

# **Aggravated Burglary – Home Invasions**

s 401 *Criminal Code*

**Prior to 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
SIO	suspended imprisonment order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
49.	<p><i>Tunney v The State of Western Australia</i></p> <p>[2013] WASCA 286</p> <p>Delivered 17/12/2013</p>	<p>39 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Criminal record; one charge of breach police order.</p> <p>Experienced unhappiness as a child.</p> <p>Constant record of employment.</p>	<p><u>Indictment</u> Ct 1: Agg AOBH. Ct 2: Criminal damage. Ct 3: Agg burg.</p> <p><u>s32 Notice</u> Breach police order. Trespass. Breach protective bail conditions.</p> <p>The victim and appellant had been in an ‘on and off’ domestic relationship for 3 years. The offending occurred over a period of months. The first incident occurred at the victim’s home whereby the appellant kicked the victim in the groin whilst she was on the floor. The kick caused extensive bruising.</p> <p>The next day the appellant followed and continually texted the victim as she was driving to a suburban shopping centre. She entered the shopping centre and returned to her car a few hours later. On her return she found two of the car tyres had been deflated.</p> <p>About 4 months later the victim arrived home with her 2 children and found the appellant inside her house. The appellant took a bag from the victim’s car containing personal belongings. Police issued a police order however in this time the appellant made numerous telephone calls to the victim at work.</p> <p>Days later the appellant again entered the victim’s</p>	<p><u>Indictment</u> Ct 1: 18 mths imp (cum) Ct 2: 2 mths imp (conc). Ct 3: 22 mths imp (cum)</p> <p><u>s32 Notice</u> 1 mth imp (conc). 4 mths imp (cum). 2 mths imp (conc).</p> <p>TES 3 yrs 8 mths imp.</p> <p>EFP.</p> <p>Lacked victim empathy; continued to blame victim; little remorse.</p> <p>Sentencing judge described appellant’s behaviour as constituting a ‘sustained pattern of violent offending against a vulnerable victim’.</p> <p>Intimidated the victim to write a misleading letter in mitigation.</p>	<p>Dismissed – on papers.</p> <p>At [34] The appellant engaged in sustained offending against the victim. The design and effect of the offending was to intimidate the victim both physically and psychologically. The appellant was not deterred from committing further offences by police orders or bail conditions...</p>

			<p>home using a set of keys he had cut without the victim's permission.</p> <p>The next day the victim arrived home to find the appellant inside her house. The appellant attempted to kiss the victim on her mouth and touch her breast. The appellant then physically assaulted the victim.</p> <p>Less than one month later the appellant entered into a bail undertaking which included conditions not to contact the victim. The victim breached the order by contacting the victim and attending her house.</p>		
48.	<p><i>Pool v The State of Western Australia</i></p> <p>[2013] WASCA 274</p> <p>Delivered 02/12/2013</p>	<p>34-41 yrs at time offending. 42 yrs at time sentencing.</p> <p>Convicted after PG (following negotiations) - Cts 1, 3-4 discontinued.</p> <p>Criminal record; none of which had attracted a term of imp; offences include trespass &amp; unlawful use of optical surveillance device.</p> <p>Left school at 17 yrs; worked in various occupations.</p> <p>In early 30's commenced using cannabis &amp; methyl.</p> <p>Suffered significant depression at various times;</p>	<p>Indecent deal child u13 yrs s320(4) <i>Criminal Code</i> x 1. Att indecent record child 13-16 yrs s552, 321(6), 321(8)(a) <i>Criminal Code</i> x 1. Indecent deal child 13-16 yrs s321(4), 321(8)(b) <i>Criminal Code</i> x 4. Agg burg in dwelling 401(2) <i>Criminal Code</i> x 2. Agg indecent record child 13-16 yrs s321(6), 321(8)(b) <i>Criminal Code</i> x 1. Indecent ass s323 <i>Criminal Code</i> x 3. Indecent record child s321(6), 321(8)(a) <i>Criminal Code</i> x 1. Dep lib s333 <i>Criminal Code</i> x 1. Agg sex pen s326 <i>Criminal Code</i> x 1. Sex pen s325 <i>Criminal Code</i> x 1.</p> <p>The offending occurred over a period of about 7 yrs and involved numerous acts of sexual violation against 5 victims.</p> <p><u>Ct 2:</u> The appellant and his wife were friends of the</p>	<p>TES 11 yrs 9 mths imp.</p> <p>EFP.</p> <p>High risk of sexual re-offending.</p> <p>Expressed some regret but has attempted to justify &amp; minimise its severity.</p> <p>Each victim suffered significant &amp; ongoing psychological trauma.</p> <p>Sentencing judge described appellant's attitude as 'predatory'.</p> <p>High risk of future sexual offending.</p>	<p>Dismissed.</p> <p>McLure dissenting.</p> <p>At [71] ... The humiliation and degradation ... was made worse by the appellant's use of a mobile telephone to record visual images of his assaults upon them.</p> <p>At [72] I accept, however that the appellant's individual offences against CLT and TJC were at the lower end of the scale of seriousness in child sex cases and that his individual offences against MJR and MT were not in the worst category of home</p>

		<p>including when offending.</p> <p>Married since 2005; two sons; youngest suffers from mild cerebral palsy &amp; frequent seizures.</p> <p>Psychiatric, Psychological &amp; PSR Reports indicate the offences were committed in the context of marked amphetamine abuse &amp; considerable psychological instability.</p>	<p>victim's mother and regularly babysat the victim. When the victim was 7 yrs old, she stayed at the appellant's home. Whilst his wife was asleep in the same room the appellant rubbed the victim's breasts and vagina.</p> <p><u>Ct 3:</u> The victim was aged 13 yrs. She was a neighbour of the appellant. One evening the victim stayed at the appellant's home and went to have a shower. The appellant attempted to record the victim showering from outside. The victim undressed and started to shower before noticing the appellant's phone.</p> <p><u>Cts 6-10:</u> The victim was aged 13 yrs and was the same victim as in Ct 3. The victim slept the night at the appellant's home. Whilst she slept the appellant touched her breast. The appellant then masturbated with his penis close to the victim's face, ejaculated and wiped the fluid on her lips. He then held his erect penis against her lips for a few seconds and again touched her breast. The appellant used a video camera to record his actions.</p> <p><u>Cts 11-13:</u> The 17 yr old victim was at her boyfriend's house; asleep and fully clothed. The appellant entered the house through an unlocked carport/ kitchen door. The appellant cut the victims outer clothing as she slept with scissors; exposing various parts of her body. He then rubbed her exposed vagina. The victim awoke after hearing a loud bang and the appellant ran from the house. Some months after the incident the victim noticed some videos on her</p>		<p>invasion cases involving sexual violence.</p> <p>At [77] The number of victims, the duration of the offending, the planning, premeditation and persistence, the escalation in the seriousness of the criminal conduct, the appellant's lack of insight and his high risk of recidivism required the imposition of a very lengthy term of imprisonment.</p>
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			<p>mobile. The videos had been taken by the appellant during the burglary and included a depiction of his hand rubbing the victim's vagina. The victim and appellant were unknown to each other.</p> <p><u>Ct 14:</u> The victim was aged 14 yrs and unknown to the appellant. The appellant used a video camera to film the victim through her bedroom window. The victim noticed the appellant looking at her through the window. When the appellant was arrested about 14 months later; police found 3 cassettes hidden in the bodywork of his motor vehicle. The cassettes contained footage of the victim.</p> <p><u>Cts 15-19:</u> The victim was a 37 yr old woman. The victim and appellant were unknown to each other. The appellant entered the victim's house through an unsecured rear sliding door. After scrimmaging through the house he went to the victim's bedroom, placed his hand over her mouth, wrapped his hand around her throat, and tied her hands together and to the bed. He sexually assaulted and digitally penetrated her with his fingers and vibrator. At the same time he used his mobile to record and take photographs of the victim.</p>		
47.	<p><i>Colbung v The State of Western Australia</i></p> <p>[2013] WASCA 257</p> <p>Delivered</p>	<p><u>Supreme Court</u> 21 yrs at time offending.</p> <p>Convicted after very late PG (5 days before trial).</p> <p>Second trial – first aborted as the appellant failed to</p>	<p><u>Supreme Court</u> Ct 1: Agg burg. Ct 2: Agg armed robb. Ct 3: Steal MV. Ct 4: Steal MV.</p> <p><u>District Court</u> Ct 1: Act or omission causing GBH</p>	<p><u>Supreme Court</u> Ct 1: 2 yrs 8 mths imp (conc). Ct 2: 3 yrs 11 mths imp. Ct 3: 4 mths imp (cum). Ct 4: 6 mths imp (cum). TES 4 yrs 9 mths imp.</p>	<p>Dismissed – on papers.</p> <p>At [44] ... The appellant's offending was very serious.</p> <p>AT [66] ... The objective circumstance of the</p>

06/11/2013	<p>give proper notice of an alibi defence.</p> <p><u>District Court</u> Convicted after PG (very late PG on Ct 2).</p> <p>*****</p> <p>Extensive and serious criminal record including agg armed robb, agg robb, agg burg.</p> <p>Dysfunctional upbringing; left school at Year 9; undertook business course at TAFE.</p> <p>Diagnosed with depression whilst in juvenile detention.</p> <p>Limited employment history; 'significant potential' as footballer.</p> <p>In relationship; two daughters; partner supportive of him.</p> <p>Alcohol and drug user.</p> <p>Previous parole order cancelled; previous non-compliance of several</p>	<p>Ct 2: Steal MV &amp; drive reckless.</p> <p><u>Supreme Court</u> The victims, a young man and woman, were asleep at their residence. Both victims woke from noise outside and saw the appellant and co-offender walking towards their front door. The male victim armed himself with a knife and golf club. The female victim retreated to an ensuite toilet and called the police. The appellant and co-offender then forced entry into the house. The appellant was armed with a screwdriver and a knife. The co-offender was armed with a knife and pointed it at the male victim and held the blade about 50 cm from the victim's chest. The co-offender demanded the car keys from the victim and threatened to stab him if he moved. The appellant then rummaged through the bedroom and stole the victim's handbag, wallet, iphone, car keys and other keys. The appellant and co-offender then left the house.</p> <p>The appellant and co-offender then dragged the male victim's off-road motorbike from the garage and placed the motorbike in the back of the victim's motor vehicle. They then drove off.</p> <p>Police later observed the appellant riding the stolen motorbike. Police pursued the motorbike for a short distance before losing sight of it.</p> <p><u>District Court</u> The appellant was seen by police at night driving a stolen motor vehicle and a pursuit ensued. The appellant drove at speeds in excess of 140 km in a 60 km zone, drove on the incorrect side of the road</p>	<p>EFP.</p> <p><u>District Court</u> Ct 1: 2 yrs 9 mths imp. Ct 2: 2 yrs 9 mths imp.</p> <p>TES 2 yrs 9 mths imp served cum upon Supreme Court sentence.</p> <p>EFP.</p> <p>*****</p> <p>Aggregate term 7 yrs 6 mths imp.</p> <p><u>Supreme Court</u> No recollection of alleged offending; changed his PG on basis of the evidence against him in the State brief.</p> <p>Only 4 % discount given.</p> <p>VIS indicated victims suffered significant anger, distress and trauma.</p> <p>Sentencing judge gave</p>	<p>offending as a whole were very serious ... The aggregate term of 7 years and 6 months was of a severity that was appropriate in all the circumstances of the case ...</p>
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		juvenile community orders.  Intoxicated at time of offending.	and without lights. Police eventually lost sight of the vehicle.  Days later the appellant was a passenger in another vehicle. Police observed the vehicle travelling in excess of the speed limit. The vehicle stopped and police stopped next to the vehicle.  The victim alighted from the vehicle to speak with the driver. A second officer also alighted. While the victim was standing next to the driver's side of the vehicle the appellant alighted from the vehicle and sat in the driver's seat of the police vehicle. The victim ran to the driver's side of the police vehicle; however, the appellant reversed the vehicle. The open door struck the victim and he was dragged backwards and fell to the ground. The victim struck his head on the road surface and became unconscious. The appellant fled the scene in the stolen police vehicle. During the incident, the vehicle ran over the victim's legs. The appellant made no attempt to stop or assist the victim.  The victim suffered serious injuries including concussion, ligament damage to his ankle, cartilage damage to his hip and muscle damage to his back.	credit for 'some understanding of the effect on your victims and some acceptance of responsibility and remorse'.  High risk of re-offending.  <u>District Court</u>  Remorseful.  Victim's rehabilitation process has been lengthy; has not fully recovered; appears to have some residual disabilities.  15% discount for PG for Ct 1 and 5% for Ct 2.	
46.	<b><i>Brady v The State of Western Australia</i></b>  [2013] WASCA 253  Delivered 30/10/2013	33 yrs at time sentencing.  Convicted after PG.  Long & persistent criminal history; 14 prior convictions for burg; served terms of imp for these offences; repeat offender.	Ct 1: Agg burg. Ct 2: Wilful damage. Ct 3: Assault w/i to resist detention. Ct 4: Burg. Ct 5: Agg burg. Ct 6: Agg burg.  The appellant's offending occurred over the space of approximately 1 month.	Ct 1: 2 yrs imp. Ct 2: 6 mths imp. Ct 3: 14 mths imp. Ct 4: 17 mths imp. Ct 5: 18 mths imp. Ct 6: 2 yrs 8 mths imp.  Cts 3, 5, & 6 cum.	Dismissed on papers.  At [25] The circumstances of each of the aggravated burglaries on a dwelling were serious. On each occasion the appellant entered the victim's house at a time when it was likely

		<p>Unsatisfactory performance on parole and community orders.</p> <p>Long history of illicit drug abuse.</p>	<p><u>Cts 1:</u> The appellant forced entry to the victim's house and stole a set of car keys &amp; kitchen knife. He was confronted by the victim and told the victim he was seeking refuge from people who were chasing him. The appellant was permitted to leave the premises by taxi.</p> <p><u>Ct 2-4:</u> The appellant went to the victim's business. At the time, a number of staff were at work. The appellant went into a computer room which was not open to the public and stole property. As he did so he was confronted by an employee who attempted to stop him from leaving. The appellant attempted to punch the employee but missed. The appellant dropped some property he had and then pushed the employee causing him to fall to the ground. Other staff members attempted to detain him but released him when he kicked the office door. The appellant left the building and went to his car which had been locked within a cyclone fence. He climbed the fence, got into the car and drove through a fence, causing damage.</p> <p><u>Ct 5:</u> The appellant entered the victim's house through a possibly unlocked back door. At the time the victim was asleep on a couch in the lounge room. Inside he stole property and car keys. The appellant left the house and stole the victim's motor vehicle.</p> <p><u>Ct 6:</u> The appellant forced entry to the victim's house.</p>	<p>TES 5 yrs 4 mths imp.</p> <p>Remorseful.</p> <p>Offences committed to support his illicit drug use.</p> <p>Steps toward rehabilitation.</p>	<p>somebody would be at home. Indeed, on each occasions somebody was at home...In such circumstances the possibility of unintended consequences is ever present.</p>
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			The appellant was searching through a room when the victim's 6 year old daughter saw him. The child woke the victim when she screamed. The victim confronted the appellant and then went to get her husband. When she returned he had left. A Nintendo Wii the appellant had taken from the toy room was left on a table in the back yard.		
45.	<i>Edmonds v The State of Western Australia</i>  [2013] WASCA 250  Delivered 28/10/2013	32 yrst at time sentencing.  Convicted after trial.  Criminal record; brief traffic record; no prior convictions for violence.  Happy childhood; regular employment.  Some history of alcohol abuse.	Make threat with intent to cause detriment x 1. Damage MV x 1. Agg burg x 1.  The appellant's sister was in a relationship with the victim. The appellant had strong feelings of animosity towards the victim.  The appellant drove to the victim's house in company with his father. The appellant threatened the victim with a 'flogging' if he did not transfer a van into his sister's name. A fight ensued and in order to escape the victim locked himself in a vehicle. The appellant obtained a long piece of wood and smashed one of the vehicle's windows.  About 17 days later the victim was at a house where the victim's 75 year old mother was staying, along with the victim's brother and brother's son aged 4 years. The appellant forced his way into the house by smashing a window, armed with a wooden pole. He assaulted both the victim and the victim's brother.	12 mths imp (conc). 12 mths imp (conc). 3 yrs 6 mths imp (cum).  TES 4 yrs 6 mths imp.  EFP.  No remorse; believed his actions were justified; no insight to what he had done and no victim empathy.  Sentencing judge described burglary as a 'savage invasion' and a 'serious example of burglary'.	Dismissed – on papers.  At [18] I do not regard the offences committed by the appellant as being a continuing episode of offending. They were separate and distinct...  At [21] It is behaviour which must be marked by a sentence that provides a strong element of general and personal deterrence.
44.	<i>The State of Western Australia v Peacock</i>	52 yrs at time sentencing.  Convicted after trial.  Prior criminal record;	Agg burg x 1.  The respondent's daughter had formerly been in a relationship with Wayne Jones. Both had moved on to form other relationships. The daughter, out of	\$5000 fine.  No remorse.	Allowed.  Re-sentenced to 2 yr 6 mths imp susp 12 mths.

<p><b>[2013] WASCA 248</b></p> <p>Delivered 23/10/2013</p>	<p>significant record of traffic offences.</p> <p>Full time employment in his own business; employed 4 other staff.</p> <p>Well regarded as individual and businessman.</p>	<p>jealous, caused Jones to believe that his current partner had an affair with the daughter's current partner. This news caused Jones to go the daughter's partner's house and, amongst other things, damage a fish tank owned by the daughter.</p> <p>When the daughter discovered the damage she became very angry and told the respondent. A decision was then made to go to Jones' home with the purpose of intimidating him. The respondent and his daughter arranged for others to accompany them, including 2 other men and the respondent's partner.</p> <p>Jones and his partner were at home. The group, including the respondent and his daughter, forcibly entered the house. One of the males was wielding a baseball bat. The group angrily confronted Jones and his partner.</p> <p>The baseball bat was thrown at Jones and he then picked up an axe to defend himself. Both Jones and his partner retreated to the back of the house. Jones was forced to the ground still holding the axe. His fingers were injured when one of the group stood on the axe handle, trapping his fingers between the handle and the brick paving. Jones' partner was then assaulted by the respondent's daughter.</p>	<p>Made an impulsive decision to assist his daughter to collect payment for the damaged fish tank.</p> <p>Sought to minimise and justify his behaviour to the author of the PSR.</p> <p>Sentencing judge referred to the offence as being 'very serious'.</p>	<p>At [31] ... a home invasion which is committed with intent to intimidate the occupants is more serious than a burglary which involves simply an intent to steal.</p> <p>At [32] ... It is sufficient to note that offences of this nature and this level of seriousness almost invariably result in a sentence of imprisonment to be immediately served. ..The sentence imposed in this case is entirely inconsistent with those customarily imposed...</p> <p>At [35] It is inexplicable that his Honour could conclude that the respondent was more culpable than his daughter and yet impose a penalty on the respondent which is of a type lower on the hierarchy of sentences referred to in s39(2) <i>Sentencing Act</i>...</p> <p>At [38]-[39] But for the state maintaining its concession that a</p>
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					suspended sentence would be appropriate and the need not to create disparity with the sentence imposed on the daughter, this offending would have attracted a longer sentence and one to be immediately served.
43.	<p><i>Wragg v The State of Western Australia</i></p> <p>[2013] WASCA 198</p> <p>Delivered 30/08/2013</p>	<p>26 yrs at time sentencing.</p> <p>Convicted after trial – PG to criminal damage first day of trial.</p> <p>Criminal record; indicating a propensity for violence &amp; disregard for the law.</p> <p>Completed Year 12; various trade qualifications; employed prior to being remanded in custody.</p> <p>De facto relationship.</p> <p>History of substance abuse; completed a drug &amp; alcohol &amp; cognitive skills programme whilst on remand.</p> <p>Not intoxicated at the time of offending.</p>	<p>Agg burg x 1. Criminal damage x 1.</p> <p>The appellant in his vehicle, together with another vehicle travelled to the victim’s residence to confront and intimidate the occupants about a previous incident. They arrived at the house and the appellant approached the front door. His passenger remained in the car. The three occupants of the other car also approached the front of the house.</p> <p>A masked intruder who was found by the trial judge to be the appellant kicked open the front door then punched the victim Mrs D; to the side of the head. The punch knocked her to the floor. Upon seeing what happened to his mother, an older brother used a curtain rod to repeatedly hit the appellant about the head and forced him back out the front door. One of the occupants followed the appellant out. The appellant then retreated away towards the driveway. Mrs D came outside to see what had happened to her two older sons and the house came under attack by others throwing bottles and a pot plant.</p> <p>The older male occupant ushered Mrs D and</p>	<p>4 yrs 6 mths imp. No sentence imposed.</p> <p>EFP.</p> <p>Sentencing judge said that in the circumstances the appellant’s culpability was the same whether he was the masked intruder or merely another party... this was an offence committed for the purpose of retribution.</p> <p>Vigilante type behaviour; not opportunistic and had an element of premeditation.</p> <p>Some remorse, albeit belatedly.</p>	<p>Dismissed.</p> <p>At [40] This was an attack intended to terrorise the occupants of residential premises in their own home. The implication that this was vigilante action does nothing to mitigate the offence ... Deterrence, both general and particular, must be an important consideration in respect of vigilante action.</p>

		On bail at time of offence for other offences of violence.	another back inside the house. As the older brother was trying to close the broken front door, he heard the front window smashing. He went outside and saw the appellant punch the front windows as he again retreated along the porch towards the driveway. The appellant then got into the driver's side of his car and made a pointing gun gesture before driving off.		
42.	<p><b><i>KWLD v The State of Western Australia</i></b></p> <p><b>[No 4] [2013] WASCA 185</b></p> <p>Delivered 14/08/2013</p> <p>On appeal from Children's Court</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 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>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.  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>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).  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</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 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</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>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 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</p>	<p>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 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>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 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</p>
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			<p>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 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</p>		<p>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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			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.		
41.	<p><b><i>Boddington v The State of Western Australia</i></b></p> <p><b>[2013] WASCA 179</b></p> <p>Delivered 14/08/2013</p>	<p>35 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Criminal history; two prior burglary convictions – repeat offender.</p> <p>Unsettled childhood but a positive schooling experience.</p> <p>Four children; intended to pursue relationship with current partner after release.</p> <p>In custody had undertaken courses with the intention of reforming himself.</p> <p>Had been in custody for 1 yr 2 mths 6 days at time of sentencing.</p> <p>First co-offender (brother) Benjamin Boddington sentenced to 3 yrs imp; Second co-offender acquitted.</p>	<p>1 x Agg burg.</p> <p>The appellant and two co-offenders broke into the hotel room of the victim with the purpose of stealing the victim’s wallet from under a mattress, which they believed contained a large sum of money. The victims and offenders were known to each other.</p> <p>The co-offender kicked open the door and all offenders entered the hotel room demanding money. The mattress was upturned and the wallet located.</p> <p>It could not be determined whether the appellant or his brother took the wallet.</p>	<p>29 mths imp.</p> <p>EFP.</p> <p>Judge found that the offence was planned and premeditated.</p> <p>Judge accepted the appellant’s role was less than that of his brother and that he was ‘led along in the circumstances as they presented themselves’.</p> <p>Accepted had little memory of precisely what happened.</p> <p>Showed insight into his offending and a desire to change his lifestyle.</p>	Dismissed on papers.

<p><b>40.</b></p>	<p><b><i>Wroth v The State of Western Australia</i></b></p> <p><b>[2013] WASCA 155</b></p> <p>Delivered 28/06/2013</p>	<p>27 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Substantial criminal history including aggravated burglary, arson, assault and stealing.</p> <p>Unhappy childhood; parent's separated when he was 3 yrs; left home at 12 yrs.</p> <p>Married &amp; two step-children; supportive wife.</p> <p>History of drug abuse.</p> <p>Offences committed on a three month binge on amphetamines and cannabis.</p>	<p>Ct 1: Agg burg. Ct 2: Att. armed robbery. Ct 3: Att. armed robbery. Ct 4: Armed robbery. Ct 5: Steal motor vehicle. Ct 6: Armed robbery. Ct 7: Arson.</p> <p>The appellant went on a rampage during which he terrorised people in their homes and at a service station. The appellant was armed with a firearm and behaved in an aggressive and threatening manner, including pointing the firearm at a service station employee and at people in their homes. He later set a vehicle he stole on fire.</p>	<p>Ct 1: 12 mths imp cum. Ct 2: 3 yrs imp cum. Ct 3: 3 yrs imp conc. Ct 4: 3 yrs imp conc. Ct 5: 9 mths imp conc. Ct 6: 3 yrs imp cum. Ct 7: 9 mths imp conc.</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>Full admissions.</p> <p>PSR placed the appellant's history of substance abuse at the extreme end of the scale.</p>	<p>Sole ground of appeal breaching totality principle. Dismissed – on papers.</p> <p>At [22] ... The fact that the appellant was armed with a firearm was a serious aggravating feature.</p> <p>At [23] ... The appellant's illicit drug use, while explaining his offending, cannot excuse it.</p>
<p><b>39.</b></p>	<p><b><i>Topic v The State of Western Australia</i></b></p> <p><b>[2013] WASCA 157</b></p> <p>Delivered 28/06/2013</p>	<p>45 yrs at time sentencing.</p> <p>Convicted after late PG (first day of trial).</p> <p>Minor criminal history.</p> <p>Born in Serbia; came to Australia when 30 yrs.</p> <p>Worked as an electrician and taxi driver.</p>	<p>1 x Agg burg.</p> <p>The appellant and victim were married but had been separated for some months. The victim and children were residing in the former matrimonial home. The appellant was the subject of a VRO to protect the victim.</p> <p>The appellant entered the house and waited for the victim to come home. The victim returned home and saw the appellant enter the kitchen. The appellant grabbed the victim's neck with both</p>	<p>2 yrs imp.</p> <p>EFP.</p> <p>Made some admissions in PSR but apportioned the majority of the blame upon the victim and minimised the impact of the offence had had upon her.</p>	<p>Dismissed on papers.</p> <p>At [29] It is a rare case in which a miscarriage of justice could be demonstrated by the failure of a judge to obtain a pre-sentence report on an offender who is represented by counsel, and the failure by itself</p>

		<p>Found it difficult to accept that his marriage had broken down.</p>	<p>hands. She fought back and the appellant let her go. The appellant again approached her and grabbed her neck with both hands. While he had the victim by her neck, she knocked over a pot of oil. This caused the appellant to let the victim go. The victim then slipped on the oil and fell to the floor. After she got up, the appellant grabbed her by the neck again. The victim then reached for something from the bench and took hold of a knife. The appellant took the knife from her and pointed it at her stomach for a minute or two. Then, while holding the victim's throat with his left hand, he put the knife, which he held in his other hand, under her throat.</p> <p>The victim told the appellant that she was feeling unwell and asked to sit in the lounge. Eventually, the appellant permitted the victim to move to the lounge and followed her, still holding the knife. The appellant then put the knife into the kitchen sink, but detained the victim in the lounge room until their children returned from school. He continued to detain her against her will for some time after the children had returned home.</p>	<p>Sentencing judge regarded offence as serious and aggravated because it was committed in breach of a VRO and involved violence and the use of a knife</p>	<p>could never constitute a ground of appeal.</p> <p>At [40] General deterrence and the protection of vulnerable victims are important sentencing factors in cases involving domestic violence.</p> <p>At [41] ... the only appropriate disposition was a term of immediate imprisonment.</p>
38.	<p><i>Prempeh v The State of Western Australia</i></p> <p>[2013] WASCA 150</p> <p>Delivered 19/06/2013</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal record for dishonesty offences.</p> <p>Born in Ghana; came to Australia in 2004; as a child suffered sexual abuse.</p>	<p>Ct 1: Agg burglary.</p> <p>Ct 2: Sex pen w/o consent.</p> <p>The victim and appellant were unknown to each other. The victim was a backpacker from the UK.</p> <p>The victim left Club Bayview, Claremont on her own and was waiting for a taxi. She had been drinking and was intoxicated. Whilst waiting for a taxi she was approached by the appellant who suggested they share a taxi. On arriving home the</p>	<p>Ct 1: 4 yrs 6 mths imp.</p> <p>Ct 2: No penalty – s11.</p> <p>Sentencing judge described the offending as serious. The complainant was particularly vulnerable because she was affected by alcohol. He noted that the</p>	<p>Dismissed - on papers.</p> <p>At [26] ... it is erroneous to view the sentence ... as if it were for an offence solely involving an act of digital penetration. The offending plainly involved more than that and should be seen for what it is – an aggravated burglary</p>

		<p>History of substance abuse.</p> <p>Graphic designer in Ghana; Periods of employment in Australia as sign maker.</p> <p>Told author of PSR that he had ‘an insatiable appetite for sex and often [sought] the services of prostitutes to quell the urge’.</p> <p>Subject to a CBO at time of offences.</p> <p>Appellant’s defence at trial was that he had been invited into the house and that he did not sexually assault the victim.</p>	<p>victim paid her share of the taxi fare and left. The appellant got out as well. The victim did not engage in conversation and went inside her house and fell asleep.</p> <p>The appellant entered the house and the victim awoke to find him pulling back her duvet and trying to get into her bed. She told the appellant to get out. One of the victim’s housemates confronted the appellant and told him to leave, which he did. Both the victim and her housemate went back to bed.</p> <p>The victim and her housemate heard noises from the kitchen and found the appellant had somehow re-entered. The housemate told the appellant to leave. She then sought assistance from two other housemates. Rather than leave, the appellant went to the victim. She awoke to find him crouching down next to her bed. A struggle ensued during which the appellant inserted his fingers into the victim’s vagina. This caused both physical injury and significant ongoing psychological trauma to the victim.</p>	<p>appellant’s behaviour was persistent.</p> <p>Sentencing judge found that the appellant’s intention throughout the events was to have sex with the complainant whether she wanted it or not.</p> <p>Co-operated during the trial.</p>	<p>involving sexual assault.</p> <p>At [27] Speaking generally home burglaries which involve the commission of violence will be met with more severe penalties than those that do not.</p>
37.	<p><i>Gillespie v The State of Western Australia</i></p> <p>[2013] WASCA 149</p> <p>Delivered 19/06/2013</p> <p>Co-offender <i>Nannup v The</i></p>	<p>19 yrs at time sentencing.</p> <p>Convicted after early plea of guilty – disputed the circumstances of aggravation of Ct 2.</p> <p>Criminal history included convictions for burglaries.</p> <p>Has partner and young child.</p>	<p><u>Indictment</u></p> <p>Agg burglary x3.</p> <p>Agg armed robbery x2.</p> <p>Steal motor vehicle x3.</p> <p>Burglary x1.</p> <p><u>Breach of 6 mth CBO</u></p> <p><u>Breach of 12 mth CBO</u></p> <p>Various offences.</p> <p>All offences occurred on same night as part of a night long crime spree appellant committed with three co-offenders.</p>	<p>TES of 8 yrs imp.</p> <p>Made up of 5 yrs (Ct 2 – Agg robbery) plus 1 year (Ct 5 – Agg armed robbery 4 yrs penalty concurrent)</p> <p>1 yr (Ct 9 – Steal MV) &amp; 1 yr Charge 6102 CBO (Burglary).</p> <p>EFP.</p>	<p><u>Conviction Dismissed.</u></p> <p><u>Sentence</u></p> <p>Ground 1 against sentence dismissed.</p> <p>Leave to appeal Grounds 2, 3, 4 &amp; 6 dismissed.</p> <p>Ground 5 (chg 6102) allowed.</p> <p>Sentence quashed.</p>

	<p><i>State of Western Australia [2011] WASCA 257</i></p>	<p>No regular employment; steps taken towards his own rehabilitation prior to sentence.</p> <p>On bail at time the offences were committed.</p> <p>Commission of these offences constituted breaches of 6 mth CBO imposed by the CC and a 12 mth CBO imposed by the Magistrates Court.</p>	<p><u>Cts 1-3:</u> The appellant and three others were in a street in Como. They formed a common intention to burgle a home and steal a car. Two of the group approached a unit with a car parked at the front. The appellant and co-offender entered the backyard. The appellant picked up a pair of gardening secateurs and entered the unit. Two laptop computers were located. They were startled by the occupants of the unit and fled, taking the computers with them. The male occupant observed the appellant and others standing at the front of the unit. He gave pursuit. However, the group chased the male back into the unit where the victim was. When confronted by the group, the victim tried to escape through the rear door. At that time the appellant threw the secateurs at her, striking her in the wrist. She required surgery. The appellant and some of his accomplices then proceeded to ransack the unit, stealing various items of property including a set of car keys. The appellant and the others then stole the vehicle.</p> <p><u>Cts 4-6:</u> About 30 minutes later, the appellant and his accomplices abandoned the vehicle in Nedlands. They noticed two valuable cars parked in front of a property in that street. All four then entered the property and searched for items to steal. The two occupants of the house sought refuge in a bedroom. The group entered the bedroom. One was armed with a knife and another with a golf club. The group threatened the victims demanding cash and car keys. One co-offender yelled to kill the victims and slit their throats. They handed over a laptop and</p>	<p>Co-operated with Police including providing information which assisted in identifying two co-offenders although did not formally offer to assist police by giving evidence against those co-offenders.</p> <p>Sentencing judge described Cts 1-3 as the utmost seriousness, and described the violence used by the appellant towards the victim as ‘one of the worst examples that one can imagine’.</p>	<p>At [210] The circumstances of the offences committed by Mr Gillespie during the rampage of crime which resulted in the various counts on the indictment can only be described as extremely serious. They involved two home invasions, each of an extremely serious character...</p> <p>In relation to 5 yrs for Agg armed robbery – Ct 2 [222] the total effective sentence imposed (for count 2) was, in my view, lenient.</p> <p>TES at 8 yrs upheld.</p>
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			<p>mobile. The group found the carkeys. The appellant and another used the keys to steal a BMW. The other two used keys to steal a Subaru. Before they could depart, another car pulled into the driveway of the home, blocking their departure. One of the group, approached the obstructing vehicle and smashed the passenger side window using a golf club stolen from the house. The driver of that vehicle quickly reversed his car into the street. He suffered minor cuts to his face and hand.</p> <p><u>Cts 8-9:</u> The group then travelled to Lakelands, where the two vehicles were abandoned when one of the group had spotted a Holden Club sport parked in front of a house. The appellant and co-offender entered the house and stole the keys and cash. The keys were used to steal the car.</p> <p><u>Ct 10:</u> Two or three hours later, the offenders in the stolen vehicle, travelled to a Hotel in Cottesloe where they broke in and stole alcohol.</p>		
36.	<p><b><i>Fullgrabe v the State of Western Australia</i></b></p> <p><b>[2013] WASCA 130</b></p> <p>Delivered 23/05/2013</p>	<p>36 yrs at sentencing.</p> <p>Convicted after trial.</p> <p>Substantial criminal history; commencing when he was 10 yrs.</p> <p>Long-standing history of substance abuse; Despite participating in programs designed to address this</p>	<p>Ct 1: 1 x Agg burg s401(2) <i>Criminal Code</i> 3 x s32 offences.</p> <p>At about 9:00pm the appellant went to a house in Manning occupied by the victim, her partner and their baby. He was, at the time, armed with an electronic shock device and his face was covered in an attempt to disguise his identity.</p> <p>The appellant kicked the front door down and yelled to the victim and her partner to 'Get down. Get down'. Although the appellant did not use the</p>	<p>Ct 1: 3 yrs 6 mths imp.</p> <p>s32: 1 yr 1mth cum for 1 x burg, 10 mths conc for 1 x stealing, 8 mths conc for steal MV.</p> <p>TES 4 yrs 7 mths imp.</p> <p>EFP.</p> <p>No remorse.</p>	<p>Dismissed – on papers.</p> <p>At [12] While his criminal history is not an aggravating circumstance, it shows that the present offending is hardly an aberration and it underscores the need for personal deterrence and public protection.</p>

		<p>issue, he has failed to rid himself of this problem.</p> <p>In a stable relationship and had full-time custody of a child from a former relationship.</p>	<p>electronic shock device on the occupants, it was making a buzzing sound and it was brandished in such a way as to intimidate them. At one point, the appellant's disguise slipped and he was recognised by the victim's partner, with whom he had spent some time in prison.</p> <p>An altercation ensued, during which the appellant threw a smoking implement at the victim's partner. Eventually the appellant ran from the premises.</p> <p>The appellant did not steal any property.</p>		<p>At [19] ... in recent years, sentences for home burglary have increased to reflect the prevalence of the offence and to provide proper personal and general deterrence.</p> <p>At [21] There can be no doubt that the offence committed by the appellant was a serious instance of its type.</p>
35.	<p><i>Miller v The State of Western Australia</i></p> <p>[2013] WASCA 84</p> <p>Delivered 28/03/2013</p>	<p>28 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Long and serious criminal history which commenced at 14 yrs; offences include aggravated armed robbery and multiple burglaries.</p> <p>At time of sentencing was serving 5 yrs imp for armed robbery (see facts).</p> <p>Long history of illicit drug abuse.</p>	<p>Ct 1: 1 x Agg burg s401(2) <i>Criminal Code</i>. 6 x s32 offences.</p> <p><b>NOTE: On chart as term combined cumulative on armed robbery sentence, as set out below.</b></p> <p><u>Ct 1:</u></p> <p>The appellant had been buying drugs on a long-term basis from the victim.</p> <p>The appellant, in company with 3 others, went to the victim's house with the intention of stealing money and drugs by force. The appellant and another offender knocked on the front door and were let in by the appellant's partner. Once inside, a co-offender pulled out a handgun and pointed it at the victim and demanded money and drugs. At this point, one of the co-offenders began ransacking the house. In the meantime, the victim went to his bedroom. There he tried to arm himself with a shotgun. He was then set upon by the appellant and</p>	<p>Ct 1: 3 yrs 6 mths imp.</p> <p>s32: 6 mths cum for 1 x steal MV and all other sentences conc or fines imposed.</p> <p>TES 4 yrs imp cum on existing term of 5 yrs imp for armed robbery.</p> <p>EFP.</p> <p>Little insight.</p> <p>No real remorse.</p>	<p>Dismissed – on papers.</p> <p>At [26] General deterrence was a significant consideration. In light of the appellant's prior offending and the violent nature of the aggravated burglary, his Honour was right to emphasise personal deterrence and the need to protect the public.</p>

			<p>two co-offenders. In the process, the victim was stabbed with either a knife or a samurai sword. The appellant and the co-offenders left the house with a sum of cash, a sword, the shotgun and other items.</p> <p><u>Armed robbery</u> The appellant and a co-offender drove to a lunch bar with the intention of robbing it. The registration plates of the vehicle were covered. The co-offender left the vehicle, armed with a large knife and wearing a hooded jacket. The hood was pulled over his head to obscure his identity. The co-offender entered the shop, jumped over the counter and struck the 68 yr old shop assistant with the butt end of the knife. The victim suffered a cut to the eye and was knocked unconscious. He fell and broke his wrist. The co-offender stole the cash register containing \$700 and then left in the car driven by the appellant. A short time later, the two offenders shared the cash that had been stolen. The appellant was later arrested and made admissions to police. He entered an early plea of guilty.</p>		
34.	<p><b><i>JSA v The State of Western Australia</i></b></p> <p><b>[2012] WASCA 25</b></p> <p>Delivered 03/02/2012</p> <p>On appeal from Children's Court</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</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</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</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>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 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</p>	<p>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>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 &amp; 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</p>	<p>appellant was a 'prolific offender' who had a 'high probability of re-offending'.</p>	
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		<p>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>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>		
33.	<p><i>Mippy v The State of Western Australia</i></p> <p>[2012] WASCA 254</p> <p>Delivered 5/12/2012</p>	<p>31 yrs at time offending and sentencing.</p> <p>Convicted after fast track PG.</p> <p>Significant prior criminal record – driving offences; steal motor vehicle; weapons; disorderly conduct; assault public officer; escape custody; poss heroin; false details; common assault; agg AOBH.</p> <p>Offending breached SIO (agg AOBH).</p> <p>Long history cannabis and alcohol abuse; history amphetamine use.</p>	<p>1 x Agg burg. 1 x Unlawful damage. 1 x Agg AOBH (re-sentencing on offence subject of breached SIO).</p> <p>Victim is appellant’s mother. Living with the victim are two of her children and three grand-children (aged 14, 12, 5, 4 and 2 yrs respectively).</p> <p>Appellant went to his mother’s home and began banging on the front door. Victim realised appellant was intoxicated and refused to let him in. Appellant then went to the carport and extensively damaged his mother’s car (smashed windows, windscreen, dented and scratched the body). Appellant then pulled off the locked flyscreen door at the front of the house but could not get in through the front door. Appellant then broke two bedroom windows with rocks and entered the house. The victim took the five children who live with her into the bedroom. Appellant kicked in the bedroom door and assaulted the victim in front of the children.</p>	<p>3 yrs imp. 1 yr imp. 10 mths imp.</p> <p>TES 3 yrs 10 mths imp.</p> <p>EFP.</p> <p>Limited insight; no remorse.</p>	<p>Dismissed.</p> <p>At [30] Court expressly rejected the contention that the sentence of 3 yrs imp for the agg burg was manifestly excessive.</p>

		<p>Raised by mother and step-father and childhood marred by domestic violence; went to live with father at 13 yrs old who was a poor role model; only stable period in childhood when living with grandmother.</p>	<p>The children fled the house and the victim was able to escape and hide in the toilet. The appellant then pushed over a fridge, television and cabinet – damaging them all.</p> <p>Victim received a split lip, loose tooth and bruising to her chest and leg. Damage done totalled just over \$9,000.</p>		
32.	<p><b><i>Butler v The State of Western Australia</i></b></p> <p><b>[2012] WASCA 249</b></p> <p>Delivered 29/11/2012</p>	<p>32 yrs at time sentencing.</p> <p>Convicted after late PG – on first day of trial after it became clear that the victim intended to give evidence.</p> <p>Prior criminal record – including numerous convictions for domestic violence and breach offences.</p> <p>Offending breached bail (2 x agg assault on same victim and damage).</p> <p>Long history domestic violence against all his partners – participated in domestic violence programs but has not been able to change behaviour.</p>	<p>1 x Agg burg. 1 x Unlawful damage.</p> <p>s 32 Matters: 1 x Agg assault. 1 x Breach protective bail.</p> <p>Appellant and victim in de facto relationship but separated approx 6 mths prior to the offending.</p> <p>Appellant went to victim's home to collect some personal items. As it was Father's Day and the victim wanted to encourage the appellant's relationship with their two children, the victim permitted the appellant to stay overnight. Victim asked the appellant to leave the next morning and the appellant refused to do so. Victim rang the police and appellant left before the police arrived. As soon as the appellant left, the victim locked the doors and windows. Appellant waited until the police left and returned to the victim's home. Appellant kicked in the back door and forced his way into the home. The victim barricaded herself and their three children in the bedroom. The</p>	<p>3 yrs 6 mths imp. 6 mths imp.</p> <p>No penalty. 6 mths imp.</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>Little insight into offending; minimises responsibility; tendency towards domestic violence and at risk re-offending in similar manner; no remorse.</p>	<p>Dismissed.</p> <p>At [29] – [35] In exceptional cases it will not be an error to give no discount for a PG in sentencing. Sentencing judge did not in this case give any discount for the PG but this is an exceptional case where it is not an error to give no discount as the PG is not mitigatory. PG was not motivated by remorse, contrition or a desire to facilitate justice and was entered only when it became apparent the victim would testify contrary to his expectations.</p> <p>At [40] – [46] Some discussion of sentencing</p>

		<p>Moved to Australia with family from UK at 15 yrs old; stable family life but resenting moving to Australia and is now estranged from his family.</p> <p>Long history illicit substance abuse.</p>	<p>appellant smashed the bedroom door in half and entered the room. In front of the children, the appellant punched the victim in the head, pushed her into a corner, kicked her in the back, grabbed her by the hair and dragged her to the lounge room. The police were called and the appellant again left.</p> <p>Victim suffered a sore back, bruising to her head and a sore stomach.</p>		<p>range and comparative cases.</p> <p>At [54] Appropriate for sentence for breach to be cumulative with the sentence on the breaching offence given appellant's history of disobedience to court orders.</p>
31.	<p><i>Nannup v The State of Western Australia</i></p> <p>[2011] WASCA 257</p> <p>Delivered 29/11/2011</p> <p>Co-offender <i>Gillespie v The State of Western Australia</i> [2013] WASCA 149</p>	<p>18 yrs at time offending and sentencing.</p> <p>Convicted after early PG.</p> <p>Extensive prior criminal record – agg burg; burg; stealing; receiving; steal motor vehicle; trespass; AOBH; common assault; poss weapon with intent to cause fear.</p> <p>Poor response to previously imposed community based orders.</p> <p>Deprived and dysfunctional upbringing.</p> <p>Young daughter – no contact with child's mother at time sentencing.</p>	<p>1 x Armed robbery. 3 x Steal motor vehicle. 3 x Agg burg.</p> <p>All offences occurred on same night as part of a night long crime spree appellant committed with three co-offenders.</p> <p><u>Armed robbery:</u> Appellant and co-offenders (cousin and 2 long term friends) entered house intending to steal items from it. Victims (2 sisters aged 21 and 23 yrs) at home at the time and heard the appellant and co-offenders in their home. Victims hid in bedroom. One co-offender armed with a knife and another with what appeared to be a crowbar. One co-offender yelled to kill the victims and slit their throats. Victim 1 showed appellant and co-offenders where BMW keys were. Appellant and co-offenders eventually left house taking vehicle keys, laptop and an iphone.</p> <p>Offending premeditated and committed out of boredom.</p>	<p>5 yrs imp. 1 yr imp each ct. 4 yrs imp; 4 yrs imp; 1 yr imp.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>Armed robbery sentence reduced to 4 yrs 4 mths imp.</p> <p>TES reduced to 5 yrs 4 mths imp.</p> <p>EFP.</p> <p>At [56]-[64] Sentencing judge made an express error in not taking co-op with authorities into account when imposing sentence.</p>

			Appellant provided police with names of co-offenders and provided details of each offender's role in offending as well as making admissions as to his own involvement. Refused to testify at trial against any co-offenders.		
30.	<i>Hishmeh v The State of Western Australia</i>  [2012] WASC 183  Delivered 20/09/2012	29 yrs at time offending. 31 yrs at time sentencing.  Convicted after trial (agg burg and dep lib cts). Convicted after PG (manslaughter – jury unable to reach verdict on murder charge).  No relevant prior criminal record.  4 <sup>th</sup> of 7 children; family emigrated from Lebanon.  Married; 2 children (6 yrs and 18 mths of age); owns/operates substantial and successful business	1 x Manslaughter. 1 x Agg burg. 2 x Dep lib.  At [61] Offending at upper range of seriousness for offences of manslaughter.  Victim 1 was known to co-offender 1 as a drug dealer. Victim 2 was at the home of victim 1 and engaged in a drug transaction at the time of the offending – a fact all offenders were aware of.  Appellant and two co-offenders, after ascertaining that victim 1 was home, forced their way into victim 1's home with the intent of robbing her of the money and drugs believed to be at her home. Appellant detained victim 2, as per the pre-arranged plan, so that he could not assist victim 1. Co-offender 2 punched victim 1 in the face and tied her up with plastic clip ties and proceeded to punch her in the face and head repeatedly. Co-offender 2 also choked victim 1. Victim 1 was also repeatedly struck with a hammer to her arms knees and thighs. Injuries suffered by victim 1 – both the assault and the choking – caused fatal haemorrhaging in her brain.	8 yrs 6 mths imp. 5 yrs imp. 2 yrs and 3 yrs imp.  TES 8 yrs 6 mths imp.  EFP.  Genuine remorse; low risk future violence.	Dismissed.  At [59] Court is no longer constrained in sentencing by effect transitional provisions had on the maximum penalty (ie in practice a sentence greater than 2/3 statutory maximum could not be imposed) but sentences handed down prior to the introduction of and subsequent repeal of those provisions are still of use in providing guidance as to the sentences properly imposed.  At [70] Sentences imposed for manslaughter in last 10 years or so have tended to increase and that is consistent with the sanctity of human life.  At [71]-[82] Some discussion of cases.

<p><b>29.</b></p>	<p><i>Thomas v The State of Western Australia</i></p> <p><b>[2012] WASCA 182</b></p> <p>Delivered 19/09/2012</p>	<p>37 yrs at time offending.</p> <p>Convicted after early PG.</p> <p>Prior criminal record – driving under influence; reckless driving; dangerous driving occasioning bodily harm; common assault; disorderly conduct.</p> <p>Alcohol use problems.</p>	<p>1 x Agg burg. 1 x Steal motor vehicle. 1 x Dep lib.</p> <p>Appellant and victim were separated and, at time offending due to past domestic violence, a VRO had been taken out by the victim against the appellant. In the days immediately prior to the offending, appellant had breached the VRO twice. Appellant, in an intoxicated state, went to victim’s home and knocked on the door. Victim refused to let appellant in so the appellant removed a flyscreen and entered through a partially open window. Once inside, the appellant began to abuse the victim and demanded her car keys. Victim refused and appellant bit both of her hands in an attempt to get the keys from her. Once he had the keys, appellant forced the victim into the car. The victim attempted to escape but the appellant stopped her. Appellant then drove around erratically and at a high speed while the victim pleaded with the appellant to stop and let her out. Appellant drove onto Tonkin Highway, swerving through traffic and told the victim they were going to die. Appellant eventually lost control of the car, narrowly missed hitting another car and struck a tree. The appellant left the scene of the crash after apologising to the victim.</p> <p>Victim suffered whiplash and bruising. Victim had to borrow money to buy another car and, along with her children, had to move as she no longer felt safe in her home.</p>	<p>18 mths imp. 2 yrs imp. 12 mths imp.</p> <p>TES 4 yrs 6 mths imp. EFP.</p> <p>Minimum remorse; denied responsibility for offending by blaming victim; poor rehabilitation prospects.</p> <p>Sentence for dep lib reduced by 6 mths for totality reasons.</p>	<p>Dismissed – leave refused on papers.</p> <p>At [27] General deterrence is a key factor so as to deliver a clear message that offences involving violence to family members will not be tolerated.</p>
<p><b>28.</b></p>	<p><i>Rolfe v The State</i></p>	<p>43 yrs at time sentencing.</p>	<p>1 x Agg burg</p>	<p>3 yrs imp.</p>	<p>Dismissed – leave refused</p>

	<p><i>of Western Australia</i></p> <p><b>[2012] WASCA 169</b></p> <p>Delivered 27/08/2012</p>	<p>Convicted after fast-track PG.</p> <p>Significant prior criminal record – including inter-state convictions and violent offending.</p> <p>Witnessed domestic abuse perpetrated by his father on his mother and left home at 17 yrs old to escape the abuse.</p> <p>History regular employment.</p> <p>Supportive family.</p> <p>Five children from 2 relationships;</p>	<p>1 x GBH with intent. 1 x Unlawful wounding with intent.</p> <p>s 32 matters: 7 offences which occurred in 1997 but had not been dealt with as appellants absconded – including 2 x AOBH.</p> <p>Appellant and two co-offenders attended victim's home armed with machetes and a block-splitter or axe with the intent of collecting an alleged debt. Appellant and co-offenders forced their way into the home after knocking on the front door. The appellant immediately struck victim 1 with the machete in the side of the neck. Victim 1 turned to run away and the appellant struck him in the back. The other occupants of the home tried to flee but they were attacked by the co-offenders. The appellant also struck one of them several times with the machete to the head and arms – one of the lacerations inflicted by the appellant resulted in nerve and tendon damage to victim 2's hands. After the assaults, the appellant and his co-offenders ransacked the house in search of money.</p>	<p>5 yrs imp. 2 yrs imp.</p> <p>Various terms of imp to run concurrent with indictable offences except for 4 mths imp for one of the AOBH offences ordered to be served cumulative.</p> <p>TES 8 yrs 4 mths imp.</p> <p>EFP.</p> <p>No insight into offending; moderate risk re-offending.</p> <p>Sentence for agg burg expressly reduced by 12 mths to take into account the totality principle.</p>	<p>on papers.</p> <p>Sentence for GBH specifically challenged as manifestly excessive and found to be an appropriate sentence in all the circumstances.</p> <p>TES also appropriate and no error in accumulation of sentences.</p> <p>At [31] <i>"It will sometimes be the case that cumulative sentences are justified to properly reflect an offender's overall criminality."</i></p>
27.	<p><i>Ugle v The State of Western Australia</i></p> <p><b>[2012] WASCA 104</b></p> <p>Delivered 10/05/2012</p>	<p>18 yrs 9 mths at time offending (victim 78 yrs). 19 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Offending breached protective bail (4 x agg burg; 3 x stealing; 1 x steal motor vehicle).</p>	<p>Ct 1: Agg burg. Ct 2: Agg AOBH. Ct 3: Agg sex pen (digital pen vagina). Ct 4: Agg sex pen (pen vagina with penis). Ct 5: Agg sex pen (pen anus with penis). Ct 6: Agg sex pen (pen vagina with penis). Ct 7: Agg sex pen (pen anus with penis). Ct 8: Agg sex pen (fellatio).</p> <p>Sentenced separately for:</p>	<p>Ct 1: 2 yrs imp. Ct 2: 3 yrs imp. Ct 3: 5 yrs imp. Ct 4: 4 yrs imp. Ct 5: 6 yrs imp. Ct 6: 4 yrs imp. Ct 7: 6 yrs imp. Ct 8: 6 yrs imp.</p>	<p>Dismissed.</p> <p>At [46]-[66] Discussion of comparative cases.</p> <p>At [71] Ordinarily, youth is a significant mitigating factor but, in some instances, despite youth a sentence needs to reflect</p>

		<p>Prior criminal record – poss stolen property; steal motor vehicle; common assault.</p> <p>Never been sentenced to detention or imprisonment previously.</p> <p>Eldest of 6 children; childhood marred by violent father; family homeless while he was growing up.</p> <p>Entrenched history cannabis and alcohol abuse.</p> <p>Completed high school; minimum work history.</p>	<p>1 x Give false details to police. 1 x Breach protective bail.</p> <p>Assault and sex offences at the upper end of the scale of seriousness.</p> <p>Victim lived alone in an accommodation complex for senior citizens. Victim was showering at approx 7pm when appellant entered the grounds of the accommodation complex by jumping a perimeter wall. Appellant entered victim’s unit by smashing lounge room window after finding the rear door locked (ct 1). Appellant confronted by victim’s small dog when he entered. Appellant locked the dog in a cupboard. Victim heard the noises the appellant made and her dog barking and got out of the shower. Appellant entered bathroom and confronted naked victim. Appellant struck the victim and pushed her to the floor. Victim fell and hit her head on the wall causing a laceration on the back of her head (ct 2). Victim screamed for help and appellant placed his hand over her mouth. While victim was on the bathroom floor, appellant removed his penis from his pants, positioned himself on top of the victim and put his fingers inside her vagina (ct 3). Appellant also rubbed her clitoris, causing her pain. Victim told appellant he was hurting her but appellant persisted. Appellant partially penetrated victim’s vagina with his penis (ct 4) and then penetrated her anus with his penis, causing her to scream in pain (ct 5). Appellant then dragged victim into the bedroom, pushed her onto the bed and positioned himself over her. Appellant grabbed victim’s necklace and</p>	<p>TES two charges 14 mths imp (cumulative on sentences above).</p> <p>TES 11 yrs imp.</p> <p>EFP.</p> <p>Limited victim empathy; no acceptance of responsibility some remorse and shame; some steps towards rehabilitation (attending Alcoholics Anonymous); posed a present danger to the community.</p>	<p>the need to protect the public as wells personal and general deterrence.</p> <p>At [72] <i>“The degree of objective seriousness of the appellant’s offending required that the mitigating effect of his youth be significantly reduced in determining the appropriate sentencing disposition.”</i></p> <p>At [90] Vulnerability of the victim is a significant factor in sentencing.</p> <p>At [91] Mazza J notes that the sentence imposed in <i>Cooper v The State of Western Australia</i> [2009] WASCA 37 is in the circumstances a lenient one.</p>
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			<p>ripped it from her neck – appellant later gave the necklace to his cousin. Necklace had two lockets on it and was of sentimental value to the victim. Necklace was not recovered.</p> <p>Appellant then partially penetrated victim’s vagina with his penis (ct 6) and then partially penetrated victim’s anus with his penis (ct 7). Appellant then demanded victim perform oral sex on him. Victim said she had not done that before. Appellant thrust his penis into victim’s mouth for approx 5 minutes causing her to cough and choke. Appellant then ejaculated in victim’s mouth, again causing her to choke (ct 8).</p> <p>Appellant then demanded money, got dressed and left the victim’s home.</p>		
26.	<p><i>Angus v The State of Western Australia</i></p> <p>[2012] WASCA 54</p> <p>Delivered 12/03/2012</p>	<p>32 yrs at time sentencing.</p> <p>Minor prior criminal history – including 2 poss drugs.</p> <p>Good work history prior to drug use; began using methyl at 30 yrs of age.</p>	<p><u>Indictment BUN 26 of 2011</u> 1 x Agg burg. 1 x AOBH.</p> <p><u>Indictment BUN 28 of 2011</u> 11 x Sell/supply prohibited drug.</p> <p>Appellant and two co-offenders went to a house with the intent of confronting two of the occupants over a drug debt and threats which had allegedly been made against the family of one of the co-offenders.</p> <p>Appellant and co-offenders gained entry through the garage door and in the course of enforcing the debt the victim sustained a black eye.</p>	<p>12 mths imp. 6 mths imp.</p> <p>TES 3 yrs 3 mths imp.</p> <p>TES both indictments 4 yrs 3 mths imp.</p> <p>EFP.</p> <p>At [14] Noted that the terms imposed for agg burg and AOBH were reduced for reasons of totality.</p>	Dismissed – leave refused on papers.
25.	<i>Fogg v State of</i>	18 yrs at time offending.	1 x Agg armed robbery.	2 yrs imp (reduced from	Dismissed.

<p><i>Western Australia</i></p> <p><b>[2011] WASCA 11</b></p> <p>Delivered 18/1/2011</p>	<p>Convicted after PG. Co-operated with authorities.</p> <p>No prior criminal record.</p>	<p>1 x Dep liberty. 1 x Agg burglary. 1 x Gain benefit by fraud.</p> <p>Appellant and two co-offenders travelling to Dunsborough in appellant's car. On the way, one of the co-offenders suggested they stop at victim's house to collect a debt allegedly owed by victim. Appellant did not know victim but agreed to go and collect debt. Arrived at house at approx 11pm, appellant and two co-offenders went to door and knocked. Victim opened door and appellant and two co-offenders pushed past victim and entered the house. Appellant and one co-offender armed with 60cm iron bars from the boot of the car. Victim ordered by one of the co-offenders (armed with a knife) to sit on the couch. Victim complied and appellant stood near him, holding the iron bar. Victim was threatened and hit in the face by co-offender and was visibly scared. Appellant went into kitchen, picked up 10cm knife and returned to his place near the victim – holding the knife in front of him. Appellant and two co-offenders removed a number of items from the house (eg TV, stereo, DVD recorder). Some of the goods taken from the house were later sold at Cash Converters – the appellant and co-offenders using the money to buy alcohol and drugs which was then shared. Police also found some of the stolen goods at the appellant's house.</p> <p>Appellant affected by drugs/alcohol; played a lesser role but was still a willing participant.</p>	<p>3 yrs for co-operation). 1 yr imp. 2 yrs imp. 3 mths imp. TES 2 yrs imp.</p> <p>EFP.</p>	
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<p><b>24.</b></p>	<p><b><i>Papas v The State of Western Australia</i></b></p> <p><b>[2011] WASCA 3</b> Delivered 10/01/2011</p>	<p>27 yrs at time offending.</p> <p>No relevant prior criminal record.</p> <p>Diagnosed with depression and anxiety in 2008 - being treated with medication.</p> <p>Excessive alcohol consumption contributing factor to offending.</p> <p>Supportive family; made efforts to address anger management, relationship and substance abuse issue.</p> <p>Full time employment at time offending.</p>	<p>Ct 1: Agg burg. Ct 2: AOBH. Ct 3: Agg burg. Ct 4: Criminal damage. Ct 5: Obstruct police officer.</p> <p>Appellant went to victim's house. Victim's daughter – an ex partner of the appellant - also resided at the house. The appellant entered the property through a partially enclosed carport and removed a hidden set of house keys. He used the keys to unlock the front door and obtain entry into the house. The appellant was confronted by the victim who demanded that he leave. A verbal altercation took place between the appellant and the victim (ct 1). When the victim's daughter came to the aid of her father, the appellant grabbed her by the hand and bent her middle index finger by twisting it, causing it to fracture and dislocate (ct 2). Appellant returned to victim's home the following day. When no one answered after he knocked on the door, the appellant gained entry to the backyard by climbing on the carport roof. He then threw a pot into a glass sliding door, breaking it, and entered the house (ct 3). Victim's daughter locked herself and her 2 yr old son in her bedroom. Appellant picked up a table and began to batter the door until it was sufficiently broken for the appellant to unlock the door (ct 4). Victim's daughter ran from the house carrying her son. Appellant followed her and was detained by a neighbour until police arrived. When police attempted to restrain him, the appellant thrashed and struggled (ct 5).</p>	<p>Ct 1: 3 mths imp. Ct 2: 6 mths imp. Ct 3: 12 mths imp. Ct 4: 3 mths imp. Ct 5: 3 mths imp. TES 12 mths imp. EFP. Remorse; not at risk re-offending.</p>	<p>Dismissed – leave refused on papers.</p> <p>At [16] Agg burg is a serious offence – seriousness in this instance heightened by level of violence, actual and threatened.</p> <p>At [16] Seriousness of offending is not reduced by context of failed or failing domestic relationship – it is necessary to protect actual and potential victims of domestic violence.</p>
<p><b>23.</b></p>	<p><b><i>Royer v The State</i></b></p>	<p>30yrs at time offending</p>	<p>1 x Agg burg.</p>	<p>5 yrs imp.</p>	<p>Dismissed – 'severe' but</p>

	<p><i>of Western Australia</i></p> <p><b>[2009] WASCA 139</b></p> <p>Delivered 6/08/2009</p>	<p>(victim 62 yrs).</p> <p>Convicted after PG.</p> <p>Prior criminal record – drugs; fraud; stealing; and burglary; no violent or sexual offending. History substance abuse.</p>	<p>1 x Deprivation of liberty. 1 x Threat to kill. 1 x Agg sex assault (digital pen vagina). 1 x Agg sex assault (digital pen anus). 1 x Agg sex assault (pen vagina with penis). 1 x Agg AOBH</p> <p>Offending in worst category and ‘horrendous’ in nature - justify ‘something approaching the statutory maximum penalty’.</p> <p>Appellant separated from de facto of 3 years approx one week prior attack. Under influence of drugs and alcohol. Entered through unlocked door, went to victim’s bedroom and forced her onto bed. Removed clothes and tied up victim then placed pillow over victim’s face and digitally penetrated vagina. Turned victim onto her stomach, spat on her anus and inserted fingers. Both digital penetrations were repeated, used more than one finger each time and caused severe lacerations, bleeding and immense pain. Appellant masturbated to achieve erection and penetrated vagina until ejaculated. Struck victim on face, threatened to kill her if she told anyone and stole \$200 from purse before leaving. Victim was left naked and bound on her bed, eventually freed herself.</p>	<p>3 yrs imp. 3 yrs imp. 8 yrs imp. 8 yrs imp. 8 yrs imp. 2 yrs imp.</p> <p>TES 16 yrs. EFP.</p>	<p>reflective of criminality.</p> <p>NB: Original sentence, upheld by the Court of Appeal, was imposed whilst the transitional provisions were in force.</p>
22.	<p><i>Pollock v The State of Western Australia</i></p> <p><b>[2009] WASCA</b></p>	<p>29 yrs at time offending.</p> <p>Convicted after PG - part way through trial, after victim suffered ordeal of</p>	<p>1 x Agg burg. 1 x Dep lib. 1 x AOBH. 1 x Sex pen. 1 x Dep lib.</p>	<p>7 yrs imp. 3 yrs imp. 2 yrs 8mths imp. 8 yrs imp. 3 yrs imp.</p>	<p>Dismissed.</p> <p>At [53] ‘<i>I am not satisfied that the total effective sentence...was</i></p>

	<p><b>121</b></p> <p>Delivered 14/07/2009</p>	<p>giving evidence.</p> <p>Prior criminal record - disorderly conduct; damage to property; dishonesty; drugs.</p> <p>Born in Kununurra; left school yr 8; abused drugs and alcohol from early age.</p>	<p>1 x GBH. 1 x AOBH. 1 x Stealing. 1 x Stealing.</p> <p>Offending at the high end of scale.</p> <p>Female victim went to party with appellant, met a female friend, D, and returned to house. Altercation occurred and D asked to leave by male victim. Victim went to bed. D returned to party and informed appellant and co-offender of altercation. As revenge appellant and co-offender, armed with knife and stick, entered house, tied up male victim, assaulted him and cut off his finger. Tied up and assaulted female victim and inserted unknown object into her vagina.</p>	<p>3 yrs imp. 2 yrs 8mths imp. 2 yrs imp. 2 yrs imp.</p> <p>TES 14 yrs.</p> <p>EFP. Minimal acceptance responsibility; serious risk recidivism.</p>	<p><i>inappropriately long in light of the appellants offending or his personal circumstances.</i></p> <p>Nothing in appellant's circumstances indicating sentence more crushing than imposed on any other offender.</p> <p>If sentences had been made concurrent then criminality of the offences would effectively be unrecognised</p>
<p><b>21.</b></p>	<p><i>Miller v The State of Western Australia</i></p> <p><b>[2009] WASCA 79</b></p> <p>Delivered 02/04/2009</p>	<p>31 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record - agg burg; assault. Substance abuse issues; lack of family support.</p> <p>Under influence methamphetamine use at the time of offence.</p> <p>PSR/ psych report suggested may have psychotic mental illness,</p>	<p>Ct 1: AOBH. Ct 2: Dep lib. Ct 3: Assault with intent to rob. Ct 4: Armed robbery. Ct 5: Stealing a motor vehicle. Ct 6: Threat to kill. Ct 7: Agg burg. Ct 8: AOBH. Ct 9: Agg burg.</p> <p>13 x s32 offences (arising from same facts).</p> <p>Offending, in its entirety, at higher end of scale of seriousness.</p> <p>Appellant and victim 1 in de facto relationship and had been taking drugs for hours prior to offending.</p>	<p>Ct 1: 7 mths imp. Ct 2: 12 mths imp. Ct 3: 30 mths imp. Ct 4: 41 mths imp. Ct 5: 7 mths imp. Ct 6: 7 mths imp. Ct 7: 30 mths imp. Ct 8: 5 mths imp. Ct 9: 12 mths imp.</p> <p>Sentence range: loss of demerit points – 12 mths imp.</p> <p>TES 7 yrs 5 mths imp. EFP.</p>	<p>Dismissed.</p> <p>At [54]-[67] Discussion of cases relied on by appellant although the court concluded they were of limited use as they were not actually comparable.</p>

		<p>and personality disorder causing fears of jealousy and abandonment – did not relieve moral culpability.</p>	<p>Offending period approx 14 hrs.</p> <p>Appellant believed victim 1 was having an affair and engaging in prostitution to support her drug habit. Victim 1 denied both allegations and appellant and victim 1 argued. Appellant also believed victim 1 had made arrangements for him to be killed. During the argument, appellant punched victim 1 several times in face and body with his fists – causing a 3m laceration on her scalp (ct 1). Appellant armed himself with a knife, forced victim 1 to leave their home with him and accompany him as he walked around the streets. Appellant holding victim 1 by hair and around the waist to stop her from fleeing (ct 2). Approx 3 ½ hrs after leaving house, appellant forced victim 1 to knock on a randomly chosen door while he stood behind her. Victim 2 answered the door and appellant said his car had broken down and asked to use the phone. Victim 2 agreed and gave appellant his phone. On handing back the phone, appellant has lunged at victim 2 and pulled a knife from his trousers. Victim 2 managed to close the security screen and appellant threatened victim 2 with the knife and demanded his car (ct 3). Victim 2 closed the door and called the police. Appellant took victim 1 to another randomly chosen house and hid in the front yard to avoid police who were now patrolling the area. Victim 3 came out of the house and appellant confronted him with a knife while holding victim 1. Appellant demanded keys from victim 3. Victim gave appellant his keys. Appellant then demanded cash from him and victim 3 gave him his bankcard and a false PIN (ct 4). Appellant forced victim 1 into the car and drove off</p>	<p>Remorseful (superficial with no real insight); high risk of future violence.</p>	
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			<p>(ct 5) – manner of driving later that day constituted circumstances of aggravation for ct 5.</p> <p>Appellant drove victim 1 around for approx 1 hr and 40 min during which time he subjected her to several physical assaults and was verbally abusive and threatening to her (continuation of ct 2). During this time, appellant still armed with a knife and threatened to kill victim 1 several times and bury her body in the bush (ct 6).</p> <p>Appellant then drove to an ATM and forced victim 1 to use stolen bankcard to attempt to withdraw money. Victim 1 has taken the opportunity to run to a nearby shop and shouted for help. Staff took victim 1 to the rear of the shop and locked the shop doors. Appellant approached shop armed with the knife. On finding he could not enter the shop, appellant drove to the rear of the shop and rammed the rear roller doors with the car. Still unable to enter the shop, appellant drove into concrete planter box and used the broken pieces of concrete to smash the glass doors and enter the shop (ct 7).</p> <p>Appellant searched shop but could not find victim 1 – in the process he threatened and physically assaulted staff members (ct 8). Appellant left when he realised police had been called.</p> <p>Police arrived to find appellant leaving scene in stolen car and pursuit followed in which appellant caused 4 separate traffic crashes involving 6 cars, drove at speeds of up to 140km/hr and drove on the wrong side of the road (resulted in the 13 s 32 charges).</p> <p>Appellant was apprehended by police after car became too damaged to drive and he fled on foot and attempted to steal another car (ct 9).</p>		
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<p>20.</p>	<p><i>Harrison v The State of Western Australia</i></p> <p>[2009] WASCA 58</p> <p>Delivered 5/03/2008</p>	<p><u>Harrison:</u> 41 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>No relevant prior criminal record.</p> <p>Good employment history.</p> <p><u>Bale:</u> 21 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>No prior criminal record.</p> <p>Good employment history.</p>	<p>2 x Agg burg (each appellant).</p> <p>Two appellants were co-offenders.</p> <p>Harrison and Bale (two appellants) had been drinking together at local hotel with two friends. Harrison's house had been broken into and damaged on a number of occasions recently and, believing they knew who was responsible, the appellants decided to extract revenge. Appellants and two friends left the hotel and went to the home of the person they believed responsible for the break-ins. On arrival, they kicked in the front door – 3 children and a woman were home but the men they were looking for were not. Furniture was smashed and the woman verbally abused before the group left. Group then drove to another house and, again, gained entry by kicking the front door in – a young woman and child were home. The woman and child ran to a neighbour's house when they heard the door be smashed in. Again, furniture was smashed and windows were broken as well before the group left – Harrison was injured when a wall unit fell on him.</p> <p>Neither appellant would identify the other two men involved in the offending.</p>	<p>TES 2 yrs imp each appellant.</p> <p>Bale expressed remorse.</p>	<p>Dismissed.</p> <p>NB: Only the failure to suspend TES challenged.</p> <p>At [19] Offending described as conduct of 'enforcer type' and that a home invasion committed for the purpose of extracting retribution made the offending of a high level of seriousness.</p> <p>At [20] General deterrence significant factor in sentencing so as to remind the community vigilante type behaviour would not be tolerated.</p> <p>At [28]-[29] Offending described as being a serious example of enforcer-type or vigilante home invasions.</p> <p>At [32]-[38] Some discussion of comparative cases but those cases do not establish the proposition that there was an error in the imposition of an immediate term of imprisonment.</p>
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<i>Transitional Provisions Repealed (14/01/2009)</i>					
<b>19.</b>	<b><i>Cooper v The State of Western Australia</i></b> <b>[2009] WASCA 37</b>  Delivered 9/02/2009	36 yrs at time offending (victim 77 yrs).  Convicted after trial. Minor prior criminal record - alcohol-related driving offences  De facto relationship (13 yrs); 4 children.	1 x Agg burg. 1 x Agg AOBH. 1 x Agg indecent assault. 1 x Agg sex pen. 1 x Agg sex pen. 1 x Agg sex pen. 1 x Agg sex pen.  Offending at the higher end of the scale for this type of offending  Appellant next door neighbour of victim. Appellant drinking heavily. Entered victim's bedroom whilst she was sleeping and struck her on forehead. Held screwdriver under pillow whilst committing sex offences.	2 yrs 8 mths imp. 2 yrs imp. 2 yrs imp. 3 yrs 4 mths imp. 6 yrs 8 mths imp. 3 yrs 4 mths imp. 6 yrs 8 mths imp.  TES 12 yrs imp.  EFP.  Remorse, but did not amount to true remorse as he did not admit he was the offender	Dismissed.  <i>At [41] 'The total sentence imposed in this case by the Sentencing Judge was a sentence which, although heavy, was within the range of sentences which could be properly imposed.'</i>
<b>18.</b>	<b><i>Buxton v The State of Western Australia</i></b> <b>[2009] WASCA 6</b>  Delivered 13/01/2009	44 yrs at time offending.  Convicted after PG – dispute over facts of offending and TOI held. After seeing photos of victim's injuries (which neither the appellant nor his counsel were aware of prior to the TOI) and hearing the exam in chief of the victim, appellant instructed counsel not to cross-examine and accepted facts as alleged by	1 x Agg burg.  Appellant and victim's 7 mth relationship ended approx 6 wks prior to offending. Appellant went to victim's house and knocked on door. Victim answered and asked appellant to leave as he was intoxicated and angry. The anger stemmed from suspicion as to another male being present at the victim's house. Appellant tried to push door open but victim slammed it shut and locked it. Appellant then jumped a fence to gain access to the backyard. Appellant then forcibly removed a locked screen door to gain entry into the house.	2 yrs 8 mths imp.  TES 2 yrs 8 mths imp.  EFP.  No remorse; no acceptance of responsibility; unaware of the seriousness and impact of offending.	Dismissed.  At [11] A contention that the starting point for a sentence was too high is not the issue to be determined on appeal – the only question for the court on appeal is whether the final sentence imposed is within sound sentencing range.  At [13] s 401 requires a

		<p>prosecution.</p> <p>Prior criminal record – no violent offending.</p> <p>Previously breached VRO taken out against him by his ex-wife.</p> <p>Intoxicated at time offending (BAC 0.14).</p> <p>Good work history.</p> <p>Violently assaulted as a child – engaged in counselling at time sentencing to address childhood issues.</p>	<p>Appellant walked into family room and warned off the victim’s visitor. Appellant approached victim and threw two coffee mugs against the sink, smashing them. Victim went to her son’s bedroom to call the police. Appellant snatched the phone from the victim and threw it on the ground. Victim returned to kitchen and began cleaning the broken mugs up. Appellant approached her and placed both hands around her neck. Appellant then questioned her about her visitor. When the victim replied, the appellant slapped her cheek, causing the victim to fall to the ground.</p> <p>Appellant then picked victim up and put her on a bed. Victim tried to stand up but appellant held her down. Victim asked appellant to let her up but he refused and slapped her several times across her ear, cheek and temple. Appellant repeatedly hit victim as she tried to stand up and scream for help. After approx 3 minutes, the appellant let the victim get up. Victim grabbed a mobile phone and ran out to the street. Appellant followed her, grabbed her by the waist and dragged her back inside. Once inside, the appellant again placed both his hands around her neck, making it difficult for her to breathe. Appellant then forced victim onto bed, while still holding her neck and began slapping her all over her body. Victim managed to break free and run to the kitchen. Appellant grabbed the victim and placed his hand over her mouth to prevent her screaming, again causing her breathing difficulties. Appellant pushed the victim onto the couch and held a pillow over her face. Offending only stopped when police arrived.</p> <p>Attack described in sentencing as sustained and</p>		<p>person to commit an offence in the place of another without that person’s consent – the seriousness of offending is not lessened because that offence is against a person rather than against property.</p> <p>AT [21] Fact victim tried to exclude appellant from her home and nature and extent of violence make offending serious.</p>
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			terrifying.		
<b>17.</b>	<b><i>Woodley v The State of Western Australia</i></b>  <b>[2008] WASCA 92</b> Delivered 24/04/2008	47 yrs at time offending.  Convicted after trial.  VRO against offender (victim and offender married but separated).  Moderate prior record related to misuse of alcohol  Aboriginal man; parents alcoholics; grew up on New Norcia mission. Started new relationship whilst awaiting trial, father of 6 month old child	1 x Agg burg. 1 x AOBH. 1 x Dep lib. 1 x Sex pen.  Appellant travelled via car with three females to Muchea where victim resides with de facto. Found victim in bathroom, grabbed her by hair and punched her in head. Forced her into car and drove her back to Perth where he raped her at a house in Cloverdale.	2 yrs 8 mths imp. 12 mths imp. 12 mths imp. 4 yrs imp.  Total effective sentence 6 yrs 8 mths imp. EFP.  No insight; maintains denial and claims consensual.	Dismissed.  <i>At [25] 'Total concurrency of the sentences would result in a total sentence of 4 yrs and that would be an inadequate measure of the total criminality of the appellant's conduct'.</i>
<b>16.</b>	<b><i>Ugle v The State of Western Australia</i></b>  <b>[2007] WASCA 199</b>  Delivered 28/09/2007	36 yrs at time offending.  Convicted after late PG (prior to start of trial and after absconding twice while awaiting trial on plea not guilty).  Prior criminal record - stabbed infant son; several sex offences committed when 18 yrs.  Aboriginal man originally	1 x Agg indecent assault. 1 x Agg sex pen. 1 x Agg sex pen. 1 x Agg sex pen. 1 x Agg burg.  Knocked on victim's window at 4am waking her. Attempted to sell her drugs then forced past her asking to use bathroom, pushed her into bedroom. Threatened her with clothes iron, then committed sex offences. Threatened to shoot her if she tried to escape. Assaulted her with iron, wrapped cord round her neck. Upon leaving stole electrical equipment, TV, stereo and mobile.	2 yrs 8 mths imp. 4 yrs 6 mths imp. 8 yrs 1 mth imp. 9 yrs imp. 7 yrs 2 mths imp.  TES 11 yrs 1 mth.  Not EFP.  High risk re-offending – refusal cease substance use; unwilling abide by court orders.	Allowed only in relation to the imposition of no eligibility for parole (by majority) – at [64] public interest best served if incentive to undertake steps to rehabilitation.  <i>At [42] In light of the analysis of other cases it has to be acknowledged that this is a sentence in full measure: it is at the upper end of the range of</i>

		from Narrogin; deprived background, exposed to violence, alcoholism and neglect; poly substance abuse (cannabis, amphetamines and alcohol).			<i>sentences that could properly have been imposed. But given all of the circumstances, I do not think it is outside the available range.'</i>
15.	<b><i>Henderson v The State of Western</i></b>  <b>[2007] WASCA 198</b>  Delivered 28/09/2007	27 yrs at time offending. 30 yrs at time sentencing.  Convicted after trial.  No prior criminal record. Technical qualifications; excellent employment history; family support; long term relationship.  Bouts of depression.	Ct 1: Agg burg (victim1). Ct 2: Dep lib (victim 1). Ct 3: Steal motor vehicle (victim 1). Ct 4: AOBH (victim 2). Ct 7: Dep lib (victim 1.) Ct 8: Dep lib (victim 2).  Appellant loaned two victims \$8,000 as part of a drug deal they were all involved in. Appellant attempted to contact victims regarding the repayment of the loan but could not get in touch with them. Appellant and friend went to victim 1's house. Appellant entered the house after victim 1 refused to come out and punched victim 1 in the head (ct 1). Appellant was wearing knuckledusters. Appellant said he was going to see victim 2 and victim 1 was forced to accompany him (ct 1). Appellant and victim 1 drove in victim 1's car to victim 2's house (ct 3). On entering the house, the appellant punched victim 2 above the eye (ct 4). Appellant and both victims began talking and appellant eventually demanded the keys to victim 2's car. Appellant drove victims 1& 2 to a carpark (cts 7 & 8). After failing to secure money to be able to repay the debt over the phone, victim 2 signed his car over to the appellant. Appellant told victim 2 he would not register the transfer yet and that he would give him more time to pay. Over the next	Ct 1: 20 mths imp. Ct 2: 16 mths imp. Ct 3: 8 mths imp. Ct 4: 12 mths imp. Ct 7: 16 mths imp. Ct 8: 16 mths imp.  TES 48 mths imp. EFP.	Dismissed.  <i>At [61] 'It is not easy to make comparisons for the offence of unlawful detention because, like crimes such a manslaughter, it covers a broad spectrum of possibilities.'</i>  <i>At [61] Dep lib committed in tandem with sex offences are not properly comparable to those with no sex offences.</i>

			few days the appellant returned some of victim 2's items that had been in the car and used the car as his own. Appellant was told the police were looking for him and the car and he abandoned the car.		
14.	<i>Egan v The State of Western Australia</i>  [2007] WASCA 182  Delivered 5/09/2009	35 yrs at time sentencing.  Very minor prior criminal record.  Single mother of two children – 6 and 15 yrs of age. 15 yr old had behavioural problems which appellant working hard to address at time of sentencing; no family members able to care for either child.	1 x Agg burg. 1 x Wilful and unlawful damage.  Victim was ex-partner of appellant and appellant believed he played some role in her stepsister's recent suicide as she allegedly supplied her with amphetamines. The victim and co-offender went to the victim's home with the intent of confronting him. They arrived at his home shortly after 5am armed with a bat. The appellant yelled out "good morning" as they approached the house and they smashed a front window using the bat. The victim woke up, looked out the window, saw the appellant and co-offender and ran away. Appellant and co-offender entered the house, realised that the victim has just left and threw "every piece of moveable property they could find" around – causing approx \$20,000 worth of damage. The appellant at some point cut her hand and blood was flicked on the walls and floors.  Appellant intoxicated at time offending.  Co-offender received a suspended term of imprisonment.	2 yrs imp. 18 mths imp.  TES 2 yrs imp.  EFP.	Allowed.  <u>Sentences on appeal</u> Agg burg: 21 mths imp. Damage: 18 mths imp.  TES reduced to 21 mths imp suspended for 13 mths.  At [15]-[19] Sentencing judge fell into error in characterisation of offending and appellant's role relative to the co-offender's.
13.	<i>Drake v The State of Western Australia</i>	38 yrs at time sentencing.  Convicted after fast-track PG.	Ct 1: Agg burg. Ct 2: AOBH. Ct 3: Agg burg. Ct 4: Agg burg.	Ct 1: 26 mths imp. Ct 2: 10 mths imp. Ct 3: 26 mths imp. Ct 4: 26 mths imp.	Allowed.  TES reduced to 26 mths imp – individual sentences

<p><b>[2006] WASCA 209</b></p> <p>Delivered 12/10/2006</p>	<p>Prior criminal record – agg assault; dishonesty offences; agg burg.</p> <p>Offending breached bail.</p> <p>Unhappy and problematic childhood.</p> <p>Mother of 13 yr old child currently being cared for by appellants’ mother.</p> <p>Substance abuse issues – drug use began following conviction of her father for child sex offences against the appellants 2 yrs prior to the offending.</p>	<p>Ct 5: AOBH.</p> <p>Appellant and de facto went to victim 1’s motel room and knocked on the door at a time when the appellants knew victim 1 was there. Victim 1 unlocked door and appellants ran inside, jumped on victim 1 and continually struck her on the face and body as she lay on the bed (ct 1). The appellants then grabbed a bedside lamp and struck victim 1 on the face with causing a laceration to the left side of her eye (ct 2). Appellants’ de facto then forcibly removed the appellants from the room and started moving her towards their car. Appellants broke free and ran back to the motel room where she continued punching victim 1 in the face (ct 3). Again, the appellants’ de facto forcibly removed her from the room. Appellants made a further unsuccessful attempt to re-enter the motel room but could not as victim 1 had managed to lock the door. Victim 1 received 3cm laceration requiring sutures above her left eye</p> <p>Appellants and de facto then travelled to another address. On arrival they began yelling abuse at victim 2 who locked his door as they began walking towards it. Appellants’ de facto kicked in the door and king hit victim 2 to the face (ct 4). Appellants and de facto then began to kick and punch victim 2 in the face (ct 5). Victim 2 attempted to run and hide in the bedroom but the appellants and her de facto followed him and again repeatedly punched him in the face (ct 5).</p> <p>Victim 2 received a possible broken nose, bruising and swelling to the left eye, bruising to the left ear, cut lower lip and tenderness over his jaw.</p>	<p>Ct 5: 10 mths imp.</p> <p>TES 32 mths imp.</p> <p>EFP.</p>	<p>not altered.</p> <p>At [52] Terms of between 4 and 7 years imprisonment are frequently imposed for this type of offending.</p> <p>At [53]-[62] Some discussion of comparative cases – offending classed as an “enforcer” type case.</p>
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			Appellant explained the assaults on the basis that both victims owed her money and that police were not actioning her complaint against them expeditiously so she decided to take things in to her own hands.		
12.	<b><i>Rigby v The State of Western Australia</i></b>  [2005] WASCA 134  Delivered 22/07/2005	28 yrs at time offending.  Convicted after late PG (in face of prosecution's overwhelming case - much less mitigation).  Offending breached parole.  Prior criminal record – burglary; dishonesty offences; drug and motor vehicle related offences  Custody of 2 children - due to abuse by ex-partner's boyfriend; commenced substance use at 14 yrs (cannabis, ecstasy, amphetamine).	1 x Agg burg. 1 x Dep lib. 1 x Dep lib. 1 x Agg sex pen.  Jumped fence and entered house, victim awoke to noises. Confronted by appellant and overpowered. Screaming woke 3 yr old daughter. Victim attempted to escape when told to return daughter to bedroom. Daughter refused to return to bedroom and was left standing alone in hallway screaming whilst appellant shut study door and raped victim.  Held in sentencing offence was invasion of victim's sense of autonomy, dignity, privacy and sense of security, as well as a physical violation. Attack had a lasting impact on victim's daughter.	2 yrs 8 mths imp. 16 mths imp. 16 mths imp. 5 yrs 4 mths imp.  TES 9 yrs 4 mths imp.	Dismissed.  <i>At [32] 'Having regard to the seriousness of the offences committed by the applicant I conclude that the total aggregate or head sentence is not manifestly excessive.'</i>
11.	<b><i>The State of Western Australia v Miller</i></b>  [2005] WASCA 53	25 yrs at time offending (victim 42 yrs).  Convicted after late PG (on day trial due to begin). Prior criminal record – minor offences and one	Ct 1: Agg burg. Ct 2: Sex pen (cunnilingus). Ct 3: Indecent assault. Ct 4: Sex pen (penile pen vagina).  Respondent had met victim on several occasions prior to offending. Respondent aware that, owing to	Ct 1: 2 yrs 8 mths imp. Ct 2: 2 yrs 4 mths imp. Ct 3: 4 mths imp. Ct 4: 4 yrs imp.  TES 4 yrs imp.	Allowed.  <u>Sentences on appeal:</u> Ct 1: 4 yrs imp. Ct 2: 4 yrs 8 mths imp. Ct 3: 1 yr 4 mths imp. Ct 4: 5 yrs 4 mths imp.

	Delivered 24/03/2005	previous agg burg.  Supportive family; reasonably good work history.	psychiatric illness (schizophrenia), victim more vulnerable than average person. Respondent, after consuming substantial amount alcohol and taking 2-3 ecstasy tablets, armed himself with an iron bar and a screwdriver, concealed his face with a pillow cover and went to victim's unit. Victim heard respondent breaking in and called out for help. Respondent went to victim, began hitting the bar on his hand in a threatening manner and told victim he wanted sex. Victim, believing she had no choice, agreed and took pillow cover off respondent's head. Victim recognised respondent and asked him to shower first. Respondent showered and took victim into bedroom – performed cunnilingus (ct 2), lifted her top and put her breast in his mouth (ct 3) and engaged in sexual intercourse, withdrawing before ejaculation at the request of the victim (ct 4).		TES increased to 6 yrs imp.
10.	<b><i>Riley v The State of Western Australia</i></b>  <b>[2004] WASCA 123</b>  Delivered 9/06/2004	26 yrs at time offending.  Prior criminal record – including violent offences and stealing offences.  Offending breached parole.  Underprivileged life – poor socio-economic background; limited education; drug dependent.	Ct1: Agg burg. Ct 3: Receiving. Ct 4: Agg burg. Ct 5: Steal motor vehicle. Ct 6: Receiving. Ct 7: Agg burg. Ct 8: Agg AOBH.  Offending period 18-26 February 2002.  Appellant and co-offender gained entry through a window to the home of 50 yr couple who were home and watching TV at the time. Appellant and co-offender stole camera equipment and jewellery (ct 1). Appellant in possession of a briefcase and jewellery	Ct 1: 3 yrs imp. Ct 3: 2 yrs imp. Ct 4: 3 yrs imp. Ct 5: 2 yrs imp. Ct 6: 2 yrs imp. Ct 7: 8 yrs imp. Ct 8: 4 yrs imp.  TES 14 yrs imp. Equivalent to 9 yrs 4 mths imp transitional.  1,014 outstanding breach of parole days – ordered to be served cumulative on TES.	Allowed.  TES reduced by  At [5]-[6] Sentence for ct 1 towards lower end of the appropriate range and the sentences for cts 1-6 are “unremarkable and tending towards the lenient”.

			<p>during an unrelated house break-in (ct 3). Appellant gained entry to a home by forcing open a side window. Two victims were home at the time asleep. Appellant stole a number of items, including the car keys and car (cts 4 &amp; 5). Appellant received stolen handbag from unrelated burglary (ct 6). Appellant and co-offender armed themselves and broke into the home of an elderly couple. During the course of the home invasion, appellant struck victim 1 on the head with a jemmy he had used to enter the house. The lights had been turned off to facilitate entry and the phone lines had been cut to prevent assistance being called. Some items of furniture were smashed.</p>	<p>EFP. NB: Sentenced prior to enactment of transitional provisions.</p>	
<p><b>9.</b></p>	<p><i>Slowiak v The Queen</i> <b>[2004] WASCA 112</b>  Delivered 31/05/2004</p>	<p>26 yrs at time sentencing.  Convicted after fast-track PG.  Extensive prior criminal record and history re-offending while on parole.  Difficult childhood – parents separated appellant 2 yrs; physical &amp; sexual abuse.  Long history poly-substance abuse – heroin at 16 yrs; amphetamines.</p>	<p>1 x Armed robbery (pretending to be armed with firearm). 1 x Agg burg. 4 x Dep Lib.  Appellant broke into victim 1's home, forced her to sit down, took a knife from the kitchen and threatened her with it. Appellant refused to let victim leave and boasted about the bank robbery he had committed that day. Appellant handed her some money from the robbery and made her count it. Appellant entered home of victims 2 &amp; 3 and again forced them to sit down and stay in the room with him while he again boasted about the armed robbery. Victims 4 &amp; 5 arrived while appellant holding victims 2 &amp; 3 and the appellant forced them to sit and stay in the room as well. Appellant then asked them to drive him to meet an associate – two of them agreed to do so and appellant left them</p>	<p>7 yrs imp.  8 yrs 6 mths imp. 3 yrs imp 1<sup>st</sup> ct &amp; 2 yrs imp each remaining ct.  TES 9 yrs imp.  PSR &amp; psychol reports indicated high risk re-offending; little or no insight into effect on victims and tendency to externalise blame.</p>	<p>Dismissed.</p>

			after being driven to the meeting spot.  Armed robbery unconnected to other offences, although committed on same date.		
8.	<i>Newburn v The Queen</i>  [2004] WASCA 108  Delivered 23/05/2004	24 yrs at time sentencing.  Convicted after PG.  No relevant prior criminal record.  History of regular employment but had lost job and fallen in with wrong crowd.	1 x Agg burg. 1 x AOBH.  Appellant drove his car with 4 passengers, together with another car carrying 5 people, to the victim's house with the intent of settling a score. Appellant was unaware a number of the group were armed with metal bars and baseball bats until they arrived at the victim's house. On arrival, three members of the group forced their way through the front door while another two gained entry to the house by the rear door. The victim was asleep with his girlfriend at the time. Victim was struck numerous times to his body and head as he lay on the bed – required admission to hospital for his injuries and suffered a broken jaw. Appellant did not enter the house but waited outside. Appellant heard the noise of conflict and property being smashed and, becoming worried as to the level of violence being used, drove his car away without waiting for his passengers to return.  Appellant held to have played a key role in providing transport to the house in the knowledge that the intent was to enter the victim's home and assault him.	2 yrs imp. 1 yr imp.  TES 3 yrs imp. EFP.	Allowed.  TES reduced to 2 yrs imp – individual sentences not disturbed.  TES reduced solely on parity grounds.  At [7] While the law makes no distinction between principal offenders and those who aid them with regard to culpability, the distinction is of relevance to the sentencing process and the seriousness of offending.
7.	<i>Hart v The Queen</i>	35 yrs at time sentencing.  Convicted after fast-track	4 separate home invasions.	TES all offences 34 yrs imp. Equivalent to 22 yrs 8	Allowed – on totality.  TES reduced to 28 yrs imp.

<p>[2003] WASCA 265</p> <p>Delivered 5/11/2003</p>	<p>PG.</p> <p>Prior criminal record - burglary and violent offences but none with sexual component.</p> <p>Long term relationship broken down due to domestic violence and alcohol and amphetamine abuse; present offences fuelled by amphetamines</p>	<p><u>Cts 1-4 (home invasion 1):</u></p> <p>1 x Agg burg. 1 x Dep lib. 1 x Agg indecent assault. 1 x Unlawful wounding.</p> <p>Victim, 20 yrs, at home with 20 mth old son when appellant smashed window of her home and entered in the early hours of the morning. On entry, appellant unlocked deadbolt so he could easily escape. Victim got out of bed, appellant hid and grabbed her from behind as she walked past him. Appellant put his hands over her mouth, waved a knife in front of her face and told her not to scream. Appellant then dragged victim to a bedroom and she began to scream. Appellant pulled victim by her hair into her child's room. Child woke up and appellant pushed him out of the room and closed and locked the door behind him. Appellant pushed victim to floor, causing laceration to back of her head, and tried to remove her underwear. Victim struggled violently and grabbed appellant's testicles. Appellant ran from room and out of the door he had earlier unlocked, pushing the child against the wall in the process.</p> <p><u>Cts 5-7 (home invasion 2):</u></p> <p>1 x Agg burg. 1 x Dep lib. 1 x Agg indecent assault.</p> <p>Victim 30 yr old female living alone. In early morning, 2 days after first home invasion, appellant forced entry into victim's home, entered her bedroom. Victim woke up to find appellant on top</p>	<p>mths imp transitional.</p> <p>6 yrs imp. No sentence. 2 yrs imp. 3 yrs imp.</p> <p>TES 6 yrs imp. Equivalent to 4 yrs imp transitional.</p> <p>High risk re-offending.</p> <p>6 yrs imp. No sentence. 2 yrs imp.</p> <p>TES 6 yrs imp. Equivalent to 4 yrs imp transitional.</p>	<p>Equivalent to 18 yrs 8 mths imp transitional.</p> <p>At [32] <i>'The concern of the learned sentencing judge to separately mark each of the four groups of offences with cumulative sentences has, in the result, produced a sentence which, in totality, is beyond that which is appropriate.'</i></p> <p>At [3] <i>'The severity of a term of imprisonment increases exponentially with its length.'</i></p> <p>NB: Original sentence was imposed before the transitional provisions were in force.</p>
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			<p>of her, pinning her down. Appellant verbally threatened victim and victim noticed appellant armed with a knife. Victim struggled and cried out for help. Appellant fled house.</p> <p><u>Cts 8-14 (home invasion 3):</u>  1 x Agg burg.  1 x Dep lib.  1 x Indecent deal child u 13 yrs.  1 x Sex pen child u 13 yrs.  3 x Sex pen child u 13 yrs.  12 yr old victim spending night at 68 yr old grandmother's house. Appellant broke in, stole money from a purse and searched the rest of the house. Appellant discovered victim in bed asleep, placed his hand over her mouth and rubbed her breasts and body. Victim woke up and appellant told her not to scream or her grandmother would get hurt. Appellant pulled victims' underwear to the side and penetrated vagina with fingers. Appellant then pulled own pants down and inserted penis into vagina, attempting sexual intercourse. Appellant stopped after moment and said it wasn't working. Appellant removed victim's underwear and again inserted penis into vagina. Victim felt cold metal object, knife or screwdriver, against her neck. Victim allowed to go to toilet, appellant accompanied her with his hand around her throat and walked her back to bedroom where he again inserted penis into vagina, attempting sexual intercourse while holding knife or screwdriver to her throat. Appellant eventually ejaculated onto bed. Appellant then left, after again threatening victim, and took the telephone with him.</p>	<p>6 yrs imp.  No sentence.  3 yrs imp.  7 yrs imp.  10 yrs imp each count.</p> <p>TES 10 yrs.  Equivalent to 6 yrs 8 mths imp transitional.</p>	
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		<p><u>Cts 15 -31 (home invasion 4):</u>  1 x Agg burg.  1 x Agg sex pen.  1 x Agg indecent assault.  1 x Att agg sex pen.  1 x Agg sex pen.  1 x Agg indecent assault.  1 x Agg sex pen.  1 x Agg sex pen.  1 x Agg sex pen.  1 x Agg indecent assault.  1 x Agg sex pen.  1 x Agg indecent assault.  1 x Dep lib.  1 x Agg armed robbery.  1 x Steal motor vehicle.</p> <p>Immediately after third home invasion, appellant entered home 68 yr old woman living alone. Victim asleep in bed. Appellant entered bedroom, placed hand over mouth and held a knife to her throat. Appellant put hands inside victim's underwear, rubbed her vagina and then digitally penetrated her. Appellant removed victim's tracksuit pants and underwear, forced her onto her stomach and pushed her legs apart. After several unsuccessful attempts at inserting penis into vagina, appellant pushed victim into keeling position, spread her vagina with his hands and penetrated her vagina with his penis. Appellant engaged in sexual intercourse to ejaculation. During intercourse, appellant had knife in teeth. Appellant then threw victim onto her stomach, lay on top of her and inserted his penis into her anus. Victim resisting, crying and pleading with appellant to stop. Appellant removed penis</p>	6 yrs imp. 7 yrs imp. 1yr imp. 4 yrs imp. 10 yrs imp. 1 yr imp. 12 yrs imp. 10 yrs imp. 10 yrs imp. 2 yrs imp. 7 yrs imp. 2yrs imp. No sentence. 4 yrs imp. 4 yrs imp.  TES 12 yrs imp. Equivalent to 8 yrs imp transitional.	
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			<p>from anus, pushed victim onto her side, knelt on the bed and attempted to force his penis into her mouth. Victim resisted and shut mouth. Appellant grabbed her mouth and jaw and prised mouth open and then moved penis in and out of her mouth. Appellant stopped after short while and attempted to wipe victim's vagina, mouth and buttocks with sheet to remove DNA evidence. Appellant held pillow over victim's head and demanded car keys while holding knife to her throat. Victim told appellant where keys were and appellant left, after cutting phone lines.</p>		
6.	<p><b>Ahmad v The Queen</b>  <b>[2003] WASCA 234</b>          Delivered 3/10/2003</p>	<p>26 yrs at time sentencing.          Convicted after trial.          Minor prior criminal record.          University educated.</p>	<p>Ct 1: Agg burg.          Cts 2 – 7: Dep lib.          Ct 8: Kidnapping.          Ct 9: Extortion.</p> <p>Appellant and co-offender forced their way into a home while the family (father, mother and three of four children) were home. Appellant and co-offender wore dark clothing and balaclavas. One had gloved hands and the other had what appeared to be socks on his hands. The co-offender was armed with a rifle and the appellant armed with a hunting knife. The appellant bound the family's ankles and hands and the victim 1 (the mother) was taken to the bedroom. Appellant ordered her to take out all the jewellery and cash – which she did. Appellant questioned her about a safe – victim 1 replied they did not have one. Victim 1 returned to room where rest of family was and appellant asked same questions of victim 2 (the father). Became apparent to appellant no safe on premises but that the family had \$46,000 cash in the bank.</p>	<p>3 yrs imp.          3 yrs imp each ct.          7 yrs imp.          7 yrs imp.</p> <p>TES 13 yrs imp.          Equivalent to 8 yrs 8 mths imp transitional.</p> <p>EFP.</p> <p>NB: Sentence imposed prior to enactment of transitional provisions.</p>	<p>Dismissed.</p> <p>At [39] In all the circumstances of offending neither the individual sentences nor the TES could be said to be manifestly excessive.</p>

			<p>Appellant arranged for a third and fourth co-offender to attend property. Victim 1 was blindfolded and taken to a van. She was then driven to the appellant's home, placed on a mattress and kept, blindfolded and tied, under armed guard. Appellant and one co-offender remained with rest of family at the house. Appellant told victim 2 he must pay \$46,000 to ensure safe return of his wife. Appellant gave him instructions on how to effect payment. Payment made and appellant directed victim 2 to a shopping centre where he said victim 1 had been left. Victim 1 was not there having been left by the appellant several miles away. Victim 2 and family spent many anxious hours before she was found. Money was not recovered.</p> <p>Appellant found to be the one who had devised the plan.</p>		
<b><i>Transitional Provisions Enacted (31/08/2003)</i></b>					
5.	<p><b><i>Hibbs v The Queen</i></b></p> <p><b>[2002] WASCA 204</b></p> <p>Delivered 2/08/2002</p>	<p>24 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record – fraud; receiving; stealing; dangerous driving.</p> <p>Regular employment until falling in with bad crowd.</p>	<p>1 x Agg burg. 1 x AOBH.</p> <p>Appellant and 9 co-offenders went to victim's home with intent to "settle a score". Co-offenders were armed with baseball bats and metal bars – appellant's role was to provide transport. Victim was asleep in a rear bedroom with his girlfriend when the group forcibly entered the front of the house. Victim was struck numerous times as he lay in bed – suffered multiple injuries, including a broken jaw, and required hospital treatment.</p>	<p>2 yrs imp. 1 yr imp.</p> <p>TES 3 yrs imp. Equivalent to 2yrs imp transitional.</p> <p>EFP.</p>	<p>Allowed.</p> <p>TES reduced to 2 yrs imp. Equivalent to 16 mths imp transitional.</p> <p>NB: Individual sentences not altered.</p>

			Appellant remained outside during the assault and left when he heard the noise the assault generated.		
4.	<i>Collins v The Queen</i>  [2002] WASCA 142  Delivered 29/05/2002	26 yrs at time offending.  Convicted after early PG.  Prior minor assaults; disturbances; resisting arrest.  De facto relationship (8 yrs); two young children; suffered severe physical and emotional abuse as a child; suffering relationship, business and financial difficulties	1 x Agg burg. 1 x Sex pen. 1 x AOBH. 1 x Agg burg. 1 x Robbery. 1 x Agg burg. 1 x Assault police officer.  Appellant entered random house, disconnected telephone, threatened victim with bottle. Appellant then committed 5 sex offences. In process, appellant assaulted brother who came home and tried to prevent the rape. Appellant left house then returned demanding keys to car, crashed car and entered and ransacked neighbouring house. Appellant assaulted police when being apprehended.  Appellant had patchy recollection of offending and could not believe he had behaved so violently or that he sexually violated victim in the way described - severely intoxicated by alcohol at time offending.	3 yrs imp. 6 yrs imp. 6 yrs imp. 8 yrs imp. 6 yrs imp. 8 yrs imp. 2 yrs imp. 3 yrs imp. 4 yrs imp. 1 yr imp. 1 yr imp.  TES 11 yrs imp. Equivalent to 7 yrs 4 mths imp transitional.  Genuine remorse.	Dismissed - sentences appropriate length, if anything rather lenient. Aggregate term well within range of properly proportionate response by the court to the total criminality involved.
3.	<i>Ricciardello v The Queen</i>  [2001] WASCA	38 yrs at time sentencing.  Convicted after trial.	Ct 2: Robbery with violence. Ct 3: Dep lib. Ct 6: Agg burg.	Ct 2: 4 yrs. Ct 3: 5 yrs imp. Ct 6: 7 yrs 9 mths imp.	Allowed.  TES reduced to 16 yrs 9 mths imp.

	<p><b>416</b></p> <p>Delivered 19/12/2001</p>	<p>Armed robbery breached parole (heroin offences).</p> <p>Significant prior criminal record – assault; gaming; agg indecent assault; firearms offences; drugs.</p> <p>Supportive family; mother ill; father suffered 3 strokes.</p>	<p>Appellant went to victim’s work premises, assaulted him by repeatedly punching him and stole his phone, keys and \$580 cash.</p> <p>Appellant then took victim to co-offender’s house, service station and back to victim’s work premises against his will with the intent to gain more money from him.</p>	<p>TES 19 yrs 9 mths imp. Equivalent to 13 yrs 2 mths imp transitional.</p> <p>Not EFP.</p> <p>Owed 2,212 breached parole days at time sentencing to be served cumulatively on sentence above.</p>	<p>Equivalent to 11 yrs 2 mths imp transitional.</p> <p><u>Sentences on appeal:</u> Ct 6: 4 yrs 9 mths imp (totality reasons only).</p> <p>Not EFP.</p> <p>Individual sentences all appropriate but TES when breach days taken into account excessive.</p>
<p>2.</p>	<p><b>King v The Queen</b></p> <p>[2001] WASCA 198</p> <p>Delivered 19/06/2001</p>	<p>36 yrs at time sentencing.</p> <p>No relevant prior criminal record.</p> <p>Pathological gambling problem following workplace injury; good employment record.</p> <p>No previous violence in marriage.</p>	<p>Ct 1: Agg burg. Ct 2: Dep lib.</p> <p>Victim and appellant married for 13 yrs and have 3 children together (8, 5 &amp; 3 yrs). Separated at time offending and VRO in place against appellant. Owing to appellant’s violence and threats the victim moved (with children) to a women’s refuge and subsequently moved to an address unknown to the appellant. Appellant found address out and went to the property and knocked on front door. When victim asked who it was, appellant replied “it’s just a neighbour”. Victim unlocked door and appellant pushed his way in knocking the victim over. Victim began to scream and appellant pulled her to her feet and slapped her. Victim ran screaming from house but returned as the children were there and the appellant had not followed her out. Appellant took victim to kitchen and sat her on a chair in the corner, telling her not to move, and</p>	<p>Ct 1: 7 yrs imp. Ct 2: 3 yrs imp.</p> <p>TES 7 yrs imp. Equivalent to 4 yrs 8 mths imp transitional.</p> <p>Not EFP.</p>	<p>Allowed.</p> <p>EFP ordered – threat appellant will pose at time eligible for parole is a matter to be assessed by Parole Board not sentencing judge.</p> <p>TES undisturbed.</p>

			<p>began acting in a threatening manner. Appellant told children victim was a ghost and that they would see and smell her burn. When appellant was not looking, victim ran to lounge room to call the police but the appellant forced her to return to the kitchen (ct 2). Victim rang police when appellant went outside to tend to one of the children who had fallen off their bike.</p> <p>Offending at upper end of scale of seriousness and only the actual infliction of physical violence could have made the offending worse. Offending was culmination of 2 mths of persecution of the victim by the appellant – it was not an isolated incident of offending.</p>		
1.	<p><b><i>Narrier v The Queen</i></b> [2000] WASCA 86</p> <p>Delivered 6/04/2000</p>	<p>25 yrs at time offending.</p> <p>Prior criminal record – frequent appearances in children’s court in WA and SA (including juvenile convictions for agg sex assault; dep lib; armed robbery); served term juvenile detention; numerous adult convictions (burglary; child stealing; assault)</p> <p>Sexual offending related to alcohol dependence.</p> <p>In foster care until 7 yrs – little physical or emotional</p>	<p>1 x Agg burg. 1 x Agg sex pen. 1 x Agg burg. 1 x AOBH.</p> <p>Offending occurred on one night.</p> <p>Appellant intended to steal money from first victim’s house. On arrival, saw victim 1 through window and decided to sexually assault her. Appellant waited until victim 1 opened rear door to let her dog out. Appellant then grabbed victim 1 by throat and pushed her back into the house while holding her mouth closed. Took victim 1 into lounge room and threatened to kill her. Pushed victim 1 onto sofa and pulled her pants down to her ankles. Appellant lowered shorts and penetrated vagina with his penis. After withdrawing, appellant went into kitchen and waited for victim 1 to come</p>	<p>4 yrs imp. 8 yrs imp. 4 yrs imp. 3 yrs imp.</p> <p>TES 12 yrs imp. Equivalent to 8 yrs imp transitional.</p> <p>Order of indefinite imp made s 98 Sentencing Act.</p> <p>Remorse; embarrassment &amp; distress at offending; no attempt to minimise responsibility; no attempts to blame</p>	<p>Allowed – only order for indefinite imp appealed. Order for indefinite imp quashed. TES undisturbed.</p> <p>At [35] “<i>In my view and in the sense discussed by the High Court Justices in Chester, this was not one of the very exceptional cases where the exercise of the power was demonstrably necessary to protect society from physical harm.</i>”</p>

		<p>care; returned to natural parents – regular domestic violence and excessive alcohol consumption; father died alcoholism when appellant 13 yrs;</p>	<p>to him. Appellant then apologised. Victim 1's two young children asleep in house at time offending. Appellant went to victim 2's house with intent to steal money. Victim 2 asleep on sofa and woke up. Victim 2 tried to run away but appellant grabbed her by the neck and head and restrained her. Victim 2 struggled free and ran outside. Appellant grabbed her again and another struggle ensued. Victim 2 told appellant she recognised him from the neighbourhood and appellant fled.</p>	<p>victims; no attempt to justify behaviour.</p>	
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