

Sexual Assaults – Home Invasions

ss 325 and 326 *Criminal Code*

From 1 January 2014

Transitional Sentencing Provisions: This table is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period
- Transitional provisions period
- Pre-transitional provisions period

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
PG	plead guilty
agg	aggravated
burg	burglary
sex pen	sexual penetration without consent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
ct	count
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
2.	<i>Atkinson v The State of Western Australia</i> [2017] WASCA 154 Delivered 17/08/2017	<p>45 yrs at time sentencing. 25 and 27 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>Minor criminal history.</p> <p>Dysfunctional family; parents separated when young adult; eldest sister epileptic; younger brother involved in heavy drug use; mother imprisoned for fraud.</p> <p>Strained relationship with mother for many yrs, now close; maintains some contact with father.</p> <p>Frequently truant at school; expelled in yr 10.</p> <p>Single; no children.</p> <p>Worked many yrs mining industry; currently unemployed.</p> <p>Long history of alcohol and illicit drug use.</p> <p>Diagnosed bipolar disorder;</p>	<p>Cts 1 & 5: Agg burglary. Cts 2, 6-8: Agg sex pen. Cts 3 & 9: Dep lib. Ct 4: Att agg robbery.</p> <p>The offences arise from two separate incidents. One in 1997 and the other in 1999.</p> <p><u>Cts 1-4 (1997)</u></p> <p>The victim, N, was 18 yrs old and home alone. He forced his way into her home after knocking on her door wearing a balaclava on his face.</p> <p>Atkinson held a knife to N's throat, tied her up and covered her face before sexually penetrating her and demanding money, which she said she did not have.</p> <p>He warned her not to talk, scream or move before leaving the premises.</p> <p><u>Cts 5-9 (1999)</u></p> <p>The victim, E, was 19 yrs old and home alone.</p> <p>Atkinson let himself into her home and covered her face, before tying her up and repeatedly sexually penetrating her.</p> <p>He told her not to phone anyone because he would be watching before leaving the premises.</p> <p>In 2016 Atkinson's DNA was matched to the</p>	<p>Ct 1: 7 yrs 6 mths imp (head) Ct 2: 7 yrs imp (conc). Ct 3: 2 yrs imp (conc). Ct 4: 2 yrs imp (conc). Ct 5: 7 yrs 6 mths imp (cum ct 1). Ct 6: 7 yrs imp (conc). Ct 7: 3 yrs imp (conc). Ct 8: 7 yrs imp (conc). Ct 9: 2 yrs imp (conc).</p> <p>TES 15 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge noted the offences only came to light following a DNA match to the 1999 offences and it was to the appellant's credit that he made some admissions with respect to the 1997 offences.</p> <p>The sentencing judge found the appellant's cooperation indicated some degree of contrition and acceptance of culpability and that he understood the issues</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence, totality, failure to consider remorse and discount for voluntary disclosure of guilt on cts 1-4.</p> <p>Re-sentenced:</p> <p>Ct 1: 5 yrs 6 mths imp. Ct 2: 5 yrs 2 mths imp. Ct 3: 1 yr 6 mths imp. Ct 4: 1 yr 6 mths imp.</p> <p>All other sentences and orders for cum, conc and EFP otherwise unaffected.</p> <p>TES 13 yrs imp.</p> <p>At [61] The offences were extremely serious offences of their type. They involved planning and the use of force to overwhelm young and vulnerable victims at night in their homes. Physical restraints and threats were used, including the use of weapons, in order to obtain the victim's compliance.</p>

		<p>history of non-compliance with medication.</p>	<p>1999 offences. During a second police interview he voluntarily disclosed the 1997 offences to police.</p>	<p>likely to have been confronted by the two victims. He took a neutral stance on the appellant's remorse as the psychologist and psychiatrist had differing views as to whether the appellant had victim empathy and was genuinely remorseful.</p> <p>Moderate to low-risk of reoffending.</p>	<p>The offences caused great psychological trauma to the victims and have had long-lasting effects.</p> <p>At [64] ... the appellant's disclosure of the 1997 offending was significant because it was a disclosure to the authorities of otherwise unknown offences. ... It might be suggested that the appellant made the disclosure because he feared ... other undisclosed DNA evidence that would implicate him. However, there was no suggestion of that ... and in fact it was not the case. Whatever the appellant's motivations, and he said that he was motivated by remorse, the fact is that but for his disclosure there is no reason to think that the appellant would have been charged with the 1997 offences. In these circumstances his disclosure was a significant matter to the credit of the appellant to be taken into account in sentencing on</p>
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					<p>cts 1 to 4.</p> <p>At [65] ... the individual sentences for cts 1 to 4 were the same as those imposed for the similar offending in cts 5 to 9. This cannot be accounted for by any significant difference in the offending. The two groups of offences were of a comparable level of seriousness. Indeed, the respondent accepted before this court that, if anything, the second group of offences were more serious.</p>
1.	<p><i>PSS v The State of Western Australia</i></p> <p>[2015] WASCA 98</p> <p>Delivered 19/05/2015</p>	<p>15 yrs 11 mths at time offending. 16 yrs 8 mths at time sentencing.</p> <p>Convicted after PG.</p> <p>Committed cts 1-2 while on bail for cts 3-4.</p> <p>No history for violent or sexual offending. Criminal history, including agg burgs, stealing, trespass, poss a prohibited weapon, breach of bail and IYSO.</p>	<p>Ct 1: Agg burg. Ct 2: Sex pen. Ct 3: Common assault. Ct 4: Common assault. Ct 5: Poss prohibited dug.</p> <p><u>Ct 1 and 2</u> The victim was 24 yrs old. The appellant was taller and heavier than the victim. He committed the offences under the influence of alcohol and cannabis.</p> <p>Between 2.00am and 3.00am, The appellant climbed through a window into the victim's house. The victim was alone and asleep in bed. She woke from noises. The appellant crawled into her bed, held her down with his left leg and said "I</p>	<p>Ct 1: 3 yrs detention (conc). Ct 2: 3 yrs 9 mths detention. Ct 3: 3 mths detention (conc). Ct 4: 4 mths detention (conc). Ct 5: NFP.</p> <p>TES 3 yrs 9 mths detention.</p> <p>Eligible for supervised release after 22.5 mths.</p> <p>Sentencing judge</p>	<p>Dismissed.</p> <p>At [26]-[30] Discussion of comparable cases.</p> <p>At [35] Having regard to the seriousness of the circumstances of the sex pen offence, the sentence imposed by the sentencing judge was within the sound exercise of the sentencing discretion.</p>

		<p>Turbulent childhood.</p> <p>Extensive cannabis use from age 13.</p> <p>Commenced sexual relations from age 12.</p>	<p>want sex”. She began to cry loudly and replied that she could not as she was a Christian. The victim pushed his chest but he stood his ground. He forcefully demanded that she hug him. She was crying and shaking with fear, but agreed. The appellant kissed the victim, forcing his tongue into her mouth. He forced the victim on her knees and forced his erect penis into her mouth. He took hold of her head with both hands and pulled her towards him while thrusting his hips forward and back. He ejaculated in the victim’s mouth and then left the house.</p> <p><u>Ct 3 and 4</u> The appellant was with two others at a train station. He approached the victim, who was standing with her partner. The victim’s partner had been assaulted by a co-offender. He held the victim by her arms, restraining her from assisting her partner. When the victim stood in front of her partner to protect him from being assaulted further, the appellant grabbed her by the arms and pulled her down to the ground.</p> <p>The second victim had seen the appellant attacking a person on the platform and ran down the stairs to try and prevent the assault. The appellant ran at the second victim and punched and kicked him repeatedly.</p> <p><u>Ct 5</u> The appellant was found in poss of a small bag of cannabis.</p>	<p>classified sex pen as a very serious offence of its kind. Penetration was violent, frightening, humiliating and degrading. Impact of offending on victim was serious and profound.</p> <p>Sentencing judge found appellant had some remorse and empathy.</p>	
<i>Transitional Provisions Repealed (14/01/2009)</i>					

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Transitional Provisions Enacted (31/08/2003)

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