

Aggravated burglary

**Residential properties
(excluding home invasions)**
s 401 Criminal Code

From 1 January 2014

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
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
SGMC	Stirling Gardens Magistrates Court

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
37.	<p><i>Serukai v The State of Western Australia</i></p> <p>[2020] WASCA 159</p> <p>Delivered 21/09/2020</p>	<p><u>Clive Serukai</u> 40 yrs at time sentencing.</p> <p>Convicted after early PG (20% discount).</p> <p>No prior criminal history; minor traffic record.</p> <p>Brother of co-accused; born Fiji; eldest of four children; good upbringing.</p> <p>Moved to Australia aged 7 yrs.</p> <p>Completed yr 11 high school.</p> <p>Employed electrician; responsible for team of 10 people.</p> <p>Married; three children; two adult step-children from wife's prior relationship.</p> <p>Involved in rugby league various capacities.</p> <p><u>Paul Serukai</u> 31 yrs at time of sentencing.</p> <p>Convicted after early PG (20% discount).</p>	<p>1 x Agg burglary.</p> <p>The appellants' sister-in-law's home was broken into and items, including her mobile phone, were stolen.</p> <p>Using an app the sister-in-law tracked her mobile phone to some units. It did not indicate in which particular unit the phone was located. She went to a police station to report the burglary.</p> <p>Frustrated with the police response the appellants decided to go to the unit complex. Searching bushes at the back of the units they located their sister-in-law's phone and one of her bank cards.</p> <p>One of the units was occupied by the victims, a male and female in their early 20's who suffered from mild intellectual and physical impairments.</p> <p>The appellants, of the view the victims knew about the burglary, decided to enter their unit to question them. One of the appellant's obtained a baseball bat from his car, thinking they may need it to protect themselves. When the door was answered the appellants pushed past the male victim and entered the unit without consent.</p> <p>The appellants then began questioning the</p>	<p><u>Clive and Paul Serukai</u> 2 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the experience would have been terrifying for the young vulnerable victims; the appellants had no idea whether the victims were actually involved in the burglary and their actions could have led to 'a confrontation that could have ended much more badly than it did', a risk the appellants took when they went into the home with a baseball bat.</p> <p>The sentencing judge found the offending was agg by the fact the appellants were in company with each other and the victims were vulnerable due to their intellectual and physical impairments.</p> <p>The sentencing judge characterised the offending as a vigilante attack and there was a need to deter vigilantism of this kind.</p>	<p>Allowed.</p> <p>Appeal concerned type and length of sentence.</p> <p>Resentenced to 15 mths imp (20% discount); susp 12 mths upon serving a further 3 mths in custody.</p> <p>At [47] ... the offenders did not, ... inflict or expressly threaten any actual physical harm to the victims. Nor was any property taken or damaged. The conduct comprising the offence constituted entering the home without consent once the male victim answered the door, asking questions and walking through the premises (without ransacking the premises or moving items) looking for stolen property or other people. The threat made just prior to the appellants' departure was general in nature. While the experience was</p>

		<p>No prior criminal history.</p> <p>Brother of co-accused; born Fiji; one of four children; good upbringing.</p> <p>Completed yr 12.</p> <p>Employed large mining company at time sentencing.</p> <p>Single at time sentencing.</p> <p>Resided New Zealand number of yrs playing rugby; suffered back injury; use of Voltaren for pain relief resulting in kidney failure; underwent kidney transplant in 2018; otherwise in good health.</p>	<p>victims, who were frightened by the presence of the baseball bat. The victims denied knowing anything about the burglary.</p> <p>Before leaving the appellants searched the victims' unit. They also informed the victims they would be back if they found out they were involved in the burglary.</p>	<p>The sentencing judge found the seriousness of the offending and the distress the victims would have suffered at the time made it inappropriate to suspend the term of imp.</p> <p>Appellants' genuinely remorseful; cooperative; understood impact of the offending on the victims; aberration from their normal behaviour; unlikely to reoffend in the future.</p>	<p>doubtlessly distressing for the victims, and the possession of the baseball bat was significantly aggravating, the offending in this case lacked the more egregious features of the offending in the other cases noted ... The offending was unplanned, although not entirely spontaneous as there was opportunity for pause and reflection between the appellants finding the mobile phone and entering the apartment with a baseball bat.</p> <p>At [48] ... the seriousness of the offending was such that imp was the only appropriate sentencing option. ... The length of the sentence was longer than was required ... [and] was not commensurate with the seriousness of the offence.</p> <p>At [55] ... this is an exceptional case where a</p>
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					susp sentence is commensurate with the seriousness of an agg home burglary offence. ...
36.	<p><i>Robson v The State of Western Australia</i></p> <p>[2020] WASCA 153</p> <p>Delivered 17/09/2020</p>	<p>24 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Minor prior criminal history; no prior sentences of imp.</p> <p>Completed yr 10.</p> <p>Qualified plumber.</p> <p>Partner of 3 yrs; first child born 5 mths prior to sentencing.</p> <p>History of alcohol abuse; heavily intoxicated at time offending; gambling addiction; resulting in financial distress; suffers anxiety and depression.</p>	<p>1 x Agg burglary.</p> <p>The female victim was aged 74 yrs and lived alone.</p> <p>At about 3.00 am Robson was outside the victim's home shouting he wanted to gain entry. The victim refused to allow him inside.</p> <p>Robson gained entry to the house by smashing a window. In terror, the victim ran out of her home and sought help from neighbours. He then ransacked her bedroom and stole jewellery and \$700 cash.</p> <p>Robson was identified by DNA from blood he left inside the victim's home.</p> <p>The stolen items were found and returned to the victim. The \$700 cash was never recovered.</p>	<p>2 yrs 3 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the burglary was unplanned and not especially sophisticated; it was committed at a time when the appellant would have known, at some stage, someone was present in the home.</p> <p>The sentencing judge found after the appellant's confrontation with the victim, causing her to flee her home in terror, he continued with the burglary; ransacking her bedroom and stealing items of value to the victim, albeit not necessarily of the greatest value seen in burglaries of this type.</p> <p>Ongoing psychological and financial impact on victim.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [23] The appellant's offending was a serious example of an agg home burglary. His victim was a 74-yr-old lady who lived alone and was terrified by the experience. ... The appellant forced his way into a house, which he knew to be occupied, at 3 am. [He] ransacked the victim's bedroom and took items of both personal and financial value to her. The criminality involved in the offending demanded a substantial term of imp.</p> <p>At [25] ... the length of the term of imp imposed ... was lenient. It is not reasonably arguable that</p>

				Remorseful; voluntary engagement in counselling; steps taken towards rehabilitation.	the sentencing judge erred in being satisfied that it was inappropriate to susp or conditionally susp the term of imp. ...
35.	<p><i>The State of Western Australia v Wilkins</i></p> <p>[2020] WASCA 149</p> <p>Delivered 09/09/2020</p>	<p>25 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Prior criminal history.</p> <p>Traumatic upbringing and dysfunctional and deprived childhood; suffered physical and emotional abuse.</p> <p>Limited education.</p> <p>Prior employment as a mentor and case manager for juvenile offenders.</p> <p>Death of his grandmother aged 19 yrs; loss of several friends and a close family member to suicide.</p> <p>Commenced cannabis use aged 12 yrs; heavy alcohol use by mid-teens; methyl use at age 18 yrs.</p> <p>Mental health issues; diagnosed with</p>	<p>Ct 1: Agg burglary. Ct 2: Att agg armed robbery.</p> <p>The victim was aged 61 yrs.</p> <p>Wilkins knocked on the front door of the victim's home. His wife answered the door. He asked to speak with the victim. Without invitation Wilkins entered the house. The victim's wife told him to leave and wait outside. He ignored her.</p> <p>The victim confronted Wilkins and demanded the keys to his car. The victim refused and told him to leave. Wilkins did not move so the victim again told him to leave and pushed him towards the front door.</p> <p>Wilkins resisted and produced a tomahawk. Brandishing and raising the tomahawk above his head he repeatedly told the victim he didn't want to hurt him.</p> <p>The victim grabbed a chair and used it to push Wilkins towards the door.</p>	<p>Ct 1 & 2: 13 mths imp (conc), conditionally susp 18 mths.</p> <p>The sentencing judge found the offending involved an invasion of the privacy and safety of the victim and his family in their own home; the respondent entered the house without consent and refused to leave when repeatedly told to do so; he had armed himself with a tomahawk, which he wielded and swung at the victim who was endeavouring to remove him from his home and the victim suffered bodily harm as a result of his struggles with the respondent.</p> <p>Genuinely remorseful; peer support work undertaken in prison.</p>	<p>Allowed (type and length of sentence and totality principle).</p> <p>Appeal concerned type and length of sentence; totality principle and error of fact (rehabilitation programmes cancelled or suspended as consequence of COVID-19 pandemic).</p> <p>Re-sentenced:</p> <p>Ct 1: 3 yrs 3 mths imp. Ct 2: No penalty.</p> <p>TES 3 yrs 3 mths imp.</p> <p>EFP.</p> <p>At [68] ... the respondent's offending in relation to ct 1 was deplorable. The seriousness of the offence</p>

		<p>depression and anxiety; prescribed antidepressant and antipsychotic medication; hospitalised for drug induced psychosis aged 20; attempt to commit suicide by drug overdose aged 21.</p>	<p>Wilkins twice swung the tomahawk towards the victim. The victim grabbed the tomahawk and a struggle ensued for control of the weapon.</p> <p>The victim's 20 yr old son assisted the victim to overcome and remove Wilkins from the house.</p> <p>Wilkins continued to resist as the victim forced him along the driveway. Wilkins walked about 15 to 18 feet from the victim before confronting the victim again, shouting angrily. The victim pushed him away. Wilkins then left.</p> <p>During the struggle the victim suffered cuts and bruises to his arms and hands and general soreness and stiffness to his body.</p> <p>Wilkins was under the influence of both alcohol and methyl at the time of the offending.</p>	<p>is apparent from the agg features identified ...</p> <p>At [70] ... The seriousness of what the respondent did was to be found in his actions in entering a home occupied by other people without their consent; attempting to steal their motor vehicle by demanding their car keys; and swinging a tomahawk at the victim when the victim resisted. The fact that the victim, with the assistance of his son, was able to overpower the respondent does not detract from the seriousness of the offending.</p> <p>At [71] Further, the respondent's repeated statement, 'I don't want to hurt you', while he brandished the tomahawk ... was reasonably capable of being understood as impliedly</p>
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					<p>asserting that if the victim did not comply with the respondent's demands, the respondent would hurt him.</p> <p>At [78] In all the circumstances, we are satisfied that the sentence imposed ... for ct 1 was not commensurate with the seriousness of the offence. The sentence was manifestly inadequate both as to type and length. ...</p>
34.	<p><i>The State of Western Australia v Clark</i></p> <p>[2020] WASCA 103</p> <p>Delivered 25/06/2020</p>	<p>31 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal history; including a conviction for domestic violence relating offending on C.</p> <p>Difficult and problematic childhood.</p> <p>Diagnosed with ADD as a child; suffers from epilepsy; poor decision making and coping skills.</p> <p>History of substance abuse since the age of 18 yrs.</p>	<p>Ct 1: Agg burg (dwelling). Ct 2: Att murder.</p> <p>Clark and C (victim ct 1), separated after a relationship of about 10 yrs. They had four children together.</p> <p>Clark moved out of the family home. Despite C allowing him to visit and stay at the house from time to time, he knew the home was solely the place of C and the children.</p> <p>Clark had trouble accepting the relationship was over. On an occasion in the weeks before the offending he believed,</p>	<p>Ct 1: 3 yrs 6 mths imp (conc). Ct 2: 15 yrs imp (conc).</p> <p>TES 15 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the respondent's attack was premeditated; he entered the bedroom with the intention of killing the victim; the intention to kill was not held only momentarily and it was not an act in self-defence; the</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence ct 2.</p> <p>Resentenced:</p> <p>Ct 1: 3 yrs 6 mths imp (conc). Ct 2: 17 yrs imp (conc).</p> <p>TES 17 yrs imp.</p> <p>EFP.</p> <p>At [70] ... the</p>

			<p>incorrectly, C was seeing another man. He went to the house in the early hrs of the morning, resulting in a verbal confrontation with C.</p> <p>The night before the offending Clark was again preoccupied with the thought that C was involved with other men. Agitated and angry he fabricated a reason to go to her home. He sent false text messages to and from his mobile telephone to create an apparent conversation between himself and a fictitious buyer about the sale of a bicycle. He then tried contacting C about the fictitious sale.</p> <p>That evening Mr L (victim ct 2) spent the night at C's home. In the morning Clark went to the house, not knowing Mr L or anyone else apart from C would be home.</p> <p>Without consent Clark entered C's house. He asked C to give their relationship another chance, but she told him she was not interested and that she had spent the night with someone else.</p> <p>Clark then went into C's bedroom and there was a brief verbal exchange with Mr L. Clark collected a knife from the kitchen and tried to return to the bedroom, but was prevented from doing so by C. He</p>	<p>victim was defenceless and he attacked with dangerous weapons; it was persistent and violent and inflicted very serious facial injury which left the victim with a permanent facial disfigurement.</p> <p>The trial judge found the respondent fled the scene and rendered no assistance to the victim, despite it being obvious he had suffered injury.</p> <p>No acceptance of responsibility; blamed the victim for his offending; limited remorse and limited victim empathy; responded positively to incarceration.</p> <p>Medium risk of future violent offending.</p>	<p>respondent's offending was a serious example of offending of its type. The respondent's attack on [Mr L] was premeditated. The attack was carried out with weapons. The respondent's intention to kill was not held only momentarily. He held that intention while he was inflicting the injuries. The respondent's attack on [Mr L] was persistent. After attacking [Mr L], the respondent fled the scene and rendered no assistance to him.</p> <p>At [77] In our opinion, the sentence ... was not commensurate with the seriousness of the respondent's offending. The sentence ... was not merely lenient. In particular, the sentence was not merely at or towards the lower end of the sentencing outcome open to his Honour on a proper exercise of his</p>
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			<p>eventually threw the knife across the room before leaving the house.</p> <p>That same day Clark repeatedly tried to contact C, before returning to the house. C refused to let him enter her home or to discuss their relationship. As she opened the door he pushed past her and entered the house. At some point he took a Stanley knife, with the blade extended, from his pocket. He told C, 'I'm going to slice this cunt up' and then walked towards the bedroom where Mr L was lying on the bed. C telephoned 000.</p> <p>Clark told Mr L he was going to kill him, before punching him in the mouth. He then slashed Mr L across the face with the knife, causing a deep laceration to his cheek, which bleed profusely.</p> <p>Clark continued the attack on Mr L by jumping on him, sitting on his chest and slashing him with the knife. He suffered cuts to his arms and hands as he att to defend himself and a number of large cuts to his body.</p> <p>When Mr L fell to the floor Clark got on top of him, repeatedly telling him he was going to kill him. During a struggle for control of the knife, the knife's blade was</p>		<p>discretion. The sentence was substantially less than the sentencing outcome that was properly open to his Honour.</p>
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			<p>ejected.</p> <p>Clark collected two more knives from the kitchen, along with a screwdriver. Returning to the bedroom he continued his attack on Mr L, slashing and stabbing him with one of the knives and the screwdriver.</p> <p>Clark left the house. He was arrested a short time later.</p> <p>If not treated the deep cut to Mr L's cheek would have endangered or been likely to have endangered his life.</p>		
33.	<p><i>Eldridge v The State of Western Australia</i></p> <p>[2020] WASCA 66</p> <p>Delivered 30/04/2020</p>	<p>41 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Long criminal history.</p> <p>Born in NZ; parents separated when still a baby; no contact with his biological father.</p> <p>Raised in WA; discovered his stepfather was not his biological father and his brother and sister not his biological siblings when a teenager; victim of serious forms of child abuse.</p> <p>Completed yr 10 high school.</p>	<p>1 x Burglary.</p> <p>A family were on holiday when Eldridge forced entry into their home. He left his blood on a windowsill.</p> <p>Once inside Eldridge rummaged through the family's belongings. He located a safe and damaged it. He stole various items valued in excess of \$14,000, some of which had sentimental value to the owner.</p> <p>None of the stolen property was recovered.</p> <p>Eldridge also smashed the victim's car windows in an att to gain access to it and steal any items secured within it.</p>	<p>5 yrs imp.</p> <p>EFP.</p> <p>Repeat offender.</p> <p>The sentencing judge found the offending a serious example of its type.</p> <p>The sentencing judge found that at the time of committing the offence, the appellant was using methyl and supporting his habit by breaking into homes and cars; he sold or exchanged the stolen items for illicit</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [59] ... The appellant broke into an unoccupied house and stole a substantial amount of property, some of which was of sentimental value and therefore irreplaceable. The appellant's actions have had a long-lasting and detrimental effect upon the victim ...</p>

		<p>Dysfunctional and unstable lifestyle from aged 15 yrs; frequently homeless; periods in juvenile detention.</p> <p>Short period of labouring work early twenties; never held any stable or long-term work.</p> <p>Long term drug addiction; including heroin and methyl.</p> <p>Ongoing back problems from motor vehicle accident; diagnosed moderate level of chronic depression.</p>	<p>Eldridge was identified by the DNA profile taken from the blood on the windowsill.</p>	<p>drugs.</p> <p>The sentencing judge noted the appellant had been sentenced to increasingly lengthy periods of imp, but this had not deterred him from committing the present offence; desirability to participate in rehabilitation; however previous attempts at treatment programs when incarcerated and has been unable to cease illicit drug use and his pattern of reoffending.</p> <p>No remorse; continued to deny the offending.</p>	<p>At [64] ... home burglaries are serious offences which are prevalent and which are ordinarily met with terms of imp. There has long been a recognition that sentences for home burglary need to be firmed up. ...</p> <p>At [65]-[66] The sentence imposed upon the appellant in this case was not unreasonable or plainly unjust ... his Honour was entirely correct to give emphasis not only to general deterrence, but also to personal deterrence, punishment and public protection. ...</p>
32.	<p><i>Peterson v The State of Western Australia</i></p> <p>[2019] WASCA 207</p> <p>Delivered 27/12/2019</p>	<p>38 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Prior criminal history; at time offending subject to a susp imp order for an offence committed in QLD which was very similar on its facts to</p>	<p>Ct 1: Agg burglary. Ct 2: Indec assault.</p> <p>Sometime after midnight the victim, T, and her housemate observed Peterson outside their villa. T returned to bed.</p> <p>A short time later T woke to find Peterson crouched next to her bed. His hand under</p>	<p>Ct 1: 5 yrs 4 mths imp. Ct 2: No penalty.</p> <p>EFP.</p> <p>The sentencing judge found the offending a serious example of its type; it occurred at night and</p>	<p>Dismissed.</p> <p>Appeal concerned error in mitigation discount (deprived background diminished with age).</p> <p>At [56] ... it is clear that the sentencing judge</p>

		<p>present offending; present offences committed while subject of outstanding arrest warrants in QLD and NSW.</p> <p>Very difficult childhood; death of his mother aged 5 yrs; upbringing marred by domestic violence; absence of emotional and financial support; physically and emotionally abused and neglected.</p> <p>No contact with extended family.</p> <p>Limited and difficult education; left school yr 9.</p> <p>Intermittent periods of employment.</p> <p>Long-term issues with alcohol and illicit drug use.</p>	<p>the covers between her legs, one finger touching her vagina outside her underwear. He told her to be quiet.</p> <p>T told Peterson to get out, which he did. She followed him to the back door and locked it. She then called the police.</p> <p>Peterson was later identified by CCTV footage.</p>	<p>involved a gross violation of the victim's security; she was entitled to feel safe in her own home.</p> <p>Denial of some facts; no remorse; little regard to impact offending has had on the victim; significant risk to public safety and of sexual re-offending.</p>	<p>found that the appellant's 'very difficult childhood', as his Honour put it, 'shaped' him into the adult he had become.</p> <p>At [57] ... his Honour failed to give 'full weight' to the appellant's very significant childhood deprivation in exercising the sentencing discretion. ... Accordingly, we are satisfied that his Honour erred ...</p> <p>At [59] ... the offences were very serious and have had lasting adverse effects upon T. ... [His] risk of sexual re-offending is significant. ...</p> <p>At [63] The decisions in <i>Prempeh</i> and <i>Pool</i> do not establish that the sentence ... imposed on the appellant for ct 1 was inconsistent with the standards of sentencing customarily observed with respect to that offence or</p>
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					<p>inconsistent with the place which the appellant's criminal conduct occupies on the scale of seriousness of this kind of offence.</p> <p>At [65] Having regard to all relevant circumstances and all relevant sentencing factors, including the appellant's very difficult childhood and the impact and ongoing effects that has had upon him, we are of the opinion that a sentence of 5 yrs 4 mths imp for ct 1 is appropriate. ...</p>
31.	<p><i>Pickett v The State of Western Australia</i></p> <p>[2019] WASCA 178</p> <p>Delivered 12/11/2019</p>	<p>21 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Atrocious juvenile criminal history; including two convictions for manslaughter by motor vehicle aged 14 yrs.</p> <p>Third child of nine children; non-drinking parents; stable home.</p> <p>Struggled at school often in trouble;</p>	<p>Ct 1: Agg burglary. Ct 2: Armed robbery. Ct 3: Agg indec assault. Cts 5 & 6: Agg sex pen.</p> <p>The victim, aged 27 yrs, was home alone. In the early hrs of the morning she was woken by the sound of Pickett, in the company of a co-offender, breaking into her home (ct 1).</p> <p>The victim called the police and hid in her bedroom. Pickett entered the room and,</p>	<p>Ct 1: 3 yrs imp (conc). Ct 2: 5 yrs imp (cum). Ct 3: 3 yrs imp (conc). Ct 5: 4 yrs imp (cum). Ct 6: 3 yrs imp (conc).</p> <p>TES 9 yrs imp.</p> <p>Sentence to be served partly cum upon a TES of 10 yrs 9 mths imp already serving.</p> <p>Indefinite imp order made</p>	<p>Appeal allowed.</p> <p>Appeal concerned indefinite imp order (imposed 23 June 2000).</p> <p>Resentenced:</p> <p>Ct 1: 3 yrs imp (conc). Ct 2: 5 yrs imp (cum). Ct 3: 3 yrs imp (cum). Ct 5: 5 yrs imp (cum). Ct 6: 5 yrs imp (conc).</p>

		<p>frequent truancy; expelled aged 11 yrs.</p> <p>Very little employment history.</p>	<p>pretending to be armed with a knife, demanded money from her. She gave him \$55 in cash (ct 2).</p> <p>Pickett then made the victim remove her nightdress, so she was naked. He then compelled her to touch herself (ct 3). He also made her walk naked outside, past the co-offender who was keeping watch.</p> <p>Pickett also sexually penetrated the victim without her consent (cts 5 and 6).</p>	<p>under s 98 of the <i>Sentence Act 1995</i>.</p> <p>It was accepted the sexual offending was premeditated.</p> <p>No remorse or victim empathy; high risk of reoffending.</p>	<p>TES 13 yrs imp.</p> <p>TES with other sentences approx. 14 yrs 7 mths imp.</p> <p>At [81] The judge emphasised ... the seriousness of the appellant's offending, the escalation of its seriousness in November and December 1998 and the rapidity with which the appellant offended each time he was released from custody. We accept all of those matters. Nevertheless, the combination of ... the fact that most of the offending was committed, when the appellant was a child of less than 14 yrs or ... when he had just turned 14 yrs old; ... the appellant's youth – being just 21 yrs old – when he committed his most recent offences; ... the lengthy horizon – more than 7 yrs</p>
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					<p>– before[he] would be released; and ... the absence of any expert opinion ... means that [his] criminal history could not, in our respectful opinion, on its own justify the making of an indefinite imp order.</p> <p>At [83] In the absence of expert psychiatric or psychological evidence, offences committed at the age of 21 yrs or less (and generally at the age of 14 yrs or less) provide an insufficient foundation to conclude, on the balance of probabilities, that, when released from prison aged almost 30 yrs, the appellant would be such a danger to society or part of it as to reasonably justify the making of an indefinite imp order.</p> <p>At [93] In resentencing the appellant, the starting point is the very serious nature of the appellant's</p>
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					offending, and the effects it has had upon his victim.
30.	<p><i>Brindley v The State of Western Australia</i></p> <p>[2019] WASCA 153</p> <p>Delivered 04/10/2019</p>	<p>34 yrs at time offending.</p> <p>Convicted after PG (20% discount).</p> <p>Prior criminal history; no history of violent offending; prior sentence of imp.</p> <p>Until incident subject of appeal has not re-offended since release from prison in 2008.</p> <p>Completed yr 11.</p> <p>Good sportsman; played rugby for WA.</p> <p>Hard-working; successful trade business.</p> <p>Married; three young children; family orientated.</p> <p>Prior substance abuse issues.</p>	<p>Ct 1: Agg burg. Ct 2: AOBH.</p> <p>The victim, Natalie, was at home with her four children (aged 18, 15, 12 and 3 yrs). Visiting the home were the victims, Dillon (19 yrs) and his cousins Brayden (21 yrs) and Brodie (19 yrs).</p> <p>Dillon and Brayden left the house to walk to the shops. On the way they were confronted by a man who accused Dillon of breaking into his car. After a verbal altercation they continued to the shops and returned to the house.</p> <p>On arriving back at the house a utility arrived at the address. Brindley and three male co-offenders got out of the vehicle and approached the house.</p> <p>Natalie and her two youngest children were outside the front of her house. She confronted the group, who she did not know, yelling at them to get off her property. Brindley yelled back and pushed Natalie in the chest, causing her to stumble backwards.</p> <p>Brindley then started assaulting Brodie.</p>	<p>Ct 1: 3 yrs 6 mths imp (cum). Ct 2: 6 mths imp (cum).</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the seriousness of the offending made a term of imp the only appropriate disposition.</p> <p>The sentence judge found the appellant used unprovoked violence; he was a stranger to the victims; he broke into the house of a vulnerable woman with four children; he entered the house in a violent way, knowing people were inside and terrorised the occupants; he behaved in a ‘thuggish way’; he forcefully punched a person he knew to be unconnected with the matter to send a message to others.</p> <p>The sentencing judge found the offending was ‘simply</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [40] The ... offence was in the more serious category of a violent home invasion with intent to intimidate the occupants ... We accept that some aggravating features – such as the use of weapons – were absent. However, the offending was very serious, involving an attack after dark by a group of strangers on a house occupied by a woman and her children, who must have been terrified by the experience. The offence was a significant violation of the sanctity of their home, in which they were entitled to feel safe. ...</p> <p>At [41] The vigilante nature of the attack was</p>

			<p>Brayden attempted to break up the fight, but he was grabbed from behind by one of the co-offenders and placed in a headlock and threatened with assault. Brodie was able to run off. The co-offender released Brayden and he ran inside the house, locking the security door behind him.</p> <p>Brindley forced entry into the home by kicking open the security door. On searching the house he located a locked bedroom door, which he kicked open. Brayden had secured himself in the room and on being found by Brindley he was taken to the front of the house. Asking for Dillon and being unable to locate him Brindley said, 'Well, where the fuck is he because our mate's car has been broken into five times and you cunts are going to face the music'.</p> <p>After a short conversation with a co-offender Brindley walked over to Brayden and said, 'Tell Dillon this is for him'. He then punched Brayden with a closed fist to the head, causing a laceration to his eyebrow. Brayden fell to the ground and was punched and kicked several times by one of the co-offenders. Brindley and his co-offenders then left the house.</p>	<p>gratuitous violence'; it was not spontaneous and had a degree of planning and premeditation; the appellant's actions those of a vigilante, but went beyond those of a vigilante because he was not responding to a loss he had suffered; he was 'lending the muscle'.</p> <p>Demonstrated remorse; acceptance of responsibility and co-operative.</p>	<p>also a significant aggravating feature of the offending. ...</p> <p>At [48] In considering the significance of any identified range, it is necessary to bear in mind the need for firming up of sentences for serious cases of home burglary, especially home burglary accompanied by violence to the occupants.</p> <p>At [50] ... the TES ... bears a proper relationship to the overall criminality involved in both of the offences viewed in entirety, having regard to all relevant facts and circumstances ... and all relevant sentencing factors. ...</p>
29.	<i>Jackamarra v The State of Western</i>	22 yrs at time of sentencing.	<p><u>Indictment</u> Cts 1 & 2: Agg burg.</p>	<p>Indictment Ct 1: 3 yrs imp.</p>	Dismissed.

<p>Australia</p> <p>[2019] WASCA 150</p> <p>Delivered 26/09/2019</p>	<p>Convicted after PG (25% discount).</p> <p>Prior criminal history; significant Children’s Court criminal record; including agg burglaries; stealing; possession of drugs and agg robbery.</p> <p>Alcohol and physical violence prevalent during childhood; moved frequently.</p> <p>Attended numerous schools; required educational support in primary school; irregular attendance in high school; trouble reading and writing.</p> <p>Cannabis and methyl use from aged 14 yrs; alcohol from age 15 yrs; heavy daily user of methyl from 2015.</p>	<p>Ct 3: Stealing</p> <p><u>Section 32</u> Ch 1: Stealing. Chs 2 & 6: Burglary and commit offence. Ch 3: Agg burglary. Chs 4 & 7: Stealing. Ch 5: Burglary with intent.</p> <p><u>Breach of CBO</u> Ch 1: Stealing. Ch 2: Breach of bail.</p> <p><u>Indictment – Ct 1</u> Jackamarra forced entry to the victim’s home by kicking open the front door. He stole six WWII memorabilia replica firearms, a computer, a safe and its contents and a jewellery box and its contents. The total value of the stolen property was \$21,509. None of the property was recovered.</p> <p><u>Cts 2 and 3</u> On another occasion Jackamarra and an unidentified co-offender entered the victim’s residence through an unlocked door. Jackamarra stood outside and kept watch.</p> <p>The victim got out of bed and saw the co-offender going through her dressing table</p>	<p>Ct 2: 2 yrs 6 mths imp (conc). Ct 3: No penalty.</p> <p><u>Section 32:</u> Ch 1: No penalty. Ch 2: 20 mths imp (conc). Ch 3: 20 mths imp (conc). Ch 4: No penalty. Ch 5: 12 mths imp (conc). Ch 6: 3 yrs imp (cum). Ch 7: No penalty.</p> <p><u>Breach of CBO</u> Ch 1: 12 mths imp (conc). Ch 2: 3 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>Remorseful; good prospects of rehabilitation.</p>	<p>Appeal concerned totality principle and error of fact (finding on parole at time offending).</p> <p>At [55] ... the proper inference to be drawn is that the sentencing judge referred to some of the appellant’s offending being committed while he was on ‘parole’, when his Honour meant to say that some of the offending occurred while the appellant was on ‘bail’. ...</p> <p>At [56] ... the appellant was subject to some form of conditional release at the time of committing all of the offences which are the subject of this appeal. ...</p> <p>At [57] The fact that he was subject to the kinds of conditional release noted above was an agg factor. That the conditional release was pursuant to a bail order, a conditional</p>
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			<p>draws. She asked him what he wanted and he indicated he wanted money. He continued to search the drawers and the house while the victim looked on. He put items into a bag owned by the victim, stealing a purse, jewellery and money.</p> <p>Jackamarra was later identified from DNA found on a bag, that belonged to the victim, outside the house.</p> <p><u>Section 32 - Chs 1 & 2</u> Jackamarra went to a unit with the intention of breaking into to search for items to steal. After climbing a fence he entered the unit through an unlocked door. He stole a handbag containing her purse, personal items and jewellery. At the time of this offending he was subject to a CBO.</p> <p><u>Chs 3 & 4</u> Jackamarra acted as a lookout, whilst his unidentified co-offender kicked open the front door of a home and went inside. The co-offender rummaged through the bedroom, opened a safe and stole jewellery. Items to the value of \$3,100 were stolen. At the time of this offending Jackamarra was either on bail or at large having breached his bail.</p> <p><u>Ch 5</u></p>		<p>release order or a supervised release order, as opposed to a parole order, did not reduce the seriousness of the offending.</p> <p>At [73] While not in the worse category, a number of the burglary offences summarised ... were very serious. ... The overall criminality involved in all of this offending was high.</p> <p>At [77] ... In our view, the TES bore a proper relationship to the overall criminality involved in all the offences, viewed in their entirety and having regard to the circumstances of the case, including those referable to the appellant personally.</p>
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			<p>After jumping a fence Jackamarra entered a home through a window. Inside he rummaged through several rooms but did not take any items. He left the house by the same window. At the time of this offending he was subject to a CBO.</p> <p><u>Chs 6 & 7</u> Smashing a glass door with a hammer Jackamarra gained entry to a home. He ransacked the premises, upturning a large amount of property. He also tried to force entry to a gun safe using an axe. He stole electronic devices, vehicle keys, jewellery and a handbag before leaving through a window. At the time of this offending he was subject to a CBO.</p> <p><u>Breach of CBO – Ch 1 & 2</u> Jackamarra’s girlfriend stole a handbag and gave it to him. He took \$300 from the purse before throwing it away. Whilst on bail for this offence he failed to attend court, in breach of his bail.</p>		
28.	<p><i>Kickett v The State of Western Australia</i></p> <p>[2019] WASCA 147</p> <p>Delivered</p>	<p>32 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Extensive criminal history. Prior convictions for burglary. Repeat offender.</p>	<p>1 x Agg burg.</p> <p>The victims, husband and wife, were retired pensioners aged 85 yrs and 81 yrs respectively.</p> <p>Kickett went to the victims’ home, knocked on the door and asked the female</p>	<p>3 yrs 10 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending a very serious example of an agg burglary; the appellant took advantage</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [28] The present case is not in the most serious category of burglary. The</p>

	<p>19/09/2019</p>	<p>Difficult and traumatic childhood; raised by maternal grandmother; then her father and his partner; father imprisoned most of her childhood.</p> <p>Left school aged 13 yrs.</p> <p>Four relationships; all marred by domestic violence and dependency on illicit drugs.</p> <p>No employment history; reliant on welfare benefits.</p> <p>Heart murmur since birth; does not require medication; suffered psychologically 4 yrs prior to sentence; two incidents of self-harm.</p> <p>Long history of illicit substance abuse; solvent and methyl use intravenously from aged 10 yrs.</p>	<p>victim if she could come inside for a glass of water.</p> <p>Kickett was taken into the kitchen. She then asked if she could use the bathroom. After which she entered a bedroom and rummaged through their belongings.</p> <p>The female victim saw Kickett in the bedroom and told her to get out. Believing she had stolen items the female victim yelled out to the male victim. The male victim tried to restrain Kickett, but she lashed out using her arms and legs attempting to break free.</p> <p>Kickett and the male victim fell to the floor. After a short struggle she broke free and ran to the front door. The male victim was able to grab her bag, causing it to rip open and its contents to spill onto the porch. Kickett fled.</p> <p>Kickett was identified from DNA and her mobile phone left at the home</p>	<p>of an elderly couple; gaining access to their home under the guise of getting a glass of water</p> <p>Very high risk of reoffending in a similar nature; unless drug problem addressed.</p>	<p>appellant did not force her way into the complainants' home in a violent manner. However, the appellant was aware that the home was occupied by an elderly couple, whom she took advantage of by gaining access to their home under the guise of getting a glass of water. ... The use of violence at the time was a significant agg feature of the offence.</p> <p>At [31] ... the sentence ..., which was less than 20% of the maximum available penalty and only 22 mths longer than the minimum term, cannot arguably be characterised as unreasonable or plainly unjust.</p>
<p>27.</p>	<p><i>Moore v The State of Western Australia</i></p> <p>[2019] WASCA 35</p>	<p>44 yrs at time offending. 46 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; convictions for very similar offending; imprisoned</p>	<p>Cts 1-5: Agg burg. Ct 6: Agg indec assault. Ct 7: Stealing.</p> <p>Moore followed and propositioned a female in a park. She ran and managed to elude him.</p>	<p>Ct 1: 15 mths imp (conc). Ct 2: 2 yrs imp (cum). Ct 3: 2 yrs 6 mths imp (cum). Ct 4: 2 yrs imp (conc). Ct 5: 5 yrs 6 mths imp (cum). Ct 6: 5 yrs 6 mths imp (conc).</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p>

<p>Delivered 19/02/2019</p>	<p>most of his adult life.</p> <p>Parents separated prior to his birth; never met his father; in foster care from a very young age; adopted by foster parents.</p> <p>Adoptive parents caring and supportive; victim of sexual abuse aged 5-8 yrs.</p> <p>Behavioural problems from young age; completed school aged 16 yrs; connected with his biological mother when a teenager.</p> <p>No long-term relationships; single at time of sentencing; 20-yr-old daughter from a brief union.</p> <p>Commenced alcohol and cannabis use in his teens; methyl and heroin use by age 20 yrs.</p> <p>History of schizophrenia, att suicide and depression.</p>	<p><u>Cts 1- 2</u></p> <p>In an attempt to try and locate the female Moore went to a unit owned by the victim, McKenzie. He opened a window with the intent of entering the unit to look for her and indecently assault her. He ran when seen by McKenzie.</p> <p>Moore then ran to a unit owned by the victim, McGauran. He entered this unlocked unit, still searching for the female with the intention of indecently assaulting her. Once inside he spoke to McGauran. McKenzie, who had followed him to the unit, intervened causing him to leave. A short time later he was apprehended by police, charged and released on bail.</p> <p><u>Cts 3-7</u></p> <p>The next day Moore gained entry to the home of the victims, Drewett and Ford, by throwing a gas bottle through a door. Hearing the noise Drewett went to investigate. Finding Moore inside his home Drewett told him to leave. After a brief argument he threw the gas bottle at the victim and left.</p> <p>Minutes later Moore entered the unlocked home of the victims Dunn and Funnell. He entered the bedroom in which the victims</p>	<p>Ct 7: 6 mths imp (conc).</p> <p>TES 10 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the offending serious; the appellant had been released from prison three days before committing ct 1; he was on bail for cts 1 and 2 when he committed cts 3-7; there was a degree of persistence in relation to the offending the subject of cts 1 and 2; there was violence in the commission of the offence the subject of ct 3; his criminal conduct in relation to ct 4 was brazen; there was a degree of persistence in his assault of RB.</p> <p>No demonstrated remorse or victim empathy; continues to deny the offending; history of refusing to accept responsibility; resistant to treatments and unwilling to engage in programs or address issues underlying his</p>	<p>At [64] The appellant is at a high risk of reoffending in a sexual manner if he continues to resist treatment and makes no progress in dealing with the issues which underpin his sexual offending. His prospects of rehabilitation are not encouraging.</p> <p>At [67] Although cts 1-2 were committed in close temporal proximately, and cts 3-7 were also committed in close temporal proximity, it was necessary to accumulate some of the individual sentences in order to ensure that the TES imposed ... was commensurate with the seriousness of his overall offending.</p> <p>At [68] ... the TES ... did not infringe the first limb of the totality principle. A custodial term of that length was required in order properly to mark the</p>
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			<p>were sleeping and stole a number of items. He fled when confronted by Dunn.</p> <p>Almost immediately Moore entered the home of the victim RB. She was home alone. He approached her, told her to be quiet and grabbed and pulled at her clothing with the intent of exposing her breasts. He then hit her in the face, causing her mouth to bleed, before dragging her to her bedroom and onto her bed. When she began screaming loudly he desisted and left the home, taking with him her wallet.</p>	sexual offending.	<p>very serious character of the appellant's offending as a whole, ... The TES bears a proper relationship to the criminality involved in all of the offences, viewed together, and having regard to all relevant facts and circumstances ... including the seriousness of the overall offending, the vulnerability of the victims (especially RB), the pattern of sentencing in prior cases with some comparable features, and the limited mitigation.</p>
26.	<p><i>Stanley v The State of Western Australia</i></p> <p>[2018] WASCA 229</p> <p>Delivered 10/12//2018</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Minor criminal history; traffic and drug poss offences; repeated failure to comply with court orders; placed on CBO two days prior to committing this offence.</p> <p>Co-offender sentenced in Magistrates Court to 15 mths ISO on basis value of stolen property \$10,000.</p>	<p>1 x Agg burg.</p> <p>Stanley and her co-offender smashed a window to gain entry to a home, knowing it was unoccupied after a car had earlier caused extensive damage to the property.</p> <p>Both Stanley and the co-offender entered the house and stole property valued at about \$10,000.</p> <p>Stanley was later identified by her fingerprints left at the scene.</p>	<p>15 mths imp.</p> <p>The sentencing judge found the offence was premediated and the value of items taken, while not unusually high, was very significant; no interaction with anyone at the premises and no significant damage done to the home.</p> <p>The sentencing judge found having regard to the innate seriousness of the crime the</p>	<p>Allowed.</p> <p>Appeal concerned parity principle.</p> <p>Re-sentenced to:</p> <p>9 mths imp, susp 9 mths; program and supervision requirements.</p> <p>At [15] ... In this case, co-offenders were sentenced in different</p>

		<p>Youngest of four children; difficult childhood; father alcohol dependent; mother subject of domestic abuse; left home aged 15 yrs; exposure to recent trauma and death of her brother.</p> <p>Learning/cognitive difficulties not recognised until high school; struggled socially at school due to speech impediment.</p> <p>Limited employment history; worked only short periods.</p> <p>History of methyl use from age 24 yrs; drug affected at time offending.</p>	<p>Numerous stolen items from the property were also found by police at the home at which she was arrested.</p>	<p>only appropriate penalty was imp and it was not appropriate to susp the sentence.</p> <p>Used time in custody productively; prospects of positive contribution to community on release.</p>	<p>courts, not simply by different judicial officers. The prospect of anomalous outcomes of the kind which have arisen in this case is why it is to be hoped that ... the unsatisfactory approach taken in this case will not be repeated.</p> <p>At [52] ... the ... unusual features of this case, in combination, made it appropriate to order that the appellant be resented ...</p> <p>At [54] ... the appellant had some matters which, compared to her co-offender, counted against her. ... She, unlike her co-offender, had previously been placed on CBOs with which she had failed to comply. Further, the co-offender was aged 22, whereas the appellant was aged 30 ... However, the significance of the difference in their ages</p>
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					<p>was, to an extent, reduced by the cognitive challenges faced by the appellant.</p> <p>At [55] ... the undiagnosed substantial cognitive challenges faced by the appellant should be given some weight.</p> <p>At [56] ... significantly, ... the appellant had served more than 6 mths' imp.</p>
25.	<p><i>Ugle v The State of Western Australia</i></p> <p>[2018] WASCA 97</p> <p>Delivered 02/06/2018</p>	<p>35 yrs at time sentencing.</p> <p>Convicted after early PG (10% discount).</p> <p>Significant criminal history; including fraud and property offences; poor history of complying with supervision requirements.</p> <p>Aboriginal woman; childhood marred by neglect, alcohol and drug abuse and domestic violence, including sexual violence.</p> <p>Four children; no contact with three youngest children living with their</p>	<p>Ct 1: Agg burg. Ct 2: Steal motor vehicle.</p> <p>Ugle gained entry to a home, occupied by the victim and several children who were asleep in the house.</p> <p>Ugle took the victim's handbag and an iPad.</p> <p>A short time later Ugle used the victim's bank card to make a fraudulent purchase.</p> <p>Later that morning Ugle returned to the victim's home and, using keys she found in the handbag, stole the victim's car.</p>	<p>Ct 1: 2 yrs 7 mths imp (conc). Ct 2: 12 mths imp (conc).</p> <p>TES 2 yrs 7 mths imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>Appeal concerned plea discount.</p> <p>Re-sentenced to:</p> <p>Ct 1: 2 yrs imp (conc). Ct 2: 12 mths imp (conc).</p> <p>EFP.</p> <p>At [24] ... The sentencing judge accepted that appellant's plea of guilty was made at the first reasonable opportunity.</p>

		<p>father.</p> <p>History of substance abuse; regular user of methyl.</p> <p>Homeless and using methyl at time offending.</p>	<p>The vehicle was subsequently recovered.</p> <p>Ugle's fingerprints were located inside the car and traffic camera footage obtained showed her travelling as a passenger in the vehicle. Store CCTV footage obtained captured her making the fraudulent purchase.</p>		<p>At [33] ... neither the strength of the prosecution case nor any other circumstances could reasonably lead to the view that the value of the benefits to the State and the victim was so low as to justify only a 10% discount ... The judge's conclusion that only a 10% discount was appropriate was plainly unreasonable or unjust.</p> <p>At [46] ... This was not an agg home burglary at the upper end of the range of seriousness for offences of that kind.</p> <p>At [50] ... we would give a 25% discount ... for the appellant's plea of guilty at the first reasonable opportunity in respect of both offences.</p>
24.	<i>Mason v The State of Western Australia</i>	<p>32 yrs at time offending. 33 yrs at time sentencing.</p> <p>Convicted after early PG (25%</p>	<p>1 x Agg burg.</p> <p>Mason entered a home, occupied by the victim and her three children.</p>	12 mths imp (susp). Program and supervision requirements.	<p>Dismissed.</p> <p>Appeal concerned type of sentence.</p>

<p>[2018] WASCA 43</p> <p>Delivered 04/04/2018</p>	<p>discount).</p> <p>Prior criminal history; no previous convictions for burglary.</p> <p>Born Thailand; abandoned and raised in an orphanage from 5 mths old.</p> <p>Adopted by Australian parents aged 7 yrs.</p> <p>Strong and supportive family; second of four children.</p> <p>Significant intellectual disability; diagnosed ADHD aged 9-10 yrs; difficulties at school.</p> <p>Educated to yr 12; completed carpentry apprenticeship; qualified welder; gainfully employed.</p> <p>Past auditory and visual hallucinations.</p> <p>Escalating methyl use from aged 24 yrs.</p>	<p>He drank from a bottle in the fridge.</p> <p>He then went into the bedroom of the victim's 12 yr-old daughter. When she woke up and screamed he fled.</p> <p>Identified by his DNA found on the bottle in the fridge.</p>	<p>The sentencing judge found the offending agg by entering the home in the early hours when he knew or ought to have known it was likely people inside would be asleep and vulnerable; there was the potential for confrontation with the home owner; that he woke and terrified a 12 yr-old girl.</p> <p>The sentencing judge found this case did not provide an appropriate vehicle for general deterrence because of the appellant's intellectual disability and other mental health considerations. Disability causally relevant to the defence.</p> <p>Undertaking methyl dependency treatment program at time sentencing.</p> <p>Co-operative with police; exhibited genuine remorse and victim empathy.</p>	<p>At [67] ... He entered a home at 3.30 am when ... the occupants were sleeping. In doing so, the appellant created the real potential for confrontation and the possibility of unintended injury and damage. That was magnified by the fact that the appellant was under the influence of drugs Further, [he] disturbed a 12 yr-old girl who was asleep in her bedroom.</p> <p>At [69] ... it was open to the sentencing judge to form the view that, when [the appellant's significant mitigating factors in his favour] were weighed against the seriousness of the offence, a conditionally susp imp was the appropriate disposition. ... an ISO, would not have been commensurate with the seriousness of the offence. While the appellant's</p>
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					mental impairment meant that the significance of general deterrence was substantially reduced, it could not be said to be eliminated ... Moreover, the appellant's use of illicit drugs was relevant to his risk of reoffending. ... Personal deterrence was a material factor in the sentencing process.
23.	<p><i>Humphreys v The State of Western Australia</i></p> <p>[2017] WASCA 208</p> <p>Delivered 09/11/2017</p>	<p>33 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>Lengthy record of prior convictions, including agg burglary. Not previously sentenced to a term of imp.</p> <p>Difficult childhood.</p> <p>Left school year 11.</p> <p>Illicit substances use at a young age. Daily user of methyl by aged 17 yrs.</p> <p>Previous engagement in drug rehabilitation.</p>	<p><u>Indictment</u> 1 x Agg burg.</p> <p><u>Section 32</u> 1 x Agg common assault.</p> <p><u>Breach of ISO</u> 2 x Breach of VRO (4003 and 4006). 1 x Damage.</p> <p>The victim was at home with her two children aged 4 and 9 yrs.</p> <p>Under the influence of methyl Humphreys attended the victim's home to collect money for a drug debt owed to him by the victim's ex-partner.</p> <p>The victim answered the door. Humphreys demanded money and verbally abused her.</p>	<p><u>Indictment</u> 3 yrs 6 mths imp.</p> <p><u>Section 32</u> No penalty.</p> <p><u>Breach of ISO</u> 3 mths imp each ct. Breach of VRO (4003) cum with ct on indictment. All other offences conc with each other and agg burglary.</p> <p>TES 3 yrs 9 mths imp.</p> <p>EFP.</p> <p>The sentencing judge described the agg burglary as a very serious offence by use</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence, agg burglary only.</p> <p>Re-sentenced to:</p> <p><u>Indictment</u> 2 yrs 3 mths imp.</p> <p>All other sentences and cumulacy to stand.</p> <p>TES 2 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [29] The offence committed by the</p>

			<p>The victim told him to leave so he threw a drink can in her direction. He then began to walk away.</p> <p>The victim detached a security chain to close the door. As she did so, Humphreys forced entry to the house, body slamming the door with such force it smashed one of its glass panels.</p> <p>Humphreys grabbed the victim by the neck with both hands and demanded money from her.</p> <p>The victim was able to yell out to her children to leave the house, before breaking free and running out of the house to meet them.</p> <p>Humphreys left the scene.</p> <p>The victim suffered bruising to her neck.</p>	<p>of actual violence against a vulnerable victim whose children were present. It was not an uncharacteristic aberration.</p>	<p>appellant did not have features seen in the more serious cases. The offence was not premeditated and occurred at the spur of the moment. It did not involve the use of a weapon or occur at night and the appellant was not in company. The level of violence used by the appellant was not as extreme as the violence perpetrated in more serious cases.</p> <p>At [30] ... The victim was vulnerable and the offence was committed with young children present. ... It cannot be overlooked that the appellant was subject to an ISO at the time of the offence ...</p> <p>At [33] ... the length of the sentence was more consistent with one that may have been imposed after trial.</p>
22.	<i>Hume v The State of Western</i>	21 yrs at time offending.	1 x Agg burg.	18 mths imp.	Dismissed.

<p>Australia</p> <p>[2017] WASCA 205</p> <p>Delivered 31/10/2017</p>	<p>Convicted after early PG (20% discount).</p> <p>Prior criminal history; sentences of imp for offences of agg unlawful wounding.</p> <p>11 mths spent in custody on remand charge of arson; acquitted shortly before sentencing for this offence.</p> <p>Aboriginal; raised in WA.</p> <p>Background of considerable deprivation and disadvantage; exposed to domestic violence; childhood disrupted by family dysfunction; parental drug and alcohol abuse.</p> <p>Attended numerous schools.</p> <p>Homeless from aged 17 yrs; unstructured life; no support; unemployed.</p> <p>Family history of mental illness; suffers complex mental health problems, schizophrenia; severe substance abuse disorder; antisocial personality disorder; history of failing to comply with medical advice and</p>	<p>Hume's entered the unit of the 71-yr-old victim late at night, looking for keys with which to steal a vehicle.</p> <p>He was upset and angry with his mother because she would not give him her car keys.</p> <p>He gained access to the home by opening the garage roller door then opening an unlocked internal door leading inside.</p> <p>He stole a mobile phone, a soft drink and a suitcase containing clothes.</p> <p>The victim was asleep and was disturbed by Hume's however he did not confront her.</p> <p>Some, but not all of the stolen property was recovered.</p>	<p>EFP.</p> <p>The sentencing judge found the offence was, by its nature, very serious.</p> <p>The sentencing judge found the offending agg by being committed at night; against an elderly victim; the risk of confrontation and he was on bail at the time of the offence.</p> <p>The sentencing judge found the offending not directly related to his mental illness; he was merely angry and frustrated.</p> <p>Desire to cease drug use and avoid negative family and peer influences.</p>	<p>Appellant challenged length of sentence.</p> <p>At [37] ... the circumstances in which the offence was committed meant that it was nevertheless offending of a serious kind. The appellant entered the ... home at a time, late at night, when it was likely that someone would be home. ... Although there was no confrontation between the complainant and the appellant in this case, the potential for a physical confrontation and the possibility of injury or damage to property as a result, is an inevitable risk of offending of this kind.</p> <p>At [38] ... He committed the offence because he was intoxicated and angry. ... When the time spent in custody on the arson remand is also taken into account, it does not</p>
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		<p>prescribed medication.</p> <p>History of illicit substance use; intoxicated and affected by drugs at time of offending.</p>			<p>warrant the conclusion that the sentence was manifestly excessive.</p> <p>At [40] ... appellant's circumstances, including his unemployment, homelessness, substance abuse, and the challenges he faced in dealing with his mental health issues, were such that his prospects of rehabilitation remain poor.</p>
21.	<p><i>Jolly v The State of Western Australia</i></p> <p>[2017] WASCA 181</p> <p>Delivered 12/10/2017</p>	<p>52 yrs at time sentencing.</p> <p>Convicted after very late PG (10% discount).</p> <p>No prior criminal history.</p> <p>Steady record of employment.</p> <p>Divorced; three children to victim E</p> <p>Substance abuse history; cannabis and methyl but mostly alcohol.</p> <p>Episodes of depression; no history of a major mental illness.</p>	<p>Cts 1 & 3: Agg burg. Ct 2: Wilful damage.</p> <p>The victim E was Jolly's ex-wife. E was now in a relationship with the victim SC, but they did not reside together.</p> <p>Jolly, carrying a knife, went to E's house and entered the home through an unlocked door. Jolly's 18-yr-old daughter, who resided with E, was the only person home at the time.</p> <p>Inside the home Jolly picked up an axe. In E's bedroom he used the knife to stab the mattress and cut up the sheets. Using the axe he caused substantial damage to property. His daughter tried unsuccessfully</p>	<p>Ct 1: 12 mths imp (cum) Ct 2: No penalty. Ct 3: 4 yrs imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending with regard to ct 3 was not a one-off aberration having regard to the commission of ct 1 and it was an escalation of his violent conduct.</p> <p>The sentencing judge decided that accumulation of</p>	<p>Dismissed.</p> <p>Appellant challenged finding of late plea and plea discount. Appeal concerned totality principle and length of sentence in respect of ct 3.</p> <p>At [33] The PGs were not entered at the first reasonable opportunity. Accordingly, the appellant could not lay any claim to a 25% reduction pursuant to s 9AA of the SA. The pleas were entered very late.</p>

			<p>to stop him, before fleeing the house in terror.</p> <p>The home was uninhabitable, so E and the children went to stay at SC's home.</p> <p>The following night Jolly went to SC's home, carrying the same axe. Unannounced he entered the home. He confronted E and SC in a bedroom. Jolly's 14-yr-old son tried to stop him. Jolly said 'You're dead, you cunt', before punching E in the side of the face. When SC grabbed hold of the axe Jolly punched him in the chin. He eventually let go of the axe and ran off.</p> <p>Jolly surrendered himself to police some days later.</p> <p>The victims suffered relatively minor injuries, and, along with the children, psychological trauma.</p>	<p>the individual sentences was necessary 'in order to mark the very serious nature of [the] overall offending and to reflect the important sentencing considerations of personal and general deterrence', but reduced the terms imposed on each ct to accommodate the totality principle.</p> <p>Participated in behavioural change programme on bail; positive improvements noted; sentencing judge expressed difficulty in accepting the finding the appellant 'displayed good insight' into his offending.</p>	<p>At [36] ... a sentencing judge is not required by s 9AA of the SA to expressly state the head sentence. His Honour's failure to state the head sentence cannot, without more, demonstrate a failure to give the stated s 9AA reduction.</p> <p>At [41] The circumstances of ct 3 were particularly serious. Having already committed a violent home burglary upon E's house the day before, the appellant once again armed himself with an axe, entered SC's house at night, threatened SC and then assaulted him and E. He did so in the presence of two of his children ...</p> <p>At [48] We do not regard the appellant's offending ... as constituting a continuing episode of offending. The offences were separate in time and</p>
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					place. Each involved separate and deliberate decisions by the appellant to enter houses occupied by his ex-wife carrying weapons and behaving in a threatening manner. ... To impose wholly or partly conc sentences for cts 1 and 3 would not have been a proper reflection of the appellant's overall criminality.
20.	<p><i>Woods v The State of Western Australia</i></p> <p>[2017] WASCA 179</p> <p>Delivered 29/09/2017</p>	<p>21 yrs at time offending. 22 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Extensive and persistent criminal history; including serious offences as a child; no prior sentences of imp.</p> <p>Sentenced SGMC further 77 offences, 6 mths imp; conc with each other; conc with TES for offences subject of this matter.</p> <p>Dysfunctional childhood; mother mentally ill; absent father; exposed illicit drugs from young age; sexually</p>	<p>Ct 1: Agg robbery. Cts 2 & 12: Burg. Cts 3-5, 7-8, 10-11 & 13: Agg burg. Ct 6: Agg armed robbery. Ct 9: Att agg burg.</p> <p>The offences were committed over a five week period.</p> <p><u>Ct 1</u> Woods got into the passenger's seat of a car. Snatching the keys from the 83 yr-old driver's hands she ordered her out of the vehicle, before forcibly pulling her from the car and stealing it. The car was extensively damaged and written off.</p> <p><u>Ct 2</u></p>	<p>Ct 1: 3 yrs 6 mths imp (cum). Cts 2 and 12: 1 yr imp each ct (ct 2 cum all other cts conc). Cts 3-5, 7-8, 10-11 and 13: 18 months imp each ct (conc). Ct 6: 5 yrs imp (cum). Ct 9: 2 yrs imp (conc).</p> <p>TES 9 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending demonstrated 'a degree not simply of deliberation but of</p>	<p>Allowed.</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p> <p>Resentenced. Orders in relation to conc, cum and backdating set aside.</p> <p>Cts 2 and 8 cum upon each other, cum upon individual sentences for ct 6.</p> <p>All other counts conc with each other and conc with</p>

		<p>abused aged 12 yrs; deeply affected by suicide of a relation; little or no family support.</p> <p>First relationship marred by domestic violence; two young children from union cared for by grandmother.</p> <p>Alcohol and inhalants from 11 yrs; methyl aged 14 yrs.</p>	<p>About a fortnight later Woods forced entry into a home and stole car keys and used them to steal a vehicle.</p> <p><u>Ct 3</u> The next day Woods entered a home and rummaged through a handbag. She fled when disturbed.</p> <p><u>Ct 4</u> The following day Woods forced entered to another home and stole numerous items. The occupant and a friend were home at the time.</p> <p><u>Ct 5</u> Two days later Woods entered a house and stole a wallet. She fled when disturbed. Returning a short time later to steal a car.</p> <p><u>Ct 6</u> Two days later Woods went to a house and asked the 72 yr-old occupant to use her phone. This was denied so she forced a window to gain entry. Armed with a knife, she raised it in an aggressive manner and demanded jewellery and the car keys. The occupant feared for her life and told Woods she felt unwell and asked her to call for an ambulance. Woods declined and left, stealing a number of items, including a mobile phone and car.</p>	<p>some calculation' in particular, several of the offences involved the targeting of elderly women.</p> <p>The sentencing judge found the seriousness of the offending 'so great that deterrence and punishment and the protection of the community, particularly vulnerable members of the community who the appellant showed a tendency to target outweighed her individual needs'.</p>	<p>sentence for ct 6.</p> <p>TES 7 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [50] The appellant's overall offending was very serious. ... Most of the offences involved some premeditation, calculation and planning. ... The appellant specifically and intentionally targeted elderly women.</p> <p>At [53] ... It was necessary, in order properly to mark the appellant's overall criminality in committing numerous serious offences, to accumulate some of the individual sentences. However, the TES ... was ... severe having regard to all relevant sentencing factors and all relevant sentencing principles ...</p>
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		<p><u>Ct 7</u> The following day Woods entered a home, but fled when disturbed.</p> <p><u>Ct 8</u> The same day Woods went to a house and asked the 82 yr old occupant for directions. She was permitted into the house. Once inside she stole car keys and a car. The car was extensively damaged.</p> <p><u>Ct 9</u> The next day Woods knocked on the door of another home and asked the occupant to call a taxi. When the occupant was on the phone Woods attempted to enter the house.</p> <p><u>Ct 10</u> The same day Woods ran inside a house after asking her to call a taxi. She stole a handbag and car keys. Using the keys she then stole a car.</p> <p><u>Ct 11</u> The same day Woods entered another home. She was disturbed after stealing car keys, which she used to steal a car.</p> <p><u>Ct 12</u> The same day Woods forced entry into a further home and damaged items inside.</p>		<p>At [73] ... the magistrate's sentencing decision (including the facts and circumstances of the 77 offences with which the decision was concerned) should be taken into account in the application of the totality principle (in particular, in the backdating of the new TES) when this court resentsences the appellant in respect of the 13 cts in the indictment.</p>
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			<p>She also stole personal items, including a hearing aid and WWII medals and car keys. Using the keys she stole the occupant's car.</p> <p><u>Ct 13</u> A few days later Woods entered a house and stole jewellery. The occupant was at home at the time.</p>		
19.	<p><i>Burnes v The State of Western Australia</i></p> <p>[2017] WASCA 77</p> <p>Delivered 21/04/2017</p>	<p>28 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Extensive criminal history; including stealing, driving, drug and firearm offence; assaulting police and armed robbery.</p> <p>Left school at yr 8.</p> <p>Negative peer associations.</p> <p>Minimal employment history.</p> <p>Long and entrenched history of illicit drug use; commenced using aged 15 yrs.</p>	<p><u>Indictment 861</u> Ct 1: Poss methyl wiss 10.9g at 27% purity.</p> <p><u>Indictment 236</u> Ct 1: Burg. Ct 2: Stealing.</p> <p><u>Section 32 notice 1</u> Ch 1: Att pervert justice.</p> <p><u>Section 32 notice 2</u> Ch 1, 13 & 19: Steal motor vehicle. Ch 2-3 & 7: Poss firearm/ammunition. Ch 4: Poss stolen property. Ch 5: Carried controlled weapon. Ch 6 & 8: Poss prohibited weapon. Ch 9-11: Breach bail. Ch 12: Threats to injure. Ch 14: Assault to prevent arrest. Ch 15: No authority to drive. Ch 16: Reckless driving. Ch 17: Fail to stop.</p>	<p><u>Indictment 861</u> Ct 1: 1 yr 6 mths imp (cum).</p> <p><u>Indictment 236</u> Ct 1: 2 yrs imp (cum). Ct 2: No punishment (s11).</p> <p><u>Section 32 notice 1</u> Ch 1: 1 yrs imp (cum).</p> <p><u>Section 32 notice 2</u> Ch 1: 1 yr imp (conc). Ch 2: 1 yr imp (conc). Ch 3: 3 mths imp (conc). Ch 4: 6 mths imp (conc). Ch 5: 8 mths imp (conc). Ch 6: 4 mths imp (conc). Ch 7: 9 mths imp (conc). Ch 8: 8 mths imp (conc). Ch 9: 3 mths imp (conc). Ch 10: 3 mths imp (conc). Ch 11: 3 mths imp (conc). Ch 12: 1 yr 6 mths imp</p>	<p>Allowed - error of fact only, otherwise dismissed.</p> <p>Appeal concerned totality principle and error of fact in respect of ch 12 (PE 48601 of 2015).</p> <p>Re-sentenced to:</p> <p>Discount of 10% on indictable offences; discount of 20% on section 32 notice offences.</p> <p>Ch 12: 12 mths imp (cum).</p> <p>All other individual sentences and orders remain.</p>

			<p>Ch 18: Carried prohibited weapon.</p> <p><u>Indictment 861</u> Police stopped and searched Burnes' car. They found a clipseal bag containing the methyl and a set of electronic scales.</p> <p><u>Indictment 236</u> Burnes removed a flyscreen from a sliding door, smashed the glass and entered the victim's home. He ransacked the home and stole jewellery valued at approx. \$27,000. None of the jewellery has been recovered.</p> <p><u>Section 31 notice 1 and 2</u> A hired car was reported stolen and later found abandoned. A DNA profile taken from the car was matched to Burnes (ch 1).</p> <p>On another occasion Burnes threatened and intimidated the owner of a car into giving him the car's keys. He then drove off in the car (ch 19).</p> <p>On another occasion Burnes failed to appear in the Perth Magistrate's Court while remanded on bail (ch 9).</p> <p>On another occasion Burnes drove a stolen car to his former partner's house (ch 13). His former partner walked up to the car and, during a heated argument, Burnes</p>	<p>(cum). Ch 13: 9 mths imp (conc). Ch 14: 1 yr 6 mths imp (cum). Ch 15: 6 mths imp (conc); MDL susp 12 mths. Ch 16: 8 mths imp (conc); MDL susp 24 mths. Ch 17: 1 mths imp (conc); MDL susp 4 yrs (cum). Ch 18: 6 mths imp (conc). Ch 19: 1 yr 6 mths imp (conc).</p> <p>TES 7 yrs 6 months imp.</p> <p>EFP.</p>	<p>TES 7 yrs imp. EFP.</p> <p>At [33] ...the TES of 7 yrs 6 mths imp did not infringe the first limb of the totality principle.</p> <p>At [35] ... his Honour found that the appellant used a <i>loaded</i> firearm when making the threat. ... There was no evidence to support his Honour' finding that the firearm was loaded during the offence ...</p> <p>At [36] The appellant should have been sentenced in respect of PE 48601 of 2015 on the basis that the weapon he used was unloaded. The finding that the firearm used to threaten the appellant's former partner was loaded made the offence more serious. This is because of the risk that a loaded firearm may somehow be discharged. It is evident ... his</p>
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			<p>pointed a firearm directly at her and said 'I'll fix you' (ch 12).</p> <p>On another occasion Burnes was seen to get into the stolen car the subject of ch 19. To prevent him from driving, police stopped their car behind and to the side of his car, their lights and siren activated. Burnes accelerated heavily and deliberately reversed in to the police car while two police officers were inside (ch 14). He failed to stop and drove away at speed (ch 17). Pursued by police, he drove on the incorrect side of the road and contravened traffic control signals. He mounted a kerb and drove over a median strip (ch 16). It was raining heavily; there were other vehicles on the road and his driving so dangerous the pursuit was aborted. He was not the holder of a valid MDL at the time (ch 15). The vehicle was later found abandoned and inside, was a prohibited electronic shock weapon, disguised as a torch (ch 18).</p> <p>On another occasion Burnes was bailed to appear in the District Court, he failed to do so (chs 10 & 11).</p> <p>On another occasion Burnes went to an apartment to meet an acquaintance. Police were at the apartment in order to execute a</p>		<p>Honour regarded the 'fact' that the firearm was loaded justified the imposition of a more severe penalty.</p> <p>At [39] Although the firearm was not loaded, the victim was not to know whether the weapon was loaded or unloaded. The use of the unloaded weapon by the appellant was designed to terrify and doubtless had that effect. The offence was still serious.</p>
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			<p>search warrant. Alerted to his presence in the lobby he was searched and found to be in poss of \$4,700 in cash (ch 4) and a replica firearm (ch 5). A set of home-made knuckledusters (ch 6), nine 12-gauge shotgun cartridges and 51 .22 calibre revolver rounds (ch 7) were found in his car. When asked to provide his personal details he gave a false name and signed identification and bail documents using the false name (ch 1 of section 32 notice 1). On another occasion police searched Burnes' home and found a crossbow (ch 8) and a .22 calibre bolt-action repeater rifle (ch 2), loaded with six bullets (ch 3). The rifle had been modified and its serial numbers removed.</p>		
18.	<p><i>MacCauley v The State of Western Australia</i></p> <p>[2017] WASCA 65</p> <p>Delivered 23/03/2017</p>	<p>23 yrs at time offending. 24 yrs at time sentencing.</p> <p>Convicted after early PG (20%).</p> <p>Short criminal history; prior weapon and breach VRO convictions.</p> <p>Parents separated aged 5 yrs.</p> <p>Born in NZ; moved to Australia with her mother as a child and lived 'a transient life'.</p> <p>Tenuous relationship with her mother,</p>	<p><u>Indictment</u></p> <p>Ct 1: Crim damage. Ct 2: Agg burg (dwelling). Ct 3: Threat to kill.</p> <p><u>Section 32 notice</u></p> <p>Ch 1: Agg assault. Ch 2: Breach VRO. Ch 3: Breach bail.</p> <p>MacCauley and victim 2 had been in a relationship. The victim had custody of their young son and lived with his mother, victim 1.</p>	<p><u>Indictment</u></p> <p>Ct 1: 9 mths imp (conc). Ct 2: 2 yrs imp. Ct 3: 12 mths imp (conc).</p> <p><u>Section 32 notice</u></p> <p>Ch 1: No further penalty. Ch 2: No further penalty. Ch 3: 1 mth imp (conc).</p> <p>TES 2 yrs imp. EFP.</p> <p>The sentencing judge described the offending as</p>	<p>Allowed.</p> <p>Appeal concerned new psychiatric evidence.</p> <p>Re-sentenced.</p> <p>Ct 1: 6 mths imp (conc). Ct 2: 18 mths imp. Ct 3: 9 mths imp (conc).</p> <p>TES 18 mths imp.</p> <p>EFP.</p>

		<p>a substance abuser; close to her two sisters.</p> <p>Left home at 14 yrs.</p> <p>In a new relationship at time sentencing.</p> <p>Commenced abusing alcohol and illicit substances at an early age.</p>	<p>A VRO was in place protecting the victim's mother from MacCauley.</p> <p>MacCauley, distressed by difficulties in seeing her son consulted a GP, who diagnosed panic disorder, social anxiety and stress/adjustment disorder. She was medicated and placed on a treatment plan.</p> <p>The following day MacCauley, in company with police, attended victim 1's property to take possession of a car. Due to a dispute over ownership of the vehicle police were unable to assist. MacCauley became upset and refused further police assistance.</p> <p>After police left MacCauley smashed six windows and entered victim 1's house. She attempted to strike victim 2 with a mirror and threatened to kill both victims and herself. Picking up a shard of glass she threatened victim 1, lunging at him a number of times. Outside, MacCauley used a shovel to damage a vehicle belonging to victim 1.</p> <p>Restrained until police arrived MacCauley was taken for medical treatment as she displayed and expressed suicidal intent.</p> <p>MacCauley was bailed to appear in the Magistrate's Court but failed to attend.</p>	<p>very serious. He accepted that at the time of the offending the appellant was suffering from an adjustment disorder and was experiencing stress and, on the balance of probabilities, she found it difficult to make calm and rational choices and was disinhibited in her behaviour due to her heightened emotional state.</p> <p>The sentencing judge found no evidence the appellant suffered any recognised psychiatric disorder.</p>	<p>At [42] ... diagnosis of adjustment disorder was incorrect. Rather, the appellant was suffering from a moderately severe major depressive disorder... 'considerable causal relationship' between the depressive disorder and her offending.</p> <p>At [51] Although the disorder did not deprive the appellant of her ability to discern right from wrong, or of her ability to form an intent, it is now apparent that the appellant's mental state was a mitigating factor of greater significance than the sentencing judge was in the position to assess.</p>
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<p>17.</p>	<p>Winmar v State of Western Australia</p> <p>[2016] WASCA 184</p> <p>Delivered 28/10/2016</p>	<p>29 yrs at time sentencing.</p> <p>Convicted after late PG (15% discount – Ind 1049) (20% discount – Ind 494).</p> <p>Subject to an SIO at time offending for 5 convictions of unlicensed driving.</p> <p>Significant criminal history, including prior convictions for burg and assault.</p> <p>Daily user of methyl at time offending.</p> <p>Dysfunctional upbringing; sexually abused and used illicit drugs from a young age.</p> <p>Completed schooling to yr 9; never worked.</p> <p>Three children; pregnant at time sentencing.</p> <p>Suffers from depression.</p>	<p><u>Indictment 1049 of 2015</u> Ct 1: Dangerous driving to escape pursuit. Cts 3 & 5: Assault public officer.</p> <p><u>Indictment 494 of 2015</u> Cts 1-4 & 6: Agg burg. Ct 5: Reckless driving.</p> <p><u>Indictment 1049 of 2015</u> Winmar was driving with a passenger in a car when police signalled for her to stop. She sped from police, drove on the wrong side of the road and in and out of traffic at about 100km p/h. Caught in traffic she was informed she was under arrest.</p> <p>During an altercation with police Winmar managed to start the car and drive off, throwing two police officers to the ground. They suffered minor injuries.</p> <p><u>Indictment 494 of 2015</u> Winmar entered the 73-yr-old victim’s home and rummaged through drawers, stealing jewellery. The victim was outside at the time.</p> <p>Winmar and co-offenders broke a window and entered the victim’s home. Stealing a handbag and jewellery. The victim was not at home.</p>	<p><u>Indictment 1049 of 2015</u> Ct 1: 6 mths imp (cum). Ct 3: 9 mths imp (cum). Ct 5: 9 mths imp (cum).</p> <p><u>Indictment 494 of 2015</u> Ct 1: 15 mths imp (head sentence) Ct 2: 2 yrs imp (conc). Ct 3: 2 yrs imp (cum) Ct 4: 18 mths imp (conc). Ct 5: 18 mths imp (cum) Ct 6: 18 mths imp (conc).</p> <p><u>Breach of SIO</u> 8 mths imp each (conc with each other and other sentences imposed).</p> <p>TES 6 yrs.</p> <p>EFP.</p> <p>The sentencing judge regarded the seriousness of the driving and burg offences and the need to impose a deterrent penalty.</p> <p>The sentencing judge noted positive steps taken towards rehabilitation and engaged in</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality principle.</p> <p>At [27] The overall criminality involved in the offences which the appellant committed was high. She drove in a manner which placed police officers and other road users at very high risk of death or serious injury on two occasions. The assaults on the two police officers ... placed them at risk when performing their important public duties and called for a cumulative sentence. The burg offences were agg by the fact that the appellant was in company, and by the impact of the offences on often elderly victims.</p>
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			<p>Winmar smashed a window and entered the 74-yr-old victim's home, stealing jewellery. The victim came home to see Winmar or a co-offender climbing out a window.</p> <p>Winmar and co-offenders entered the 78-yr-old victim's home and stole jewellery and a TV. The victim returned home and saw Winmar or one of the co-accused leaving the house.</p> <p>Winmar and her co-offender entered the victim's home and stole her handbag containing cash and other items. The victim, outside the house, saw Winmar and her co-offender flee the house.</p> <p>Winmar drove with false licence plates. Police requested she stop but she accelerated away at high speed, mounting a verge. Police pursued Winmar who drove through a red traffic light and on the wrong side of the road. Other vehicles were forced to brake and swerve and at one point she struck a police vehicle.</p>	<p>voluntary work.</p> <p>Demonstrated remorse and acceptance of responsibility.</p>	
16.	<p><i>Suleiman v The State of Western Australia</i></p> <p>[2017] WASCA</p>	<p>27 yrs at time offending. 28 yrs time sentencing.</p> <p>Convicted after early PG (25% discount).</p>	<p>Ct 1: Breach of duty by person in control of ignition source or fire. Ct 2: Agg burg. Ct 3: Damage.</p>	<p>Ct 1: 3 yrs imp. Ct 2: 3 yrs imp (to commence 1 yr after the sentence for ct 1). Ct 3: No penalty.</p>	<p>Allowed.</p> <p>Appeal concerned procedural fairness relating to psychiatric</p>

<p>26</p> <p>Delivered 20/09/2016</p>	<p>Minor criminal history; including possess and use of cannabis.</p> <p>Born in Kenya; no history of trauma or abuse; homeless as a child in Africa.</p> <p>Permanent resident since 2008; facing deportation on completion of sentence.</p> <p>History of on and off casual part-time employment; unemployed at time offending.</p> <p>7 yr relationship with victim; mother of his two daughters, aged 5 and 4 yrs.</p> <p>Homeless at time offending.</p> <p>Diagnosed paranoid schizophrenic; history of admittance to mental health clinic.</p> <p>Psychiatric report stated that the appellatant had an acute relapse of his mental illness at the time of offending.</p> <p>Used cannabis since aged 10 and</p>	<p>Suleiman had been in a relationship with the victim, who lived in a unit with their two children.</p> <p>Suleiman went to the unit and used petrol to set fire to his car that had been parked at the premises for some time. The fire destroyed the car, damaged the carport, and the exterior of the building suffered smoke damage. The fire threatened to spread to the unit, where he knew the victim and his children were inside.</p> <p>When igniting the petrol Suleiman suffered burns to his face and hands.</p> <p>Suleiman then broke a window of the house and climbed inside. The victim and the children took refuge in a bedroom.</p> <p>Inside Suleiman smashed numerous items, before forcing entry into the bedroom that the terrified victim and the children were hiding. He grabbed the victim's phone as she was speaking to police and smashed it. He then forcefully grabbed hold of his youngest daughter and attempted to leave the house with her. Neighbours intervened and persuaded him to hand over his daughter before assisting the victim and his eldest daughter.</p>	<p>TES 4 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge took into account the appellatant's mental illness, but was not satisfied he was suffering an acute relapse of his mental illness to the extent that his judgment was impaired.</p> <p>Remorseful.</p>	<p>illness.</p> <p>Resentenced: Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: No penalty.</p> <p>TES 2 yrs imp.</p> <p>EFP.</p> <p>At [35] ... in determining the appellatant's mental state ... his Honour relied to a significant extent on his personal assessment of the appellatant's appearance, and the manner in which the appellatant conducted himself, in the electronically recorded interview</p> <p>At [48] ... the sentencing judge's failure to raise with defence counsel that his Honour was proposing to reject the State's concession in relation to [the psychiatrist's] report; and ... the basis on which</p>
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		regular user of alcohol.	Suleiman left the scene but was arrested close by a short time later.		<p>he proposed to reject the State's concession, denied the appellant procedural fairness.</p> <p>At [49] ... the diagnosis of a mental illness requires expert evidence from a psychiatrist and is not to be made by the application of a non-expert's common-sense, rationality and experience.</p> <p>At [56] The only conclusion reasonably open, having regard to [the psychiatrist] reports, is that the appellant had suffered an acute relapse of mental illness at the time of the offending and that there was a causal connection between the relapse and the commission of the offences.</p>
15.	<i>Rowley v The State of Western Australia</i> [2016] WASCA	42 yrs at time sentencing. Convicted after PG (15% discount). Minor traffic and criminal history.	Ct 4: Agg burg. Ct 5: Damage. Ct 6: Threat to harm. Ct 7: Agg stalking.	Ct 4: 18 mths imp (conc). Ct 5: 15 mths imp (conc). Ct 6: 20 mths imp (cum ct 7). Ct 7: 40 mths imp (conc).	Dismissed. Appeal concerned totality. At [41] The offending

<p>162</p> <p>Delivered 16/09/2016</p>	<p>No history of domestic violence from current and previous relationships.</p> <p>Single at time offending; three children from previous marriage.</p> <p>History of drug use.</p>	<p>Rowley and the victim “A” were in a highly volatile physical relationship.</p> <p>A accused Rowley of stealing a diamond earring from her. As a result of Rowley’s aggressive behaviour she went to stay with her mother. During A’s absence Rowley entered A’s home using a key that he had cut without her knowledge (ct 4). Inside he found some peaches; he crushed and smudged them throughout the home, including the carpets, walls, paintings and bedding. Rowley sent a text message to A telling her he was going to wreck her apartment and clothes. A returned home and found what he had done, along with a “love note” and the missing earring on the kitchen bench. A had the external locks changed and got an interim VRO against the Rowley.</p> <p>In the morning Rowley returned to A’s home and cut out the new deadlock from the rear door (ct 5).</p> <p>Rowley and A’s relationship ceased, but they continued to see each other. A did not pursue charges in respect of the incidents and did not have the VRO served on him.</p> <p>Rowley was at A’s home. When she refused him sex he snatched her mobile</p>	<p>TES 5 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge characterised Rowley’s offending behaviour as calculated, deliberate and persistent, some of which was in wilful defiance of a court order. Rowley engaged in frequent verbal, physical and psychological abuse of A. It was hard for A to end the relationship because of his domination of her.</p> <p>The sentencing judge took into account the highly adverse effects the offending had on A and emphasised the duty of the courts to protect victims of domestic violence from harm.</p> <p>Remorseful.</p> <p>Low to moderate risk of reoffending.</p>	<p>was not isolated. Each offence was deliberately carried out with the intention of intimidating A and was a serious example of its kind.</p> <p>At [45] The adverse psychological and economic effects of the appellant’s offending ... have been profound.</p> <p>At [49] ... the appellant’s overall offending involved a high level of criminality. A degree of accumulation was required, having regard to the different offences committed by the appellant, albeit with the same objective to intimidate and terrify A. A sentencing factor which cannot be overlooked here is the need for general deterrence. Stalking offences are often committed against vulnerable persons who suffer greatly as a</p>
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			<p>phone to examine its contents. A slapped and clawed at Rowley’s face to attempt to get her phone back so he threw her onto the couch and pushed her face into it, restricting her breathing and telling her ‘That’s it, bitch. You’ve fucking done it now’. Marching A to the laundry he obtained methylated spirits and a lighter and threatened to set her alight. A pleaded with Rowley to stop. He was unable to open the bottle (ct 6).</p> <p>Over the course of several months Rowley sent aggressive, threatening and abusive text messages to A. She took out another VRO. To get her to remove the VRO Rowley stalked her, including forcing her to stop her car whilst she was driving; trespassing onto her property intimidating her with a metal pole and having a female friend telephone her in an attempt to lure her to a vacant block (ct 7).</p> <p>Found in in Rowley car were a baseball bat with metal screws, night-vision goggles, a GPS tracking device, mobile phone, a blood-filled syringe and 17 SIM cards.</p> <p>Rowley was also found to have accessed websites on stalking. He had searched the internet for listening devices, night-vision binoculars, tracking devices and “How to”</p>		<p>consequence of the offending behaviour. Offending of the kind engaged in by this appellant designed ... to cause terror to someone who had the “temerity” to want to cease a relationship requires a sentence with elements of both personal and general deterrence</p>
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			sites for hacking emails and mobile phones.		
14.	<p><i>Churnside v The State of Western Australia</i></p> <p>[2016] WASCA 146</p> <p>Delivered 26/08/2016</p>	<p>20 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Extensive criminal history, 34 prior burglary convictions.</p> <p>Aboriginal; diagnosed with foetal alcohol spectrum disorder (FASD); intellectual impairment compounded by childhood trauma and neglect; exposed to domestic violence.</p> <p>Supportive family.</p> <p>Left school early; education characterised by chronic absenteeism, experienced bullying and harassment.</p> <p>Significant user of cannabis and alcohol from age of 14 yrs.</p>	<p>2 x Agg burg.</p> <p><u>Ct 1</u> At around 10:30pm Churnside and a co-offender entered a home through an unlocked door. The occupants, including a 10 yr-old girl, were home at the time. Bottles of alcohol were stolen.</p> <p><u>Ct 2</u> On another occasion Churnside and the same co-offender entered a home through an unlocked door. The occupants were at home at the time. They stole mobile phones and a handbag containing \$70 cash.</p> <p><u>Co-offender</u> Convicted after PG of above two cts; 1 x Ind deal child U13 yrs; 2 x Stealing, 1 x Att. Burg.</p> <p>The ind dealing with a child U13 yrs occurred during the course of the burglary the subject of ct 1. Churnside was not present when the co-offender placed his hand down the shirt and shorts of the 10 yr-old child, before attempting to remove her shorts by cutting them with scissors.</p> <p>Sentenced to:</p>	<p>Ct 1: 10 mths imp. Ct 2: 12 mths imp (cum).</p> <p>TES 22 mths imp. EFP.</p> <p>The sentencing judge found prison was unlikely to deter Churnside from reoffending and moving him to a community (where he had previously lived with an uncle) and away from his current adverse influences and peer pressures would be beneficial.</p> <p>The sentencing judge observed Churnside's cognitive impairment might create difficulties with compliance with a community-based disposition and that agencies could not provide the sort of intensive monitoring required.</p> <p>The sentencing judge noted significant differences</p>	<p>Allowed.</p> <p>Appeal concerned type of sentence; totality and parity (significant intellectual impairment (FASD); error in concluding no viable community-based disposition available).</p> <p>Resentenced to 12 mths CBO on each ct, conc, with supervision and programme requirements.</p> <p>At [73] In our opinion, ... it has not been demonstrated that [the terms of imp] infringed the parity principle ... there was ... a substantial disparity between the TES imposed upon the co-offender and the appellant. ... the co-offender's record of convictions was not as bad as the appellant's. ... the TES imposed upon the</p>

			<p>Ct 1: 12 mths imp. Ct 2: 12 mths imp. Stealings: No penalty. Ind deal with child U13 yrs: 9 mths imp. Att. burg: 6 mths imp.</p> <p>TES: 2 yrs 9 mths imp. EFP.</p>	<p>between Churnside and his co-offender as a consequence of Churnside's cognitive and intellectual impairment.</p> <p>High risk of re-offending; inevitable risk that the nature and seriousness of his offending will escalate.</p>	<p>co-offender was affected by the operation of the totality principle. ...</p> <p>At [78] ... although the offences committed by the appellant were serious ... deterrence, both general and specific, is of much reduced significance in the sentencing process because of the disabilities which the appellant suffers through no fault of his own.</p> <p>At [79] ... there is an obvious connection between the appellant's disabilities and his offending behaviour, the moral culpability of the appellant's offending behaviour is diminished because of the disabilities which he suffers through no fault of his own.</p> <p>At [81] ... although there were limitations upon the resources available to support the appellant in</p>
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					<p>the community, the information available to the court at the time of sentence suggested that there were a number of possible avenues of support ...</p> <p>At [82] ... Although the material before the court did not establish detailed or definite plans that would enable the court to conclude that the appellant could be provided with the supports which he needed ... the information did not disclose that there were possibilities and opportunities which could be explored and developed to the point at which the court could be satisfied that a viable community-based sentencing disposition was available ...</p>
13.	<i>Dickie v The State of Western Australia</i>	<p>22 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p>	<p><u>Indictment</u></p> <p>2 x Agg burg.</p> <p><u>Indictment</u></p>	<p><u>Indictment</u></p> <p>Ct 1: 3 yrs imp (cum).</p> <p>Ct 2: 1 yrs imp (cum).</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality.</p>

	<p>[2016] WASCA 88</p> <p>Delivered 03/06/2016</p>	<p>Dickie subject to an ISO at time offending.</p> <p>Extensive criminal history, including prior burg convictions.</p> <p>Educated to yr 11.</p> <p>Employed in a variety of jobs, promising football player.</p> <p>Limited support and negative peer associations.</p> <p>Son from a former long term relationship.</p> <p>History of illicit substance use.</p>	<p>The female victim and her children were at home, when Dickie entered through the rear door and stole two handbags containing cash and cards. Dickie left when he was disturbed by the children.</p> <p>Dickie then went to the home of another female and entered the premises through the unlocked front door. He stole a handbag; purse; mobile phone; cash and jewellery.</p>	<p><u>Breach ISO</u> 12 mths imp (conc).</p> <p>TES 4 yrs imp.</p>	<p>At [11] The seriousness of the offences ... is agg by the fact that the appellant was on an ISO at the time. It is clear that the need for personal deterrence was uppermost in the sentencing judge's consideration, which reduced the mitigatory effect of the fact that he was still a relatively young offender.</p>
12.	<p><i>Garlett v The State of Western Australia</i></p> <p>[2016] WASCA 80</p> <p>Delivered 19/05/2016</p>	<p>21 yrs at time sentencing.</p> <p>Convicted after early PG (20% discount).</p> <p>At time offending Garlett subject to a 12-mth ISO for convictions of receiving, burg (dwelling) and agg burg (dwelling).</p> <p>Significant criminal history.</p> <p>Indigenous.</p>	<p><u>Indictment</u> Ct 1: Agg burg (dwelling). Ct 2: Steal motor vehicle.</p> <p><u>Section 32 notice</u> Ch 1: Poss amphetamine. Ch 2: Steal motor vehicle and drive recklessly. Ch 3, 8 and 12: Stealing. Ch 4 and 10: Failing to stop in circ of agg. Ch 5: Agg reckless driving. Ch 6-7: Reckless driving. Ch 9: Steal motor vehicle.</p>	<p><u>Indictment</u> Ct 1: 1 yr 6 mths imp (cum). Ct 2: 1 yr imp (conc).</p> <p><u>Section 32 Notice</u> Ch 1: 1 mth imp (conc). Ch 2: 1 yr imp (conc). Ch 3: 5 days imp (conc). Ch 4: 3 mths imp (conc). Ch 5: 8 mths imp (cum). Ch 6: 6 mths imp (conc). Ch 7: 6 mths imp (conc). Ch 8: 5 days imp (conc).</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged length and type of individual sentence, as well as totality.</p> <p>At [47] The appellant's overall offending was numerous, serious and persistent. The indictable offences and the s 32 notice offences were all</p>

		<p>Positive childhood; supportive family.</p> <p>Gifted footballer; played at AFL level.</p> <p>History of illicit substance abuse, including intravenous amphetamines.</p>	<p>Ch 11: Agg burg (dwelling).</p> <p><u>Indictment</u> Garlett entered the victim's home through a window and took car keys, an iPhone and wallet to the value of approx \$1,444 (ct 1). He then used the car keys to steal a vehicle valued at approx. \$10,200 (ct 2). The occupants of the house were asleep inside at the time.</p> <p><u>Section 32 Notice</u> Ch 1: Garlett was found to be in poss of a small clip seal bag containing 0.1g of amphetamine.</p> <p>Ch 2: Garlett and a co-offender took a set of keys from the front door of a house and used the keys to steal the motor vehicle parked out the front of the house. They drove the vehicle for four days before being involved in a pursuit in which he drove recklessly.</p> <p>Chs 3-6: Garlett, in company with a co-offender, stole \$50.96 worth of petrol from a service station. A short time later they were seen by police driving the stolen motor vehicle (subject of ch 2) who attempted to intercept the vehicle. Garlett failed to stop, and to evade police drove recklessly on residential and major arterial</p>	<p>Ch 9: 9 mths imp (conc). Ch 10: 3 mths imp (conc). Ch 11: 1 yrs imp (cum). Ch 12: 4 mths imp (conc).</p> <p><u>Breach ISO</u> Re-sentenced to: Receiving: 1 mth imp (conc). Burg: 1 yr imp (conc). Agg burg: 1 yr 6 mths imp (cum).</p> <p>TES 4 yrs 8 mth imp.</p> <p>EFP.</p> <p>Sentencing judge found Garlett had ignored previous opportunities to rehabilitate himself and had continued to offend, use drugs and put the community at risk. Sentence of imp not susp in view of Garlett's complete disregard for the community and property and the fact that he had not one, but two opportunities and the availability of support.</p>	<p>committed whilst he was subject to the ISO. The appellant was given two chances to comply with the ISO and within days of each of those proceedings, he committed the further offences. The offending shows that the appellant has little regard for the law. Personal deterrence was a relevant sentencing factor. So too was general deterrence. The imposition of a susp term of imp was inappropriate given the seriousness of the offending...</p> <p>At [48] I do not regard the imposition of an immediate term of imp of the length imposed as infringing the first limb of the totality principle. To the contrary, it bore ... a proper relationship to the overall offending involved in all the offences, viewed in their entirety and having regard</p>
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			<p>roads, weaving in and out of heavy traffic. Police were forced to abort the pursuit. A speed camera recorded Garlett driving at 161 km p/h in an area with a speed limit of 110 km p/h.</p> <p>Ch 7: In the stolen vehicle Garlett recorded himself on his iPhone driving between 140-200 km p/h.</p> <p>Chs 8-10: Whilst he was on bail for the above offences Garlett stole a motor vehicle, using a spare key from a house. Garlett was seen by police and attempted to escape by driving recklessly and attempting to cross a sandy median strip. The vehicle became bogged and Garlett ran from the vehicle into nearby bushland.</p> <p>Ch 11: In company with another male Garlett broke the glass panel of a rear door and entered a house and stole property to the value of \$2,500.</p> <p>Ch 12: Garlett stole clothing from a department store.</p>		to the circumstances of the case, including those referable to the appellant personally.
11.	<p><i>Worthington v The State of Western Australia</i></p> <p>[2016] WASCA 57</p>	<p>37 yrs at time offending. 38 yrs at time sentencing.</p> <p>Convicted after PG (15% discount).</p> <p>Appalling criminal history, including</p>	<p>Cts 1 and 2: Agg burg. Cts 3; 6 and 11: Burg. Cts 4; 7 and 12: Stealing. Ct 5: Stealing motor vehicle. Cts 8-10 and 13-20: Fraud.</p>	<p>Cts 1 and 11: 18 mths imp (cum). Ct 2: 20 mths imp (conc). Ct 3: 3 yrs 6 ths imp (cum). Cts 4 and 6: 18 mths imp (conc).</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle, individual sentences not challenged.</p>

<p>Delivered 08/04/2016</p>	<p>dishonesty offences and 27 prior convictions for burglary. Repeat offender.</p> <p>Dysfunctional childhood; subjected to violence; substance misuse; neglect; abuse and his parents separation.</p> <p>Left home at a young age.</p> <p>The offences occurred only five mths after his release from prison for assault and burglary offences.</p>	<p>Over a seven-week period Worthington broke into five homes and stole property.</p> <p>Worthington entered a home. The victim and her two-year-old child were home alone. \$4,100 worth of property was stolen. Identified by fingerprints (ct 1).</p> <p>Worthington entered a home and stole \$770 worth of property before being disturbed by the occupant (ct 2).</p> <p>Worthington forced entry to a home and stole a large amount of property, including a car, trailer and boat valued at approx. \$46,000 (cts 3-5).</p> <p>Worthington smashed his way into a home and stole a credit card and goods worth approximately \$9,900. He used the card on three occasions to purchase \$137.21 worth of property. Some of the property was later located (cts 6-10).</p> <p>Worthington forced entry a home. He stole approximately \$4,000 worth of property and a credit card. The card was used on eight occasions to purchase goods worth \$380.09 (cts 11-20).</p> <p>Worthington's offending led to a gross property loss of at least \$60,000. Only</p>	<p>Ct 5 and 7: 12 mths imp (conc). Ct 8-10 and 13: 3 mths imp (conc). Ct 12: 1 mth imp (conc) Cts 14-20: 3 mths imp (conc).</p> <p>TES 6 yrs 6 mths imp. EFP.</p> <p>The sentencing judge identified no mitigating personal circumstances. Personal and general deterrence and community protection were significant factors in the exercise of her discretion.</p> <p>The appellant did not express remorse.</p>	<p>At [18] ... Given the number of offences and the multiple occasions upon which offences were committed, it was appropriate ... to accumulate some of the sentences imposed.</p> <p>At [22] Although the TES ... was substantial, it is not reasonably arguable that it was, in all of the circumstances of the case, erroneous. The TES bore a proper relationship to the appellant's overall criminality, viewed in its entirety and having regard to the circumstances of the case, including the appellant's personal circumstances, and the total effective sentences imposed in comparable cases.</p>
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			some of the stolen property was recovered.		
10.	<p><i>QJS v The State of Western Australia</i></p> <p>[2015] WASCA 9</p> <p>Delivered 15/01/2015</p>	<p>20 yrs at time most offending.</p> <p>Conviction after PG.</p> <p>Offending breached ISO.</p> <p>Significant criminal history, including convictions for stealing, burg, breaches of bail, stealing motor vehicle and common assault.</p> <p>Difficult upbringing; attended numerous schools; never had significant employment.</p> <p>Significant substance abuse problem.</p> <p>Offending on indictment occurred shortly after the Department of Child Protection took the appellant's young daughters into their care.</p>	<p><u>Indictment</u></p> <p>Ct 1: Agg burg (dwelling). Ct 2: Steal motor vehicle. Ct 3: Agg armed robbery. Ct 4: Accessory after the fact to agg armed robbery. Ct 5: Agg armed robbery. Ct 6: Agg robbery.</p> <p><u>Section 32 notice</u> 18 charges.</p> <p><u>Indictment</u> <u>Ct 1 -2:</u> At about 3.50am on 17 December 2013 QJS went to a house in company with a co-offender. He forced the garage door open and used an internal door to access the kitchen. He took a car key from the kitchen and used the keys to steal a car from the garage.</p> <p><u>Ct 3:</u> Approx. one hour later, QJS and the co-offender saw a woman walking along the street. They formed an intention to snatch her bag. The co-offender threatened the victim with a screwdriver. He pushed the tip into her cheek and demanded her handbag. The victim gave her handbag to the co-offender. QJS drove them away.</p>	<p><u>Indictment</u></p> <p>Ct 1: 1 yr 9 mths imp (conc). Ct 2: 4 mths imp (conc) Ct 3: 3 yrs 3 mths imp (cum). Ct 4: 1 yr 4 mths imp (conc). Ct 5: 3 yrs 3 mths imp (conc). Ct 6: 2 yrs 4 mths imp (conc).</p> <p><u>Section 32 notice</u> The appellant received various imp terms for various charges, 2 yrs 9 mths of which was ordered to be served cum.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Cooperated with police by giving names of co-offenders.</p> <p>Limited insight into offending and effect on victims; remorse; victim empathy.</p>	<p>Dismissed – on papers.</p> <p>At [35] The rationale for treating offending whilst on bail or parole as being an aggravating factor applies equally where a person commits offences whilst on some other form of conditional release, such as an ISO... The commission of an offence whilst on an ISO not only exposes the offender to resentencing for the original offence, it is a factor relevant to the sentencing for the breaching offences.</p> <p>At [50] The offences contained on the indictment were serious offences of their type.</p>

			<p><u>Ct 4:</u> At about 3.30pm on the same day QJS and a co-offender were driving through a shopping centre car park. The co-offender decided to steal the handbag of a passing shopper. The co-offender got out of the car and grabbed the victim's handbag. There was a struggle until the co-offender raised a box cutter knife above the victim's head causing her to let go. The co-offender got back in the car and QJS drove the co-offender away in order to help him escape.</p> <p><u>Ct 5:</u> About 30 minutes later, QJS and a co-offender formed an intention to steal a handbag from a shopper at another shopping centre car park. QJS stopped the car behind the victim who was seated in her parked car. The co-offender opened the victim's car door and, while brandishing a screwdriver, demanded her handbag. The victim handed her bag to the co-offender. QJS drove them away.</p> <p><u>Ct 6:</u> At about 9.30am on 19 December 2013, QJS and co-offender formed an intention to steal a handbag from a shopper at a shopping centre car park. QJS stopped the car in close proximity to the victim. The</p>	
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			<p>co-offender got out and pushed the victim from behind causing her to stumble. The co-offender attempted to steal her handbag dragging her as he did so. After a struggle he obtained poss of the bag and ran to the car.</p> <p>QJS was arrested the same day. He made admissions to the offences, but denied entering the house in ct 1.</p> <p><u>Section 32 Notice</u> Between 8 August 2012 and 19 December 2013 QJS committed multiple offences including agg burg on a liquor shop, breach of bail, stealing, wilful damage, trespass, steal motor vehicle, dangerous driving to escape pursuit, traffic offences and poss of a prohibited drug. QJS made admissions to the section 32 offences when interviewed.</p>		
9.	<p><i>Rowsell v The State of Western Australia</i></p> <p>[2015] WASCA 2</p> <p>Delivered 09/01/2015</p>	<p>19 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Criminal history including convictions of stealing, burg, drug offences and weapon offences.</p> <p>In a relationship; expecting child.</p>	<p>Agg burg (dwelling) x 1.</p> <p>The victim was a 72-year-old woman.</p> <p>Between 7.00pm and 7.15pm on 26 July 2013, Rowsell used a hammer to smash the kitchen window of the victim's unit. The kitchen light was on. On hearing the noises, the victim went into the kitchen to find the appellant entering through the window holding the hammer. The victim</p>	<p>30 mths imp.</p> <p>EFP.</p> <p>Repeat offender; no remorse; youth.</p>	<p>Dismissed.</p> <p>At [17] In determining whether an offender is remorseful, a sentencing judge is entitled to have regard to the appellant's conduct as a whole. Remorse, if genuine, will generally be an important consideration in</p>

			<p>ran out her front door to the neighbour's unit. Rowsell stole \$40 from the victim's purse and left the unit.</p> <p>Rowsell cut himself when entering the kitchen window and left droplets of blood. The blood was analysed and was found to match the appellant's reference DNA sample.</p>	<p>sentencing and a sentencing judge is not bound to take at face value an offender's statement that he or she is remorseful. Nor will a plea of guilty of itself establish remorse although, together with other relevant evidence, it may be a relevant factor in enabling an inference of remorse to be drawn.</p> <p>At [31] It is arguable that the text of s 7(3)(b) is wide enough to extend to the mandatory minimum penalty for repeat offenders in s 401(4) of the <i>Criminal Code</i>...</p> <p>What is clear is that being a 'repeat offender' for the purpose of s 401(4) is analogous to a circumstance of aggravation and that it too can be taken into account as an aggravating factor under s 7(1) of the <i>Sentencing Act</i>.</p>
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					<p>At [39] Discussion of comparative cases.</p> <p>At [41] In the present case, the offending, while not the most serious kind of agg burg, was nevertheless serious.</p> <p>At [51] Remorse is not to be equated with sorrow for being caught, an acknowledgement that conviction is inevitable or regret on the offender's part that he or she faces some kind of sanction. Remorse, if it is to be mitigating, at least requires a realisation by the offender that what he or she did was morally wrong and some sign of sorrow for the impact of the consequences of the offence.</p>
8.	<p><i>AH v The State of Western Australia</i></p> <p>[2014] WASCA 228</p>	<p>20 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Criminal record including convictions for steal motor vehicle and agg burg.</p>	<p>Ct 1: Att steal motor vehicle.</p> <p>Ct 2: Agg burg.</p> <p>Ct 3: Agg burg.</p> <p>Ct 4: Steal motor vehicle.</p>	<p>Ct 1: 2 mths imp (conc).</p> <p>Ct 2: 12 mths imp.</p> <p>Ct 3: 12 mths imp (cum).</p> <p>Ct 4: 9 mths imp (conc).</p> <p>TES 24 mths imp.</p>	<p>Allowed.</p> <p>Re-sentenced – all terms of imp served conc.</p> <p>TES 12mths imp.</p>

	<p>Delivered 10/12/2014</p>	<p>Aboriginal.</p> <p>Childhood characterised by dysfunction, dislocation, physical abuse, sexual abuse and exposure to substance abuse.</p> <p>Attended school until year 12; frequent truant; suffers significant intellectual impairment and cognitive disability; almost completely illiterate and innumerate.</p> <p>Never been employed; lacks the skills to obtain employment.</p> <p>Vulnerable to anxiety and stress; whilst imprisoned condition deteriorated to acute psychosis; made an involuntary patient at the Frankland Centre.</p> <p>Occasional user of alcohol and cannabis.</p> <p>History of re-offending on court imposed orders.</p> <p>Offending occurred within a few weeks of being placed on a second CBO after breaching the first order.</p>	<p>AH entered an unlocked vehicle parked on the verge of a house. She found a key in the centre console and started the vehicle. The owner heard the vehicle start and ran from the back of the house. The vehicle stalled and the owner reached in and removed the keys from the ignition before telling AH to get out of the vehicle. AH left the vehicle and apologised to the owner before leaving.</p> <p>Later that evening, AH, who was intoxicated, entered an unlocked house. She found a spare key to a vehicle and used the key to steal the vehicle. AH drove the vehicle a few hundred metres before crashing into a light pole.</p> <p>A week later and while AH was on bail for those offences, intoxicated, she entered a house through an unlocked door. She found keys to vehicle and used the keys to steal the vehicle.</p>	<p>EFP.</p> <p>Significant risk of re-offending.</p>	<p>At [8] There was an undue focus upon the preparation of reports and assessments for the court, and far too little focus upon the need to actually provide support and assistance. The conspicuous failure of the justice system to provide any support and assistance which she so clearly needed and which was identified in the various reports and assessments presented to the court not only failed AH, but also failed to protect the communities of Roebourne and Karratha.</p>
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<p>7.</p>	<p><i>Ryder v The State of Western Australia</i></p> <p>[2014] WASCA 187</p> <p>Delivered 21/10/2014</p>	<p>24 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Lengthy criminal record of a similar nature.</p> <p>Suffers from a form of schizophrenia; exacerbated by extensive drug use.</p> <p>History of failing to comply with mental health treatment when in the community.</p> <p>Co-offender sentenced to a total of 2 yrs imp.</p>	<p><u>Indictment</u> Ct 1: Agg burg (dwelling). Ct 2: Agg burg (dwelling).</p> <p><u>Section 32 notice</u> x 15 charges</p> <p>Ryder was in a relationship with her co-offender. Ryder was about 4 months pregnant.</p> <p><u>Ct 1:</u> The victim, an 83 yr old female pensioner, was at home cleaning. Ryder distracted the victim while her co-offender entered and searched the master bedroom. When the victim went to get the telephone Ryder left. Property was stolen to the value of \$62,380.</p> <p><u>Ct 2:</u> The victim was a 70 yr old pensioner, who was home alone. Ryder knocked on the front door and asked to use the toilet. The victim refused and threatened to call the police. Ryder brushed past the victim into the house, causing him to lose his balance and stumble into a nearby door. The victim followed Ryder upstairs and she eventually left. While Ryder was with the victim the co-offender entered the house and stole property.</p>	<p><u>Indictment</u> Ct 1: 18 mths imp. Ct 2: 12 mths imp (cum). <u>Section 32 notice</u> 6 mths imp (cum). TES 3 yrs imp.</p> <p>The appellant denied any involvement in count 2.</p> <p>Trial judge found appellant and co-offender deliberately targeted vulnerable elderly people and devised a system involving distraction and sneaking theft of their property.</p> <p>High risk of reoffending.</p>	<p>Dismissed – on papers.</p>
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			<p><u>Section 32 charges</u> Included stealing a 14-foot boat and jewellery/</p>		
6.	<p><i>Anderson v The State of Western Australia</i></p> <p>[2014] WASCA 167</p> <p>Delivered 09/09/2014</p>	<p>18 yrs 5 mths at time of offending.</p> <p>Convicted after early PG.</p> <p>Good relationship with mother; father died with 3 or 4 yrs.</p> <p>Exposed to domestic violence at a young age; family life was unsettled; significant involvement by welfare agencies.</p> <p>Spent much of teenage years in juvenile detention; suffered depression and self-harming behaviour.</p> <p>History of substance abuse; using between 1g and 1.5g of amphetamine per day.</p> <p>Uncooperative with preparation of PSR and psychological report.</p>	<p><u>Indictment</u> Ct 1: Agg burg (dwelling). Ct 2: Stealing.</p> <p><u>Section 32</u> Ct 1: Agg burg (dwelling). Ct 2: Stealing. Ct 3: Agg burg (dwelling). Ct 4: Stealing. Ct 5: Agg burg (commercial). Ct 6: Stealing. Ct 7: Steal motor vehicle. Ct 8: No MDL.</p> <p>Anderson committed a crime spree over nine days. The spree only stopped when apprehended by police.</p> <p><u>Indictment</u> Anderson in company with another forced entry into a house and stole property and cash valued at \$575,150.</p> <p><u>Section 32 notice</u> <u>Cts 1-4:</u> Anderson in company with two others forced entry into houses and stole property.</p>	<p><u>Indictment</u> Ct 1: 4 yrs imp. Ct 2: No penalty.</p> <p><u>Section 32</u> Ct 1: 12 mths imp (cum). Ct 2: No penalty. Ct 3: 12 mths imp (conc). Ct 4: No penalty. Ct 5: 9 mths imp (conc). Ct 6: No penalty. Ct 7: 12 mths imp (conc). Ct 8: \$100 fine.</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>Offences committed in order to obtain funds to feed drug addiction.</p> <p>Judge noted offending was very serious.</p>	<p>Dismissed – on papers.</p> <p>At [24] The offending became more serious as it progressed, moving from a commercial premise to homes and with increasing force.</p> <p>At [26] Having regard to the appellant’s personal circumstances and the nature of the offending conduct, the present offences could not be seen as a mere youthful aberration.</p>

			<p><u>Cts 5-6:</u> Anderson in company with another; rode through a Hungry Jacks drive-through on bikes. Anderson forced open a sliding door. The associate held open the window while Anderson leant through and removed the tray from the cash register.</p> <p><u>Cts 7-8:</u> Anderson drove a motor vehicle from the scene of a burglary knowing the vehicle was stolen. Anderson has never held a licence.</p>		
5.	<p><i>Abraham v The State of Western Australia</i></p> <p>[2014] WASCA 151</p> <p>Delivered 21/08/2014</p>	<p>19 yrs at time offending and sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record.</p> <p>Finished school at 15 yrs; poor literacy and numeracy skills; no work experience.</p> <p>User of illicit substances.</p> <p>Subject of a CBO when offence committed.</p>	<p>Agg burg x 1.</p> <p>Abraham and another decided to break into a dwelling. Abraham stood on the verge while his co-offender knocked on the door. The victim was asleep and was awoken by the knocking. She looked through the window and saw the co-offender. She fled and contacted police.</p> <p>The co-offender kicked the front door and both offenders entered stealing property. Abraham was disturbed by police and arrested.</p>	<p>12 mths imp.</p> <p>EFP.</p> <p>Remorseful to some extent.</p> <p>Admitted his involvement in ROI but refused to identify co-offender.</p>	<p>Dismissed – on papers.</p> <p>At [57] Confirmed that the strength of the State case is a relevant consideration in assessing the amount of any sentence discount for a plea of guilty.</p> <p>At [62] The sentencing judge retains a discretion in deciding upon the discount to be given in each case.</p>
4.	<p><i>Hill v The State of Western Australia</i></p> <p>[2014] WASCA</p>	<p>28 yrs at time offending.</p> <p>Convicted after PG.</p>	<p><u>Indictment</u></p> <p>Ct 1: Agg armed robbery.</p> <p>Ct 2: Agg armed robbery.</p> <p>Ct 3: Agg Armed robbery.</p>	<p><u>Indictment</u></p> <p>Ct 1: 4 yrs imp.</p> <p>Ct 2: 4 yrs imp (conc).</p> <p>Ct 3: 4 yrs imp (conc).</p>	<p>Dismissed.</p> <p>At [62] In multiple offending of this kind,</p>

<p>150</p> <p>Delivered 19/08/2014</p>	<p>Long and persistent history of serious offending including numerous convictions for burglary and stealing.</p> <p>Highly dysfunctional upbringing exposed to domestic violence, alcoholism and was provided substances to use.</p> <p>Long history of alcohol and illicit substances abuse.</p> <p>Four significant dysfunctional personal relationships; Father to one child.</p> <p>Unemployed.</p> <p>Failed to make any positive changes as a result of completing programs in prison.</p> <p>Poor record of compliance and completion of previous orders and parole; failure to engage in no-custodial treatment programs.</p>	<p>Ct 4:Agg burg (residential).</p> <p>Ct 5:Agg burg (residential).</p> <p><u>Section 32</u> Breach of bail.</p> <p><u>Indictment</u> Hill, in company with four others were travelling on Tonkin Highway. On seeing a black Audi they decided to steal it and to steal from the Audi's passengers. When stopped at a red traffic light, the driver deliberately drove into the back of the Audi. Both vehicles pulled into a side street where Hill and the co-offender provided false personal details to the driver. The co-offender produced a crowbar and struck the side of the Audi. The offenders demanded money and stole the handbags of passengers. A co-offender then drove off in the Audi.</p> <p><u>Section 32</u> These two offences occurred two months after the agg armed robberies.</p> <p>Hill and another broke into an unoccupied residence and stole property. They then went to another residence. Hill acted as a lookout while the co-offender forced his way in. An elderly occupant heard the</p>	<p>Ct 4: 3 yrs imp (conc & cum).</p> <p>Ct 5: 3 yrs imp (conc & cum).</p> <p><u>Section 32</u> 4 mths imp (cum).</p> <p>TES 7 yrs 4 mths imp.</p> <p>Made full admissions in ROI; co-operation with police was limited.</p> <p>Remorse and victim insight; acceptance of responsibility to some extent; minimised his level of responsibility.</p> <p>The sentencing judge was not satisfied that the appellant's prospects of rehabilitation were at all substantial.</p> <p>Moderate to high risk of violent re-offending and high risk of 'generalist re-offending'.</p>	<p>comparison with sentences imposed in other cases is difficult because of the very great variations in the number of possible offences and the possible combinations of offences.</p> <p>At [79] the appellant's prospects of rehabilitation through eligibility of parole were outweighed by the need for the protection of the community.</p> <p>At [85] Discussion about determining discount for co-operation.</p> <p>At [91] the offending in this case was very serious.</p>
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			entry and confronted the co-offender. Both ran from the scene.		
			Hill breached his bail by not appearing before the Magistrates Court.		
3.	<p><i>Pryor v The State of Western Australia</i></p> <p>[2014] WASCA 143</p> <p>Delivered 06/08/2014</p>	<p>36 yrs at time offending and sentencing.</p> <p>Convicted after early PG.</p> <p>Extensive criminal record including breach of VRO, assault, AOBH, stalking, drug possession and burglary.</p> <p>Breached various community and suspended imprisonment orders.</p> <p>Unstable childhood.</p> <p>Father of 4 children from previous relationship; relationship was marred by domestic violence perpetrated by the appellant.</p> <p>Current partner is supportive of appellant.</p> <p>Entrenched substance abuse problem.</p> <p>Made efforts towards his reformation, however not successful.</p>	<p>Ct 1: Agg burg (dwelling). Ct 2: Steal motor vehicle. Ct 3: Agg burg (dwelling). Ct 4: Steal motor vehicle. Ct 5: Agg burg (dwelling). Ct 6: Agg armed robbery. Ct 7: Agg burg (place).</p> <p>Pryor went on a crime spree over an eight day period.</p> <p><u>Ct 1 & Ct 2:</u> Pryor entered the victim's house through an unsecured rear door. The victim was home but distracted. Pryor took a set of car keys, left the house and using the keys stole the victim's motor vehicle.</p> <p><u>Ct 3 & 4:</u> Five days later Pryor entered the victim's garage. The victim was home and busy with her 2 small children. Pryor saw the victim had left the keys in her motor vehicle to which he got in and started it. The victim heard this, ran to the garage and attempted to open the car door. Pryor drove away. During her efforts to stop Pryor the</p>	<p>Ct 1: 2 yrs imp. Ct 2: 3 yrs imp (conc). Ct 3: 3 yrs imp (conc). Ct 4: 1 yr imp (conc). Ct 5: 2 yrs imp (conc). Ct 6: 4 yrs imp. Ct 7: 1 yr imp (conc).</p> <p>Ct 1 cum on Ct 6.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Remorseful.</p> <p>Made full and frank admissions.</p> <p>Committed the offences in the context of a methyl binge.</p> <p>Sentencing judge noted that the only significant matter in mitigation was the plea of guilty.</p>	<p>Dismissed – on papers.</p> <p>At [27] The aggravated armed robbery committed by the appellant was a serious example of its type.</p> <p>At [32] Although the burglaries were not the most serious cases of their type, they were serious enough.</p>

			<p>victim fell to the ground and grazed her left leg.</p> <p><u>Ct 5:</u> Pryor and another entered the victim's residence through an unsecured door. Inside they searched and located items to take. While committing the offence the victim arrived home. As a result, they fled the scene. No property was taken.</p> <p><u>Ct 6:</u> Early the next day Pryor and his accomplice drove to a service station in the stolen motor vehicle. Carrying a lighter and a plastic bottle which contained petrol, he approached the counter while his accomplice stole a bottle of soft drink. Pryor threatened set fire to the victim if he did not give him money. Fearing for his safety, the victim retreated to the office.</p> <p><u>Ct 7:</u> Pryor and his accomplice then drove to a business which was closed. Pryor used a brick to smash a glass door and the two entered. Inside they stole food and drink.</p>		
2.	<p><i>Tela v The State of Western Australia</i> [No 2] [2014] WASCA</p>	<p>18 yrs at time offending. 19 yrs at time sentencing. Convicted after early PG.</p>	<p><u>Indictment</u> Ct 1: Agg burg. Ct 2: Agg burg. Ct 3: Burg</p>	<p><u>Indictment</u> Ct 1: 1 yr 6 mths imp (cum). Ct 2: 1 yr 6 mths imp (conc). Ct 3: 1 yr imp (conc).</p>	<p>Dismissed – on papers. At [19] The indictable offences were undoubtedly serious. They</p>

<p>103</p> <p>Delivered 15/05/2014</p>	<p>Criminal record including possess controlled weapon.</p> <p>Employed since left school.</p> <p>Positive references.</p> <p>Good and supportive family.</p> <p>Breached 6 mth CRO by committing agg burg.</p>	<p><u>Section 32</u> Ct 1: Drive reckless to escape pursuit Ct 2: Agg fail to stop Ct 3: No MDL Ct 4: AOBH</p> <p><u>Indictment</u> Tela and others committed burglary on homes in order to obtain bicycles, off-road motorcycles and associated equipment.</p> <p><u>Section 32:</u> <u>Ct 1, 2 & 3:</u> Tela was riding an off-road motorcycle with others. Police received a number of calls from members of the public that there were several motorcycles driving around on roads with no lights on. Police pursued Tela and two others in vehicles and by helicopter. Tela rode his motorcycle at an excessively high speed, with lights off and on the incorrect side of the road. At the time his licence was cancelled.</p> <p><u>Ct 4:</u> Tela assaulted the victim in an unprovoked attack. Tela swung a baseball bat at the victim, narrowly missing the victim's legs. Tela continued to swing the bat and eventually struck the victim in the back and the face. The victim suffered a bruised hip, a broken nose and severe swelling to the</p>	<p><u>Section 32</u> Ct 1: 1 yr imp (cum). Ct 2: 3 mths imp (conc). Ct 3: Fine \$1000. Ct 4: 3 mths imp (cum).</p> <p>TES 2 yrs 9 mths imp.</p> <p>EFP.</p> <p>Motive was greed.</p> <p>Good future prospects.</p>	<p>were premeditated and targeted. Substantial amounts of property were taken on each occasion. ... The assault occasioning bodily harm was unprovoked, involved the use of a weapon and inflicted multiple injuries on an innocent victim.</p>
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<p>1.</p>	<p><i>Whitby v The State of Western Australia</i></p> <p>[2014] WASCA 99</p> <p>Delivered 05/05/2014</p>	<p>25 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Significant prior criminal record including convictions for stealing, receiving, agg burg and trespass.</p> <p>Imprisoned on several occasions; poor response to community based dispositions.</p> <p>Long history of illicit substance abuse.</p> <p>No employment history; relied on Centrelink benefits.</p> <p>Suffers depression.</p> <p>On remand participated in several rehabilitation programmes.</p>	<p>face.</p> <p><u>Indictment 684/13</u> Ct 1: Agg burg.</p> <p><u>Indictment 1054/13</u> Ct 1: Agg burg. Ct 2: Stealing. Ct 3: Steal motor vehicle.</p> <p><u>Indictment 684/2013</u> Whitby entered the victim's house by opening a front sliding window and ripping the flyscreen. The victims were asleep. Whitby stole property but was disturbed by the victims and fled from the house.</p> <p><u>Indictment 1054/13</u> Whitby entered the victim's house by removing a flyscreen from the lounge room window and forcing the window open. The victims were asleep. Whitby stole items and left in the appellant's motor vehicle. Whitby was later seen driving the stolen vehicle.</p>	<p><u>Indictment 684/13</u> Ct 1: 2 yrs imp.</p> <p><u>Indictment 1054/13</u> Ct 1: 2 yrs 6 mths imp (cum). Ct 2: no penalty. Ct 3: no penalty.</p> <p>TES 4 yrs 6 mths imp.</p> <p>EFP.</p> <p>Remorseful.</p>	<p>Dismissed – on papers.</p> <p>At [28] The offences committed by the appellant in the present case involved serious offending of its kind.</p> <p>At [29] The appellant's personal circumstances and antecedents were poor.</p>
<p><i>Transitional Provisions Repealed (14/01/2009)</i></p>					
<p><i>Transitional Provisions Enacted (31/08/2003)</i></p>					

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