> <p>Some demonstrated remorse; significant risk of reoffending.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [33] ... It is sufficient to note that the TES imposed on the appellant is broadly consistent with the sentencing pattern for offences of the kind he committed, ...</p> <p>At [34] The appellant's overall offending was very serious. ... The appellant was a dealer, as well as a user, in the upper mid-level of the drug distribution chain. The offending was for commercial purposes. ...</p> <p>At [35] ... the egregiousness of the offences the subject of ind Y was aggravated in that, when he committed those</p>

					offences, the appellant was on bail for the offence the subject of ind X. ...
26.	<p><i>Greenfield v The State of Western Australia</i></p> <p>[2019] WASCA 29</p> <p>Delivered 14/02/2019</p>	<p>48 yrs at time offending. 49 yrs at time sentencing.</p> <p>Convicted after trial (ct 1). Convicted after late PG (ct 2).</p> <p>Prior criminal history; including drug related offending; on bail for present offences when charged and convicted of poss cannabis.</p> <p>Regularly employed until 2015; on becoming unemployed commenced dealing in cannabis on a commercial basis.</p> <p>History of illicit drug use; past drug counselling undertaken and prior to sentence.</p>	<p>Ct 1: Poss methyl wiss 32.1g at 85% purity. Ct 2: Poss cannabis wiss 5.46g.</p> <p>On the execution of a search warrant at Greenfield's home police located methyl and cannabis.</p> <p>Also located in his car were two sets of scales containing traces of the drugs.</p>	<p>Ct 1: 4 yrs imp (cum). Ct 2: 6 mths imp (cum).</p> <p>TES 4 yrs 6 mths imp. EFP.</p> <p>The sentencing judge found the 'very significant quantity of high purity drug in crystal form' was capable of being broken down and distributed widely into the community; the high purity of the methyl suggested the appellant was close to the source, and seemingly trusted to be supplied with drugs of such purity for sale.</p> <p>The sentencing judge determined that the seriousness of the offending was such that the only appropriate disposition was terms of imp.</p> <p>No demonstrated remorse or evidence of cooperation; steps taken towards rehabilitation.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (ct 2) and totality principle.</p> <p>At [32] Ct 2 involved the poss of what can properly be described as a small quantity of cannabis wiss it to another. The offence was committed in the context that the appellant dealt in 1 oz quantities of cannabis, and that he was a commercial dealer in the drug over a period of time. He was also dealing in cannabis at the same time as he was dealing in methyl. ... cannabis is not a harmless drug. It has deleterious effects upon those who use it, and it is often associated with, or is a gateway to, more harmful drugs.</p> <p>At [34] ... there is very little that can be said in mitigation for the appellant, save that he had undertaken some counselling ... prior to being sentenced. Even that is somewhat dubious in light of the fact that while ... on bail for the present offence, he was found in poss of a</p>

					<p>quantity of cannabis.</p> <p>At [39] ... a fine would have been an inappropriate sentencing option in this case, and ... the only appropriate sentencing option was a term of immediate imp. ... As to its length, we regard the 6 mths that was imposed ... within the range of an appropriate exercise of the sentencing discretion. ... The sentence is not manifestly excessive.</p> <p>At [41] Ct 1 was a serious offence of its type. ... the appellant possessed a reasonably substantial quantity of methyl with a high purity. The high purity is of importance because, ... it gave rise to the potential for the methyl to be 'broken down', thus broadening the potential harm to the community. It is also the case that the appellant was close to the source of the methyl. The appellant possessed the drug with the intention of distributing it into the community for commercial gain.</p> <p>At [45] ... The cumulation of the 6-mth sentence on ct 2 with the sentence on ct 1 was appropriate to reflect that the</p>
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					<p>appellant was dealing with two different illicit drugs. Additional punishment was appropriate in order to properly reflect the greater criminality involved in the appellant's dealing in cannabis. ...</p>
25.	<p>Clarke v The State of Western Australia</p> <p>[2018] WASCA 190</p> <p>Delivered 29/10/2018</p>	<p>31 yrs at time offending. 33 yrs at time sentencing.</p> <p>Convicted late after PG (5% discount).</p> <p>Prior criminal history; including convictions for drug possession and firearms and weapons offences; prior sentence of imp.</p> <p>Stable, secure and loving childhood; youngest of three children; toddler when parents separated; close relationship with his mother and step-father.</p> <p>Completed yr 10; reasonable grades; excelled in sport.</p> <p>Commenced but did not complete an apprenticeship; employed building and mining industries number of yrs.</p> <p>Lived and worked QLD five yrs; returned to WA to support step-father diagnosed with cancer; relationship with partner ending at this time; no</p>	<p>Cts 1; 7; 10 & 12: Poss firearm. Cts 2; 6 & 9: Poss money suspected of being unlawfully obtained. Ct 4: Poss methyl wiss 28.54g at 82%-83% purity. Ct 5: Poss MDMA wiss 314.64g at 84% purity. Cts 8 & 11: Poss ammunition.</p> <p>Clarke was stopped by police riding his motorcycle, having initially sought to evade them. He was found in poss of a loaded 9 mm pistol and \$31,180.05 cash (cts 1 & 2). He was also found to be carrying two Blackberry phones, a mobile phone and a smoking implement.</p> <p>Whilst on bail for cts 1 and 2 a motor cycle travelling at excessive speed was tracked by the police air wing to Clarke's home. Police attended the house to locate the rider. A search of the home located large quantities of drugs, cash and a loaded handgun. Methyl, comprising three separate quantities of 4.43g, 17.9g and 4.24g, and three further quantities between 0.27g and 0.97g were located in the house (ct 4).</p> <p>A vacuum sealed bag of MDMA powder weighing 313.82g was also located, along with a further 0.82g secreted inside a blowtorch (ct 5).</p>	<p>Ct 1: 2 yrs 6 mths imp (cum). Cts 2; 8 & 11: 6 mths imp (conc). Ct 4: 2 yrs 4 mths imp (conc). Ct 5: 5 yrs imp (cum). Ct 6: 1 yr 6 mths imp (cum). Cts 7 & 12: 2 yrs imp (conc). Ct 9: 8 mths imp (conc). Ct 10: 1 yr imp (cum).</p> <p>TES 10 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant was a high level drug dealer and drug user; the drug dealing business in which he was engaged was a commercial enterprise and enabled him to support a comfortable lifestyle; in addition to the cash the subject of the charges, he admitted he had made \$90,404.50 profit in six months.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle. Individual sentences not challenged.</p> <p>At [68] ... the appellant was charged with offences committed on three separate occasions, committed over a period of between six and seven mths. Some degree of accumulation of the sentences imposed was therefore warranted. ... more significantly, the appellant committed offences on two separate occasions while he was on bail for the charges the subject of cts 1 and 2. ... The appellant's continued determined offending, over a period of six to seven months, meant that the overall criminality of his offending was of a very serious kind, and was far more serious than the individual offences, considered in isolation, ...</p> <p>At [77] ... offences of poss</p>

		<p>children.</p> <p>History of amphetamine use; regular drug habit aged 21 yrs; drug free about five yrs; relapsed into drug-use following loss of step-father after six months illness and loss of support of his partner.</p>	<p>A room in the home and been set up as a drug preparation area. This room contained scales, clipseal bags, a spoon and the monitor for a CCTV surveillance system installed at the home. A number of mobile phones and Blackberries were also located.</p> <p>A total of \$198,450.50 in cash was also found in six locations around the house (ct 6).</p> <p>Also located was a .22 handgun with 10 live rounds of ammunition (cts 7 & 8).</p> <p>Clarke fled the house by jumping a rear fence before he could be apprehended.</p> <p>Several weeks later police returned to Clarke's home and executed a search warrant. On this occasion a total of \$11,223.55 in cash was located (ct 9).</p> <p>A 9 mm semi-automatic handgun and a magazine containing 11 rounds of ammunition were also found hidden in the house (cts 10 & 11).</p> <p>A dismantled semi-automatic 12-gauge shotgun was also found (ct 12).</p> <p>Various other items consistent with drug-dealing were found in the house on this occasion, including three Blackberries and two mobile phones.</p>	<p>The sentencing judge found the appellant's involvement in the distribution of drugs was substantial and his conduct in dealing in drugs was persistent, his apprehension had not deterred him from engaging in that conduct.</p> <p>The sentencing judge found the appellant's repeated firearms offences as very serious, and his repetition of those offences as a particularly grave matter; his possession of guns while participating in drug dealing activities was especially serious.</p> <p>The sentencing judge found the appellant's continued offending while on bail an aggravating factor.</p> <p>Remorseful; accepted responsibility for his offending; willing to undertake treatment for substance abuse; good prospects for rehabilitation.</p>	<p>of prohibited drugs were, of themselves, very serious, having regard to the quantity and purity of the drugs involved. In addition, the MDMA was found in powder form, which suggests that it could be cut and pressed into tablets or put into capsules for wider distribution. ... The amount of cash, the firearms and ammunition, and the appellant's admissions, confirmed that he was engaged in a successful and profitable drug dealing business. The appellant's ability to obtain firearms of the kind involved here, ... also suggested a high level of involvement in drug-dealing.</p> <p>At [78] ... the offences of poss of unlicensed firearms and ammunition were, of themselves, very serious offences. The appellant's poss of the handguns was especially serious, because of the capacity to conceal them. Ct 1 was a particularly serious instance of that conduct, because the appellant had a loaded handgun ... which suggests that he took the gun with him when he was engaged in drug-dealing activities. ... The seriousness of that</p>
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					<p>conduct was exacerbated by the inherent risk of injury or death generated by carrying firearms in such circumstances.</p> <p>At [79] ... the offences were not committed in an isolated incident of criminal conduct and could not be characterised as an aberration. ...</p>
24.	<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</p>	<p>Ct 1: Poss methyl wiss 13.27g at 76%-80% purity.</p> <p>Cts 2 & 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 & 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>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>

		major mental illness prior to offending.		Genuinely remorseful; steps taken towards rehabilitation; prior history of drug addiction counselling; good prospects of rehabilitation and low risk of reoffending.	<p>At [41] The terms of imp imposed for the appellant's extortion offences were not manifestly excessive.</p> <p>At [42] ... the appellant's offence of poss of methyl wiss is itself a serious criminal offence. In the circumstances, it amply justified, indeed required, a term of imp cum on the sentences for the extortion offences. The appellant was in poss of more than 13.5g of methyl of a high degree of purity, with the intention to sell or supply it to another.</p> <p>At [44] ... the TES ... was within the range of an appropriate exercise of the sentencing discretion.</p>
23.	<p><i>Donaldson v The State of Western Australia</i></p> <p>[2018] WASCA 143</p> <p>Delivered 10/08/2018</p>	<p>35 yrs at time offending. 36 yrs at time sentencing.</p> <p>Convicted after PG (10% discount).</p> <p>Prior criminal history; including multiple drug convictions; no prior sentences of imp.</p> <p>Born in Scotland; difficult and dysfunctional childhood.</p> <p>Migrated to Australia with wife and child 2001; two</p>	<p>1 x Poss methyl wiss 5.69g at 79% purity.</p> <p>Donaldson was the passenger in a motor vehicle when it was stopped and searched by police.</p> <p>Methyl was located in the vehicle inside a camera case, stored in in eight separate cipseal bags.</p>	<p>2 yrs 3 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant was prepared to disseminate the methyl into the community.</p> <p>Sentenced on basis appellant a low-level user/dealer.</p> <p>Motivated to abstain from drug use; engaged in drug and alcohol programme</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [32] ... His offending was not an aberration. ... The appellant's steps towards rehabilitation were commendable, but not exceptional. No special leniency was warranted. ...</p> <p>At [36] ... the sentence ... is broadly consistent with reasonably comparable cases.</p>

		<p>children born in Australia; marriage ended 2008.</p> <p>Suffered serious work-related injury; relapsed into drug use.</p> <p>History of illicit substance abuse; using methyl at time offending.</p>		whilst on remand.	... in the context of the maximum penalty, the facts and circumstances of the offending, the standards of sentencing customarily observed, the place which the appellant's offending occupies on the relevant scale of seriousness of offences of this kind and all mitigating factors, the sentence was not unreasonable or plainly unjust. ...
22.	<p><i>Jones v The State of Western Australia</i></p> <p>[2018] WASCA 105</p> <p>Delivered 31/05/2018</p>	Convicted after PG (10% discount).	<p>1 x Poss methyl wiss 5.15g at 81% purity.</p> <p>Police had cause to search Jones. In a satchel in clipseal bags police located 4.27g and 0.78g of methyl.</p> <p>He was also found to be in possession of \$810 cash.</p> <p>During his interview Jones admitted to giving some of the drugs to his partner or swapping it with friends for goods and services.</p>	<p>20 mths imp.</p> <p>EFP.</p> <p>The sentencing judge characterised the State case as 'arguably a strong case'.</p> <p>The sentencing judge found the appellant was a user of methyl, prepared to deal in the drug in order to fund his own acquisition costs and he was prepared to share the drug with others, including his girlfriend.</p> <p>The sentencing judge found the offending agg by the fact he was on bail for another matter at the time of committing the offence.</p>	<p>Allowed.</p> <p>Appeal concerned plea discount.</p> <p>Re-sentenced to 18 mths imp.</p> <p>EFP.</p> <p>At [17] The sentencing judge did not find, and in our view it could not be said, that the plea was entered at the first reasonable opportunity. His pleas was entered at his eighth appearance ... Moreover, the appellant absconded on bail for a period of about a mth, during the 4 ½ mths from when he was charged until he entered his PG.</p> <p>At [18] As the plea was not entered at the first reasonable</p>

					<p>opportunity, a discount of 25% was not available.</p> <p>At [23] ... In our view, the confined considerations relevant to the s 9AA discount mean that the appellant's absconding has only limited weight in the proper determination of the discount.</p> <p>At [24] ... it was not open to the sentencing judge, on a proper exercise of discretion, to award a discount of 10%. ... something of significance must have gone wrong in the exercise of the discretion ...</p> <p>At [30] ... we discounted the head sentence ... by 17.5% on account of the appellant's PG.</p>
21.	<p><i>Oziewicz v The State of Western Australia</i></p> <p>[2018] WASCA 81</p> <p>Delivered 24/05/2018</p>	<p>34 yrs at time sentencing.</p> <p>Convicted after early PG (20% discount).</p> <p>Prior criminal history; previous convictions for manufacturing prohibited drugs.</p> <p>Good employment history; has a trade.</p> <p>In a relationship; three children from earlier relationship.</p>	<p>Cts 1 & 2: Att manufacture methyl.</p> <p>Ct 3: Poss methyl wiss. 23.74g at 6% - 65% purity.</p> <p>Ct 4: Poss MDA 10.15g at 22% purity.</p> <p><u>Ct 1</u> A search of premises found chemicals and apparatus. Several of the items contained methyl and pseudoephedrine, indicating they had earlier been used to manufacture methyl. Oziewicz's fingerprints were on several items.</p> <p><u>Ct 2</u> About six months later Oziewicz's home was searched. Chemicals and apparatus and</p>	<p>Ct 1: 3 yrs imp (cum)</p> <p>Ct 2: 3 yrs 10 mths imp (cum).</p> <p>Ct 3: 2 yrs 6 mths imp (conc).</p> <p>Ct 4: 8 mths imp (cum).</p> <p>TES 7 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the quantity of the drug the subject of ct 3 significant; there was a commercial purpose behind the offences</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (cts 1 and 2) and totality principle.</p> <p>At [90] ... The first att manufacture of methyl occurred about six months before he committed the second such offence. ... that called for an element of accumulation in the sentences for cts 1 and 2. Further, the appellant's offences of poss of methyl</p>

		<p>Long history of illicit substance abuse; methyl addiction time offending; partner also methyl user.</p>	<p>items consistent with the manufacture of methyl were found.</p> <p><u>Cts 3 and 4</u> During the search brown powder, two separate bags of white powder and 20 capsules were located.</p> <p>Analysis found methyl and MDA components of the brown powder and 15 of the capsules. MDA and methyl were found in five of capsules. A bag of white powder contained methyl, the other a component of methyl.</p> <p>Scales, clip seal bags and a tick list were also found, along with a loaded sawn-off shotgun and ammunition.</p>	<p>and it was the appellant's intention to sell the drugs; the offending could not be described as uncharacteristic.</p> <p>Credit given for participation in drug rehabilitation programs on remand.</p>	<p>and of MDA were each distinct from his att to manufacture. ... a further degree of accumulation was warranted. The offence of possession of methyl was itself a serious offence ...</p> <p>At [93] ... we are not satisfied that the TES was disproportionate to the overall criminality involved in all of the offences viewed in their entirety ...</p>
20.	<p><i>Hollingsworth v The State of Western Australia</i></p> <p>[2018] WASCA 47</p> <p>Delivered 10/04/2018</p>	<p><u>Ind 46</u> 23 yrs at time offending.</p> <p><u>Ind 47</u> 24 yrs at time offending.</p> <p><u>Ind 46</u> Convicted after PG 20% discount) (cts 1 & 2) Convicted after trial (ct 5).</p> <p><u>Ind 47</u> Convicted after PG (25% discount).</p> <p>Minor criminal history.</p> <p>Parents separated aged 2 yrs; brought up by his mother and stepfather; both highly supportive.</p> <p>Completed school; did</p>	<p><u>Ind 46</u> Cts 1: Poss MDMA wiss 29.9g at 16% purity. Ct 2: Poss money suspected of being unlawfully obtained. Ct 5: Poss MDMA wiss approx. 1.4kg at 15%-19% purity.</p> <p><u>Ind 47</u> Ct 1: Poss MDMA wiss 148g at 1% purity. Ct 2: Poss methyl wiss 23.5g at 75%-87% purity. Ct 3: Poss money suspected of being unlawfully obtained.</p> <p><u>Ind 46</u> Hollingsworth took a backpack containing 3,488 MDMA tablets and stored them at the home of his co-offender, Mr Sims.</p> <p>The next day Hollingsworth and Mr Sims obtained and stored at the home an altered</p>	<p><u>Ind 46</u> Ct 1: 2 yrs 4 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 5: 7 yrs 6 mths imp (cum with ct 2 ind 47).</p> <p><u>Ind 47</u> Ct 1: 3 yrs imp (conc). Ct 2: 2 yrs 6 mths imp (cum with ct 5 ind 46). Ct 3: 16 mths imp (conc).</p> <p>TES 10 yrs imp. EFP.</p> <p>The sentencing judge found the appellant a significant mid-level to upper-level dealer; engaged for a significant period in an extensive and ongoing</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned parity principle (ct 5).</p> <p>At [50] Mr Sims' criminality in ct 5 was of a different, and significantly lesser, quality than the criminality of the appellant. Mr Sims was not the owner of the MDMA. ... Mr Sims' participation was limited to a temporary joint possession with the appellant ... for the purpose of making the tablets available for collection from his bedroom by the appellant as and when he required. Mr Sims, ..., was not aware of the precise quantity of the drug. ... his role was very much</p>

		<p>reasonably well.</p> <p>Qualified plumber; stable work number of years; lost job as a result of drug use.</p> <p>No physical health issues.</p> <p>Finding prison psychologically challenging; medicated.</p> <p>History of MDMA use.</p>	<p>sawn-off .22 calibre rifle.</p> <p>Later that day Hollingsworth took some of the MDMA tablets from his backpack and he, and Mr Sims, drove to a number of locations intending to sell some of the tablets. Hollingsworth conducted the drug transaction by himself, whilst Mr Sims remained in the vehicle.</p> <p>That afternoon the vehicle was stopped by police. As this occurred Hollingsworth broke one of four mobile phones he had in his vehicle to destroy records of his drug dealing activities.</p> <p>Hollingsworth was searched and found in possession of 105 MDMA tablets (ct 1).</p> <p>\$2,525 cash was also found on his person and in his car (ct 2), along with an exercise book containing a record of his drug dealing business.</p> <p>The same day police executed a search warrant at the home of Mr Sims and discovered Hollingsworth's backpack containing the MDMA tablets, along with the firearm (ct 5).</p> <p><u>Ind 47</u> Some months later police executed a search warrant at Hollingsworth home. Hidden in a number of locations inside the home were MDMA tablets and powder (ct 1) and various quantities of methyl (ct 2).</p> <p>Also found at the home was AU\$21,250 and US\$800 in cash (ct 3).</p>	<p>course of drug dealing; the offences were not isolated incidents, nor out of character.</p> <p>The sentencing judge found the appellant engaged in drug dealing and committed the offences for profit, to make money over and above what he needed to repay a debt and fund his own addiction.</p> <p>The sentencing judge found the offences the subject of ind 46 very serious; committed as part of an ongoing and significant course of serious criminal conduct and the offences the subject of ind 47 were aggravated by the fact they were committed while on bail for the offences the subject of ind 46.</p> <p>Undertook rehabilitative programmes and educational courses on remand; remorseful; accepted responsibility for his offending; insight into seriousness of his criminal conduct.</p>	<p>secondary to that of the appellant.</p> <p>At [51] ... the appellant's antecedents were favourable to him and were more favourable than Mr Sims' antecedents. However, it is well established that, in drug offending of the kind engaged in by the appellant, favourable personal circumstances, ... are subsidiary considerations because of the need to provide for general and personal deterrence.</p> <p>At [52] ... we are satisfied that it is not reasonably arguable that the disparity of three yrs between the sentences imposed on the appellant and Mr Sims for ct 5 infringed the parity principle or the principle of equal justice. The disparity reflected the much more serious criminality of the appellant ...</p>
19.	<i>Evans v The State of</i>	36 yrs at time sentencing.	<u>Ind 553</u>	<u>Ind 553</u>	Dismissed – on papers.

<p>Western Australia</p> <p>[2017] WASCA 225</p> <p>Delivered 06/12/2017</p>	<p><u>Ind 553</u> Convicted after late PG (12.5% discount).</p> <p><u>Ind 179</u> Convicted after early PG (20% discount).</p> <p>Substantial criminal history; prior drug offending and sentence of imp.</p> <p>Stable childhood.</p> <p>Completed apprenticeship.</p> <p>Twice married, two young children to current partner.</p> <p>History of illicit drug use; methyl use after first marriage breakup; significant dependency.</p> <p>No serious or treatable mental health issues.</p>	<p>Ct 1: Manufacture methyl 27.19g Ct 2: Poss methy wiss 29.4g at 59% purity. Ct 3: Poss methy wiss 10.34g, 2.72g at 52% purity.</p> <p><u>Ind 179</u> Ct 1: Att manufacture methyl.</p> <p><u>Ind 553</u> Evans was found in possession of a total of \$1,613 in cash. A search of the boot of his car located two jerry cans containing a biphasic liquid, the upper layer found to be ephedrine and methyl. Laboratory apparatus and chemicals constituting a clandestine drug laboratory were also discovered. Ephedrine and methyl were detected on some of the equipment (ct 1).</p> <p>Located inside the vehicle in a clipseal bag a quantity of methyl was also found. Along with a set of scales and a large quantity of clipseal bags (ct 2).</p> <p>Whilst on bail for the above offences a search of Evans' home located a quantity of methyl (5.37g) in his shed. In his house a further quantity of methyl (4.97g) was also found, along with \$1,000 in cash and a set of digital scales on which methyl was detected. (ct 3)</p> <p><u>Ind 179</u> Evans absconded from bail. In bushland police located items consistent with the clandestine manufacture or attempted manufacture of methyl. A forensic examination located his DNA. A search of his home found items consistent with the manufacture of methyl, including</p>	<p>Ct 1: 3 yrs 4 mths imp (cum). Ct 2: 2 yrs 10 mths imp (conc). Ct 3: 1 yr 8 mths imp (cum).</p> <p><u>Ind 179</u> 3 yrs 2 months imp (cum).</p> <p>TES 8 yrs 2 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found there was a commercial element and 'sheer persistence' to the offending.</p>	<p>Appeal concerned totality, individual sentences not challenged.</p> <p>At [28] The appellant's overall criminality was high, particularly having regard to the persistence and commerciality of the offending. ...</p> <p>At [29] ... The offending the subject of the second ind was separate in time and place to the offending in the first ind. It was particularly serious because it was committed while the appellant was in effect a fugitive from justice, having breached bail. In order to reflect its seriousness, it warranted a separate and additional punishment.</p>
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			packaging similar to that found at the laboratory site and instructions on how to manufacture the drug.		
18.	<p><i>The State of Western Australia v Doyle</i></p> <p>[2017] WASCA 207</p> <p>Delivered 08/11/2017</p>	<p>18-19 yrs at time offending.</p> <p>Convicted after PG (25% discount).</p> <p>Short criminal history; offences of poss MDMA; poss stolen or unlawfully obtained property and assault public officer.</p> <p>Born raised in Perth; one of four children.</p> <p>Supportive family.</p> <p>Paraplegic father; assisted him with dealing with his disability.</p> <p>Left school yr 10; commenced apprenticeship.</p> <p>Illicit drug use; history of abusing ecstasy and cocaine. Using 20-30 ecstasy pills per week and in excess of 6g of cocaine per week at time offending.</p>	<p>Cts 1-14; 16-17; 19-23; 25-29; 31-32; 34-38; 40; 42-45; 47; 49-57; 61-64; 66; 68-69; 71-72; 74; 76-77 & 79: Offer to supply MDMA 3.3kg.</p> <p>Cts 15; 18; 24; 30; 33; 58-59; 65; 67; 70; 73 & 80: Offer to supply cocaine 31g.</p> <p>Cts 39; 46; 60 & 75: Offer to supply methyl 11.5g.</p> <p>Ct 48: Offer to supply GBH (aka fantasy) 8ml.</p> <p>Ct 78: Offer to supply cannabis.</p> <p>Cts 41 & 82: Failing to comply with data access order.</p> <p>Ct 81: Poss unlawfully obtained property.</p> <p>A search warrant was executed at Doyle's home. Illicit drugs and a Blackberry device were located.</p> <p>Approximately 10 mths later a search warrant was again executed at the respondent's home. Illicit drugs and items commonly associated with the sale and supply of illicit drugs, including electronic scales, controlled weapons and numerous mobile telephones, including two encrypted Blackberry telephones were seized.</p> <p>The respondent's phone was found to contain numerous text messages in which he offered to sell or supply illicit substances to various people on a regular basis over a period of approximately 18 months.</p>	<p>Cts 1-20; 22-31; 33-43; 45-46; 48-55; 57-61; 63-76; 78-82: 9 mths imp (conc).</p> <p>Ct 21: 12 mths imp (cum).</p> <p>Ct 32; 44 & 47: 12 mths imp (conc).</p> <p>Ct 56: 18 mths imp (head sentence).</p> <p>Ct 62: 18 mths imp (cum).</p> <p>Ct 77: 18 mths imp (conc).</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the respondent was part of the commercial distribution of prohibited drugs into the community; he was involved in drug dealing on a commercial basis and the offending was pretty persistent and relentless.</p> <p>The sentencing judge found the respondent did not sell the offered prohibited drug in a significant number of the cts. However there can be no suggestion that when he offered drugs for sale he didn't intend to sell them if he could have.</p> <p>Remorseful. Engaged in a drug programme and</p>	<p>Allowed.</p> <p>Appeal concerned length of sentences (cts 21, 32, 44, 47, 55-56, 62, 77 & 79) and totality principle.</p> <p>Re-sentenced on cts 21, 32, 44, 47, 55, 56, 62, 77 and 79.</p> <p>Cts 21; 32 and 47: 2 yrs imp.</p> <p>Cts 44; 55 & 79: 18 mths imp.</p> <p>Cts 56; 62 & 77: 3 yrs imp.</p> <p>Cts 56 (head sentence) and 62 cum; all other sentences conc with each other and with head sentence.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>At [35] ... Each offence was committed by the respondent as part of an ongoing and long-term business of supplying illicit drugs. The respondent's primary motive was to obtain money to fund the lifestyle he could not otherwise afford. While it must be accepted that each offer was not in fact fulfilled, this was only because his supplier would not extend</p>

				<p>counselling to address his drug problems.</p>	<p>him credit for such substantial quantities of MDMA. ... He clearly intended to effect each sale. It cannot be overlooked that each offer was not an isolated event.</p> <p>At [36] This court has not been previously called upon to decide whether an individual sentence for offering to sell or supply a prohibited drug is manifestly inadequate or manifestly excessive. Thus, there are no relevant comparable cases.</p> <p>At [38] ... each sentence is, when all relevant circ and all relevant sentencing factors are considered, unreasonable or plainly unjust. ... Each sentence was substantially outside the sentencing range open to his Honour on a proper exercise of his discretion.</p> <p>At [41] The overall criminality involved in the offending was very serious. The respondent was engaged in the business of dealing with methyl, MDMA, cocaine, GBH and cannabis for profit and with the particular aim of promoting his lifestyle. ... about half of the offers resulted in the</p>
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					<p>substance in question being sold or supplied.</p> <p>At [42] The appellant also twice defied data access orders. ... Offenders who fail to comply are obstructing law enforcement authorities from undertaking their role in detecting offences.</p> <p>At [43] ... a TES of 4 yrs imp falls a long way short of bearing a proper relationship to the overall criminality involved in the commission of all of the offences.</p>
17.	<p><i>Goodwin v The State of Western Australia</i></p> <p>[2017] WASCA 184</p> <p>Delivered 12/10/2017</p>	<p>34 yrs at time offending. 36 yrs at time sentencing.</p> <p>Convicted after PG (14% discount).</p> <p>Prior criminal history; including breaches of VRO and poss prohibited drug.</p> <p>Time spent in immigration detention after arrest for offences subject of appeal; assaulted and sustained significant injuries whilst in detention; ongoing surgery required.</p> <p>Born in UK, arrived in Australia in 2010.</p> <p>Married; separated after a short period due to illicit drug use.</p>	<p>25 x Offer to supply methyl 1g – 1.73g and 0.1 - 3.5g. 1 x Sold MDMA.</p> <p>Goodwin sent group text messages advertising the sale of methyl. Over 16 different days over a 69 day period he communicated with 12 separate individuals about supplying them with the drug.</p> <p>Goodwin took anti-detection measures by using four different telephone numbers.</p> <p>An UCO met with the appellant and arranged to purchase MDMA or ecstasy from him. The UCO subsequently purchased 20 tablets from him for \$600 (ct 6).</p>	<p>Cts 1-5; 8; 10-15; 20 & 25: 12 mths imp. Cts 6 & 9: 16 mths imp. Cts 7; 17-18 & 26: 14 mths imp. Cts 16; 19; 21-24: 6 mths imp.</p> <p>Cts 6 & 26 cum with each other, conc all other sentences.</p> <p>TES 2 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant had a considerable customer base and he was an active street-level dealer, at the mid-range, selling to end users.</p>	<p>Dismissed.</p> <p>Appeal concerned failure to account for time spent in immigration detention.</p> <p>At [26] ... her Honour was entitled to recognise and give credit for the time the appellant had spent in immigration detention by reducing the length of the individual sentences and the TES she would otherwise have imposed. ... her Honour did not make an error of fact or law by recognising and giving credit for the time the appellant had spent in immigration detention in the manner that she did, rather than backdating the TES.</p>

		<p>Good prospects of employment; stable accommodation and supportive family and friend in UK.</p> <p>History of illicit drug use; methyl addiction; drug free since taken into immigration detention.</p>		<p>The sentencing judge found the appellant had not fully accepted responsibility for his offending and PGs were entered after numerous adjournments and delays.</p>	<p>At [27] ... each individual sentence imposed on the appellant was appropriate having regard to the max penalty for the offence, the objective seriousness of the offence, the standards of sentencing customarily observed with respect to the offence, the place which the appellant's criminal conduct occupies on the scale of seriousness of offences of the kind in question, the appellant's personal circumstances and all other relevant sentencing factors ...</p>
16.	<p><i>Grant v The State of Western Australia</i></p> <p>[2017] WASCA 162</p> <p>Delivered 31/08/2017</p>	<p>26-27 at time offending. 29 at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Advantage of good secure upbringing; supportive family and friends.</p> <p>Completed yr 12; completed plumbing apprenticeship; self-employed; annual turnover of approx \$500,000.</p> <p>Long term illicit drug use.</p>	<p>Ct 1: Manufacture methyl. Ct 2: Poss methyl wiss 33.1g. Ct 3: Poss cocaine wiss 3.7g. Cts 4-5: Poss dexamphetamine wiss 47.24g.</p> <p>A search warrant was executed at the appellant's business premises and home.</p> <p>At the business premises equipment consistent with the manufacture of methyl, and which contained traces of ephedrine and methyl, were located. A number of containers holding large quantities of reaction waste were also found and established methyl manufactured. Although quantity unknown.</p> <p>At the home two bags of cocaine and two bottles containing 94 (18.8g) and 142 (28.44g) dexamphetamine tablets were located. In addition items associated with dealings in prohibited drugs were found,</p>	<p>Ct 1: 3 yrs 6 mths imp (cum). Ct 2: 3 yrs imp (cum). Ct 3: 12 mths imp (conc). Cts 4-5: 6 mths imp (conc).</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>Manufacturing occurred over an unknown period of time.</p> <p>Whether or not the appellant was the 'cook' or was in overall charge of the manufacture could not be determined, however he played 'an integral role'. He provided premises, organised others, obtained</p>	<p>Dismissed.</p> <p>Appeal concerned first limb of totality principle.</p> <p>At [80] ... the appellant was engaged in a serious course of criminal conduct. He played a significant part in manufacturing an unknown quantity of methyl by providing the premises at which the manufacture occurred, by organising others, by obtaining and providing the necessary ingredients and by some involvement in the actual manufacturing process.</p> <p>At [81] .. this was a reasonably sophisticated</p>

			<p>including sets of digital scales; a vacuum sealing machine; money counting machines; empty clipseal bags and written directions for the manufacture of methyl and \$1,400 cash.</p> <p>He had earlier purchased a quantity of isopropanol alcohol, a solvent used in the manufacture of methyl.</p> <p>A computer and mobile phone belonging to him also contained information relating to the manufacture of methyl. In telephone calls he used code words to reference methyl and dexamphetamine and instructions to an associate made reference to the manufacture of drugs.</p> <p>His DNA was found on some items located at his business premises, including from a mixed profile inside a pair of gloves.</p>	<p>ingredients and had some involvement in the actual manufacturing process.</p> <p>It was a commercial effort directed at production for on-sale and not primarily, or even significantly, for his own use. The objective seriousness was towards the upper end of the middle of the scale of seriousness.</p> <p>No remorse or contrition.</p>	<p>manufacturing enterprise that was pursued for commercial profit. The quantities of drugs ... showed that he was in the business of selling or supplying a range of drugs. Though the quantities were not particularly high, all the evidence suggested that these were simply the drugs that the appellant had on hand at the time. The poss offences needed to be seen in the context of a continuing involvement in the manufacture, sale and supply of drugs.</p> <p>At [83] ... Four cases is a small sample from which to discern patterns of sentences customarily imposed.</p> <p>At [96] Having regard to all the relevant circumstances there is no reasonable basis for the claim that the total sentence was disproportionate to the total criminality of the offending having regard to all relevant circumstances ...</p>
15.	<p><i>Sakhie v The State of Western Australia</i></p> <p>[2017] WASCA 103</p> <p>Delivered 01/06/2017</p>	<p>22 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Prior criminal history; including previous convictions</p>	<p>Ct 1: Poss modified handgun, whilst not being the holder of a licence or permit. Ct 2: Poss methyl wiss 13g of 70% purity. Ct 3: Poss cocaine wiss 23g of 52% purity</p> <p>Sakhie was riding a motorcycle. When called upon to stop he sped way. After a short chase he abandoned his motorcycle,</p>	<p>Ct 1: 12 mths imp (cum). Ct 2: 2 yrs imp (cum). Ct 3: 2 yrs imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned length of sentence; totality and claims of duress.</p> <p>At [20] ... the onus is on the appellant to prove ... that he</p>

		<p>for possession of weapons.</p> <p>Born in Afghanistan; family members killed in conflict; lived Pakistan aged 1-10 yrs before emigrating to Australia.</p> <p>Supportive family; parents separated; father suffers drug and mental health problems.</p> <p>Difficulties at high school due to limited English; completed yr 12.</p> <p>Employed; trainee bricklayer.</p> <p>Commenced cannabis used in yr 9-10; methyl at 16-17 yrs old; \$15,000 drug debt at time of arrest.</p> <p>At time of PG ceased using methyl; distanced himself from negative peer influences.</p>	<p>fled on foot and was apprehended a short time later.</p> <p>At the time of arrest Sakhie threw an object over a fence. The item was recovered and found to be a modified 8mm handgun, fitted with a silencer and with the serial numbers removed.</p> <p>Later than morning a search of his home located methyl and cocaine hidden in the house.</p> <p>If sold in points the methyl and cocaine each had an estimated value of \$13,500.</p>	<p>Aggregate sentence reduced from 6 yrs imp).</p> <p>The sentencing judge found the appellant a mid-level dealer; the drugs were of high purity and high value and was indicative of the level of his involvement.</p> <p>The sentencing judge found the gun was not intended for protection and those who deal in illicit drugs are frequently found in poss of firearms and are 'one of the frequently seen tools of the drug trade'.</p> <p>Good prospects of rehabilitation.</p>	<p>committed the offences as a result of pressure placed on him by others: ... A mere assertion that the appellant has been assaulted or threatened, without reference to any specific incident, is not admissible.</p> <p>At [22] ... the appellant's recent claims of duress are inconsistent with the submissions made on his behalf at the sentencing hearing.</p> <p>At [31] ... The fact that the appellant, on his own admission, had run up a \$15,000 drug debt is indicative of his level of involvement. It was also accepted that the weapons were used in the context of drug dealing. There are dangers inherent in drug dealing, but the carrying of weapons in this context increases the possibility of serious violence as they can be used to threaten or coerce. The firearms offence was also made more serious by the fact that the handgun had been modified, not only to remove its serial number, but to enable the fitting of a silencer.</p>
14.	Potaka v The State of Western Australia	<p>23 yrs at time offending.</p> <p>24 yrs at time sentencing.</p>	1 x Poss methyl wiss 6.35g at 81% purity.	2 yrs 9 mths imp.	Dismissed – on papers.

	<p>[2017] WASCA 98</p> <p>Delivered 25/05/2017</p>	<p>Convicted after early PG (25% discount).</p> <p>Relevant prior criminal history.</p> <p>At time of offending on parole 1x Poss methyl wiss 20g, for which sentenced to 22 mths imp.</p> <p>Supportive family; parents separated when a child; left home 14 yrs.</p> <p>Left school yr nine.</p> <p>Employed; working for his father at time offending.</p> <p>History of alcohol and drug abuse; commenced methyl use aged 20 yrs; using daily time offending.</p>	<p>Police executed a search warrant on Potaka's residence and in his bedroom found methyl.</p> <p>A set of digital scales, \$500 in cash and a diary containing names, weights and money owing were also located.</p> <p>Potaka was sentenced on the basis that the cash and diary had not been proved to be connected with the offence.</p>	<p>EFP.</p> <p>The sentencing judge characterised the appellant as 'a low-level street dealer' and accepted he was using methyl and was selling the drug to pay for his habit.</p> <p>The sentencing judge found the fact the appellant committed the offence on parole as an agg factor.</p> <p>Motivated towards 'some form of rehabilitation.</p>	<p>Appeal concerned length of sentence and failure to state head sentence prior to applying s9AA discount.</p> <p>At [26] ... The appellant's counsel ... submitted, ... that, because his Honour did not expressly refer to the head sentence, this court should infer that the reduction was not made from the head sentence.</p> <p>At [27] We do not accept this submission. His Honour's use of the words 'would have otherwise imposed' can only be reasonably understood as shorthand for the definition of the head sentence ... and does not reveal any error in approach.</p> <p>At [32]... The fact that the appellant may have been motivated to deal in methyl to support his own drug habit is not a mitigating factor and does not reduce the seriousness of the offence. His Honour was correct to regard the offence as more serious because it was committed while the appellant was on parole ... An offender's obligation not to commit an offence does not diminish as the parole period progresses. ... the</p>
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					present offence is not uncharacteristic of him and manifests a continuing attitude of disobedience of the law.
13.	<p><i>Burnes v The State of Western Australia</i></p> <p>[2017] WASCA 77</p> <p>Delivered 21/04/2017</p>	<p>28 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Extensive criminal history; including stealing, driving, drug and firearm offence; assaulting police and armed robbery.</p> <p>Left school at yr 8.</p> <p>Negative peer associations.</p> <p>Minimal employment history.</p> <p>Long and entrenched history of illicit drug use; commenced using aged 15 yrs.</p>	<p><u>Indictment 861</u> Ct 1: Poss methyl wiss 10.9g at 27% purity.</p> <p><u>Indictment 236</u> Ct 1: Burglary. Ct 2: Stealing.</p> <p><u>Section 32 notice 1</u> Ch 1: Att pervert justice.</p> <p><u>Section 32 notice 2</u> Ch 1, 13 & 19: Steal motor vehicle. Ch 2-3 & 7: Poss firearm/ammunition. Ch 4: Poss stolen property. Ch 5: Carried controlled weapon. Ch 6 & 8: Poss prohibited weapon. Ch 9-11: Breach bail. Ch 12: Threats to injure. Ch 14: Assault to prevent arrest. Ch 15: No authority to drive. Ch 16: Reckless driving. Ch 17: Fail to stop. Ch 18: Carried prohibited weapon.</p> <p><u>Indictment 861</u> Police stopped and searched Burnes' car. They found a cipseal bag containing the methyl and a set of electronic scales.</p> <p><u>Indictment 236</u> Burnes removed a flyscreen from a sliding door, smashed the glass and entered the victim's home. He ransacked the home and stole jewellery valued at approx. \$27,000. None of the jewellery has been recovered.</p>	<p><u>Indictment 861</u> Ct 1: 1 yr 6 mths imp (cum).</p> <p><u>Indictment 236</u> Ct 1: 2 yrs imp (cum). Ct 2: No punishment (s11).</p> <p><u>Section 32 notice 1</u> Ch 1: 1 yrs imp (cum).</p> <p><u>Section 32 notice 2</u> Ch 1: 1 yr imp (conc). Ch 2: 1 yr imp (conc). Ch 3: 3 mths imp (conc). Ch 4: 6 mths imp (conc). Ch 5: 8 mths imp (conc). Ch 6: 4 mths imp (conc). Ch 7: 9 mths imp (conc). Ch 8: 8 mths imp (conc). Ch 9: 3 mths imp (conc). Ch 10: 3 mths imp (conc). Ch 11: 3 mths imp (conc). Ch 12: 1 yr 6 mths imp (cum). Ch 13: 9 mths imp (conc). Ch 14: 1 yr 6 mths imp (cum). Ch 15: 6 mths imp (conc); MDL susp 12 mths. Ch 16: 8 mths imp (conc); MDL susp 24 mths. Ch 17: 1 mths imp (conc); MDL susp 4 yrs (cum). Ch 18: 6 mths imp (conc).</p>	<p>Allowed - error of fact only, otherwise dismissed.</p> <p>Appeal concerned totality and error of fact in respect of ch 12 (PE 48601 of 2015).</p> <p>Re-sentenced to:</p> <p>Discount of 10% on indictable offences; discount of 20% on section 32 notice offences.</p> <p>Ch 12: 12 mths imp (cum).</p> <p>All other individual sentences and orders remain.</p> <p>TES 7 yrs imp. EFP.</p> <p>At [33] ...the TES of 7 yrs 6 mths imp did not infringe the first limb of the totality principle.</p> <p>At [35] ... his Honour found that the appellant used a <i>loaded</i> firearm when making the threat. ... There was no evidence to support his Honour' finding that the firearm was loaded during the offence ...</p>

		<p><u>Section 31 notice 1 and 2</u></p> <p>A hired car was reported stolen and later found abandoned. A DNA profile taken from the car was matched to Burnes (ch 1).</p> <p>On another occasion Burnes threatened and intimidated the owner of a car into giving him the car's keys. He then drove off in the car (ch 19).</p> <p>On another occasion Burnes failed to appear in the Perth Magistrate's Court while remanded on bail (ch 9).</p> <p>On another occasion Burnes drove a stolen car to his former partner's house (ch 13). His former partner walked up to the car and, during a heated argument, Burnes pointed a firearm directly at her and said 'I'll fix you' (ch 12).</p> <p>On another occasion Burnes was seen to get into the stolen car the subject of ch 19. To prevent him from driving, police stopped their car behind and to the side of his car, their lights and siren activated. Burnes accelerated heavily and deliberately reversed in to the police car while two police officers were inside (ch 14). He failed to stop and drove away at speed (ch 17). Pursued by police, he drove on the incorrect side of the road and contravened traffic control signals. He mounted a kerb and drove over a median strip (ch 16). It was raining heavily; there were other vehicles on the road and his driving so dangerous the pursuit was aborted. He was not the holder of a valid MDL at the time (ch 15). The vehicle was later found</p>	<p>Ch 19: 1 yr 6 mths imp (conc).</p> <p>TES 7 yrs 6 months imp.</p> <p>EFP.</p>	<p>At [36] The appellant should have been sentenced in respect of PE 48601 of 2015 on the basis that the weapon he used was unloaded. The finding that the firearm used to threaten the appellant's former partner was loaded made the offence more serious. This is because of the risk that a loaded firearm may somehow be discharged. It is evident ... his Honour regarded the 'fact' that the firearm was loaded justified the imposition of a more severe penalty.</p> <p>At [39] Although the firearm was not loaded, the victim was not to know whether the weapon was loaded or unloaded. The use of the unloaded weapon by the appellant was designed to terrify and doubtless had that effect. The offence was still serious.</p>
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			<p>abandoned and inside, was a prohibited electronic shock weapon, disguised as a torch (ch 18).</p> <p>On another occasion Burnes was bailed to appear in the District Court, he failed to do so (chs 10 & 11).</p> <p>On another occasion Burnes went to an apartment to meet an acquaintance. Police were at the apartment in order to execute a search warrant. Alerted to his presence in the lobby he was searched and found to be in poss of \$4,700 in cash (ch 4) and a replica firearm (ch 5). A set of home-made knuckledusters (ch 6), nine 12 gauge shotgun cartridges and 51 .22 calibre revolver rounds (ch 7) were found in his car. When asked to provide his personal details he gave a false name and signed identification and bail documents using the false name (ch 1 of section 32 notice 1).</p> <p>On another occasion police searched Burnes' home and found a crossbow (ch 8) and a 22 calibre bolt-action repeater rifle (ch 2), loaded with six bullets (ch 3). The rifle had been modified and its serial numbers removed.</p>		
12.	<p><i>Dias v The State of Western Australia</i></p> <p>[2017] WASCA 49</p> <p>Delivered 17/03/2017</p>	<p>31 yrs at time offending.</p> <p>Early PG (25% discount).</p> <p>Prior criminal history, including drug offences.</p> <p>Supportive family.</p> <p>Completed school at yr 10.</p>	<p>Indictment</p> <p>Ct 1: Poss cannabis wiss 39.57g.</p> <p>Ct 2: Poss methyl wiss 7.16g of 78% purity.</p> <p>Ct 3: Poss dexamphetamine 32.4g.</p> <p>Ct 4: Poss money unlawfully obtained.</p> <p>Section 32 Notice</p> <p>Ch 1: Poss ammunition.</p> <p>Ch 2: Poss MDMA.</p> <p>Ch 3-4: Poss drug paraphernalia.</p> <p>Ch 5: Poss prohibited weapon.</p>	<p>Indictment</p> <p>Ct 1: 3 mths imp (cum).</p> <p>Ct 2: 18 mths imp (cum).</p> <p>Ct 3: 12 mths imp (conc).</p> <p>Ct 4: 3 mths imp (conc).</p> <p>Section 32 Notice</p> <p>Ch 1: 1 mth's imp (conc).</p> <p>Ch 2: \$300 fine.</p> <p>Ch 3-4: \$200 fine.</p> <p>Ch 5: \$100 fine.</p> <p>Ch 6: 9 mths imp (conc).</p>	<p>Dismissed – on papers.</p> <p>Appellant appealed length of sentence and concerned totality.</p> <p>At [27] ... the appellant's drug-related offending was not an isolated aberration but an ongoing street-level operation conducted for</p>

		<p>Good employment history.</p> <p>Long term cannabis and methyl user.</p> <p>Unaddressed mental health issues; poor coping mechanisms and decision-making skills.</p>	<p>Ch 6: Fail to obey data access order. Ch 7: Poss methyl.</p> <p>Indictment Dias was stopped driving in vehicle. A search of his car located cannabis inside a backpack in two plastic containers (ct 1).</p> <p>Also in the backpack in a container were five cipseal bags containing a total of 6.89g of methy and numerous unused cipseal bags, a calculator and a 'tick list'. At his home a further cipseal bag containing 0.27g of methyl and a set of scales were found. He admitted using the scales to weigh drugs (ct 2).</p> <p>A bottle containing 74 dexamphetamine tablets were also found in his vehicle. At his home another bottle containing 88 tablets were found (ct 3).</p> <p>In Dias' wallet \$1,205 cash was found, along with \$600 in cash at his home (ct 4).</p> <p>Section 32 Notice During the search of his home police located ammunition and a shot gun round; two MDMA tablets of 0.59g; and two smoking implements.</p> <p>In his vehicle a knuckleduster or kubotan with a dagger blade inside was found.</p> <p>Dias refused to provide police with the unlock codes of two mobile phones. A data access order was obtained, but he failed to comply with it.</p> <p>Some months later Dias' vehicle was</p>	<p>Ch 7: 3 mths imp (cum with cts 1 and 2 on ind).</p> <p>TES 2 yrs imp. EFP.</p> <p>The sentencing judge found the offending towards 'the lower end of the scale'; but he was prepared to disseminate a number of different types of prohibited drugs to others in order to obtain money. The substantial tick lists showed the extent and scale of the appellant's operation. His drug dealing was not a one-off aberration but an on-going business.</p> <p>Sought counselling and hope of rehabilitation.</p>	<p>personal gain. He dealt in a variety of prohibited drugs. The presence of cipseal bags, scales, weapons, tick lists and cash showed a degree of organisation and persistence. The fact that the appellant was also a drug user and dealt in drugs to support his habit did not reduce the seriousness of his offending.</p>
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			stopped and searched. Three clipseal bags containing less than a gram of methyl were located behind the dashboard.		
11.	<p><i>Zheng v The State of Western Australia</i></p> <p>[2016] WASCA 224</p> <p>Delivered 13/12/2016</p>	<p>41 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No relevant prior convictions.</p> <p>Born and educated in China.</p> <p>Aged parents, siblings and eldest daughter still in China.</p> <p>Lived in Australia 2001-2004 and since 2007.</p> <p>Twice married. In a relationship at time of offending. Two daughters; 20 yrs and 2 mths at time offending.</p>	<p>1 x Poss methyl wiss 49.85g of 77%-82% purity.</p> <p>The appellant operated a retail business. Police and Australian Customs and Border Protection Services executed a search warrant at the property.</p> <p>The appellant's handbag was located and found to contain \$10,345.00 in cash and two clipseal bags containing methyl.</p>	<p>4 yrs 3 mths imp. EFP.</p> <p>The sentencing judge found the large quantity and high purity of the drugs, along with the large amount of cash indicated the appellant was in contact with those close to the upper levels of the chain of distribution.</p> <p>The sentencing judge took into account the mitigating effect imp would have on the appellant's daughter, aged 2 yrs at time of sentencing.</p> <p>No remorse or insight into the seriousness of her offending.</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged length of sentence.</p> <p>At [15] The appellant's offending was serious ... The appellant was found not to be a user of methyl and it is evident that she intended to distribute it into the community for commercial gain.</p>
10.	<p><i>Hickling v The State of Western Australia</i></p> <p>[2016] WASCA 124</p> <p>Delivered 13/07/2016</p>	<p>41 yrs at time sentencing.</p> <p>PG (20% discount).</p> <p>No relevant criminal history.</p> <p>Born in NZ; arrived in Australia 1998.</p> <p>Permanent resident, not a citizen of Australia.</p> <p>Cannabis user from 15 yrs.</p> <p>Daily user of methyl and cannabis at time offending.</p>	<p>Ct 1: Poss methyl wiss 7.01g at 37% purity.</p> <p>Ct 2: Poss cannabis wiss 515.07g.</p> <p>A search of Hickling and his car located two clip seal bags containing methyl (ct 1), two mobile phones and \$4,975 in cash. Text messages and a 'tick lists' on the phones recorded payments received and amounts owed.</p> <p>Records extracted from the mobile phones indicated that at the time Hickling was apprehended he was in the midst of a drug deal.</p>	<p>Ct 1: 3 yrs imp.</p> <p>Ct 2: 6 mths imp (cum).</p> <p>TES 3 yrs 6 mths imp. EFP.</p> <p>The sentencing judge described the offending as serious and found the appellant undertook drug transactions on credit and had established a group of persons who purchased illicit drugs from him.</p> <p>The sentencing judge</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence on ct 1, totality and failure to take into account deportation as a consequence of imp.</p> <p>At [56] ... the Minister is obliged to cancel the appellant's visa in light of the imposition of a term of imp of more than 12 mths, subject to the Minister's power to revoke such a decision.</p>

		<p>A search of Hickling's home located cannabis in a vacuum-sealed plastic sleeve, as well as smaller amounts in plastic clipseal bags (ct 2).</p> <p>In addition police found drug paraphernalia; three dead 1m high mature cannabis plants; 12 dead immature seedlings and three living seedlings.</p>	<p>rejected the proposition that half the methyl was for personal use and the other half would have been sold, only to fund his habit and not for profit.</p> <p>Favourable prospects of rehabilitation and positive character references.</p>	<p>At [57] ... the appellant did not expressly ask this court to overrule <i>Dauphin</i> ... We respectfully agree with the reasoning of Steytler J in <i>Dauphin</i>.</p> <p>At [59] The court's sentencing discretion is not appropriately exercised by reference to predictions about how such an administrative discretion, which arises only after the appropriate sentence is imposed, may be exercised at some future time.</p> <p>At [62] ...the evidence ... about the appellant's prospect of deportation and hardship was 'limited'</p> <p>At [63] ... The prospect of deportation is not a mitigating circumstance in WA. In any event, in those States in which the potential of deportation may be taken into account as a mitigating circumstance, it is necessary for offenders to demonstrate hardship.</p> <p>At [71] ... the appellant was a user of illicit drugs; however, he was also dealing in drugs for profit. The appellant was deeply</p>
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					<p>involved in the drug trade, even if that involvement was at the lower end of the hierarchy.</p> <p>At [72] ... The appellant was found in possession of a reasonably substantial quantity of cannabis in the context of being engaged in the cultivation of that drug for some time prior to his apprehension. The presence of seedlings indicates an ongoing intention to produce and distribute cannabis. Given the nature of this separate and additional offending, it was well open for his Honour to order that the sentence on ct 2 be served cum on ct 1.</p>
9.	<p><i>Labrook v The State of Western Australia</i></p> <p>[2016] WASCA 127</p> <p>Delivered 15/07/2016</p>	<p>46 yrs of age.</p> <p>Late PG.</p> <p>Extensive criminal history, including prior drug convictions and offences of violence.</p> <p>Abusive childhood, alcoholic father.</p> <p>Educated to yr 9, studying towards a business degree in custody.</p> <p>In a relationship at time of sentencing. Father of three</p>	<p><u>Indictment</u></p> <p>3 x Offer to sell methyl.</p> <p>Labrook offered to sell an ounce (28g) of methyl for \$11,500-\$12,000 to a woman who contacted him on his mobile phone (ct 1).</p> <p>A man contacted Labrook and asked for a 'half weight' of methyl. Labrook offered the man 1g for \$500 (ct 2).</p> <p>Labrook was contacted by a woman on his mobile phone. He offered to sell her 3.5g of methyl for \$2,000 (ct 3).</p> <p>On each occasion the offence was detected by police who were monitoring his phone.</p>	<p><u>Indictment</u></p> <p>Ct 1: 3 yrs imp. Ct 2: 12 mths imp (conc). Ct 3: 22 mths imp (cum). TES 4 yrs 10 mths imp. EFP.</p> <p><u>Summary offences</u></p> <p>Ch 1: 7 mths imp suspended sentence activated. Ch 2: 4 mths imp (cum). Ch 3: Fine \$200. Ch 4: 4 mths imp (conc). Ch 5: 6 mths imp (cum).</p> <p>TES 17 mths imp. EFP.</p>	<p>Dismissed.</p> <p>Appellant challenged totality principle.</p> <p>At [49] The sentencing judge found that the appellant was involved in a commercial enterprise, at least on a modest scale, and had ready access to significant amounts of methyl. ... The appellant engaged in consistent offending over a 2½ month period. The appellant's purpose was commercial gain.</p>

		<p>young children, to two different partners.</p> <p>Regularly user of methyl since aged 18 yrs.</p>	<p>Between committing and being sentenced for the indictable offences Labrook was sentenced on the following summary offences:</p> <p><u>Ch 1: Driving under suspension</u> Labrook was driving a motorcycle at the time his driver's licence was suspended and he was the subject of a suspended sentence.</p> <p><u>Chs 2 and 3: Driving under suspension and giving false personal details</u> Labrook was stopped driving a car while his driver's licence was suspended. He provided a false name to police. At the time of committing these offences he was the subject of the suspended sentence (1).</p> <p><u>Chs 4-5: Driving under suspension; reckless driving in circ of aggravation</u> Driving a vehicle Labrook attempt to evade police by driving into a parking lot, forcing his vehicle through a lowered swing gate and a parking attendant to run out of his path. He then drove on a number of main thoroughfares in a built up area at speed, pursued by two police vehicles with emergency lights and sirens engaged, causing members of the public to take action to avoid a collision. Labrook accelerated and braked with sufficient aggression to skid and cause smoke from his tyres. When the car's engine seized he jumped out of the vehicle as it was rolling, narrowly missing two surveyors and destroying a tripod. He hid in nearby bushes before being located and arrested.</p>	<p>Combined TES 6 yrs 3 mths imp.</p> <p>The sentencing judge took into account the appellant's personal circumstances; prospects of rehabilitation and the need for protection of the public; punishment and personal and general deterrence.</p> <p>The summary offences breached a 7mths term of imp, suspended for 18mths for driving under suspension.</p>	<p>At [52] The driving offences ... were particularly serious, involving the risk of injury to a number of members of the public who were required to take evasive action ... the individual sentence for the reckless driving offence represents a lenient outcome.</p> <p>At [53] It is also significant that the appellant received the benefit of the suspended sentence ... All other offences were committed while serving the suspended sentence.</p> <p>At [54] It is an aggravating factor that the appellant committed the drug offence ... while on bail.</p>
8.	Howard v The State	32 yrs at time offending.	<u>Indictment</u>	<u>Indictment</u>	Appeal dismissed.

	<p><i>of Western Australia</i></p> <p>[2016] WASCA 70</p> <p>Delivered 06/05/2016</p>	<p>Late PG (10% discount).</p> <p>Lengthy criminal history.</p>	<p>1 x Poss methyl wiss 11.8g of 79% purity.</p> <p><u>S32 Notice</u> 2 x Poss firearm in circ of agg. 1 x Poss unlicensed firearm. 2 x Poss unlicensed ammunition. 2 x failing to ensure safe keeping of firearm/ammunition. 1 x Poss cannabis. 1 x Poss prohibited weapon. 1 x Poss smoking utensil.</p> <p>Methyl, scales, cutting agent, clipseal bags, surveillance cameras, firearms and ammunition were found at Howard's home.</p> <p>While on bail for the indictable offence and some of the summary offences, police found a sawn-off shotgun; four shotgun rounds; cannabis; a taser and two smoking implements at his home.</p>	<p>2 yrs 6 mths imp.</p> <p><u>S32 Notice</u> 2 x Poss firearm: 12 mths imp each (cum each other and ind). 1 x Poss unlicensed firearm: 3 mths imp. 2 x Poss unlicensed ammunition: 6 mths imp each. 2 x Failing to ensure safe keeping of firearm/ammunition: 3 mths imp each. 1 x Poss cannabis: 1 mth imp. 1 x Poss prohibited weapon: 6 mths imp. 1 x Poss smoking utensil: Fine \$1,000</p> <p>TES 4 yrs 6 mths imp.</p> <p>Sentencing judge not satisfied on the balance of probabilities the drug was for the appellant's use and supply to his partner. Sentenced on basis appellant was a user/dealer.</p>	<p>Appellant challenged length of sentence, the application of s 9AA and totality principle.</p> <p>At [17] ... it was open to the sentencing judge to apply the same discount to all the offences. The only information before the sentencing judge was that the appellant had not foreshadowed his intention to PG to the s32 offences until more than four months after the appellant pleaded guilty to the indicatable offence.</p> <p>At [20] ... the appellant's lengthy criminal record indicated a persistent defiance and disregard for the law and that the offending was not an uncharacteristic aberration. This, together with the appellant's offending ... whilst on bail ... underscores the need for personal deterrence in addition to general deterrence.</p>
7.	<p><i>Truscott v The State of Western Australia</i></p> <p>[2016] WASCA 58</p> <p>Delivered 08/04/2016</p>	<p>27 yrs at time offending; 29 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Substantial criminal history.</p>	<p>1 x Poss methyl wiss 4.94g of 72-76% purity.</p> <p>Police searched the appellant's house and found the methyl in the appellant's bedroom. Police also found empty clip seal bags, scales, cutting agent, glass smoking implements and 15.73g of cannabis. The</p>	<p>16 mths imp.</p> <p>EFP.</p> <p>Sentencing judge found that some of the methyl was for appellant's personal use and some would have been</p>	<p>Dismissed – on papers.</p> <p>At [23] The appellant intended to sell some of the methyl into the community. There was therefore an element of commerciality to what he did. While the</p>

		<p>Mental health issues.</p> <p>Traumatic childhood; limited education and work history.</p> <p>At time sentencing, offered apprenticeship and accepted into apprenticeship course.</p> <p>Long user of cannabis and methyl.</p>	<p>appellant admitted ownership of all items.</p>	<p>sold to his friends in order to fund his further use of the drug.</p> <p>Sentencing judge characterised the appellant as a 'user/dealer'.</p>	<p>quantity of methyl was relatively small, the purity was high. Although not the primary factors for consideration, the quantity and purity of the drug remain relevant and important because they impact on the scope and extent of the potential harm to the community.</p> <p>At [25] The appellant's antecedents were not favourable. He has little insight into the adverse effects of his offending. He was, shortly before being sentenced, still using illicit drugs. Despite his claim that he was prepared to undertake counselling - which was repeated at the hearing of this application - there is, as yet, no demonstrated rehabilitation. As her Honour said, personal and general deterrence were the dominating sentencing considerations in this case.</p>
6.	<p><i>Tran v The State of Western Australia</i></p> <p>[2016] WASCA 37</p> <p>Delivered 29/02/2016</p>	<p>Convicted after trial.</p> <p>36 yrs at time offending; 38 yrs at time sentencing.</p> <p>Criminal history, including poss heroin wiss.</p> <p>Difficult childhood.</p>	<p>1 x Poss methyl wiss 13.9g of 66-69% purity.</p> <p>Police searched the appellant's house and found the methyl behind a pillow on a couch that the co-offender had been sitting in front of. They also found \$4,900 cash behind a pillow that the appellant was sitting on. Scales and clip seal bags were found in the appellant's handbag and \$900</p>	<p>3 yrs 9 mths imp.</p> <p>EFP.</p> <p>Trial judge found that it was more likely that the appellant was the purchaser of the drugs.</p> <p>Trial judge found that the</p>	<p>Dismissed – on papers.</p> <p>At [31] The trial judge's unchallenged finding was that the appellant dealt in illicit drugs in the 'upper mid-level' range ... Her prime motivation appears to have been to fund her own drug use and to alleviate her</p>

		<p>Single; four children from previous relationships.</p> <p>Limited employment history; financial difficulties.</p> <p>History of drug use; breached previous parole by testing positive to amphetamine and methyl.</p>	<p>cash on the table.</p> <p>The appellant admitted that she used methyl and that the \$900 cash was hers. She denied poss of the methyl and \$4,900 cash.</p>	<p>appellant dealt in illicit drugs in the “upper mid-level range”.</p>	<p>financial difficulties.</p> <p>At [35] Her Honour found that there were no matters of mitigation in the appellant's personal circumstances... There was no evidence that the appellant had taken any steps with a view to her rehabilitation. She maintained her denial of the offending and was not remorseful.</p>
5.	<p><i>Fenton v The State of Western Australia</i></p> <p>[2015] WASCA 255</p> <p>Delivered 14/12/2015</p>	<p>Convicted after early PG (discount not stated in appeal judgment).</p> <p>31 yrs at time offending.</p> <p>Criminal history, including one conviction of poss prohibited drug.</p> <p>Long-time user of cannabis and methyl.</p> <p>Stopped using methyl after being charged; continues to use cannabis.</p> <p>Motivated to engage in drug counselling.</p>	<p><u>Indictment</u></p> <p>1 x Poss methyl wiss 5.19g of 66-75% purity.</p> <p><u>Section 32 Notice</u></p> <p>5 x drug-related offences.</p> <p>Police searched the appellant's home and with the appellant's confession, found 1.69g (75% purity) and 1.68g (66% purity) of methyl in the pocket of his shorts. The appellant stated that he purchased it for \$3,000.</p> <p>Police also found 1.82g of methyl on the floor. The purity of this methyl is unknown.</p> <p>The appellant admitted that he intended to supply some of the methyl to his friends.</p>	<p><u>Indictment</u></p> <p>10 mths imp.</p> <p><u>Section 32 Notice</u></p> <p>\$850 fine.</p> <p>Despite the appellant ceasing the use of methyl and expressing a willingness to undergo treatment, the sentencing judge had reservations about rehabilitation.</p>	<p>Dismissed.</p> <p>At [14] The appellant was sentenced on the basis that his intention was to supply the methyl to friends without charge and to use some himself, and that there was no commercial aspect to his poss.</p>
4.	<p><i>Maric v The State of Western Australia</i></p> <p>[2015] WASCA 190</p> <p>Delivered 16/09/2015</p>	<p>39 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Long criminal history, including convictions of drug offences.</p>	<p>1 x Poss methyl wiss 5.78g of 26-27% purity.</p> <p>1 x Driving MV without authority.</p> <p>Appellant was riding his off-road motorcycle. He was approached by an off-duty police officer. After being approached, he disposed of his camera case into a bush.</p>	<p>3 yrs imp.</p> <p>Susp term to be served: 6 mths imp (cum).</p> <p>TES 3 yrs 6 mths imp.</p> <p>Trial judge found appellant as a user/low level street</p>	<p>Dismissed - on papers.</p> <p>At [21] – [21] Discussion of comparable cases.</p> <p>At [28] Whilst the amount of methyl possessed by the appellant was less than that</p>

		Drug offence breached SIO for driving offence.	<p>The police officer later found the appellant's camera case containing methyl, digital scales, a bundle of clipseal bags and straw.</p> <p>Driving offence not connected to drug offence; no facts were provided.</p>	dealer.	in many of the other cases... that was not the only or indeed the most important factor. The appellant was clearly engaged in low level street dealing. His offending involved an element of commerciality. There was an absence of any mitigating factors and a pronounced need for personal deterrence.
3.	<p><i>JM v The State of Western Australia</i></p> <p>[2015] WASCA 40</p> <p>Delivered 06/03/2015</p>	<p>42 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history.</p> <p>Married; three young children.</p>	<p>1 x Poss methyl wiss 23g of 61-73% purity.</p> <p>Police executed a search warrant at the appellant's home and seized three clipseal bags. The first bag contained 21.4g of 61% pure methyl, the second contained 2.32g of 73% pure methyl and the third contained 0.11g of methyl. Methyl worth over \$20,000.</p> <p>Police also found digital scales, a bundle of clipseal bags and a quantity of cutting agent.</p> <p>After the appellant's conviction, but before sentencing, the appellant provided information to police on offences committed by other persons.</p>	<p>3 yrs imp.</p> <p>Sentencing judge found appellant as a 'user/dealer...slightly above a street dealer'.</p>	<p>Dismissed.</p> <p>[31] - [37] Discusses the scope and application of the principles relating to cooperation.</p> <p>At [45] The appellant's timing and drip feeding of his disclosures suggests he did not have confidence that they could withstand close and considered scrutiny... The appellant has failed to demonstrate that either of the disclosures were actually or potentially valuable at any relevant time so as to constitute cooperation.</p> <p>At [47] ...the sentence imposed on the appellant was well within the discretionary range even when regard is had to the matters on which he relies.</p>

2.	<p><i>Stewart v The State of Western Australia</i></p> <p>[2014] WASCA 195</p> <p>Delivered 30/10/2014</p>	<p>28 yrs at time offending. 29 yrs at time sentencing.</p> <p>Convicted after late PG.</p> <p>Lengthy criminal history including traffic and drug offences.</p> <p>Left school at Year 9; worked for father & owned own business.</p> <p>Lost home & business following loss of driver's licence.</p> <p>Methyl addiction.</p> <p>Attended and sought counselling following arrest.</p>	<p>Possess methyl wiss 11.8g of 23% purity.</p> <p>The appellant was stopped by police whilst driving his vehicle. Police observed the appellant to be acting nervously and saw some drug paraphernalia in his car. The appellant was searched. In his underpants were 4 clipseal bags containing 1.66g, 1.70g, 1.72g and 11.8g of methyl. Later police discovered that the appellant was in possession of two more clipseal bags which contained 0.78g of methyl between them. Only the contents of the bag containing 11.38g of methyl was analysed.</p> <p>Police also located cash, a clipseal bag containing MSM, a set of electronic scales, a smoking implement and three mobile phones in various parts.</p>	<p>2 yrs 6 mths imp.</p> <p>EFP.</p> <p>Remorseful.</p> <p>Sentencing judge accepted the appellant 'got into the wrong crowd and his life fell apart'.</p> <p>Sentencing judge found was a 'user/dealer'.</p>	<p>Dismissed – on papers.</p>
1.	<p><i>The State of Western Australia v Thompson</i></p> <p>[2014] WASCA 108</p> <p>Delivered 21/05/2014</p>	<p>55 yrs at time of trial.</p> <p>Convicted after trial.</p> <p>Criminal history – multiple convictions for poss prohibited drug.</p> <p>Disability pensioner; supplements income by busking, selling second hand goods and motor vehicle parts.</p> <p>Long history of drug use, including a bad problem with heroin for 15 yrs.</p> <p>Suffers panic attacks, anxiety and hepatitis C.</p>	<p>Possess methyl wiss 4.34g of 33-63% purity.</p> <p>Police conducted a search of the respondent's house.</p> <p>The respondent was in possession of 4.34g of methyl in 3 separate parcels containing 0.18g, 0.21g and 3.95g.</p> <p>The first two parcels were found in the respondent's pocket and the third on a shelf in the respondent's house. The respondent was also in possession of electronic scales, a small number of clip seal bags and 0.87g of methyl at 1% purity mixed with MSM.</p> <p>The respondent said the drugs were for his personal use.</p>	<p>\$2000 fine.</p> <p>Sentenced in absence of PSR.</p> <p>Sentencing judge found was able to purchase, on favourable terms, a larger quantity of methyl (7gms) than he had previously purchased.</p> <p>Judge found, consistent with the verdict, that a small part of the methyl in the respondent's possession would be supplied, without reward, to another.</p>	<p>Allowed.</p> <p>Re-sentence to 18 mths imp susp for 12 mths.</p> <p>At [40] A fine is so far outside the range of a sound exercise of the sentencing discretion as to constitute an affront to the proper administration of justice.</p>

		<p>At time of offence, was a methyl user who was taking drugs to deal with adverse side effects from chemotherapy treatment for hepatitis C.</p> <p>Has not used prohibited drugs since being charged.</p>			
<i>Transitional Provisions Repealed (14/01/2009)</i>					
<i>Transitional Provisions Enacted (31/08/2003)</i>					