

## **Aggravated burglary**

**Residential properties  
(excluding 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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:

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| imp   | imprisonment                              |
| susp  | suspended                                 |
| conc  | concurrent                                |
| cum   | cumulative                                |
| PG    | plead guilty                              |
| Agg   | aggravated                                |
| Burg  | burglary                                  |
| Att   | attempted                                 |
| EFP   | eligible for parole                       |
| TES   | total effective sentence                  |
| ISO   | intensive supervision order               |
| PSO   | pre-sentence order                        |
| CBO   | community based order                     |
| wiss  | with intent to sell or supply             |
| DDOBH | dangerous driving occasioning bodily harm |

| No. | Case  | Antecedents   | Summary/Facts   | Sentence   | Appeal   |
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| 30. | <p><i>LJL (a child) v Mason</i></p> <p>[2013] WASC 465</p> <p>Delivered 19/12/2013</p> <p>On appeal from Children's Court</p> | <p>12 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Criminal record; including agg burg, assault W/I to rob, agg robb.</p> <p>Committed a string of similar offences throughout the same year.</p> <p>All offences other than AOBH committed in breach of IYSO.</p> <p>Response to previous orders was unsatisfactory.</p> | <p>Agg burg x 3.<br/>Burg x 2.<br/>AOBH x 1.<br/>Criminal damage x 1.</p> <p>The appellant hit the victim to the left side of his face with a stolen scooter. He also punched the victim in his face. The victim suffered bruising under his right eye and soreness to both sides of his face.</p> <p>The appellant broke into homes and stole property. In one instance, in company with a co-offender, they threw paint inside and outside of a house. Putty was also used to stick items to the wall and to write offensive words.</p> | <p>TES 3 mths detention.</p> <p>Good prospects of rehabilitation.</p>  | <p>Dismissed.</p> <p>At [15] ... Rehabilitation is a particularly important consideration in respect of children.</p> <p>At [19] There is nothing to suggest that the magistrate did not have regard to the report indicating that the appellant had recently made positive changes and was responding well to supervision. However, the offences were of a very serious nature...</p> <p>Discussion surrounding the amendment of s120 <i>Young Offenders Act</i>.</p> |
| 29. | <p><i>Pennetta v The State of Western Australia</i></p> <p>[2013] WASCA 234</p> <p>Delivered 17/10/2013</p>                   | <p>35 yrs at sentencing.</p> <p>Convicted after early PG.</p> <p>Extensive criminal history mostly for drug offences; convictions for burglary and stealing; substance use had been major contributing factor.</p> <p>Exposed to substance abuse and domestic violence as a child; left school in Year 9.</p>                         | <p><u>Indictment</u></p> <p>Ct 1: Agg burg (dwelling).<br/>Ct 2: Burg (dwelling).</p> <p><u>Section 32</u></p> <p>5 x Agg burg (dwelling).<br/>1 x Att agg burg (dwelling).<br/>1 x Burg (commercial).<br/>2 x Steal MV.<br/>2 x Drive under suspension.<br/>8 x Stealing.<br/>2 x Poss stolen property.</p>  | <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>Remorseful.</p> <p>Did not recall details of offences due to being under the influence of amphetamines at the time.</p> | <p>Dismissed – on papers.</p> <p>At [47] The sentencing judge was correct to describe the appellant's course of offending as a crime spree. It involved a number of serious burglary offences on residential properties... The appellant's persistence and disregard for the law is</p>  |

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|     |  | <p>Imprisoned at age 23; on release began selling drugs to fund his own substance abuse.</p> <p>Partner of 10 yrs; two children – one whom was born after the appellant was remanded in custody for these offences.</p> <p>Whilst on bail appellant committed Ct 2 and some section 32 offences.</p>   | <p>1 x Poss controlled weapon.<br/>1 x Poss prohibited drug.<br/>1 x Poss smoking utensil.</p> <p>The appellant on most occasions, committed the offences with a co-offender; forced entry to homes and a business; often by smashing a window. He ransacked the homes and stole significant property.</p> <p>The offences were clearly planned. The appellant targeted homes at times that he expected the occupants were absent.</p>  | <p>Offences committed under coercion to obtain property to pay off a drug debt.</p> <p>High risk of re-offending.</p>  | <p>evident from the fact that he continued his offending whilst on bail.</p>  |
| 28. | <p><i>Nolan v The State of Western Australia</i></p> <p>[2013] WASCA 235</p> <p>Delivered 14/10/2013</p> <p>Decisions from District and Magistrates Court.</p> | <p>42 yrs at sentencing.</p> <p>Convicted after early PG.</p> <p>Extensive prior criminal record in Qld, NSW and WA; including dishonesty offences; damaging property, stealing and drug possession.</p> <p>First placed in detention in NSW at 14 yrs; not previously been imprisoned in WA.</p> <p>Dysfunctional childhood; marred by instability and physical and emotional abuse; lived in refuges and associated with older career criminals from 16 yrs to 30 yrs.</p> | <p><u>District Court</u><br/>Ct 1: Agg burg (place).<br/>Ct 2: Burg (place).<br/>Ct 3: Burg (dwelling).<br/>Ct 4: Burg (dwelling).</p> <p><u>Magistrates Court</u><br/>1 x Burg.<br/>1 x Disorderly conduct.<br/>1 x Trespass.<br/>1 x Att burg (dwelling).<br/>5 x Burg (dwelling).<br/>3 x Agg burg.</p> <p><u>Cts 1-2:</u><br/>The appellant forced entry to a Video Store at North Beach in company with another and stole items to the value of \$12,734.65. About 20 days later the appellant again broke and entered the</p> | <p><u>District Court</u><br/>Ct 1: 2 yrs imp.<br/>Ct 2: 1 yr imp (conc).<br/>Ct 3: 1 yr imp (conc).<br/>Ct 4: 2 yrs imp (cum)</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p><u>Magistrates Court</u><br/>TES 2 yrs imp (to be served cum upon District Court sentence).</p> <p>During VROI regarding 2 burglaries voluntarily confessed</p> | <p><u>District Court</u><br/>Dismissed.</p> <p><u>Magistrates Court</u><br/>Allowed.</p> <p>Orders of concurrency and accumulation set aside and to be served concurrently.</p> <p>Re-sentenced to 4 yrs imp.<br/>EFP.</p> <p>At [29] Though the burglaries were committed primarily to finance the appellant's drug addiction, his actions were those of a</p> |

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|     |  | <p>Commenced using drugs at 12-13.</p> <p>Since incarceration has completed several drug rehabilitation and educational courses.</p> | <p>Video Store and stole items to the value of \$2.716.30.</p> <p><u>Cts 3-4:</u><br/>The appellant forced a rear door and entered the victim's house and stole property. He had entered the property unlawfully on a previous occasion. The appellant left in a vehicle that was stolen from the property.</p> <p>On the same day the appellant returned to the property and using the keys from the stolen vehicle; opened a safe. He stole money and business banking documents. He later destroyed some of the property.</p> <p><u>Magistrates Court</u><br/>The appellant used profane language at a shopping centre, trespassed and between 2003 and 2011 the appellant committed 17 burglaries on commercial premises and dwellings.</p> <p>The appellant wore gloves and took other steps to avoid leaving fingerprints or DNA. He buried most of the stolen cash and used it over a number of months to support his lifestyle. He also arranged for a friend to deposit some of the cash in his bank account.</p> | <p>to having committed a large number of burglaries over a period of about 9 years.</p> <p>Remorseful and showed some victim empathy.</p> <p>High risk of re-offending.</p> | <p>career criminal.</p> <p>At [39] (Aggregate of 6 yrs breached first limb of totality principle). The nature and extent of the appellant's voluntary disclosure of offences, most of which would not otherwise have been solved, was the decisive factor in the formation of my opinion on this point.</p> <p>At [56] It is desirable in cases such as this for one court to sentence an offender on all charges with the aim of ensuring that the total effective sentence complies with the totality principle. Unnecessary fragmentation of the proceedings, as apparently occurred here, can increase the risk of an infringement of the totality principle.</p> |
| 27. | <b><i>Wroth v The State of Western Australia</i></b> | <p>27 yrs at time sentencing.</p> <p>Convicted after early PG.</p>   | <p>Ct 1: Agg burg.<br/>Ct 2: Att. armed robbery.<br/>Ct 3: Att. armed robbery.<br/>Ct 4: Armed robbery.</p>  | <p>Ct 1: 12 mths imp cum.<br/>Ct 2: 3 yrs imp cum.<br/>Ct 3: 3 yrs imp conc.<br/>Ct 4: 3 yrs imp conc.</p>  | <p>Sole ground of appeal breach of totality principle. Dismissed – on papers.</p>   |

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|     | <p><b>[2013] WASCA 155</b></p> <p>Delivered<br/>28/06/2013</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 5: Steal motor vehicle.<br/>Ct 6: Armed robbery.<br/>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 stolen on fire.</p>  | <p>Ct 5: 9 mths imp conc.<br/>Ct 6: 3 yrs imp cum.<br/>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>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>   |
| 26. | <p><b><i>Miles v The State of Western Australia</i></b></p> <p><b>[2013] WASCA 156</b></p> <p>Delivered<br/>28/06/2013</p> | <p>40 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Lengthy and significant criminal history including many dishonesty offences and violence; repeat offender in respect to home burglary.</p> <p>Difficult upbringing; childhood marred by domestic violence and sexual abuse; left home at 13 yrs; addiction to illicit drugs since teenage years.</p> <p>Suffers from epilepsy, depression and bipolar disorder.</p> | <p><u>Indictment</u><br/>1 x Agg burg.<br/><u>Section 32 notice</u><br/>1 x Stealing.<br/>1 x Att fraud.<br/>1 x Fraud.<br/>1 x Common assault.<br/>1 x Giving false details.</p> <p><u>Indictment:</u><br/>The appellant entered the victim's house and was confronted by the 71 yr old victim. He telephoned police who attended and found the appellant standing in front of the victim's house. She made no attempt to flee on becoming aware that he police had been called.</p> | <p><u>Indictment</u><br/>22 mths imp cum.<br/><u>Section 32 notice</u><br/>3 mths imp.<br/>2 mths imp.<br/>4 mths imp cum.<br/>3 mths imp cum.<br/>1 mth imp.</p> <p>TES 29 mths imp.</p> <p>EFP.</p> <p>Credit for 5 mths on remand.</p> <p>Remorse.</p> | <p>Dismissed – on papers.</p> <p>TES did not infringe first limb of the totality principle.</p> <p>At [17] ... Householders are entitled to feel that they and their property will be safe in their home. The type of offending engaged in by the appellant undermines this confidence.</p> <p>At [19] The appellant's behaviour in the post office</p> |

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|     |  | <p>Former partner died in 2011.</p> <p>At time of offending on methadone program.</p>  | <p><u>Section 32 notice:</u><br/>The victim had lost his wallet including credit cards. The appellant found the wallet and a short time later used one of the cards in an attempt to buy items from a shop. The transaction was declined. Undeterred the appellant went to another shop where he purchased items. The transaction was accepted.</p> <p>The appellant went to a post office to obtain money via transfer. The appellant was unable to produce any photo ID and payment was declined. The appellant became aggressive and abusive. She pushed the victim, struck her to the face and then pushed her again.</p> <p>After her arrest for the agg burg she provided police with false details.</p> | <p>Since incarceration completed drug rehabilitation and other courses.</p>   | <p>was totally inexcusable and unreasonable. The complainant was simply doing her job and was assaulted because of it. Sentences for assaults in such situations should reflect the need to protect those serving the public from this kind of behaviour.</p>   |
| 25. | <p><i>Conley v The State of Western Australia</i></p> <p>[2013] WASCA 95</p> <p>Delivered 12/04/2013</p> | <p>42 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Criminal record including steal motor vehicle and burglary.</p> <p>Breached susp imp order imposed for burglary.</p> <p>Constant record of employment.</p> <p>Came from a normal and caring environment.</p> | <p>Ct 1: Steal motor vehicle.<br/>Ct 2: Burg.<br/>Ct 3: Breach susp imp order (burglary).</p> <p><u>Ct 1:</u><br/>The appellant was drinking at a hotel. There he met two men. At the behest of these men, the appellant attended a house with the intention of stealing property. The premises comprised the house itself and a shed. The appellant gained entry to the shed by forcing open a roller door. Once inside, he stole two motorcycles. The appellant left the shed by smashing open a locked side door.</p>   | <p>Ct 1: 5 mths imp cum.<br/>Ct 2: 3 yrs imp cum.<br/>Ct 3: 7 mths imp cum.</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>No admissions in VROI.</p> | <p>Dismissed – on papers.</p> <p>At [38] As this court has made clear on many occasions, the one-transaction rule is not a rule at all. It is a handy rule of thumb.</p> <p>At [39] The offences the subject of the indictment, although committed on the same night and at the same premises, involved two</p> |

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|     |  | <p>Experienced learning difficulties. Suffers ADHD.</p> <p>Entrenched drug and alcohol use.</p> <p>Separated from wife at time of sentence; she was recently diagnosed with inoperable cervical cancer but diagnosis known to appellant before commission of offences.</p>   | <p><u>Ct 2:</u><br/>The appellant then entered the victim's house by forcing open a lounge room window. Once inside, he stole a large amount of property valued at \$37,237.</p> <p><u>Ct 3:</u><br/>At the time the appellant committed these offences, he was subject to a 7 mth term of imp susp for 12 mths for the charge of burglary. Imposed only 1 mth after committing these offences.</p>  |  | <p>separate and distinct actions. First, the appellant broke into the shed and stole two valuable motorcycles. Second, he broke into the house and stole almost \$40,000 worth of property. Cumulative sentences were justified to properly reflect the criminality of all that he did at the victim's premises.</p>  |
| 24. | <p><i>Spry v The State of Western Australia</i></p> <p>[2013] WASCA 68</p> <p>Delivered 14/03/2013</p> | <p>31 yrs at time offending.<br/>44 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>In 1995 became addicted to heroin.</p> <p>Prior WA criminal record – traffic offences and some minor drug offences, assault public officer and numerous receiving. Previous term or imprisonment.</p> <p>After committing offences, in SA, convicted in 2003 of trespass, possess house-breaking implement at night and carrying an article of disguise. Placed on GBB.</p> | <p>Ct 1: Burg (habitation).<br/>Ct 2: Burg (habitation).</p> <p>The appellant was employed by a small business which installed household electronic security systems and safes. The appellant's duties included commissioning the security systems and safes that were installed in the customer's houses. In respect of each victim that is what he did.</p> <p>At the time the offences were committed, the appellant had left his employment. However he either knew the PIN or the security code for the security system in each house and could, after gaining entry, arm and disarm it. He also knew (or thought he knew) the combination or code necessary to access each safe.</p> | <p>Ct 1: 3 yrs imp.<br/>Ct 2: 2 yrs imp cum.</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>Denied the offences in VROI.</p> <p>No remorse.</p> <p>Sentencing judge regarded the offences as serious examples of their type because they were planned and premeditated and involved knowledge of</p> | <p>Dismissed.</p> <p>No challenge to individual sentences, only totality.</p> <p>At [36] It is equally plain that there is no tariff for burglary offences. This is because it is an offence committed in very diverse circumstances by offenders whose personal circumstances may widely differ. It is evident that sentences for home burglary have firmed up over time.</p> <p>Even though not</p> |

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|     |  | <p>Delay between the commission of the offence and his sentencing – In 2005, subsequent to being charged, failed to appear before Court and BWT issued. Appellant left the State and did not return until 2011.</p> <p>Bench warrant executed 12 September 2011 and remanded in custody from that date.</p> | <p><u>Ct 1:</u><br/>The victim left her house for an overnight fishing trip. Before leaving, she locked the premises and armed the alarm system. The safe was locked. Sometime that night the appellant gained entry to the house, disarmed the alarm, opened the victim’s safe and stole over \$5000 cash.</p> <p><u>Ct 2:</u><br/>The victim left her house to go to work. She locked the house and armed the security system. Sometime during the day, the appellant gained entry to the house by cutting a hole through the ceiling and disarmed the alarm. He attempted to open the safe but, because the combination had been changed, he was unsuccessful. He then proceeded to steal other property; some of which was later pawned.</p> | <p>each of the premises gained in his employment.</p> <p>Breach of trust of employee and victims and terms and breaching the conditions of the security installer’s licence.</p> <p>No attending from 2003 so judge satisfied minimal risk to the community at this stage in his life.</p> | <p>aggravated burglary At [31] Nevertheless a home burglary not committed in circumstances of aggravation is a serious offence. The offences committed by the appellant were serious offences of their type.</p> <p>At [32] Offences of the type committed by the appellant have the potential to undermine the integrity of the security industry and public confidence in it.</p> |
| 23. | <p><b><i>Turnbull v The State of Western Australia</i></b></p> <p><b>[2013] WASCA 5</b></p> <p>Delivered 9/01/2013</p> | <p>27 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Prior criminal record – constant offending as adult linked to drug use.</p> <p>Diagnosed anti-social and borderline personality disorder.</p> <p>Amphetamine and cannabis dependency.</p>   | <p>1 x Agg armed robbery.<br/>2 x Stealing.<br/>1 x Agg burg.<br/>1 x Agg armed robbery.<br/>1 x Stealing.<br/>1 x Stealing.<br/>1 x Arson.</p> <p>Appellant and two co-offenders drove to a post office. They removed the number plates from the car, disguised their faces and clothing and armed themselves with a tomahawk (appellant) and fishing knife (co-offender 1). They entered</p>   | <p>5 yrs imp.<br/>1 yr imp each ct.<br/>4 yrs imp.<br/>5 yrs imp.<br/>18 mths imp.<br/>3 mths imp.<br/>2 yrs imp.</p> <p>TES 8 yrs imp.</p> <p>EFP.</p> <p>Genuine remorse; high</p>   | <p>Dismissed – leave refused on papers.</p>   |

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|     |  |  | <p>the post office. The appellant acted as security and a look-out while co-offender 1 demanded and received money from the manager and then the manager's wife. Appellant and co-offender 1 then returned to the car where co-offender 2 was waiting.</p> <p>The first two counts of stealing related to the theft of two caravans from a caravan yard.</p> <p>Appellant and co-offender (co-offender 1 from above) armed themselves with claw hammers and covered their faces before entering a residence by kicking in the door. The victim was asleep inside and was woken by the co-offender threatening him with the hammer and demanding cash and property. Victim's wallet, cash ATM card and PIN, car keys and car were stolen. ATM card was later used to withdraw \$200 – used by appellant and co-offender to purchase drugs – and the vehicle was destroyed by fire.</p> | <p>risk future violent offending without intervention.</p>  |   |
| 22. | <p><b><i>McRae v The State of Western Australia</i></b></p> <p><b>[2012] WASCA 243</b></p> <p>Delivered 27/11/2012</p> | <p>27 yrs at time offending.</p> <p>Convicted after fast track PG.</p> <p>Extensive prior criminal record in WA, Victoria and NSW– agg burg; burg; att agg burg; att burg; steal motor vehicle; drive recklessly, stealing; fraud.</p> | <p>1 x Agg burg.<br/>1 x Steal motor vehicle.<br/>3 x Agg DDOBH.<br/>1 x Fail to ensure victim received assistance.</p> <p>s 32 Matter:<br/>1 x Obstruct public officer.</p> <p>Appellant broke into a home while the owners were in bed asleep. Once inside, appellant stole</p>   | <p>2 yrs 6 mths imp.<br/>18 mths imp.<br/>2 yrs imp each ct.<br/>2 yrs 6 mths imp.</p> <p>6 mths imp.</p> <p>TES 5 yrs imp.</p> | <p>Dismissed – leave refused on papers.</p> |

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|     |  | <p>Offending committed within two months of being released from term imprisonment on which he was not EFP.</p> <p>Spent majority of time in WA in prison.</p> <p>Significant and continuing substance abuse issues.</p> | <p>a wallet. Purse, cash, sunglasses and car keys. The appellant used the car keys to steal the owner's car.</p> <p>While driving the stolen vehicle, appellant overtook another car at approx 80kmh in a 60kmh zone and drove over a speed hump becoming momentarily airborne. Appellant continued at speed through a stop sign and collided with a van. The impact caused the van to spin 360 degrees and left the driver with bruising to his knees and heavy bruising to his chest and shoulders. After hitting the van, appellant continued through the intersection and collided with a ute causing the ute to veer off the road and crash into a brick wall. The passenger in the ute received heavy bruising to the stomach and the driver of the ute suffered a broken collarbone, heavy bruising to the chest and pain to his shoulder blades and neck. The appellant ran from the scene. And was later found hiding at a nearby petrol station. When police attempted to handcuff him, the appellant pushed them and ran away. Police apprehended him 10 minutes later.</p> | <p>EFP.</p> <p>High risk of reoffending in violent and generalist manner.</p>   |  |
| 21. | <p><i>JKL v The State of Western Australia</i></p> <p>[2012] WASCA 215</p> <p>Delivered 29/10/2012</p> | <p>21 yrs at time offending.</p> <p>Convicted after early PG.</p> <p>No relevant prior criminal record.</p> <p>Offending for cts 9, 10 and 11 breached bail for cts 1-8.</p>  | <p>Ct 1: Agg burg.</p> <p>Ct 2: Steal motor vehicle.</p> <p>Ct 3: Agg burg.</p> <p>Ct 4: Steal motor vehicle.</p> <p>Ct 5: Steal motor vehicle.</p> <p>Ct 6: Agg burg.</p> <p>Ct 7: Steal motor vehicle.</p> <p>Ct 8: Agg burg.</p>  | <p>Ct 1: 2 yrs 6 mths imp.</p> <p>Ct 2: 1 yr 6 mths imp.</p> <p>Ct 3: 2 yrs 6 mths imp.</p> <p>Ct 4: 1 yr 6 mths imp.</p> <p>Ct 5: 1 yr 6 mths imp.</p> <p>Ct 6: 2 yrs 6 mths imp.</p> <p>Ct 7: 1 yr 6 mths imp.</p> <p>Ct 8: 2 yrs 6 mths imp.</p> | <p>Allowed.</p> <p>Re-sentenced taking into account post-sentencing co-operation with authorities. Sentences imposed for agg burg in first instance not found to</p> |

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|     | <b>NB: Facts set out in confidential annexure to judgement and subject to confidentiality order</b>                     | <p>Provided significant assistance to authorities.</p> <p>Supportive family.</p>  | <p>Ct 9: Steal motor vehicle.<br/>Ct 10: Stealing.<br/>Ct 11: Arson.</p> <p>Appellant and co-offenders broke into residential properties in the early hours of the morning for the purpose of stealing motor vehicles. The intention was to sell them and share the proceeds. Burglaries were planned and premeditated and committed when the occupants of the properties were home.</p> <p>Arson related to a vehicle which had been set on fire to destroy any evidence it may have yielded.</p> <p>Most of the stolen vehicles were recovered with the assistance of the appellant.</p> | <p>Ct 9: 1 yr 6 mths imp.<br/>Ct 10: 1 yr 6 mths imp.<br/>Ct 11: 4 yrs imp.</p> <p>EFP.</p> <p>Some insight into offending.</p> | <p>be manifestly excessive.</p> <p><u>Sentences on appeal:</u><br/>Ct 1: 2 yrs 2 mths imp.<br/>Ct 2: 15 mths imp.<br/>Ct 3: 2 yrs 2 mths imp.<br/>Ct 4: 15 mths imp.<br/>Ct 5: 15 mths imp.<br/>Ct 6: 2 yrs 2 mths imp.<br/>Ct 7: 15 mths imp.<br/>Ct 8: 2 yrs 2 mths imp.<br/>Ct 9: 15 mths imp.<br/>Ct 10: 3 mths imp.<br/>Ct 11: 3 yrs imp.</p> <p>TES reduced to 3 yrs 3 mths imp.</p> <p>EFP.</p> |
| 20. | <p><b><i>Rahman v The State of Western Australia</i></b></p> <p><b>[2012] WASCA 140</b></p> <p>Delivered 25/07/2012</p> | <p>Convicted after trial – warrant was issued after appellant failed to appear at directions hearing approx one month prior to his trial and it was not until several months after the trial date that the appellant was apprehended.</p> <p>Lengthy prior criminal record – robbery; steal motor vehicle and drive recklessly; burg; numerous agg burg; sex pen without consent; poss cannabis and ecstasy wiss.</p> | <p>1 x Agg burg.<br/>1 x Robbery.</p> <p>Appellant and co-offender broke into a home using a screwdriver to remove part of the lock on a sliding door with the intention of stealing items. The residents of the house were at home and asleep at the time. A laptop and a purse were stolen.</p> <p>Appellant committed a robbery on a deli while on bail.</p>  | <p>20 mths imp.<br/>20 mths imp.</p> <p>TES 3 yrs 4 mths imp.</p> <p>EFP.</p>   | <p>Dismissed – leave refused on papers.</p> <p>Sentence for agg burg specifically challenged on appeal.</p>  |

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|     |  | <p>Previously breached parole by way of re-offending.</p> <p>While subject to the above warrant, appellant committed a robbery (take-away food outlet).</p>   | <p>Co-offender for agg burg convicted after early PG and sentenced to 8 mths imp.</p>   |  |  |
| 19. | <p><i>Downey v The State of Western Australia</i></p> <p>[2012] WASCA 55</p> <p>Delivered 14/03/2012</p> | <p>22 yrs at time sentencing.</p> <p>Convicted after fast-track PG.</p> <p>Minor prior criminal record – burg; traffic offences.</p> <p>Supportive family – returned to live at home since offending.</p> | <p>1 x Agg burg.<br/>1 x Stealing.<br/>1 x Fraud.</p> <p>Appellant and co-offender went to victims' home with intention of breaking in and stealing items. Appellant knocked on the front door and, after realising no one was home, jumped the fence into the backyard. Appellant gained entry into the house by pushing through the flyscreen and unlatching the backdoor. Items stolen included electronic equipment and jewellery valued at approx \$15,000. None of the personal jewellery items were recovered. Appellant later pawned an iPod stolen in the burglary, claiming he was the owner.</p> <p>Appellant's claim that he was homeless and hungry at time of offending and needed money for food was rejected by the sentencing judge.</p> <p>Appellant refused to identify co-offender.</p> | <p>18 mths imp.<br/>7 mths imp.<br/>3 mths imp.</p> <p>TES 21 mths imp.</p> <p>EFP.</p> <p>Medium risk re-offending.</p> | <p>Dismissed – leave refused on papers.</p> <p>At [32] Ordinarily an offence of agg burg will attract a term of immediate imprisonment.</p> <p>At [23] planned and deliberate nature of offending plus substantial amount of property stolen meant immediate imprisonment appropriate.</p> <p>At [33] Fraud was a separate act of offending even though it was committed on the same day as the agg burg – some additional punishment was thereby justified.</p> |
| 18. | <p><i>Kelly v The State of Western Australia</i></p>   | <p>32 yrs at time offending.</p> <p>Convicted after fast-track PG.</p>  | <p>1 x Agg burg.</p> <p>Appellant gained entry to residential property</p>  | <p>3 yrs 6 mths imp.</p> <p>TES 3 yrs 6 mths imp.</p>  | <p>Dismissed – leave refused on the papers.</p>  |

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|     | <p><b>[2011] WASCA 273</b></p> <p>Delivered 23/12/2011</p>   | <p>Extensive prior criminal record – armed rob; unlawful wounding; multiple burg; stealing; NSW convictions as well as WA.</p> <p>Long history of poly-substance abuse.</p>  | <p>by smashing a rear glass door. Once inside, appellant searched the house and stole a laptop, jewellery and other property. Victim returned home and was confronted by the appellant who was holding a replica firearm. Victim feared for her safety, ran from the house and then called police. When police arrived the appellant was still present in the rear yard and was shot by police three times after he failed to obey their request to put the gun down. One bullet remains lodged in the appellant’s abdominal wall close to his spine.</p>   | <p>EFP.</p>   | <p>At [9] Endorsed the observations made in <i>Nannup v State of WA</i> [2011] WASCA 257 to the effect that the primary sentencing considerations for agg burg cases are personal and general deterrence and sentences should be viewed in the context of a recent firming up of sentences for home burgs.</p> |
| 17. | <p><i>Nannup v The State of Western Australia</i></p> <p><b>[2011] WASCA 257</b></p> <p>Delivered 29/11/2011</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.<br/>3 x Steal motor vehicle.<br/>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>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</p> | <p>5 yrs imp.<br/>1 yr imp each ct.<br/>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-operation with authorities into account when imposing sentence.</p>                                     |

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|     |  |  | <p>house taking vehicle keys, laptop and an iphone.</p> <p>Appellant and co-offenders then entered a house in Lakelands, stole car keys and cash and then left.</p> <p>Appellant and co-offenders then entered the Albion Hotel in Cottesloe by smashing a glass panel of a bottle shop and stole large quantities of alcohol before leaving.</p> <p>Offending premeditated and committed out of boredom.</p> <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.</p> |   |  |
| 16. | <p><i>Papertalk v The State of Western Australia</i></p> <p>[2011] WASCA 229</p> <p>Delivered 14/10/2011</p> | <p>28 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Lengthy prior criminal record – multiple burg; trespass; possess house-breaking implements; traffic offences; stealing.</p> <p>Disadvantaged background; subjected to physical abuse by father.</p> <p>Serious drug and alcohol abuse issues</p> | <p>1 x Agg burg.</p> <p>Appellant repeat offender and required to be sentenced to a minimum term of 12 mths imp.</p> <p>Appellant climbed the back fence of victim's home at approx 1.30pm. Appellant knocked on back door and entered the home with the intention of stealing items. Victim (home owner) was home and disturbed the appellant before he could steal any items.</p>   | <p>2 yrs imp.</p> <p>TES 2 yrs imp.</p> <p>EFP.</p> <p>Appellant repeat offender and required to be sentenced to a minimum term of 12 mths imp.</p> <p>Lack of insight into</p> | <p>Dismissed – leave refused on papers.</p> <p>At [28] Range of sentences for burglary offences has been recently firmed up due to the prevalence of such offending.</p> <p>At [28] offence of burg generally attracts a term of immediate imprisonment.</p> |

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|     |   | which appellant fails to acknowledge.   |   | offending; no victim empathy.   | At [29] <i>“Householders are entitled to feel confident that they and their property will be safe at home. This type of offending undermines this confidence.”</i>   |
| 15. | <b><i>Mills v The State of Western Australia</i></b><br><br><b>[2011] WASCA 199</b><br><br>Delivered 27/09/2011 | 31 yrs at time sentencing.<br><br>Convicted after late PG (morning of the trial).<br><br>Lengthy and serious prior criminal record – armed rob; agg armed rob; AOBH.<br><br>Offending breached bail (steal motor vehicle and drive recklessly).<br><br>History drug abuse – cannabis, heroin and amphetamines; offending committed while under influence morphine.<br><br>Daughter; de facto partner. | 1 x Agg burg.<br>2 x Agg armed robbery.<br><br>1 x Steal motor vehicle.<br><br>Offending at high end of scale of seriousness.<br><br>Appellant and co-offender went to victims’ home. Appellant concealed his face with a balaclava, kicked open the front door and charged into the lounge room armed with a handgun. The co-offender followed, armed with a screwdriver. Co-offender’s face was also concealed.<br>Victims 1 and 2 (60 yr old male and 59 yr old female) were watching TV in the lounge room. Appellant ordered them to lie on the ground and pointed his gun at them. Victim 3 (32 yr old female) entered the lounge room and appellant pointed his gun at her as she did. Appellant co-offender demanded money, asking where the cash was hidden and where the safe was. Victim 3 said she had to get her 7 yr old daughter and began walking to a rear bedroom. Appellant followed and held his gun to her head. Co- | 3 yrs 6 mths imp.<br>7 yrs 6 mths imp each ct.<br>1 yr 6 mths imp.<br><br>TES 7 yrs 6 mths imp. | Dismissed – leave refused on papers.<br><br>At [9] <i>“An individual sentence towards the high end of the customary range is frequently appropriate in circumstances where total concurrency is ordered.”</i><br><br>NB: Sentence for agg burg not challenged. |

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|     |  |   | <p>offender remained with victims 1 and 2 holding the screwdriver toward them. Victim 3 collected her daughter and returned to lounge room. Appellant held gun to victim 1's head, demanding money and the location of the safe. Victim 1 replied there was no safe and was taken to the kitchen by the appellant. Co-offender yelled out to grab the handbags - appellant did as well as car keys. Appellant was told one of the bags he took contained heart medication but he took the bag and all its contents nonetheless. Appellant and co-offender drove off in victims' car.</p> <p>Handgun used by appellant was a replica but the victims did not know this.</p> |  |   |
| 14. | <p><i>Morris v The State of Western Australia</i></p> <p>[2011] WASCA 47</p> <p>Delivered 22/02/2011</p> | <p>29 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Significant prior criminal record – burg; drug-related offending.</p> <p>Entrenched substance abuse problem (cannabis, amphetamines, heroin); had several naltrexone implants in the past; under influences of morphine and xanax at time offending.</p> | <p>Ct 1: Stealing.<br/>Ct 2: Attempt steal motor vehicle.<br/>Ct 3: Burglary.<br/>Ct 4: Agg Burg.<br/>Ct 5: Agg armed robbery.<br/>Ct 6: Burglary.<br/>Ct 7: Burglary.</p> <p>Appellant stole a concrete saw (value \$3,000) which was later recovered (ct 1). Approx 3 weeks later, appellant broke into a motor vehicle, attempted unsuccessfully to start the engine by forcing the ignition before fleeing the scene (ct 2). That same day, appellant broke into a high school and stole a blind student's</p>   | <p>Ct 1: 3mths imp.<br/>Ct 2: 6mths imp.<br/>Ct 3: 18mths imp.<br/>Ct 4: 18mths imp.<br/>Ct 5: 4 years imp.<br/>Ct 6: 18mths imp.<br/>Ct 7: 18mths imp.</p> <p>TES 5 yrs 6 mths imp.</p> <p>EFP.</p> <p>Minimised offending; limited victim empathy.</p> | <p>Dismissed.</p> <p>At [10] Concurrent terms do not necessarily have to be imposed for multiple offences constituting one transaction - that general principle may be displaced by totality.</p> <p>At [11] Offending that formed cts 2-7 was not part of one transaction – cts 4 and 5 in particular were separate and distinct</p> |

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|            |   |  | <p>Braille computer (value \$6,363) (ct 3). That same night, appellant knocked on victim's door at approx 3am. Appellant was refused entry and, brandishing a knife, appellant then forced his way into victim's home (ct 4). Appellant demanded and received victim's prescription medicine (methadone, oxynorm and antenex). (ct 5) Victim was 72 yrs old.</p> <p>Following day, appellant returned to the high school and forced open a door with the intent of stealing items. Appellant triggered an alarm and fled with nothing (ct 6). Later that day, appellant returned to high school and stole an electric guitar and bass amplifier which were later recovered (ct 7).</p> |   | <p>offences.</p>  |
| <p>13.</p> | <p><i>Pustkuchen v State of Western Australia</i></p> <p>[2010] WASCA 11</p> <p>Delivered 2/01/2010</p> | <p>25 yrs at time offending.</p> <p>Convicted after late PG on ct 1 (committed for trial).<br/>Convicted after trial ct 2.</p> <p>Lengthy prior criminal record – agg burg; stealing; armed robbery; first conviction at 10 yrs old.</p> <p>Offending breached suspended sentence (burg and stealing offences). Released from imp 6 mths prior to offending - previous response to supervision had been poor; history of non-compliance reflected poor</p> | <p>Ct 1: Agg burg.<br/>Ct 2: Criminal damage by fire.</p> <p>Offence date 26/10/2007 – max penalty 14 yrs imp.</p> <p>Appellant and co-offender (then girlfriend) went to a house. They did not know owners. Appellant had co-offender go to front door and knock to see if anybody was home. Appellant broke a window and crawled through. Appellant began to rummage through and ransack residence. He stole a large number of items to value of approx \$53,000. Co-offender brought car around to rear of house and parked it in a garage. They then loaded stolen property into back of car, filling the boot and back seat.</p>  | <p>Ct 1: 3 yrs imp.<br/>Ct 2: 5 yrs imp.</p> <p>12 mths suspended sentence activated.</p> <p>TES 7 yrs imp.<br/>EFP.</p> <p>Genuine remorse; devastated at effect drug use and offending; progress towards rehabilitation; accepted responsibility.</p> | <p>Dismissed.</p> <p>At [50] TES not disproportionate to overall criminality of offending.</p> <p>At [42] &amp; [50] Offending were extremely serious - fire was lit at a home with intent of destroying DNA evidence and did severe damage.</p> <p>At [51] TES not crushing – heavy sentence but does not deprive appellant of a reasonable expectation of a</p> |

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|     |  | <p>attitude towards law and order.</p> <p>Spent much of adult life in prison; institutionalised.</p> <p>Single; no dependants.</p> <p>Parents separated; support of family, immediate and extended.</p> <p>Introduced to heroin at 13 yrs by girlfriend who later died of a heroin overdose; made several reasonable efforts to avoid relapse into drug use, including participating in a residential rehabilitation programme.</p> <p>Reasonable level of education; engaged in a variety of occupations.</p> | <p>As co-offender drove car out of garage, appellant went back inside to retrieve his telephone. When appellant emerged from house, it was on fire. Fire caused considerable damage to house and contents, including structural damage, to value of approx \$400,000.</p> <p>House itself was not insured for fire damage. Victims lost all personal possessions, and damage had a profound emotional and financial effect on their lives - emotional and financial consequences of offending were an aggravating factor.</p> <p>Appellant's conduct constituted a wanton act of vandalism and demonstrated a total disregard for property of others.</p> |  | <p>useful life after release from prison.</p>   |
| 12. | <p><i>Dunks v The State of Western Australia</i></p> <p>[2009] WASCA 82</p> <p>Delivered 7/05/2009</p> | <p>28 yrs at time sentencing.</p> <p>Convicted after PG at earliest opportunity.</p> <p>Voluntarily confessed to offences when arrested by police on another matter.</p> <p>Significant and lengthy prior criminal record – burglary; breaches; steal motor vehicle; receiving; stealing; criminal damage; drug and alcohol</p>  | <p>18 x Agg burg.</p> <p>7 x Criminal damage by fire.</p> <p>18 x Agg burg.</p> <p>2 x Burglary.</p> <p>12 x Steal motor vehicle.</p> <p>1 x Stealing.</p> <p>Appellant engaged in persistent course criminal conduct in breaking and entering into residential properties and stealing items and vehicles. Arson offences relate to setting stolen vehicles alight to destroy the vehicle and evidence. Damage caused by fire approx \$200,000.</p>  | <p>14 mths imp each ct</p> <p>TES 8 yrs imp.</p> <p>EFP.</p> | <p>Dismissed.</p> <p>At [28] Voluntary disclosure of offences which may remain undetected can be a significant mitigating factor.</p> <p>At [30]-[40] Discussion of comparable cases.</p> |

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|     |  | <p>related offences.</p> <p>Offending drug and alcohol related.</p> <p>Exposed to substance abuse and violence during childhood.</p> <p>3 children; supportive girlfriend; limited family support.</p>   |  |   |  |
| 11. | <p><i>Otway v The State of Western Australia</i></p> <p>[2008] WASCA 165</p> <p>Delivered 18/08/2008</p> | <p>19 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record – 11 children’s court convictions steal motor vehicle and numerous stealing and burglary.</p> <p>Diagnosed ADHD.</p> <p>Some rehabilitative progress in custody.</p> | <p>Ct 1: Agg burg.</p> <p>Ct 2: Agg armed robbery.</p> <p>Ct 3: Steal motor vehicle.</p> <p>Ct 4: Agg burg.</p> <p>Ct 5: Stealing.</p> <p>Ct 6: Agg burg.</p> <p>Ct 10: Agg burg.</p> <p><u>Cts 1, 2 and 3:</u><br/>Appellant and co-offender, both wearing beanies over their faces, smashed a bedroom window and entered the victim’s home. One of them armed themselves with a dagger-shaped letter opener from the kitchen. One of them demanded the car keys from the victim and, when the victim refused, threatened to stab him with the letter opener. Owing to the threat, the victim directed them to a briefcase containing his car keys – approx value of car was \$60,000. One of them grabbed the keys, mobile phone and wallet (\$85 cash and bankcards). They then left in the victim’s car.</p> | <p>Ct 1: 2 yrs imp.</p> <p>Ct 2: 3 yrs 6 mths imp.</p> <p>Ct 3: 2 yrs imp.</p> <p>Ct 4: 2 yrs imp.</p> <p>Ct 5: 4 mths imp.</p> <p>Ct 6: 2 yrs imp.</p> <p>Ct 10: 2 yrs imp.</p> <p>TES 5 yrs 6 mths imp.</p> <p>EFP.</p> <p>No genuine remorse; no victim empathy.</p> | <p>Allowed.</p> <p>Sentence on ct 2 reduced to 3 yrs 4 ½ mths imp.</p> <p>TES reduced by 6 wks.</p> <p>At [24] Sentencing Judge failed to take into account 6 weeks spent in custody prior to sentencing – sole basis for allowing appeal.</p> <p>At [12]-[15] Some discussion of comparable authorities and sentencing range.</p> |

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|   |   |   | <p><u>Ct 4:</u><br/>Later that day, the appellant and two teenage co-offenders forced open a bedroom window at another house, entered the property and stole a safe containing jewellery, a laptop, \$600 cash and a box of .22 calibre bullets.</p> <p><u>Ct 5:</u><br/>Later that evening the appellant drove off from a petrol station without paying for the petrol (\$83).</p> <p><u>Ct 6:</u><br/>The following day the appellant and the same co-offenders broke into another home through a side window and stole a television (\$4,000 value).</p> <p><u>Ct 10:</u><br/>The following day the appellant broke into another home, after watching the inhabitants leave, and stole property to the value of \$10,800 (money, laptop and television).</p> |  |   |
| <b><i>Transitional Provisions Repealed (14/01/2009)</i></b> |   |   |   |  |   |
| <b>10.</b>  | <p><i>Nguyen v The State Western Australia</i></p> <p><b>[2007] WASCA 114</b></p> <p>Delivered 29/05/2007</p> | <p>33 yrs at time offending.</p> <p>Convicted after early PG.</p> <p>Substantial prior criminal record – multiple burg and agg burg; receive stolen property.</p> <p>Born in Vietnam; came to Australia</p> | <p>1 x Agg burg.<br/>19 x Burg.</p> <p>1 x Steal motor vehicle.</p> <p>Offending period approx 6 mths. Total value stolen property approx \$165,000.</p> <p>Appellant collected addresses and phone numbers of</p>  | <p>2 yrs 6 mths imp.<br/>18 mths-2 yrs 8 mths imp each ct.<br/>6 mths imp.</p> <p>TES 11 yrs 8 mths imp.</p> | <p>Allowed.</p> <p>TES reduced to 7 yrs 8 mths imp.</p> <p>At [17]-[18] Individual sentences within range but original TES described as “extraordinarily severe”.</p> |

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|    |   | <p>as refugee at 16 yrs old.</p> <p>History heroin addiction – led to earlier offending; substance free since being imprisoned.</p> <p>Made significant attempts to rehabilitate himself since sentence.</p>  | <p>Asian families throughout the metro area. Appellant would ring house and if the call was not answered he would burgle the house, disarming any alarms in the process.</p> <p>Agg burg was of same nature but committed with a co-offender. Appellant and co-offender were stopped by police after the burglary and police found appellant in possession of screwdriver, wire-cutting pliers and 3 torches. Police also found 3 hand-written lists documenting 118 homes in 3 suburbs which were to be targeted.</p> |   |            |
| 9. | <p><b><i>Moody-Jackamarra v The State of Western Australia</i></b></p> <p><b>[2007] WASCA 7</b></p> <p>Delivered 12/01/2007</p> | <p>31 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record – dishonesty offences; burg; stealing; traffic offences; breach bail.</p> <p>Poor compliance with community based orders.</p> <p>Using illicit drugs at time offending.</p> <p>Extremely deprived childhood – mother an alcoholic; cared for by extended family; little contact with father.</p> <p>At beginning of yr 8 appellant taken away, sexually abused and all but imprisoned by man 20 yrs her</p> | <p>3 x Agg burg.</p> <p>Appellant and co-offender agreed to work together to fool homeowners into letting them into their houses under the pretence of needing to use the phone with the intent of stealing from the premises once entry was gained. Bags and cash were stolen on each occasion.</p> <p>Victim on first occasion aged 59 yrs and on second and third occasions, victims aged 73 yrs.</p>   | <p>12 mths imp each ct.</p> <p>TES 12 mths imp.</p> <p>EFP.</p> | Dismissed. |

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|    |   | <p>senior who later became her husband; had 10 children together (aged 16 yrs – 16 mths at time sentencing) who were all taken into State care owing to parent’s alcohol abuse and domestic violence. Engaging in supervised visits with children; completed urine analysis and was drug and alcohol free; engaged in parenting programs and domestic violence programs.</p> |  |   |  |
| 8. | <p><i>Slater v The State of Western Australia</i></p> <p>[2006] WASCA 206</p> <p>Delivered 10/10/2006</p> | <p>25 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Lengthy prior criminal record – multiple burg and agg burg; breach bail; escape legal custody. Drug abuse issues.</p>  | <p><u>Indictment 55 of 2004:</u><br/>1 x Agg burg.<br/>1 x Steal motor vehicle and drive recklessly.</p> <p><u>Indictment 430 of 2004:</u><br/>2 x Agg burg.</p> <p><u>Indictment 914 of 2004:</u><br/>1 x Agg burg.<br/>1 x Agg burg.<br/>1 x Agg burg.<br/>1 x Agg burg<br/>1 x Steal motor vehicle.</p> <p><u>Indictment 55 of 2004:</u><br/>Appellant broke into the home of a young woman while she was home. The victim locked herself in the bathroom in fear while the appellant ransacked her house, stole her purse and car keys. Appellant then stole her car and engaged in a police chase when officers called on him to stop as he was</p> | <p>4 yrs imp.<br/>1 yr 7 mths imp.</p> <p>4 yrs imp each ct.</p> <p>4 yrs imp.<br/>3 yrs 4 mths imp.<br/>2 yrs 4 mths imp.<br/>4 yrs imp.<br/>1 yr 4 mths imp.</p> <p>TES (all indictments)<br/>4 yrs imp to be served cumulatively with sentence of 2 yrs imp appellant serving at time of sentencing.</p> | Dismissed – leave to appeal refused on papers. |

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|    |   |  | <p>driving the stolen car.</p> <p><u>Indictment 430 of 2004:</u><br/>Appellant broke into elderly victim's home and stole goods valued at \$6524 after ransacking the house.<br/>Appellant broke into the victim's home after seeing her cooking in the kitchen as he could see a wallet in the table. Victim threw a plate at the appellant, hitting him in the head.</p> <p><u>Indictment 914 of 2004:</u><br/>Appellant broke into various homes and stole numerous items. In one instance there was a confrontation with the home owner and his young son during which the boy fled on his bike as the appellant was armed with scissors.</p>  | <p>EFP.</p> <p>Very high risk re-offending.</p>  |  |
| 7. | <p><b><i>Martino v The State of Western Australia</i></b></p> <p><b>[2006] WASCA 78</b></p> <p>Delivered 19/05/2006</p> | <p>29 yrs at time sentencing.</p> <p>Convicted after fast-track PG.</p> <p>Lengthy prior criminal record – first conviction recorded at 10 yrs old; multiple burg and att burg. Spent significant portion of life in juvenile detention.</p> <p>Commenced using drugs at 10 yrs; using amphetamine at 15 yrs old and then graduated to heroin use.</p> | <p>1 x Agg burg.<br/>1 x Attempt steal motor vehicle.</p> <p>Appellant entered victims' home through a rear sliding door while victims were asleep. Appellant took the keys to their vehicle, went to the carport and tried to start the car. The car did not start as it was fitted with an immobiliser and the noise woke up the victims. Victim 1 walked to front porch and confronted appellant. Appellant walked toward victim 1 offering the keys and pushed her back into the house. Appellant then followed her inside and told her to be quiet as the police were after him. Appellant then asked victims to call him a taxi. Victim 2 (victim 1's husband) did so. Taxi arrived at</p> | <p>12 mths imp.<br/>12 mths imp.</p> <p>TES 12 mths imp.</p> <p>At time of sentencing appellant serving TES 7 yrs imp for 44 other offences – TES for these offences ordered to be served cumulatively on that term.</p> | <p>Dismissed.</p> <p>AT [13] Appellant repeat offender at time sentencing and sentence of at least 12 mths was mandatory as per s 401(4) <i>Criminal Code</i>.</p> <p>At [15] Sentences imposed were significantly reduced having regard to the totality principle.</p> <p>At [17] Totality principle applies in circumstances</p> |

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|    |  |  | the same time as a police car. Police car followed the taxi into the driveway. Appellant told victim 2 to move the taxi before he eventually fled the premises.  |   | where defendant is serving a sentence at the time another sentence is imposed – any accumulation of the sentence does not result in an aggregate sentence which is inappropriately long having regard to the course of criminal conduct viewed as a whole. |
| 6. | <i>Cockie v The State of Western Australia</i><br><br>[2006] WASCA 66<br><br>Delivered 7/04/2006 | 33 yrs at time sentencing.<br><br>Convicted after PG.<br><br>Appalling prior criminal record – numerous burg and steal motor vehicle.<br><br>Offending breached parole.<br><br>Deprived background | 5 x Agg burg.<br>1 x Agg burg.<br>2 x Att agg burg.<br>1 x Steal motor vehicle.<br>1 x Agg robbery.<br><br>Offending occurred over space of approx 6 weeks. Agg burgs were described as brazen in that they were committed at times when the appellant knew (or ought have known) residents were home. | 16 mths imp each ct.<br>2 yrs imp.<br>12 mths imp each ct.<br>8 mths imp.<br>2 yrs imp.<br><br>TES 5 yrs 4 mths imp.<br><br>Not EFP.<br><br>No victim empathy or respect; reluctance to change offending behaviour. | Dismissed – leave refused on papers.   |
| 5. | <i>Chivers v the State of Western Australia</i><br><br>[2005] WASCA 97                           | 26 yrs at time first set of offending.<br>27 yrs at time second set offending.<br><br>Convicted after PG.<br><br>Lengthy prior criminal record –   | <u>Indictment ALB 11 of 2004:</u><br>Ct 1: Agg burg.<br>Ct 3: Agg burg.<br>Ct 4: Attempted agg burg.<br><br><u>Indictment ALB 41 of 2004:</u>  | Ct 1: 12 mths imp.<br>Ct 3: 6 mths imp.<br>Ct 4: 10 mths imp.   | Allowed.<br><br><u>Sentences on appeal:</u><br><b>ALB 11 of 2004</b><br>Ct 1: 16 mths imp.<br>Ct 3: 8 mths imp.  |

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|    | Delivered<br>1/06/2005  | including numerous burg and car thefts.<br><br>Offending on indictment ALB 41 of 2004 breached bail. | Ct 1: Agg burg.<br>Ct 2: Steal motor vehicle.<br><br><u>Indictment ALB 11 of 2004:</u><br>Offending period 3 days.<br>Ct 1: Appellant and co-offender kicked in glass panel door on a car yard in Perth and stole clothing and merchandise valued at approx \$2800.<br>Ct 3: Appellant and co-offender drove a stolen car to a bottle shop with the intention of stealing from it. Appellant was unable to gain entry to the shop despite attempting to kick in the front door.<br>Ct 4: After failing to gain entry to the bottle shop, the appellant and co-offender drove to another bottle shop and kicked in the glass front door panel to gain entry. They stole alcohol and a display case containing cigarettes.<br><br>Indictment ALB 41 of 2004:<br>Ct 1: Appellant cut fly screen of the lounge room of the elderly victim to gain entry. The appellant saw the victim was asleep on the sofa in the lounge room and went to the rear of the home, removed the flyscreen of the kitchen window and climbed into the house. The appellant stole two mobile phones, a silver necklace, fruit and car keys. Appellant then stole victim's car. | Ct 1: 3 yrs imp.<br>Ct 2: 12 mths imp.<br><br>TES 5 yrs 4 mths imp.<br>Appellant serving term 15 mths imp at time of sentencing – TES ordered to run cumulatively on that term. | Ct 4: 16 mths imp.<br><br><b>ALB 41 of 2004</b><br>Ct 1: 24 mths imp.<br>Ct 2: 8 mths imp.<br><br>TES reduced to 3 yrs 8 mths imp.<br>At [15] Sentencing judge erred by not reducing the sentences on indictment ALB 41 of 2004 by one third under the transitional provisions.<br><br>At [18] Sentencing judge did not state he was reducing the sentences to take into account PG. |
| 4. | <i>Sulejmani v The State of Western Australia</i><br><br>[2005] WASCA | <u>Sulejmani</u><br>38 yrs at time sentencing.<br><br>Convicted after early PG.                      | <u>Sulejmani</u><br>6 x Agg burg.<br><br>s 32 matters:<br>5 x Stealing.  | 3 yrs imp each ct.<br><br>3 mths imp each ct.   | Allowed.<br><br><u>Sentences on appeal:</u><br><b>Sulejmani</b><br>2 yrs 8 mths imp 5 agg  |

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| <p><b>95</b></p> <p>Delivered<br/>26/05/2005</p> | <p>Prior criminal record – dishonesty offences; stealing and receiving; driving offences.</p> <p>Troubled youth; domestic violence and problems with father saw her leave home at an early age and basically live on the streets.</p> <p>Two children – one from violent de facto relationship and one from stable relationship which ended due to her drug use.</p> <p>Heavily under influence amphetamines at time offending; motivation for offending was to gain money to purchase drugs.</p> <p><u>Buckland</u><br/>36 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Prior criminal record – dishonesty offences; cannabis offences; motor vehicle offences.</p> <p>Turbulent upbringing – father had violent episodes of binge drinking; relationship with family now is good.</p> | <p>1 x Fraud.<br/>1 x Driving no license.<br/>1 x Poss cannabis.<br/>1 x Poss smoking implement.</p> <p><u>Buckland</u><br/>6 x Agg burg.</p> <p>s 32 matters:<br/>7 x Stealing.<br/>6 x Fraud.<br/>1 x Breach bail.<br/>1 x Fail to stop.<br/>1 x Poss unlicensed ammunition.<br/>1 x Driving under suspension.</p> <p>Offending period approx one month and appellants were co-offenders and de facto partners. Usual pattern was for the appellant to enter the home (generally through an unlocked door but on one occasion forcing a window open with a screwdriver, on one occasion by removing louvre windows and on two occasions by smashing a window). On each occasion items such as VCRs, cameras, jewellery, medication and other personal items were taken. Total amount stolen in excess of \$20,000.</p> | <p>3 mths imp.<br/>3 mths imp.<br/>Fine.<br/>Fine.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>3 yrs imp each ct.</p> <p>3 mths imp each ct.<br/>3 mths imp each ct.<br/>3 mths imp.<br/>3 mths imp.<br/>3 mths imp.<br/>3 mths imp.<br/>9 mths imp.</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> | <p>burg.<br/>2 yrs imp remaining agg burg.</p> <p>TES reduced to 4 yrs 8 mths imp.</p> <p><b>Buckland</b><br/>2 yrs 8 mths imp 5 agg burg.<br/>2 yrs imp remaining agg burg.<br/>5 mths imp driving under suspension.</p> <p>TES reduced to 5 yrs 4 mths imp.<br/>At [21] Individual sentences not excessive.</p> <p>At [23] Approach of sentencing judge with regard to accumulation of sentences was moderate and appropriate.</p> <p>At [24] Sentencing judge fell into error in not working out the sentence that would have been imposed prior to the transitional provisions and</p> |
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|    |   | <p>Reasonable employment history – began roof tiling at 13 yrs old.</p> <p>Commenced drug use following breakdown of relationship and following the inter-state move of his ex-partner and child. Heavily under influence amphetamines at time offending; motivation for offending was to gain money to purchase drugs.</p>   |  |  | reducing that by one third.   |
| 3. | <p><b><i>Michael v The Queen</i></b></p> <p><b>[2004] WASCA 4</b></p> <p>Delivered 22/01/2004</p> | <p>30 yrs at time sentencing.</p> <p>Convicted after fast-track PG. Long criminal history – street drinking; breaking and entering; stealing; burg; fraud.</p> <p>Mother died in hit and run accident when appellant aged 2 yrs; ward of the State; minimal contact with alcoholic father.</p> <p>Subjected to repeated sexual assaults by foster brothers from ages 9 – 13 yrs; eventually ran away from foster home and began living on streets at 13 yrs old.</p> <p>Performing well at school until foster placement where she suffered</p> | <p>9 x Agg burg.</p> <p>6 x Burg.<br/>1 x Burg (\$100 stolen)<br/>1 x Steal motor vehicle.</p> <p>Total value of property stolen approx \$80,000 – very little recovered.</p> <p>Co-offender was current partner whom she began relationship with after ending her relationship with her 3<sup>rd</sup> partner (see previous column).</p> | <p>Sentence range 2 ½ yrs – 3 yrs imp each ct.<br/>2 yrs imp each ct.<br/>12 mths imp.<br/>6 mths imp.</p> <p>TES 8 yrs 2 mths imp.<br/>Equivalent to 5 yrs 5 mths imp transitional.</p> <p>EFP.</p> | <p>Allowed.</p> <p>TES reduced to 32 mths 20 days imp.</p> <p>EFP.</p> <p>At [40] TES manifestly excessive in that it is a longer sentence than is required to achieve the sentencing objectives identified by Anderson J in <i>Herbert v The Queen</i> [2003] WASCA 61.</p> <p>At [41] Appellant has not had support necessary to help her cope with numerous traumatic events</p> |

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|   |  | <p>sexual abuse – had been musically and mathematically gifted. When abuse began, appellant became lethargic and disinterested in school and developed behavioural problems. Education stopped at 13 yrs when she began living on the streets.</p> <p>Involved in 3 relationships all of which were marred by domestic violence; 5 children (one stillborn) to first partner when aged 14 – 21 yrs and further 2 children to third partner (one of whom died of SIDS).</p> <p>Recreational amphetamine use escalated following death of child to SIDS in 2001; children were removed from her care and placed into foster homes (some of those families investigated for alleged child abuse).</p> |   |   | <p>in her life. Appellant’s loss of liberty particularly severe punishment given the loss of her children and the justifiable concerns she has for their safety.</p> <p>NB: Original sentence imposed pre-transitional and re-sentencing on appeal occurred during the transitional period.</p> |
| <i>Transitional Provisions Enacted (31/08/2003)</i> |  |  |   |   |   |
| 2.  | <i>Moro v The Queen</i><br><br>[2001] WASCA 44 | <p>30 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record – burg;</p>  | <p>2 x Agg burg.</p> <p>1 x Steal motor vehicle and drive recklessly.</p> <p>1 x Dangerous driving causing death.</p> <p>1 x Dangerous driving causing GBH.</p> | <p>2 yrs imp each ct.</p> <p>3 yrs imp.</p> <p>3 yrs imp.</p> <p>3 yrs imp.</p> | <p>Dismissed.</p> <p>At [7] Sentence for first agg burg described as low.</p>   |

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|    | Delivered<br>7/02/2001  | loitering; poss house breaking implements; weapons offences.<br><br>Offending breached parole.<br><br>Heroin addiction.                                     | <u>First agg burg:</u><br>Appellant jemmied open the side window of a house to gain entry. Appellant stole a handbag and cash – two adults and three children were inside the house asleep at the time of offending. Appellant caught a short time later and was found in possession of a 10cm knife, a screwdriver and \$429 in cash.<br><br><u>Second agg burg:</u><br>Appro 6 weeks following first agg burg, appellant went to a house, jemmied open a window and attempted to remove the flyscreen. Resident of the house disturbed the appellant at this point and the appellant ran off. Appellant located by police a short time later and found to be in possession of 4 screwdrivers and other house breaking implements.<br><br>Other offending unconnected to agg burgs. | TES 7 yrs imp.<br>Equivalent to 4 yrs 8 mths imp transitional.   | At [14] Agg burg is a very serious offence and the prevalence of that type of offending has been the subject of considerable concern to the community. Sentences for agg burgs committed on domestic premises which are occupied at the time are to be “firmed up”.   |
| 1. | <b><i>R v Ward</i></b><br><br><b>[1999] WASCA 157</b><br><br>Delivered<br>2/08/1999 | Convicted after late PG – made on day of trial.<br><br>Substantial prior criminal record – starting as a juvenile and including previous agg burg offences. | Ct 1: Agg burg.<br>Ct 2: Agg burg.<br><br>Appellant repeat offender and required to be sentenced to a minimum term of 12 mths imp.<br><br>Respondent and co-offender broke in to a home and assaulted the three residents (ct 1).<br>Approx one year later, respondent, in company, broke into a home with the intent of stealing.   | Ct 1: 12 mths imp.<br>Ct 2: 12 mths imp.<br><br>TES 12 mths imp.<br>Equivalent to 9 mths imp transitional.<br><br>EFP. | Allowed.<br><br>TES increased to 2 yrs imp – individual sentences not altered.<br><br>At [5] Offence of burglary is a serious one and one which owing to its prevalence has become a concern for the community. Sentences for burglary offences committed on people’s |

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|  |  |  |  |  | <p>homes, especially when people are home at the time of offending, should be firmed up.</p> <p>At [8] <i>“To break into a dwelling house during the night-time for the purpose of inflicting a savage beating upon an occupant is a burglary which is at the upper end of the scale of seriousness.”</i></p> <p>At [9] Where offences occur on separate occasion, unless the totality principle requires otherwise, sentences should be imposed cumulatively.</p> <p>At [9] Individual sentences described as “light”.</p> <p>At [12] Individual sentences described as “extremely lenient” with little in the circumstances to support such leniency.</p> <p>NB: Double jeopardy applied to State appeals.</p> |
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*Agg Burg (residential excluding home invasions) 11.02.14*

*Current as at 11 February 2014*