

Children's Court sentence appeals

Prior to 1 January 2014

Glossary:

imp	imprisonment
susp	suspended
PG	plead guilty
att	attempted
ct	count
TES	total effective sentence
EFP	eligible for parole
CRO	conditional release order
AOBH	assault occasioning bodily harm
agg burg	aggravated burglary
PSR	pre-sentence report
TOI	trial of issues
NFP	no further punishment as per s 67 <i>Young Offenders Act</i>
IYSO	intensive youth supervision order
sex pen	sexual penetration

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
28.	<p><i>LJL (a child) v Mason</i></p> <p>[2013] WASC 465</p> <p>Delivered 19/12/2013</p>	<p>12 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Criminal record; including agg burg, assault W/I to rob, agg robb.</p> <p>Committed a string of similar offences throughout the same year.</p> <p>All offences other than AOBH committed in breach of IYSO.</p> <p>Response to previous orders was unsatisfactory.</p>	<p>Agg burg x 3. Burg x 2. AOBH x 1. Criminal damage x 1.</p> <p>The appellant hit the victim to the left side of his face with a stolen scooter. He also punched the victim in his face. The victim suffered bruising under his right eye and soreness to both sides of his face.</p> <p>The appellant broke into homes and stole property. In one instance, in company with a co-offender, they threw paint inside and outside of a house. Putty was also used to stick items to the wall and to write offensive words.</p>	<p>TES 3 mths detention.</p> <p>Good prospects of rehabilitation.</p>	<p>Dismissed.</p> <p>At [15] ... Rehabilitation is a particularly important consideration in respect of children.</p> <p>At [19] There is nothing to suggest that the magistrate did not have regard to the report indicating that the appellant had recently made positive changes and was responding well to supervision. However, the offences were of a very serious nature...</p> <p>Discussion surrounding the amendment of s120 <i>Young Offenders Act</i>.</p>
27.	<p><i>WW (a child) v Williams</i></p> <p>[2013] WASC 363</p> <p>Delivered 27/09/2013</p>	<p>15 yrs at time offending.</p> <p>Convicted after PG.</p>	<p>1 x Criminal damage.</p> <p>The appellant was in custody at the Banksia Hill Detention Centre. He had been in custody for over a month.</p> <p>A riot occurred. At the time the appellant was in a secure unit. He became aware of what was occurring and smashed a portable fan in the room where he was confined. He did so in order to obtain magnets from the mechanism of the fan. He then used those magnets to smash a window with a view</p>	<p>2 mths detention.</p> <p>Cumulative on current sentence.</p> <p>Magistrate accepted that the harshness of the conditions at Hakea was a relevant consideration.</p>	<p>Allowed.</p> <p>Re-sentenced to no penalty pursuant to s 67 of the <i>YOA</i>.</p> <p>At [28] The magistrate failed to take into account the likely harshness of the conditions of detention in imposing the sentence of two months detention</p>

			<p>of escaping from the room. The attempt was unsuccessful. It was not suggested that the appellant was an instigator or ringleader of the riot.</p> <p>Due to the extensive damage of the riot juvenile detainees, including the appellant, had been relocated to the Hakea Prison and part of that prison had been designated as a juvenile detention centre. The conditions for juveniles at Hakea were significantly harsher.</p>		<p>because he made a prediction regarding the completion of work at Banksia Hill that was unsupported by evidence – accepted by respondent.</p>
26.	<p><i>JBD v The State of Western Australia</i></p> <p>[2013] WASCA 180</p> <p>Delivered 14/08/2013</p>	<p>17 yrs at time offending. 18 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Criminal record; mostly limited to traffic offences.</p> <p>Parents separated when 1 year old; no further contact with biological father; good relationship with step-father at time of sentencing.</p> <p>Positive family support; lives at home with his parents.</p> <p>Left school at Year 10; reasonable work history.</p> <p>Intoxicated at time of offending; knew that he had violent episodes when drinking.</p>	<p>Ct 1: GBH. Ct 2: AOBH.</p> <p>At around 2am on a Sunday; a maxi taxi carrying the appellant, a co-offender and a number of their friends stopped in Barrack Lane, Mandurah. The appellant had been behaving aggressively in the taxi, threatening to kill the driver and banging on the window.</p> <p>At around the same time Mr Roe, Ms Shaw and their son Levi, were trying to make their way home after a night out. They had been unsuccessful in obtaining a taxi. When they saw the appellant's taxi pull up Mr Roe approached and offered to pay the fare of the people in the taxi if he and his family could then use it to get home. One of the girls who was in the taxi was rude to Mr Roe and verbally abused him. The appellant also joined in the abuse. This cause Mr Roe to back off, telling the occupants, "It's cool, it's okay, no worries".</p> <p>At about the same time the appellant and co-offender got out of the taxi and walked towards Levi shouting abuse at him. Levi tried to calm the</p>	<p>Ct 1: 12 mths imp. Ct 2: 8 mths imp (cum).</p> <p>TES 20 mths imp.</p> <p>EFP.</p> <p>Sentencing judge found co-offender was the more aggressive of the two and found that it was probable that it was the co-offender who had fractured Mr Roe's knee. However, he considered that an injury of the kind suffered was a foreseeable result of the common purpose which both offenders had in carrying out the attacks.</p> <p>Attacks were entirely unprovoked, random</p>	<p>Dismissed on papers.</p> <p>At [29] ... the appellant was required to be sentenced in accordance with the principles under the YOA.</p> <p>At [35] The youth of the appellant and his prospects of rehabilitation were appropriately reflected in the length of the terms imposed.</p>

		<p>After being charged sought counselling for alcohol issues.</p> <p>Co-offender convicted after trial and sentenced to 3 yrs imp.</p>	<p>situation but the co-offender removed his shirt and then hit Levi, knocking him to the ground. The appellant immediately joined in with blows. Levi was momentarily knocked unconscious (AOBH). His mother, who was close by, was terrified and began screaming.</p> <p>Mr Roe heard the yelling, saw his son being attacked and tried to help by pulling off one of the offenders. This caused both the appellant and the co-offender to turn on Mr Roe.</p> <p>The appellant and co-offender both punched Mr Roe and then kicked him after he fell to the ground. The appellant was then dragged back into the taxi by his girlfriend. The co-offender continued to attack Mr Roe, kicking him to the stomach, chest and back area before stomping on him. During this attack Mr Roe was on his knees, holding his hands up and pleading for the co-offender to stop (GBH).</p> <p>Levi Roe suffered a swollen and bruised left eye, abrasions to his lip and elbows.</p> <p>Mr Roe received a fractured tibia of the left knee. He also received multiple bruises and abrasions.</p>	<p>and senseless.</p> <p>Degree of remorse and co-operative with police although limited to telling the police that he could remember little about what had occurred.</p> <p>Reasonable prospects of rehabilitation.</p>	
25.	<p><i>KWLD v The State of Western Australia</i></p> <p>[No 4] [2013]</p> <p>WASCA 185</p> <p>Delivered 14/08/2013</p>	<p>15-17 yrs at time offences. 18 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record; breach VRO, make threatening statement, fraud, poss child</p>	<p>Ct 1: Att sex pen child 13-16 yrs. Ct 2: Sex pen child 13-16 yrs. Ct 3: Sex pen child 13-16 yrs. Ct 4: Sex pen child 13-16 yrs. Ct 5: Sex pen child 13-16 yrs. Ct 6: Sex pen child 13-16 yrs. Ct 7: Sex pen child 13-16 yrs. Ct 8: Involving a child in child exploitation. Ct 9: Poss child exploitation material.</p>	<p>Ct 1: 18 mths imp. Ct 2: 12 mths imp (conc). Ct 3: 12 mths imp (cum). Ct 4: 9 mths imp (conc). Ct 5: 9 mths imp (conc). Ct 6: 9 mths imp (conc). Ct 7: 9 mths imp (conc).</p>	<p>Dismissed on papers.</p> <p>At [94] Based on the findings of the sentencing judge the appellant had engaged in a pattern of behaviour. This involved targeting girls who were younger and previously</p>

		<p>exploitation material and stalking.</p> <p>Troubled childhood; born of a very brief liaison between his parents who were not in a relationship; little positive contact with biological father; Short term emergency accommodation by DCP from 13 yrs.</p> <p>Unresolved personal issues; from young age been exposed to domestic violence, substance abuse and criminality.</p> <p>Intelligent and did well at school.</p> <p>At time of offending was likely to have been suffering a depressive illness; borderline personality disorder with significant anti-social personality traits.</p> <p>On bail at time of agg burg offences.</p>	<p>Ct 10: Agg burg. Ct 11: Agg burg. Ct 12: Dep liberty. Ct 13: Impersonating public officer.</p> <p>The sexual offences involved 4 different female victims. TB was 14 yrs, SM was 13 yrs and both MC and SW were 15 yrs.</p> <p><u>Victim MC:</u> At the time of the offences MC and the appellant were in a relationship. In June 2010 the appellant initiated contact with MC by electronic communication. He arranged to meet with her to see a movie. After meeting they walked together to a secluded location where they had sexual intercourse until he ejaculated. MC asked the appellant to use a condom but he refused.</p> <p>After the incident the appellant and MC developed a relationship which lasted for about 3 months. The appellant sought information of a private nature from MC with the intention of ensuring her trust and dependency upon him.</p> <p><u>Victim SW:</u> SW was 1 of 40-50 girls in Perth randomly targeted by the appellant to engage in chat via social media with a view to becoming friends.</p> <p>In 2011 the victim initiated contact with SW through Facebook. She was previously known to him. The appellant manipulated the victim including threatening to terminate their friendship unless she sent sexually explicit photographs of</p>	<p>Ct 8: 6 mths imp (conc). Ct 9: 4 mths imp (conc). Ct 10: 15 mths imp (conc). Ct 11: 9 mths imp (conc). Ct 12: 12 mths imp (conc). Ct 13: 3 mths imp (conc).</p> <p>TES 30 mths imp.</p> <p>EFP.</p> <p>Trial of Issues – there was a dispute as to whether each of the victims had freely and voluntarily consented to the relevant sexual acts.</p> <p>Sentencing judge viewed the offences against TB and SM as being the most serious and that the appellant had used the difference in age between he and the complainants and his own level of maturity to achieve his objective with them.</p> <p>Noted by judge that the</p>	<p>unknown to him. He then engaged in emotional coercion and persistence to obtain their compliance. Other than in the case of MC this did not occur in the context of a genuine relationship.</p> <p>At [104] – [105] An appeal is not an opportunity to seek new material with a view to retrying the issues on a different basis. The general rule is that an appeal court must decide an appeal on the evidence and material before the court below... the test in an appeal against sentence is whether if the evidence had been before the sentencing judge a different sentence should have been imposed.</p> <p>At [113] ... It is far from clear that the habits or behaviour of young people in regards to social media are recognised fields of special expert knowledge.</p> <p>At [116] I have taken the opportunity to examine the</p>
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			<p>herself to him. She did as requested and took photographs of herself, which she sent to him.</p> <p>In respect of the charge of poss child exploitation material this related to the photograph sent to the appellant by SW. In the course of his evidence the appellant conceded that he had wanted this photograph because he found it sexually arousing.</p> <p><u>Victim TB:</u> The appellant initiated contact with TB in 2011 using mobile phone texts and internet. He asked TB to meet with him at a beach and she agreed. Prior to meeting the victim the appellant said that if she did not meet with him he would kill himself. After they met the appellant tried to coerce TB to engage in sexual behaviour. He attempted to sexually penetrate her with his penis. He then digitally penetrated her without her consent. After she walked home the appellant made contact with her by phone and made threats towards her, her family and himself.</p> <p><u>Victim SM:</u> The appellant initiated contact with SM in early 2011 by electronic media. He persuaded her to meet with him at a service station. They then walked back to her house. The appellant forced himself on her with threats of self-harm and manipulation. She complied and he penetrated her vagina until he ejaculated. The appellant was wearing a condom but it broke. He laughed at this.</p> <p>State's case was that in respect of each of the complaints the appellant had used emotional</p>	<p>appellant is an intelligent young man who was fully aware of the nature of the offences he was committing; high risk of re-offending.</p>	<p>extensive Facebook exchanges... When read in their entirety they amply support the conclusion that the appellant was engaged in manipulative behaviour. He maintained control by becoming angry, threatening to withdraw or threatening to tell others what had occurred.</p> <p>At [144]-[145] It is an error for a sentencing judge to either reduce or extend a term of imprisonment based upon an assumption that the offender will be paroled... There is no reason to suppose that the sentencing judge imposed a sentence that was longer than was otherwise appropriate to take into account an assumption that the appellant would be released on parole.</p>
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			<p>manipulation and persistence to achieve his objective.</p> <p><u>Agg burg:</u> The appellant and his co-offender formed a common intention to go to the victim's house and threaten and intimidate the occupants. The intention was that this would be done whilst he pretended to be a police officer conducting a search for drugs. The appellant dressed as a police officer armed with a knife sharpening implement, entered the house of 49B Dongara Street, Innaloo and declared he was a police officer and demanded to know where the drugs were.</p> <p>The appellant left and met the co-offender who was leaving 49A Dongara Street. He grabbed her and pretended to place her under arrest. He then entered 49A declaring himself to be a police officer and yelled to the occupants, including a 10 yr old child to get on the floor and place their arms behind their backs whilst he demanded to know the location of their drugs.</p>		
24.	<p><i>CJH v The State of Western Australia</i></p> <p>[2013] WASCA 139</p> <p>Delivered 05/06/2013</p> <p>Co-offender of <i>MLT v The State</i></p>	<p>16 yrs 6 mths at time of offending. 17 yrs 3 mths when sentenced.</p> <p>Convicted after PG.</p> <p>No prior criminal record.</p> <p>Left secondary school early in Year 11 and commenced an apprenticeship as a</p>	<p>1 x s445 <i>Criminal Code</i> fail to use reasonable care and to take reasonable precautions to contain a fire under his control so that it did not destroy property.</p> <p>Between 9:30pm and 11:30pm on Saturday, 7 July 2012, the appellant, MLT and a female juvenile were on the grounds of the Mount Lawley Primary School. They walked into an undercover quadrangle located in the centre of the school building. Each of the appellant and MLT had a cigarette lighter. They used the lighters to ignite two or three plastic chairs. One of the chairs was under a timber</p>	<p>8 mths detention.</p> <p>Eligible for release under a supervised release order upon serving 50% of term.</p> <p>After initially denying any role, the appellant acknowledged his criminal behaviour to police. He co-operated</p>	<p>Dismissed.</p> <p>At [48] Since the creation of the offence against s445A, read with s444A, of the Code, sentencing patterns have not emerged for either adults or juveniles. No doubt, sentencing patterns will be established gradually as a result of the experience of</p>

	<p><i>of Western Australia</i> [2013] WASCA 140</p>	<p>diesel mechanic.</p> <p>Blamed his behaviour on his experimentation with cannabis and his association with anti-social friends and acquaintances.</p> <p>Strong family support.</p>	<p>walkway on the southern side of the quadrangle. The appellant, MLT and the female juvenile left the school premises while melted plastic from this chair was still burning. After they departed, the walkway and adjacent classrooms caught alight. The fire spread rapidly through most of the school building. Numerous fire crews attended. After a number of hours the fire was brought under control. The affected parts of the school building had to be demolished. The cost of repairing and reinstating the school building was between \$16 million and \$20 million.</p>	<p>and made a number of significant admissions.</p> <p>Participated in victim mediation. Made an apology to victims.</p> <p>Triggers for offending appeared to be substance abuse (alcohol and cannabis), a lack of consequential thinking and an association with a negative peer group.</p> <p>Sentencing judge found each were jointly involved in the arson of the plastic chairs. They were therefore jointly responsible for the conflagration and its consequences.</p> <p>It was accepted that the appellant and MLT did not set fire to the plastic chairs with the intention of damaging or destroying the school building.</p>	<p>the courts in sentencing offenders who have offended with varying degrees of seriousness and culpability.</p> <p>At [49] It has been observed on numerous occasions, in relation to the offence of arson under s444(1)(a) of the Code, that there is no sentencing tariff for arson because of the great variation that is possible in the circumstances of the offending and the offenders. ... In my opinion, that observation is equally applicable to the offence against s445A read with s444A.</p> <p>At [50] ... Arson is a more serious offence than the offence in question in this appeal.</p>
23.	<p><i>MLT v The State of Western Australia</i></p>	<p>15 yrs 9 mths at time of offending, 16 yrs 6 mths when sentenced.</p>	<p>1 x s445 <i>Criminal Code</i> fail to use reasonable care and to take reasonable precautions to contain a fire under his control so that it did not destroy property.</p>	<p>8 mths detention.</p> <p>Eligible for release under a supervised</p>	<p>Dismissed.</p> <p>At [37] In the present case, the appellant's offending</p>

<p>[2013] WASCA 140</p> <p>Delivered 05/06/2013</p> <p>Co-offender of <i>CJH v The State of Western Australia</i> [2013] WASCA 139</p>	<p>Convicted after PG.</p> <p>No prior criminal record.</p> <p>His parents separated when he was about 11. Their separation had a profound emotional impact on him.</p> <p>Ceased secondary education during Year 11 and was in full time employment.</p> <p>Participated in counselling related to emotional issues associated with his parents separation before and after the commission of the offence; Very supportive parents.</p>	<p>Between 9:30pm and 11:30pm on Saturday, 7 July 2012, the appellant, CJH and a female juvenile were on the grounds of the Mount Lawley Primary School. They walked to an undercover quadrangle located in the centre of the school building. Each of the appellant and CJH had a cigarette lighter. They used the lighters to ignite two or three plastic chairs. One of the chairs was under a timber walkway on the southern side of the quadrangle. The appellant, CJH and the female juvenile left the school premises while melted plastic from this chair was still burning. After they departed, the walkway and adjacent classrooms caught alight. The fire spread rapidly through most of the school building. Numerous fire fighting crews attended. After a number of hours the fire was brought under control. The affected parts of the school building had to be demolished. The cost of repairing and reinstating the school building was between \$16 million and \$20 million.</p>	<p>release order upon serving 50% of term.</p> <p>After initially denying any role, the appellant acknowledged his criminal behaviour to police. He co-operated and made a number of significant admissions.</p> <p>Participated in victim mediation. Made an apology to victims.</p> <p>Triggers for offending appeared to be substance abuse (alcohol and cannabis), a lack of consequential thinking and an association with a negative peer group.</p> <p>Sentencing judge found each were jointly involved in the arson of the plastic chairs. They were therefore jointly responsible for the conflagration and its consequences.</p> <p>It was accepted that the appellant and CJH did not set fire to the plastic</p>	<p>was very serious.... As the sentencing judge noted, a school and its buildings are invariably an important hub and resource for the local community (ts4). A school is not merely land, bricks and mortar. In the present case, the teachers, young students and parents, and the local community generally, experienced a powerful sense of loss at the destruction of their school (including its historical records and other contents).</p> <p>At [44] ... sentencing patterns have not yet emerged, for either adults or juveniles, in relation to the offence against s445, read with s 444A.</p>
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				chairs with the intention of damaging or destroying the school building.	
22.	<p><i>JSA v The State of Western Australia</i></p> <p>[2012] WASCA 25</p> <p>Delivered 03/02/2012</p>	<p>17 yrs 4 days at time of offending. 17 yrs 2 mths at time of sentencing.</p> <p>Convicted after PG.</p> <p>Conceived in tragic circumstances.</p> <p>Eldest of 7 children. All have been in the care of DCP since 2004, as a result of their mother's neglect, alcohol misuse, incarceration and homelessness. During his early years, the appellant was raised principally by his extended family.</p> <p>Significant history of substance abuse since 12 yrs. Main substances being alcohol and cannabis, but also used inhalants.</p> <p>Very substantial prior criminal record.</p> <p>Considerable part of three</p>	<p>Ct 1: Agg burg s 401(2)(a) <i>Criminal Code</i> Ct 2: Assault public officer s 318(1)(d) <i>Criminal Code</i> Ct 3: Assault public officer s 318(1)(d) <i>Criminal Code</i></p> <p><u>Ct 1:</u> The appellant was known to the victim. The appellant entered the victim's home, without permission, through a bathroom window. The victim was asleep on a chair in the lounge room. His mobile phone was on his chest. The appellant approached the victim and removed the phone and the victim awoke.</p> <p>The appellant had a screwdriver. He took a key to the victim's home and then pointed the screwdriver at the victim and threatened to stab him. The appellant then went to the front door, unlocked it and ran from the premises.</p> <p>The victim called police. He then heard noises from outside his home. The victim went to the side of the premises and confronted the appellant and another male person, who were outside. The victim saw his keys hanging from the appellant's pocket. Also, the victim could hear his phone ringing in the appellant's pocket. He demanded the return of his keys and telephone. The appellant responded by demanding the return of his 'goon bag', which he had left at the back window of the victim's house.</p>	<p>Ct 1: 18 mths detention. Ct 2: 2 mths detention (cum). Ct 3: 2 mths detention (conc).</p> <p>TES 20 mths detention.</p> <p>Overlap between sentence and sentence being served.</p> <p>Judge stated the appellant was a 'prolific offender' who had a 'high probability of re-offending'.</p>	<p>Dismissed.</p> <p>At [104] There was no scope for greater leniency despite the appellant's youth and the other matters of mitigation. The justice system had previously made numerous significant and unsuccessful attempts to rehabilitate the appellant.</p>

		<p>years prior to these offences in detention.</p> <p>History of re-offending after release from custody.</p> <p>Displayed a pattern of absconding from Departmental and private placements in the community.</p> <p>Low literacy and numeracy skills. Significant gaps in his education as a result of his truancy from school, issues arising from placements in the community and the length of time he has spent in detention.</p> <p>Committed the offences whilst he was subject to a supervised release order.</p> <p>This offending resulted in the cancellation of the order.</p>	<p>The victim went to the back window and retrieved a plastic wine bag that was near the open bathroom window. When the victim made a comment to the appellant about his having entered the victim's home, the appellant became aggressive. He grabbed the victim and held the screwdriver in his hand as if he was going to stab the victim in his stomach. The appellant then ran away again.</p> <p><u>Cts 2 & 3</u> Later that evening two police officers took the appellant to a country hospital for examination. At the hospital, the appellant began taunting the police officers about the recent death of a police officer in a traffic crash. The appellant spat at one of the police officers, striking him on the right shoulder with saliva. The appellant then turned and spat at the other police officer, striking him on the left shoulder with spray from the saliva.</p>		
21.	<p><i>LAM v The State of Western Australia</i></p> <p>[2012] WASCA</p>	<p>17 yrs 5 mths at time offending.</p> <p>Convicted after PG.</p>	<p>1 x Agg robbery. 1 x GBH s 297 <i>Criminal Code</i>.</p> <p>Appellant and juvenile co-offenders, having attended a party where they drank alcohol and used</p>	<p>12 mths detention. 15 mths detention.</p> <p>TES 15 mths detention – eligible for release on</p>	<p>Dismissed – leave refused on papers.</p> <p>At [25] “<i>In the proper circumstances, the</i></p>

<p>246</p> <p>Delivered 29/11/2012</p>		<p>cannabis, were travelling on the same train as the victim. Appellant and four co-offenders got off at the same train station as the victim and began walking in the same direction. While following the victim, the group discussed stealing his mobile phone. One juvenile began shouting at the victim and asking to use his mobile phone. The others in the group joined in and the victim began to walk faster. The group began to make fun of the victim's clothing. The appellant picked up a bottle from the footpath and threw it in the direction of the victim. Victim told them to go away and other members of the group began to throw rubbish, bottles and other items in his direction. One co-offender demanded the victim's mobile phone while another called out for that offender to hit the victim. The victim held out his phone, fearing further assault, and another co-offender snatched it from his hand. As the victim attempted to get away from the group, he accidentally bumped into the appellant. The appellant punched him and he fell to the ground. As the victim was getting up, a co-offender asked for his wallet. The victim said he did not have one and the appellant stepped forward and punched the victim in the face. The punch rendered the victim unconscious and he fell to the ground and hit his head on the road. As the victim lay unconscious, another co-offender took the pendant from the victim's neck and threw it on the side of the road. Victim suffered serious head injuries, including frontal lobe haemorrhaging and a fractured skull. Victim spent 9 days in hospital and suffers ongoing difficulty with his eyesight, double visions, pain, concentration, short-term memory, vocabulary and sense of taste and smell.</p>	<p>supervised release order after 7 mths.</p>	<p><i>seriousness of an offence and the circumstances of its commission can require the imposition of a sentence of detention".</i></p> <p>At [28] <i>"There comes a point at which the seriousness of a crime will override the mitigating factor of being a juvenile of prior good character...the older the juvenile offender, the more responsible and accountable they must be for their actions. The community in this State is now frequently confronted with juveniles and youths engaging in alcohol and/or drug-fuelled with anti-social and violent group behaviour. The dangers of such behaviour would not be lost on a 17 year old."</i></p>
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<p>20.</p>	<p><i>LAP v The State of Western Australia</i></p> <p>[2012] WASCA 156</p> <p>Delivered 15/08/2012</p>	<p>Convicted after early PG.</p> <p>Lengthy prior criminal record – in detention persistently since 2007.</p> <p>Offending breached supervised release order.</p> <p>Poor history compliance with supervision orders.</p> <p>Exposed to domestic violence and substance abuse from early age; no stable accommodation throughout life; both parents spent considerable time in jail; offending is normal behaviour within family and extended family unit.</p>	<p>5 x Agg burg.</p> <p>Appellant broke into people’s homes while they were out and stole property.</p> <p>Offending occurred one day after appellant’s release on a supervised release order from a sentence of 18 mths detention for series of offences including agg burg.</p>	<p>22 mths detention each ct.</p> <p>TES 22 mths detention.</p> <p>No remorse; little victim empathy; little understanding of the seriousness of offending; high likelihood re-offending.</p>	<p>Dismissed – leave refused on papers.</p> <p>At [12]-[13] Characterised by sentencing judge as having a “very persistent habit of burglary’ and, given the failure of previous rehabilitative attempts, the protection of the community was of principal concern notwithstanding the appellant’s youth.</p> <p>At [21] Appellant was a repeat offender and a minimum term of 12 mths imp had to be imposed.</p>
<p>19.</p>	<p><i>HLJT v Hart</i></p> <p>[2012] WASCA 120</p> <p>Delivered 15/06/2012</p>	<p>16 yrs 10 mths at time offending.</p> <p>17 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record – agg robbery; steal motor vehicle; receiving; armed</p>	<p>1 x Armed robbery.</p> <p>Appellant and co-offender were at a train station. They followed the victim and his friend towards their car. Appellant was armed with a 35cm metal hand axe and ran at the victim. Appellant raised the axe above his shoulder in a striking position approx 5cm from the victim’s face and demanded the victim’s gold chain (value \$1800) otherwise he</p>	<p>12 mths detention.</p> <p>TES 12 mths detention.</p>	<p>Dismissed – leave refused on papers.</p>

		robbery	<p>would “chop” the victim’s face. Appellant took the gold chain and told the victim to remember his face as he would remember the victim’s face and told the victim if he went to the police he would “get youse”.</p> <p>The appellant’s room was later searched by police and, when apprehended, he was wearing the stolen chain.</p>		
18.	<p><i>DBW (a child) v The State of Western Australia</i></p> <p>[2011] WASCA 206</p> <p>Delivered 30/09/2011</p>	<p>16 yrs 2 mths at time offending. 17 yrs 2 mths at time sentencing.</p> <p>Convicted after late PG (10 mths after offence) – initial PG withdrawn and offer made to PG on basis not principal offender. TOI set to determine appellant’s role but vacated when appellant then offered to PG as principal offender.</p> <p>No prior criminal record.</p> <p>Significant anger control problems – early exposure to domestic violence; strong family support.</p> <p>Positive prospects of rehabilitation - at time of sentencing, appellant was</p>	<p>1 x Unlawful wounding. 1 x Unlawful possession of a weapon.</p> <p>At [27] Offending at upper end of range of seriousness – unprovoked, senseless and cowardly act of extreme violence.</p> <p>Appellant and his friends went to take part in the Australia Day celebrations in Perth. Before leaving, appellant armed himself with a meat cleaver. The appellant and his friends were standing on a footpath when the victim walked past. The appellant said, “What are you looking at?” to the victim, who responded by saying, “Not you mate,” and continued to walk. The appellant drew out the cleaver and followed the victim, demanding that the victim remove the Australian flag he had draped over his shoulders. Victim hesitated and appellant slashed the victim’s arm with the cleaver - causing a 10cm long, 2cm deep wound, severing muscle tissue and exposing bone. No tendon or significant nerve damage done but 13 sutures required to close wound.</p> <p>Appellant heavily intoxicated at time offending and</p>	<p>18 mths detention. 2 mths detention.</p> <p>TES 18 mths detention.</p> <p>No real remorse – indicative of process by which final PG accepted and by statements made by appellant to victim mediation officer that he engaged in victim mediation as it would look good in court.</p>	<p>Dismissed.</p> <p>At [28] Circumstances of the offending (public community event attended by families) justified increased weight being given to general deterrence.</p> <p>At [33] Youth and need for particular emphasis to be placed on rehabilitation does not mean general deterrence is not an important sentencing consideration where offending serious and/or character and antecedents of offender required.</p> <p>At [34] Youth is a relative factor – chronological age will not always match intellectual and emotional</p>

		<p>employed, had withdrawn from negative peer group and expressed willingness to undergo counselling.</p> <p>Pregnant girlfriend.</p>	<p>claimed to have no memory of events. Lack of memory claimed by appellant as reason for his initial denials of responsibility.</p>		<p>maturity and the older the offender the more diminished becomes the factor of youth.</p> <p>At [35] Rehabilitation key factor in juvenile sentencing process but does not mean that good prospects of rehabilitation must necessarily give rise to non-custodial sentences.</p>
17.	<p>TRK v The State of Western Australia</p> <p>[2011] WASCA 90</p> <p>Delivered 12/04/2011</p>	<p>17 yrs at time offending. 18 yrs at time sentencing.</p> <p>Offending breached 12 mth CRO for agg burg.</p> <p>Extensive prior criminal record for serious offences – spent significant portion youth in juvenile detention.</p> <p>Highly dysfunctional upbringing; unstable family environment; negative adult role models. Sniffing solvents and using cannabis at 11 yrs; significant substance abuse issues.</p>	<p>1 x Agg armed robbery. 1 x Agg robbery. 1 x Disorderly conduct. 1 x Obstruct police.</p> <p>Approx 2am, appellant and friends in Northbridge – arrested for disorderly behaviour and obstructing police. Approx 6 hrs after arrest, appellant and two adult co-offenders, approached victim 1 in parking lot. Appellant demanded keys, victim refused and appellant tried, unsuccessfully to grab the keys. Co-offender punched victim 1 and other co-offender grabbed keys, dislocating victim 1's little finger. Appellant and co-offenders drove off in victim 1's car.</p> <p>Approx 40 min later, appellant and co-offenders stopped at petrol station with intent robbing it. Two co-offenders entered premises and one co-offender, armed with screwdriver, demanded money. Victim 2 said there was no money and co-offender threatened to jump counter and ram screwdriver in her head. Co-offenders then threw cans of soft drink</p>	<p>2 yrs detention. 9 mths detention. Fine. Fine.</p> <p>CRO cancelled – 12 mths detention substituted.</p> <p>TES 2 yrs 9 mths detention.</p> <p>Downplayed responsibility; no personal responsibility; high risk re-offending.</p>	<p>Dismissed.</p> <p>At [9] <i>“The detention for the current offences will for the first time be served in an adult prison. However the reality is that the appellant is at a high risk of re-offending ... The President was required by statute to focus on the protection of the community. Notwithstanding the appellant's youth and other mitigating factors, there is simply no arguable basis to contend that the total effective sentence is more than what is required to reflect the total criminality of the appellant's</i></p>

			at victim 2, hitting her in the face, head and back. Victim 2 locked herself in manager's office. Appellant ran into premises, jumped counter and took till from co-offender and went to remove second till. Appellant and co-offenders left.		<i>offending."</i>
16.	<i>TRKKH v The State of Western Australia</i> [2011] WASCA 36 Delivered 22/02/2011	17 yrs and 9 mths at time offending. Convicted after PG. Significant prior criminal record – stealing; causing explosion; armed robbery; false details to police; obstruct public officer; damaging property; stealing; dangerous driving. Substance abuse issues. Father died in 2009; negative peer influences.	1 x Agg armed robbery. 1 x Common assault. Appellant, co-accused and third party near a shop they had previously formulated a plan to rob. Robbery discussed again and 40 min later, appellant disguised his face (using two bandanas, sunglasses and a hood)armed himself with metal baseball bat. Co-offender also disguised himself and then armed himself with a metal pole. Third party acted as a lookout with appellant and co-offender approached mini-mart. Third party signalled shop empty and appellant and co-offender entered. Appellant struck victim (58 yr old shop proprietor) several times to rear of his head with baseball bat – fracturing the skull. Victim's son heard the screams and approached appellant and wrestled him to the ground. Appellant hit head on counter as he fell and he dropped the baseball bat. When appellant got back on his feet, he saw the victim's son attending to this father. Appellant picked bat up and hit victim's son several times in the body. Appellant then left.	2 yrs 6 mths detention. 2 mths detention. TES 2 yrs 6 mths detention.	Dismissed. At [25] given actual and planned violence and impact on victim, sentence lenient notwithstanding youth.
15.	<i>TT v The State of Western Australia</i> [2011] WASCA	16 yrs at time offending. 17 yrs 2 mths at time sentencing. Convicted after PG – TOI	Ct 1: Armed assault with intent to rob Ct 2: AOBH. Ct 3: AOBH. <u>Ct 1:</u>	Ct 1: 2 yrs detention. Ct 2: 3 mths detention. Ct 3: 3 mths detention. TES 2 yrs 6 mths	Appeal against sentences for Counts 1-3 dismissed. At [28] TES proportionate to overall offending

	<p>40</p> <p>Delivered 22/02/2011</p>	<p>for purposes sentencing.</p> <p>Appalling prior criminal record - agg armed robbery; AOBH; agg armed assault with intent to rob; disorderly conduct; armed robbery.</p> <p>Reasonably stable upbringing.</p> <p>Regular user of alcohol and cannabis.</p>	<p>Appellant stole a backpack from the victim. During the course of the robbery, appellant placed the blade of a Stanley knife to the victim's throat.</p> <p><u>Cts 2 and 3:</u></p> <p>Appellant entered a residence occupied by the two victims (two girls aged 14 yrs and 15 yrs). The appellant was known to the victims and they asked him to leave. An argument ensued. The appellant remained outside but would not leave. Victim 1 lightly pushed the appellant to encourage him to leave. The appellant kicked victim 1 four times in the left leg, causing her to fall to the ground. Appellant then punched victim 2 with sufficient force to knock her to the ground. Appellant then ran from the area.</p>	<p>detention.</p> <p>Eligible for release on supervised release order after 1 yr 3 mths detention.</p>	<p>conduct – personal and general deterrence were primary sentencing considerations in this instance.</p>
<p>14.</p>	<p><i>CAP (a child) v Jeffers</i></p> <p>[2010] WASC 235</p> <p>Delivered 31/08/2010</p>	<p>13-14 yrs at time offending.</p> <p>No prior criminal record.</p> <p>All but one offence committed while appellant on bail.</p> <p>Dysfunctional childhood; alcoholic mother; father had little role in his upbringing and was imprisoned at time appellant sentenced.</p> <p>Average student; good sportsman.</p> <p>Substance abuse issues –</p>	<p>6 x Agg burg. 2 x Agg armed robbery. 4 x Attempted agg armed robbery.</p> <p>Appellant acted as look out while two co-offenders broke into a house in the early hours of the morning while the family was asleep inside. Items valued at \$6150 were stolen. Appellant referred to Juvenile Justice Team and released on bail.</p> <p>While on bail appellant and two co-offenders stopped victim 1 as he was riding his bike and demanded his phone and money. Appellant lifted his shirt to show victim 1 a machete after he refused to hand his belongings over. Victim 1 was the surrounded and the appellant held the machete towards victim 1's throat. Victim 1 gave them is mobile phone and was allowed to leave on his bike. Group then caught a train and at the train station approached a surrounded victim 2, demanding his</p>	<p>TES 12 mths detention.</p>	<p>Dismissed.</p> <p>At [32]-[34] Clear intent of relevant legislative provisions is that, in sentencing a young offender (especially a first time offender) a court should lean towards a disposition which encourages rehabilitation. This needs to be balanced with the need for personal and general deterrence which remain relevant factors.</p> <p>At [40] Conclusion detention was warranted</p>

		alcohol, cannabis, valium (consumed before last set of burg); willing to engage in substance abuse counselling.	ipod. Victim 2 refused and appellant lifted his short to reveal the machete. The robbery was aborted due to the disturbance of passing traffic. Appellant and co-offenders later approached victims 3 and 4 (juvenile females) as they were walking on the street. Appellant demanded their phones and they refused – one using her phone to call the police. Appellant pulled out machete and swung it near the victims. Victims waked off and group followed them until they became aware the victims were calling the police. Appellant was arrested that day, made full admissions and was subsequently bailed. Approx two weeks later appellant committed 5 burglaries on homes on the morning of his aunt's funeral.		was open but, equally, an alternate form of disposition not involving detention was also open.
13.	<i>JTP v The State of Western Australia</i> [2010] WASCA 191 Delivered 22/09/2010	14 yrs at time offending. Convicted after fast-track PG. No prior criminal record. Withdrew from associations with negative peer groups after the offending. Strong family support.	Ct 1: Agg burglary. Ct 2: Criminal damage by fire. The appellant and three juvenile co-offenders broke into a primarily school by removing glass window panes. The appellant used a permanent marker to write graffiti on the property. The group then started setting objects on fire using cigarette lighters. The appellant lit papers and string that were strung up across the classroom. The fire took hold and the group became fearful and left the premises. The school was destroyed, causing \$2.2 million in damages.	Ct 1: 5 mths detention. Ct 2: 10 mths detention. TES 10 mths detention. Remorse.	Dismissed. At [17] Extreme youth can significantly reduce the importance of general deterrence, even for very serious offences but no error on the part of the President in imposing a sentence of immediate detention in this instance.
12.	<i>JA (a child) v The State of Western Australia</i>	12 yrs at time offending. 13 yrs at time appeal. Convicted after PG.	Ct 1: Agg burglary. Ct 2: Burglary. Ct 3: Steal motor vehicle. Ct 4: Failure to stop. Ct 5: Reckless driving.	Ct 1: 12 mths detention. Ct 2: 12 mths detention. Ct 3: 6 mths detention. Ct 4: NFP. Ct 5: 6 mths detention.	Dismissed. At [5] "...while rehabilitation of a juvenile offender must always be a

	<p>[2008] WASCA 70</p> <p>Delivered 26/03/2008</p>	<p>Significant prior criminal record - 23 x burglary; 9 x stealing; 5 x steal motor vehicle; 5 driving without license, including prior police pursuit.</p> <p>Father died in a car accident when appellant aged 3 yrs; 8 siblings - 3 of whom were currently serving terms of detention or imprisonment; mother unable to effectively control/supervise appellant – no other suitable care arrangements able to be made.</p> <p>Sporadic attendance at school.</p>	<p>Ct 6: Drive without licence. Ct 7: Breach bail.</p> <p>The appellant and her 12-year old co-offender entered a dwelling in the late afternoon by removing a wire screen from an open window. The co-offender acted as the lookout while the appellant stole a handbag (Ct 1). The appellant was ultimately charged with this offence and was granted bail but failed to appear (Ct 7). On a different day, the appellant, her 10-year-old brother and 12-year-old cousin were waiting at a bus stop when they saw a vehicle leave a residence. The appellant entered that residence through a front window and stole a quantity of foreign currency (Ct 2). The group then travelled to Adventure World. After leaving Adventure World, the appellant stole a car from a nearby car park (Ct 3). The group drove off in the car. A police vehicle sighted the appellant and pursued her with its emergency lights activated. A pursuit ensued where the appellant at various stages drove at 120km/h in a 70km/h zone, ran a red light and mounted the kerb driving on the footpath. The police ultimately had to abandon the pursuit (Cts 4-6).</p>	<p>Ct 6: NFP. Ct 7: NFP.</p> <p>TES 12 mths detention.</p>	<p><i>significant consideration in sentencing, there will be cases, and this is one, when the protection of the community is also a vital consideration.”</i></p>
11.	<p><i>A Child v The State of Western Australia</i></p> <p>[2007] WASCA 285</p> <p>Delivered 23/12/2007</p>	<p>12 yrs at time offending. 13 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>No prior criminal record.</p> <p>Offered to give evidence against co-offenders.</p>	<p>Ct 1: Deprivation of liberty Ct 2: Threats to harm. Ct 3: AOBH.</p> <p>Victim aged 12 yrs and of small stature. The appellant and four juvenile co-offenders took victim to a makeshift hut in a bushland area near their school. Victim tried to run away but the group caught up with him and gave him wedgies. Victim</p>	<p>Ct 1: 8 mths detention. Ct 2: 4 mths detention. Ct 3: 6 mths detention.</p> <p>TES 8 mths detention.</p> <p>Eligible for supervised release after 4 mths detention.</p>	<p>Allowed.</p> <p>CRO with 9 mths detention imposed (reduced from 11 mths to reflect 2 mths spent in custody prior to determination of appeal) – pursuant to s 101 <i>Young Offender’s Act</i>.</p>

			<p>was suspended from a log by his underwear. One co-offender pinned victim against a wall by pressing a 'Y' shaped piece of wood against his neck while the appellant urinated in his lunchbox. Appellant then threw the lunchbox at the victim and whipped his legs with a thorny branch, causing his legs to bleed. Victim was made to kiss one of the co-offenders and was then slapped across the face. The appellant dug a shallow grave for the victim at the suggestion of one of the co-offenders. The victim was then forced to lie in the grave and the appellant shovelled sand over his legs. Victim tried to run but one of the co-offenders threatened him with an axe. Victim again attempted to run away and the group threw rocks and honky nuts at him, focusing on his head. The victim was caught again and punched several times in the arm. Victim was then subjected to degrading treatment – made to crawl on all fours; forced to jump in thorn bushes; and forced him to act like a chicken. Victim ran again and the group threw rocks at him - some of the rocks striking the victim in the head and back. The group caught the victim again and told him if he attempted to get on the school bus, he would have rocks thrown at him. Offending period was majority of school day.</p> <p>Appellant did not instigate offending though he was actively involved in it.</p>	Genuine remorse; took responsibility for conduct; not emotionally mature enough to have fully appreciated impact of offending on victim.	
10.	<i>The State of Western Australia v "A Child"</i>	<p>14 yrs at time offending.</p> <p>Convicted after PG.</p> <p>No relevant prior criminal</p>	<p>2 x Indecent dealing child u 13 yrs.</p> <p>3 x Sex pen child u 13 yrs.</p> <p>Victim 6 yr old boy.</p>	<p>TES 18 mths IYSO.</p> <p>Genuine remorse.</p>	<p>Dismissed.</p> <p>Given cognitive impairment, lack of prior sexual offending,</p>

	<p>[2007] WASCA 115</p> <p>Delivered 29/05/2007</p>	<p>record.</p> <p>Appellant abandoned at 2 mths of age by natural mother when left in the care of his babysitter; babysitter cared for him ever since and appellant regards her as his mother.</p> <p>Significant cognitive limitations and learning disabilities.</p> <p>Sexually assaulted by older child when approx same age as victim.</p> <p>At time sentencing respondent attending counselling and doing well in school.</p>	<p>Indecent dealing involved massaging the victim's penis on the outside of his clothing and kissing the victim on the face.</p> <p>Sex pen involved two counts of penile penetration of the anus and one count of making the victim perform fellatio on the respondent.</p> <p>All the offences were part of one course of conduct on the same date. In the course of offending the respondent threatened to kill the victim if he did not do what the respondent said.</p>		<p>continuing support of his 'mother' and reports which supported a non-custodial order, it was open for the sentencing judge to impose an IYSO.</p> <p>NB: Double jeopardy applied to State appeals.</p>
<p>9.</p>	<p>"I" (a child) v The State of Western Australia</p> <p>[2006] WASCA 9</p> <p>Delivered 20/01/2006</p>	<p>17 yrs at time offending.</p> <p>No significant prior criminal record.</p> <p>Convicted after PG – TOI for purposes sentencing regarding appellant's allegations that victim racially vilified and assaulted him first (rejected in sentencing)</p>	<p>1 x Assault with intent to do GBH. 1 x Stealing.</p> <p>At [35] Offending in worst category of its kind.</p> <p>Victim was a 31-year-old tourist from the UK. Victim at Perth train station. The appellant and three others (two of them co-offenders) assaulted the victim for no reason. As victim lay unconscious on the ground following upon the initial assault, appellant ran and jumped in the air with both feet</p>	<p>3 yrs detention. 2 yrs 6 mths detention.</p> <p>TES 3 yrs detention.</p> <p>Eligible for supervised release after 14 mths detention.</p> <p>Little genuine remorse.</p>	<p>Dismissed.</p> <p>At [75] Unusual for a juvenile to be sentenced more severely than an adult co-offender, but adult co-offender did not attempt to mislead the Court regarding the circumstances of the offending and had full benefit of PG. Appellant's</p>

		Affected by alcohol, cannabis and amphetamines at the time of the offence.	<p>raised, landing on the victim's head. Appellant then took victim's mobile phone and fled the scene.</p> <p>Adult co-offender sentenced 2 yrs 4 mths imp post transitional – transitional provisions do not apply to juvenile offenders.</p>		conduct objectively more serious than that of adult co-offender.
8.	<p><i>“TL” (a child) v The State of Western Australia</i> [2005] WASCA 173</p> <p>Delivered 4/07/2005</p>	<p>11 yrs at time offending.</p> <p>Convicted after PG.</p> <p>No prior criminal record.</p> <p>Poor school attendance.</p> <p>Some anger management/violence issues.</p>	<p>Ct 1: AOBH. Ct 2: AOBH. Ct 3: AOBH.</p> <p>At [22] Serious examples of offending.</p> <p>At 11.10pm at Carlisle train station friends of the appellant began assaulting the 3 victims. The appellant ran over and punched one of the victims in the back of the head with a clenched fist (ct 1). The appellant then punched another victim in the face with a closed fist. The co-offenders punched and kicked the same victim until he was on the ground - the appellant then punched him twice in the head and kicked him in the upper body (ct 2). Victims attempted to leave but co-offenders resumed assaulting victim 1. The appellant threw three railway stones at victim 1 - each of them hitting him, the last one in the head. One co-offender pushed the victim to the ground, where the appellant kicked and kned him several times in the head as well as punching him. Co-offender pushed the victim onto the railway track and the appellant threw more stones at him. The assault ended when public transport officers arrived and the appellant fled the scene.</p>	<p>Ct 1: 2 mths detention. Ct 2: 2 mths detention. Ct 3: 3 mths detention.</p> <p>TES 3 mths detention.</p>	Dismissed.
7.	<i>“LJM” (a child)</i>	17 yrs 10 mths at time	2 x Dangerous driving occasioning death.	12 mths detention each	Dismissed.

	<p><i>v The State of Western Australia</i></p> <p>[2005] WASCA 172</p> <p>Delivered</p>	<p>offending. 18 yrs at time sentencing.</p> <p>Prior criminal record - reckless driving (burnouts with 5 passengers in the car).</p> <p>Strong family support.</p>	<p>At around 3am the appellant driving car with three passengers (one 14-year-old boy and two 15-year-old boys, the latter were nephews of the appellant). The appellant had consumed a small quantity of alcohol (BAC .011%) and cannabis. None of the passengers wore a seatbelt. Appellant was driving around the boundaries of the Warmun Aboriginal Community at high speeds and did “snakies” (hard acceleration followed by hard braking to cause the vehicle to slide sideways). The appellant lost control of the car, slamming into a steel power pole. The two 15-year-old boys (seated in the backseat of the car) were thrown from the vehicle - one dying immediately and the other soon after.</p>	<p>ct.</p> <p>TES 2 yrs detention.</p>	
6.	<p><i>“WO” (a child) v The State of Western Australia</i></p> <p>[2005] WASCA 94</p> <p>Delivered 13/05/2005</p>	<p><u>WO</u> 13 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Offending breached 2 CROs (agg burg; breach bail; assault; loitering; stealing; poss prohibited weapon; receiving).</p> <p>Prior criminal record – beginning at 11 yrs.</p> <p>Father and mother acrimoniously separated; step-father occasionally aggressive; mother not able to control appellant.</p>	<p>Ct 1: Assault with intent to rob. Ct 2: Steal motor vehicle and drive recklessly.</p> <p><u>Ct 1:</u> WO stopped a 9-year old boy riding his bicycle. RM and another person joined WO. RM demanded property; the third boy searched victim’s bag but could not find anything to steal. RM suggested that WO search victim’s front pockets, and he did. RM then searched victim’s rear pockets. RM produced a knife and pointed it at the victim’s face in a threatening way. Victim pushed the knife away and rode away on his bike. One of the boys threw a piece of wood at the victim as he rode away, narrowly missing his head.</p> <p><u>Ct 2:</u> WO and RM were at a public pool. They saw the victim leave the changing rooms at the pool. They went into the rooms and stole his car keys and then</p>	<p><u>WO</u> Ct 1: 5 mths detention. Ct 2: 3 mths detention.</p> <p>Resentenced on CRO matters to 6 mths’ detention.</p> <p>TES 6 mths detention.</p> <p><u>RM</u> Ct 1: 6 mths detention. Ct 2: 3 mths detention.</p> <p>Resentenced on CRO matters to 5 mths detention.</p> <p>TES 6 mths detention.</p>	<p>Allowed.</p> <p>Each appellant re-sentenced to 4 mths CRO with 4 mths detention.</p> <p>At [43]-[56] Comprehensive discussion of sentencing principles as they apply to young offenders.</p>

		<p>Irregular school attendance; cannabis user.</p> <p><u>RM</u> 13 ½ yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Offending breached 2 CROs (agg burglary; attempted stealing; breach bail; assault; loitering; stealing; burglary).</p> <p>Prior criminal record - disorderly conduct; breach of a misconduct restraining order.</p> <p>Mother aged 17 when RM born; never knew his real father.</p> <p>Mother in de facto relationship which became violent after partner lost job; RM removed from his mother's care but was difficult to manage and was returned to her - lived with his grandmother in Perth for a time and did not offend but owing to difficult behaviour was not</p>	<p>stole items from his vehicle before leaving the pool. They returned later and stole the vehicle – which they took it out to bush flats and performed “burn-outs” until it became bogged. They then abandoned the vehicle.</p>		
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		<p>able to continue living there.</p> <p>Poor school attendance but normal numeracy and literacy skills; keen interest in sport.</p> <p>Cannabis user since 11 yrs old.</p>			
5.	<p><i>“KSB” (a child) v The State of Western Australia</i></p> <p>[2004] WASCA 296</p> <p>Delivered 19/11/2004</p>	<p>16 yrs at time offending.</p> <p>Convicted after early PG.</p> <p>No relevant prior criminal record.</p>	<p>1 x Agg burg.</p> <p>1 x Sex pen child u 13 yrs.</p> <p>2 x Stealing.</p> <p>1 x Assault public officer.</p> <p>Victim of sex pen aged 11 yrs.</p> <p>Appellant broke into a house with the intent to steal money. Whilst inside, appellant came across victim sleeping in her bed. Appellant sexually penetrated victim by inserting a finger into her anus. Appellant left the house but was pursued by the victim’s brother, who grabbed a hair tie from the appellant. DNA found on the hair tie identified the appellant as the offender.</p> <p>Appellant affected by alcohol and cannabis at time offending.</p>	<p>3 years detention.</p> <p>3 years detention.</p> <p>2 mths detention each ct.</p> <p>2 mths detention.</p> <p>TES 3 yrs detention.</p> <p>Eligible for supervised release after 18 mths detention.</p>	<p>Allowed.</p> <p>TES reduced to 2 yrs 6 mths detention.</p> <p>Sentences on stealing offences set aside and fines substituted.</p>
4.	<p><i>“DRI” (a child) v Read</i></p> <p>[2004]</p>	<p>17 yrs at time offending.</p> <p>Convicted after negotiated PG – initially charged with</p>	<p>1 x Dangerous driving occasioning death.</p> <p>The appellant and victim (best friends) went for a drive after being out for the evening - appellant was</p>	<p>9 mths detention.</p> <p>TES 9 mths detention.</p>	<p>Allowed.</p> <p>TES 9 mths detention suspended for 12 mths.</p>

	<p>WASCA 240</p> <p>Delivered 7/10/2004</p>	<p>manslaughter.</p> <p>Excellent antecedents.</p>	<p>a learner driver. Appellant remembered that he had received a text message while driving and went to pull over but the deceased offered instead to operate the steering wheel while the appellant operated the pedals. The pair negotiated a corner then the appellant accelerated down the next street. The vehicle left the road and struck a tree. The vehicle was extensively damaged and the victim later died from injuries sustained in the impact.</p>	<p>Prior to amendments to RTA s59 – reversal of onus of proof (01/01/2005)</p>	<p>When taken in combination, the principles of sentencing young offenders, the general deterrence achieved through initial term, the attitude of the secondary victims and the prosecution, the deep remorse, youth and good character of appellant together with fact there was no need for personal deterrence and the fact that the sentence would be served in an adult prison required suspension of term.</p>
3.	<p>“F” (a child) v The State of Western Australia</p> <p>[2004] WASCA 193</p> <p>Delivered 10/08/2004</p>	<p>17 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Repeating yr 12; talented tennis player until a hand injury which triggered depression.</p> <p>Anger management issues - voluntarily attended a psychologist prior to offending.</p> <p>Supportive family; part-</p>	<p>1 x Threat to kill. 1 x Deprivation of liberty. 1 x AOBH.</p> <p>At [15] Threat to kill in worst category of its kind.</p> <p>Appellant and victim (aged 18 yrs) were in a relationship. Following the end of the relationship, appellant called the victim and told her he was coming over with a shovel which was going to be used to dig her grave. The appellant told the victim he would do something to her family if she did not come for a drive with him. They drove to a remote area and appellant forced the victim to dig a hole. Victim complied. Appellant then told victim to get</p>	<p>12 mths detention. 6 mths detention. 6 mths detention.</p> <p>TES 12 mths detention.</p> <p>Eligible for supervised release after 6 mths detention.</p>	<p>Dismissed.</p>

		time employment.	into the hole but she refused. Appellant grabbed victim and flipped her onto the ground, causing a cut lip and bruising. Victim bit the appellant's hand to escape and the appellant again told the victim to lie in the hole. The appellant threw a rock at victim but it missed. The appellant then got the victim back in the vehicle and drove her home. Appellant returned and picked up the victim again later that evening and took her to Northbridge. While walking in Northbridge, the appellant told the complainant, "It's not like you're going to see your family again, we are going back to dig your grave." The appellant then called her a slut and put her in a headlock. A passer-by intervened and called the police.		
2.	<p>"MC" (a child) v The Queen</p> <p>[2003] WASCA 205</p> <p>Delivered 11/08/2003</p>	<p>17 ½ yrs at time offending.</p> <p>Convicted after early PG.</p> <p>No prior criminal record.</p> <p>32 weeks pregnant at the time of sentencing.</p>	<p>1 x Unlawful wounding.</p> <p>1 x Common assault.</p> <p>1 x Criminal damage.</p> <p>1 x Going armed in public so as to cause fear.</p> <p>Co-offender was appellant's boyfriend who was a drug user and routinely violent towards the appellant. PSR stated appellant subservient to co-offender and enjoyed that dynamic (increases need for personal deterrence) – co-offender did not exert any pressure over appellant to induce her participation in offending.</p> <p>Premeditated vicious armed attack on two strangers in their car. Co-offender smashed the driver's side window of the car and sprayed victim 1 in the face with pepper spray. Co-offender then struck the victim 2 several times with a crowbar - causing injuries requiring more than 60 stitches. Victim 1</p>	<p>20 mths detention.</p> <p>12 mths detention.</p> <p>9 mths detention.</p> <p>12 mths detention.</p> <p>TES 20 mths detention.</p> <p>Eligible for supervised release after 10 mths detention.</p>	<p>Dismissed.</p> <p>At [20] "...where the nature and circumstances of an offence are very serious, considerations of punishment and general deterrence will be accorded greater weight than in other circumstances."</p> <p>At [22] Pregnancy not a significant mitigatory factor in sentencing, especially as child remained with the appellant in the detention centre and facilities were</p>

			<p>armed himself with a piece of wood intending to help victim 2. The appellant advance on victim 2 with a knife, who retreated from trying to assist victim 2. The co-offender discharged a firearm towards the end of the incident.</p> <p>Appellant video-taped the offending.</p>		<p>more than adequate to ensure its care.</p>
1.	<p><i>R v "W" (a child)</i></p> <p>[2003] WASCA 118</p> <p>Delivered 13/6/2003</p>	<p>16 yrs at time offending. 17 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal record – minor opportunistic offending.</p> <p>Extreme intellectual disability - in bottom 1000th of the population for intellectual ability.</p> <p>History of substance abuse.</p>	<p>Ct 1: Sex pen child u 13 yrs. Ct 2: Sex pen without consent.</p> <p><u>Ct 1:</u> The complainant was a 12 year old girl and a (family?) friend of the respondent. One night the respondent (and other relatives) stayed over at the complainant's aunt's house. During the night the complainant woke up to find that the respondent had unbuttoned her jeans and had inserted his fingers into her vagina. She woke up and the respondent left the room immediately.</p> <p><u>Ct 2:</u> The second complainant was a mature woman related to the respondent. The respondent and complainant were staying at the same house on the night of the offending. The complainant went to bed substantially intoxicated. At around 4-5am the respondent entered the room and got into bed with the complainant. The respondent pulled down the complainant's tracksuit and underwear and despite the complainant's physical resistance (pushing her legs together) the respondent penetrated the complainant's vagina with his penis from behind.</p>	<p>Ct 1: 9 mths detention. Ct 2: 12 mths detention.</p> <p>TES 12 mths detention.</p> <p>At [12] Extremely limited understanding of the social significance of the offences and the possible impact of offending on victims.</p>	<p>Dismissed.</p> <p>At [18]-[19] Intellectual disability significantly reduced moral culpability and means a significant period of detention would adversely affect his prospects for rehabilitation.</p> <p>At [20] TES lenient but no error can be shown in circumstances.</p>

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Office of the Director of Public Prosecutions