

Armed robbery

Banks or financial institutions and jewellers

ss 392 and 393 Criminal Code

Prior to 1 January 2014

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
agg	aggravated
burg	burglary
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
EFP	eligible for parole
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
9.	<p><i>McNab v State of Western Australia</i></p> <p>[2010] WASCA 66</p> <p>Delivered 14/04/2010</p>	<p>28yrs at time offending.</p> <p>Convicted after PG.</p> <p>No relevant prior criminal record.</p> <p>Re-trenched from job in mining industry in December 2008. Developed gambling addiction in February 2009 – after offence, sought help for gambling addiction & excluded himself from Burswood Casino. No independent evidence addiction (only self report from appellant).</p> <p>Abuse of amphetamines and alcohol in period leading up to offending.</p>	<p>1 x Armed robbery.</p> <p>Appellant entered suburban branch of credit union wearing baseball cap, very dark sunglasses and a long shirt in an attempt to disguise himself. The appellant was armed with a syringe and demanded money from the teller (stole \$3250. \$2214 recovered at time arrest and \$200 paid in restitution at time sentencing).</p>	<p>2 yrs imp.</p> <p>TES 2 yrs imp.</p> <p>Commitment to rehab significant in sentencing but did not outweigh need general deterrence.</p>	<p>Dismissed – term at low end of sentencing range and suspension not appropriate.</p>
8.	<p><i>Robertson v State of Western Australia</i></p> <p>[2009] WASCA 83</p> <p>Delivered 7/05/09</p>	<p>36 yrs at time offending.</p> <p>Convicted after early PG.</p> <p>34 prior convictions for armed robbery and numerous conviction other offences (stealing, receiving, burglary and drugs) – spent 15yrs of adult life in custody.</p> <p>Offending occurred within 8 mths of</p>	<p>Ct 1: Armed robbery. Ct 2: Armed robbery. Ct 3: Aggravated armed robbery. 6 x s 32 offences (all concurrent).</p> <p>Ct 1: Entered Home Building Society wearing beanie and dark sunglasses. Approached staff member, place plastic shopping bag on counter and stated it was a ‘hold up’. The appellant then brandished a 30cm carving</p>	<p>Ct 1: 4 yrs 8 mths imp. Ct 2: 5 yrs 4 mths imp. Ct 3: 4 yrs 8 mths imp.</p> <p>TES 10 yrs imp.</p> <p>EFP.</p> <p>Relatively high risk re-offending</p>	<p>Dismissed – extension time refused.</p> <p>Good summary of comparative cases.</p> <p>NB: the original sentence, upheld by the Court of Appeal, was imposed whilst the transitional provisions were in force.</p>

		<p>parole expiring (within 2 yrs release).</p> <p>Motive was to relieve financial pressure on family – one child and pregnant partner.</p> <p>History drug addiction and financial problems.</p>	<p>knife and demanded money. Two staff members removed money from their drawers and put in the plastic bag. The appellant became agitated and tried to climb the counter. The appellant then brandished the knife and told them to open the safe – staff member replied that she couldn't. The appellant then grabbed the bag (containing \$378.15) and fled.</p> <p><u>Ct 2:</u> Appellant entered Sizzlers restaurant at closing time with a co-offender. The appellant was wearing a balaclava, sunglasses and gloves and had armed himself with a knife. The co-offender was armed with a sawn-off rifle. The appellant tied up two female workers with cable ties and ushered the remaining staff members onto a storeroom. The co-offender forced the manager to open the safe and place the contents in a bag (\$6055).</p> <p><u>Ct 3:</u> Appellant entered a TAB wearing blue hooded jumpsuit, mask and gloves. Appellant carrying backpack and was armed with sawn-off rifle. Appellant ordered customers to the ground, jumped the counter and pointed the gun at the manager, demanding money. Manager handed money over and appellant took wallets from the customers and manager (\$8120.55 in total). Offending occurred over 4mth period –</p>		
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			sustained and violent in nature and were, on own and together, of great seriousness.		
<i>Transitional Provisions Repealed (14/01/2009)</i>					
7.	<i>Davis v State of Western Australia</i> [2007] WASCA 147 Delivered 13/07/2007	37 yrs at time sentencing. Prior criminal record – including armed robberies at 20 yrs which resulted in probation. Alcohol & illicit drug problem since teenager – including heroin addiction. Under influence Interferon at time offending (treat Hep C) but not substantial causative factor in offending.	2 x Armed robbery (claimed armed). 4 x Armed robbery (showed weapon). 3x Armed robbery (threatened with weapon). 1 x Attempted armed robbery. 2 x Assault intent to prevent arrest. 1 x Fraud. s32 8 x fraud and 1 x stealing. Offending occurred over period 2 ½ mths – escalating throughout that period and only stopping on arrest. Robbed succession of liquor stores, post offices, banks and petrol stations whilst actually armed or claiming to be armed with firearm. Approx \$10,000 in total taken.	3 yrs imp each count. 3 yrs 6 mths imp each count. 4 yrs imp each count. 3yrs imp. 18 mths imp each count. 12 mths imp. 6 mths imp each count. TES 10yrs. EFP.	Dismissed – leave to appeal refused. At [19] Noted deterrence prime factor in sentencing. At [40] ‘...deterrent sentences of substantial length were called for. In my view, a total sentence of 10 years’ imprisonment (...15 years’ imprisonment before the transitional provisions) could not be said to be manifestly excessive.’
6.	<i>Mooney v State of Western Australia</i> [2007] WASCA 54 Delivered	47 yrs at time sentencing. Convicted after trial. ‘Appalling’ prior criminal record – including 6 previous offences armed robbery or robbery.	1 x Agg armed robbery. Appellant and co-offender entered jewellery design business after knocking on door. Appellant identified himself as police officer and handed out business card of officer which appellant had been given at a meeting with that officer previously. Appellant and	6 yrs imp. Concurrent with 3 yrs parole owing. TES 6yrs imp. Not EFP.	Dismissed. At [31] good summary as to range of sentences.

	9/03/2007	<p>On parole at time offending (offended on parole on 4 other occasions).</p> <p>Offence involved minimal planning.</p> <p>History poly-substance abuse – unwilling to address issue.</p> <p>In long-term relationship.</p>	<p>co-offender, under guise investigating stolen gold, took items from safe. Proprietor asked what they were doing and appellant punched him in face, dragged him into store room and put him on floor. When proprietor tried to get up, appellant kicked him 3 times in the head. Co-offender assaulted an employee in course robbery. None of the stolen items were recovered. During robbery, appellant armed himself with a pool cue from the premises.</p> <p>Appellant had greater role than co-offender.</p>		
5.	<p><i>Gullelo v State of Western Australia</i></p> <p>[2005] WASCA 12</p> <p>Delivered 4/2/2005</p>	<p>24/25 yrs at time offending. 27 yrs at time sentencing .</p> <p>Convicted after early PG – refused identify co-offenders.</p> <p>Extensive prior criminal record beginning at 14 yrs – robbery, burglary, drugs and previous violent offences.</p> <p>History illicit drug abuse, including heroin. At time arrest, both appellant and de facto heroin addicts and both had made some progress since arrest to address addiction.</p> <p>Disturbed and disrupted childhood; 1 yr old child.</p>	<p><u>Indictment 1</u> Ct 1: Steal motor vehicle. Ct 2: Armed robbery in company. Ct 3: Steal motor vehicle. Ct 4: Armed robbery in company.</p> <p><u>Indictment 2</u> Ct 1: Steal motor vehicle. Ct 2: Attempted armed robbery in company with violence. Ct 3: AOBH. Ct 4: Steal 2 motor vehicle registration plates. Ct 5: Armed robbery with violence.</p> <p><u>Indictment 1:</u> Robbed a pharmacy and a bank. Other</p>	<p><u>Indictment 1</u> Ct 1: 1 yr imp. Ct 2: 6 yrs imp. Ct 3: 1 yr imp. Ct 4: 6 yrs imp.</p> <p>TES 12 yrs imp.</p> <p><u>Indictment 2</u> Ct 1: 1 yr imp. Ct 2: 5 yrs imp.</p> <p>Ct 3: 2 yrs imp. Ct 4: 3 mths imp. Ct 5: 6 yrs imp.</p> <p>TES 6yrs imp conc with indictment 1.</p>	Dismissed.

			<p>offences occurred in commission/lead up to armed robberies. Appellant armed with screwdriver, co-offender with knife and in bank robbery appellant disguised himself with stocking over the head.</p> <p><u>Indictment 2:</u> Robbed newsagent, wearing masks – one offender armed with shotgun and shopkeeper knocked to ground and kicked several times. Appellant and co-offender fled without anything when member public intervened. Appellant drove to pharmacy and committed armed robbery – again, shopkeeper assaulted in course offending. Other offences occurred in commission/lead up to armed robberies – stolen motor vehicle and stole registration plates used as transport for robbery.</p> <p>Firearm used modified so could not fire – victims could not have known this so has very little mitigatory value.</p>	<p>TES 12 yrs imp (both indictments).</p> <p>EFP.</p> <p>Sentences imposed pre-transitional.</p> <p>Degree of insight and desire to break addiction.</p>	
4.	<p><i>Slowiak v The Queen</i></p> <p>[2004] WASCA 112</p> <p>Delivered 31/05/2004</p>	<p>26 yrs at time sentencing.</p> <p>Convicted after fast-track PG.</p> <p>Extensive prior criminal record and history re-offending while on parole.</p> <p>Difficult childhood – parents separated appellant 2 yrs; physical & sexual abuse.</p>	<p>1 x Armed robbery (pretending to be armed with firearm).</p> <p>1 x Agg burg.</p> <p>4 x Dep Lib.</p> <p><u>Armed robbery:</u> Appellant entered Bankwest and approached teller and handed her a note indicating he was committing a hold-up. He demanded money and told teller he was armed with a gun. The</p>	<p>7 yrs imp.</p> <p>8 yrs 6 mths imp. 3 yrs imp one count & 2 yrs imp each remaining count.</p> <p>TES 9 yrs imp.</p> <p>PSR & psychol</p>	<p>Dismissed.</p> <p>At [27] and [37] Affirmed appropriate range this type armed robbery 6-9 yrs.</p>

		Long history poly-substance abuse – heroin at 16 yrs; amphetamines.	appellant fled scene on foot with \$4880 – dropped all but \$2300 as fled. Agg burg and unlawful detentions unconnected offences to armed robbery, although committed on same date.	reports indicated high risk re-offending; little or no insight into effect on victims and tendency to externalise blame.	
3.	<i>Biggers v State of Western Australia</i> [2004] WASCA 47 Delivered 22/03/2004	42 yrs at time sentencing. Convicted after PG – also admitted to offence police did not know about. Provided information about co-offender. Extensive prior criminal record – including previous imprisonment for armed robberies. On parole at time offending. Recently become unemployed - \$10,000 loan and \$17,000 arrears child support. Nomadic lifestyle – family constantly moving; sexual abuse as teenager; juvenile convictions.	2 x Agg armed robbery. 1 x Armed robbery. 1 x Steal motor vehicle. Appellant and co-offender (<i>Orchard [2004] WASCA 23</i>) entered bank wearing balaclavas and each armed with sawn-off rifle. Pointed rifles at staff and threatened them with violence if they did not comply with demands. Left with approx \$32,000 but money was contaminated with dye bomb a staff member inserted in money (money not recovered). Approx 4 weeks later, appellant and same co-offender returned to same bank. Both wearing balaclavas but appellant armed with sawn-off rifle (co-offender not armed). Left with approx \$4000 which was again contaminated by a dye bomb (money recovered). Appellant entered bank he had previously held-up in 1998, wearing a balaclava and armed with sawn-off rifle.	TES 16yrs imp. Parole days owed served concurrently.	Allowed. TES reduced to 9 yrs 4 mths imp (includes 1/3 reduction for transitional provisions). EFP.

2.	<p><i>Orchard v State of Western Australia</i></p> <p>[2004] WASCA 23</p> <p>Delivered 3/03/2004</p>	<p>Convicted after early PG.</p> <p>On parole at time offending.</p> <p>Extensive prior criminal record – sentenced 10 yrs for 5 armed robberies; sentenced 9 yrs 3 armed robberies; assault prison officer; weapons offences; receiving; assault.</p> <p>Previous breaches of community based orders and offending on parole.</p> <p>History drug abuse.</p> <p>Suffers Hep C and taking Interferon – medical evidence indicating causative factor in offending (impaired reasoning and made appellant more susceptible to suggestions).</p>	<p>2 x Armed robbery in company.</p> <p>1 x Steal motor vehicle (used in commission armed robberies).</p> <p>Appellant and co-offender (<i>Biggers [2004] WASCA 47</i>) entered bank wearing balaclavas and each armed with sawn-off rifle. Pointed rifles at staff and threatened them with violence if they did not comply with demands. Left with approx \$32,000 but money was contaminated with dye bomb a staff member inserted in money (money not recovered).</p> <p>Approx 4 weeks later, appellant and same co-offender returned to same bank. Both wearing balaclavas but appellant not armed (co-offender had sawn-off rifle). Left with approx \$4000 which was again contaminated by a dye bomb (money recovered).</p>	<p>7 yrs imp each count.</p> <p>2 yrs imp.</p> <p>TES 14 yrs imp.</p> <p>Not EFP.</p>	<p>Allowed.</p> <p>Insufficient weight given to affects of Interferon on appellant.</p> <p>TES reduced to 6yrs (included 1/3 reduction for transitional provisions).</p> <p>EFP.</p>
<i>Transitional Provisions Enacted (31/08/2003)</i>					
1.	<p><i>Bourne v The Queen</i></p> <p>[2003] WASCA</p>	<p>21 yrs at time offending.</p> <p>Convicted after PG at earliest opportunity.</p>	<p>1 x Armed robbery in company.</p> <p>Appellant and co-offender robbed jeweller/pawnbroker in 1998. Co-offender armed with replica pistol. Appellant and co-</p>	<p>5 yrs imp.</p> <p>TES 5 yrs imp.</p> <p>Remorse.</p>	<p>Dismissed.</p> <p>Appeal based on rehabilitation in 4 yrs since offence committed.</p>

	<p>26</p> <p>Delivered 3/02/2003</p>	<p>Minor criminal record for shoplifting.</p> <p>Motivation for offending was drug debt appellant and co-offender owed.</p> <p>Offence committed shortly after break-up with fiancée (4mth old son together) and at time when appellant using illicit substances.</p> <p>Since offence, rehabilitated himself, had strong family support and good employment prospects.</p>	<p>offender ran from scene after owner escaped and raised the alarm. The co-offender was caught as he tried to flee but the appellant escaped. Co-offender went to trial and was sentenced in 2000 to TES 6 yrs 6 mths.</p> <p>Appellant arrested for offence in 2002 (4yrs after offence).</p>		<p>Offence too serious and personal circumstances not exceptional enough to justify suspension or reduction in term.</p>
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