

Burglary

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
Sex Pen	sexual penetration without consent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
Dep Lib	deprivation of liberty
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

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
13.	<p><i>Merritt v The State of Western Australia</i></p> <p>[2019] WASCA 203</p> <p>Delivered 17/12/2019</p>	<p>21 yrs at time offending. 45 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Long and extensive criminal history; prior serious convictions for serious sexual and violent offending towards girls and women.</p> <p>Dysfunctional childhood; characterised by neglect; instability and extensive physical abuse in State care.</p> <p>Indigenous heritage; few positive role models.</p> <p>Illicit drug use.</p>	<p>Ct 1: Dep lib. Ct 2: Burglary. Ct 3: Agg indec assault. Cts 4-8: Agg sex pen.</p> <p>The victim, P, was a female aged about 13 ½ yrs of age.</p> <p>P was at home with her sister when Merritt entered the home without consent (ct 2). His face was covered to conceal his identity.</p> <p>Entering her bedroom Merritt grabbed P by the back of her head and told her to get up and do as she was told (ct 1).</p> <p>Merritt then forced P to walk into bushland where he committed various sexual offences against her (cts 3-8).</p> <p>Merritt was identified, more than twenty yrs later, through DNA technology.</p>	<p>Ct 1: 4 yrs 6 mths imp (conc). Ct 2: 5 yrs 5 mths imp (conc). Ct 3: 2 yrs 9 mths imp (conc). Ct 5 & 8: 4 yrs 2 mths imp (conc). Ct 6: 6 yrs imp (cum). Ct 7: 6 yrs 6 mths imp (cum).</p> <p>TES 12 yrs 6 mths imp.</p> <p>EFP.</p> <p>At time of sentencing was a declared dangerous sex offender and subject to a continuing detention order.</p> <p>In 1994 (5 days after committing the above offences) the appellant committed further sexual offences against a 9 yr old female. Sentenced in 1995 to a TES of 10 yrs imp with EFP.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle; individual sentences not challenged.</p> <p>At [70] ... it is beyond question that the offences committed by him were of the utmost gravity. As serious as the offences were ... the offences committed [5 days later] were, if anything, even more serious. They involved the coercion of a very young and vulnerable child into bushland, where the appellant sexually penetrated her in such a way as to inflict serious physical injuries that required surgery. ... it could not be said that the offences under consideration were uncharacteristic of the appellant. To the contrary, they were entirely consistent with his prior offending to that point. He plainly posed then a</p>

			<p>The sentencing judge found the offending towards the higher end of the scale; clearly persistent and unrelenting and involved various forms of penetration; the offences are not isolated or uncharacteristic.</p> <p>The sentencing judge found the offending had a devastating impact on the victim and that she suffered ‘a terrible ordeal’.</p> <p>Some acceptance of responsibility; a significant danger of serious sexual reoffending.</p>	<p>danger to the community.</p> <p>At [71] ... the appellant remains unrehabilitated and poses a serious risk of reoffending.</p> <p>At [72] ... By the time the appellant came to be sentenced ... for the offences committed ... he was no longer youthful and so the increased importance of efforts to rehabilitate a youthful offender was no longer applicable. ... The time he has spent in custody subject to the continuing detention order and the period referred to in [23] ... were relevant considerations in the application of the totality principle.</p> <p>At [73] However, having regard to all relevant circumstances and all relevant sentencing factors ... the TES imposed ... did not</p>
--	--	--	---	--

					infringe the first limb of the totality principle. At [75] ...the TES was not unreasonable or plainly unjust.
12.	<p><i>Winmar v The State of Western Australia</i></p> <p>[2018] WASCA 155</p> <p>Delivered 03/09/2018</p>	<p>22 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after early PG (10% discount).</p> <p>Significant criminal history; multiple burglary convictions; previous sentences of imp.</p> <p>Raised by his grandmother; death of his mother aged 15 yrs; no contact with his father.</p> <p>Supportive family.</p> <p>Completed yr 10; some difficulties academically; limited employment history.</p> <p>Alcohol and cannabis use from age 15 yrs; methyl from age 18 yrs; using cannabis and methyl daily at time offending.</p>	<p>Ct 1: Burg. Ct 2: Stealing.</p> <p>The victim was not at home when Winmar smashed a glass door and gained entry to the house.</p> <p>Winmar ransacked the premises and stole electronic equipment, jewellery and clothing valued at \$59,183. He traded these items for drugs.</p> <p>None of the stolen items were recovered.</p> <p>Winmar was later identified by his fingerprints located inside the home.</p>	<p>Ct 1: 3 yrs 3 mths imp. Ct 2: No penalty.</p> <p>EFP.</p> <p>The sentencing judge found the appellant pleaded guilty in the face of a strong State case.</p> <p>No insight into seriousness of his offending; no demonstrated remorse.</p>	<p>Allowed.</p> <p>Appeal concerned errors in reasons for plea discount and length of sentence.</p> <p>Resentenced to 3 yrs imp (ct 1).</p> <p>At [34] The appellant's refusal to participate in an electronically recorded interview with the police ... was not a relevant consideration in determining the discount to be afforded under s 9AA.</p> <p>At [35] ... after taking into account all of the circumstances relevant to the evaluation of the appropriate discount under s 9AA, including</p>

				<p>the fact that the appellant had entered the PG at the earliest reasonable opportunity and the fact that the State had a strong case, it was not open to the sentencing judge, on a proper exercise of his discretion, to afford a discount of only 10%.</p> <p>At [45] We would afford the appellant a discount of 20% on the 'head sentence ... for his plea of guilty.</p> <p>At [85] ... the appellant's offence consisted of rummaging through the complainant's home in a highly intrusive manner. The property taken was of significant financial value, and much of it would have been or included material that was of high personal value. The property was not recovered. ... A sentence of immediate imp is clearly the only</p>
--	--	--	--	--

					appropriate sentencing option.
11.	<p><i>Eravelly v The State of Western Australia</i></p> <p>[2018] WASCA 139</p> <p>Delivered 10/08/2018</p>	<p>Convicted after trial.</p> <p>No prior criminal history in Australia; prior criminal convictions in USA for voyeurism and battery.</p> <p>Raised stable, hardworking and respected family.</p> <p>Held in high regard by family and friends.</p> <p>Good employment history; successful career as international airline pilot.</p> <p>Married three times; suffered loss of second wife due to illness; third wife remains supportive; two children.</p>	<p>Ct 1: Burglary. Ct 2: Dep lib. Ct 3: Unlawful wounding. Cts 4 & 8: Agg sex pen.</p> <p>Eravelly was a stranger to the victim.</p> <p>In the early hours of the morning Eravelly broke into the victim's unit whilst she was sleeping. Once inside he threatened to cut her with a knife, tied her hands behind her back, blindfolded her and sexually penetrated her vagina, anus and mouth with his penis.</p> <p>The victim sustained cuts and abrasions, including a 2cm long laceration to her wrist that required suturing.</p> <p>Eravelly was identified many years later through an international DNA database.</p>	<p>Ct 1: 3 yrs imp (cum). Ct 2: 18 mths imp (conc). Ct 3: 1 yrs imp (conc). Ct 4: 4 yrs imp (cum). Cts 5-7: 5 yrs imp (conc). Ct 8: 6 yrs imp.</p> <p>TES 13 yrs imp.</p> <p>The trial judge found while the offending was not in the worst category, it was very serious; it was premediated; he arrived with a knife, a torch, a stocking to conceal his identify and a rope to bind his victim.</p> <p>The trial judge found the appellant was in denial and without remorse, with no insight into his offending or victim empathy.</p> <p>Average risk of</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [96] ... the appellant subjected the complainant to a sustained, humiliating and degrading series of sexual assaults. The attack was premediated. It involved the appellant violating the sanctity of both the complainant's home and her body. The attack engendered great fear into the complainant. The appellant broke into her unit at night and took advantage of the complainant's vulnerability by attacking her while she was alone in the unit, asleep in her bed. ... This very serious sustained series of sexual assaults demanded a very significant term of immediate imp.</p>

				reoffending. Accepted the appellant's experience in prison would be more isolating and difficult than usual as a foreign national.	At [99] ... the TES bears 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, ...
10.	<i>Woods v The State of Western Australia</i> [2017] WASCA 179 Delivered 29/09/2017	21 yrs at time offending. 22 yrs at time sentencing. Convicted after early PG (25% discount). Extensive and persistent criminal history; including serious offences as a child; no prior sentences of imp. Sentenced SGMC further 77 offences, 6 mths imp; conc with each other; conc with TES for offences subject of this matter. Dysfunctional childhood; mother mentally ill; absent father; exposed illicit drugs from young age; sexually abused aged 12 yrs; deeply affected by suicide of a relation; little or no family support. First relationship marred by	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. The offences were committed over a five week period. <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. <u>Ct 2</u> About a fortnight later Woods forced entry into a home and stole car keys and used them to steal a vehicle. <u>Ct 3</u> The next day Woods entered a home and	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). TES 9 yrs 6 mths imp. EFP. The sentencing judge found the appellant's offending demonstrated 'a degree not simply of deliberation but of some calculation' in particular, several of the offences involved the targeting of elderly	Allowed. Appeal concerned totality principle. Individual sentences were not challenged. Resentenced. Orders in relation to conc, cum and backdating set aside. Cts 2 and 8 cum upon each other, cum upon individual sentences for ct 6. All other counts conc with each other and conc with sentence for ct 6. TES 7 yrs 6 mths imp. EFP.

		<p>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>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><u>Ct 7</u> The following day Woods entered a home, but fled when disturbed.</p> <p><u>Ct 8</u></p>	<p>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>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> <p>At [73] ... the magistrate's sentencing decision (including the facts and circumstances of the 77 offences with which the decision was</p>
--	--	---	--	---	---

			<p>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. 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</p>		<p>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>
--	--	--	---	--	--

			and stole jewellery. The occupant was at home at the time.		
9.	<p>Cummins v The State of Western Australia</p> <p>[2017] WASCA 135</p> <p>Delivered 20/07/2017</p>	<p>31 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Lengthy prior criminal history; previous offences of stealing a motor vehicle and reckless driving; first custodial sentence aged 17; most of his adult life spent in prison; difficulties with reintegration.</p> <p>Average childhood; supportive parents; family home free from abuse or illicit substance use; currently not close to his family.</p> <p>Left school aged 13; worked as plasterers apprentice; not employed since aged 17.</p> <p>Father of three children to two partners; first relationship characterised by illicit substance use and domestic violence; current partner supportive and disapproving of illicit substance use.</p> <p>Significant use of illicit drugs; commenced using methyl aged 13;</p>	<p>Ct 1: Steal motor vehicle. Ct 2: Steal motor vehicle drive recklessly. Ct 3: Threats with intent to compel. Ct 4: Att steal motor vehicle. Ct 5: Burglary. Ct 6: Steal motor vehicle drive recklessly.</p> <p>Cummins met the owner of a motor vehicle advertised for sale. Following a test drive he drove off in the car at high speed (ct 1).</p> <p>Several days later Cummins was seen driving the stolen car. Police requested he stop by activating their vehicle's emergency lights and siren, but he accelerated away at high speed. To evade police he weaved in and out of traffic at high speed, crossed to the incorrect side of the road, failed to observe a stop sign and drove through a busy intersection, forcing other cars to brake heavily to avoid a collision (ct 2).</p> <p>In the hour following Cummins was involved in a number of crashes whilst driving the stolen car. Armed with a samurai sword in a sheath he got out of the car and hit cars as they past, attempting to open the doors of cars, before they sped off. He then ran towards the victim and yelled for him to give him his car keys. Pulling the</p>	<p>Ct 1: 18 mths imp (conc). Ct 2: 3 yrs 6 mths imp. Ct 3: 2 yrs 4 mths imp (conc). Ct 4: 8 mths imp (cum on ct 2). Ct 5: 2 yrs 6 mths imp (conc). Ct 6: 3 yrs 8 mths imp (cum on ct 2).</p> <p>TES 7 yrs 10 mths imp.</p> <p>EFP.</p> <p>Ct 4 reduced from 12 mths to 8 mths imp on totality principle.</p> <p>The sentencing judge found the theft of the car the subject of ct 1 a premediated and planned theft.</p> <p>The sentencing judge described the appellant's driving as appalling and that he 'selfishly put the</p>	<p>Dismissed.</p> <p>Appeal concerned totality.</p> <p>At [41] ... Clearly this was an extremely serious course of criminal conduct. The driving-related offences involved highly dangerous actions that put the lives of many members of the public at risk. In both instances, the driving persisted and was agg by the fact the appellant was seeking to flee from police and that he had no authority to drive. The threat charge was also a very serious offence That offence was agg not only by the terms of the threat, but that it was accompanied by use of a highly dangerous weapon that was wielded in a menacing way and that the appellant pursued the complainant whilst</p>

		<p>heavily under the influence of drugs at time of offending.</p>	<p>sword from its sheath he pointed it at the victim, demanding his car keys or he would chop his head off. Out of fear the victim dropped his keys for him to take (ct 3).</p> <p>Using the keys Cummins attempted to start the victim's vehicle. Unable to do so he chased the victim to a house whilst brandishing the samurai sword, striking the front door before running off (ct 4).</p> <p>Cummins jumped into the rear yard of a neighbouring property. Entering the home through an unlocked door he stole the keys to a vehicle, got into the car parked in the driveway and driving off at speed (ct 5).</p> <p>A short time later he was seen by police driving the stolen vehicle. He failed to stop and accelerated away at high speed when requested to stop. He weaved in and out of heavy traffic, causing vehicles to brake heavily to avoid being hit. He drove through a busy shopping centre carpark at high speed, crossed to the incorrect side of the road, through red traffic lights and rammed numerous vehicles in order to escape police. His vehicle was eventually intercepted by a police and he was arrested.</p>	<p>lives and safety of other road users at significant risk'.</p> <p>The sentencing judge found ct 3 was a very serious offence; being armed with a sword lent credence to the threat.</p> <p>Appellant at high risk of committing further serious offences; remorseful and insight into the seriousness of his offending.</p>	<p>brandishing the weapon.</p> <p>At [58] ... it is relevant to consider the sentences imposed on the individual cts. In this regard, other cases dealing with offences of agg stealing of a motor vehicle ... that are relevant ... demonstrate that the sentences imposed on cts 2 and 6 were within the customary discretionary range for offences of this nature and this level of seriousness. There is nothing to suggest that the sentences imposed for the threat offence, ct 3, or the burglary offence, ct 5, were outside the customary range for those offences.</p>
8.	<i>Mogridge v The State of Western Australia</i>	<p>30 yrs at time sentencing.</p> <p>Convicted after early PG.</p>	<p><u>Indictment</u></p> <p>1 x Robbery.</p>	<p><u>Indictment</u></p> <p>3 yrs imp.</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged</p>

<p>[2016] WASCA 205</p> <p>Delivered 29/11/2016</p>	<p>Subject to a SIO and CBO at time offending.</p> <p>Lengthy criminal history, including property offences and violent offences. Mogridge has breached every court order previously imposed upon him.</p> <p>Deprived childhood; exposed to domestic violence and chronic illicit drug and alcohol abuse.</p> <p>Diagnosed schizophrenic, with multiple admissions to Graylands Hospital.</p> <p>Antisocial personality disorder.</p> <p>Illicit drug use.</p>	<p><u>Breach of SIO</u> 1 x Burg. 2 x Burg with intent. 2 x Unlawful poss.</p> <p><u>Breach of CBO</u> 1 x Breach police order. 1 x Breach of protective bail condition. 1 x Damaging property. 1 x Disorderly conduct. 4 x Stealing.</p> <p><u>Indictment</u> M entered a shop and stole an iPad and two bags belonging to the shop's owner (the victim). The victim's wife and 4 yr-old son were present. The victim tried to prevent M from leaving and during a struggle M punched the victim in the face. M dropped the stolen items and left.</p> <p><u>Breach SIO</u> M smashed the rear glass doors of an Indian restaurant and entered with others, but could not find anything to steal (burg with intent).</p> <p>M smashed a window of a pharmacy, entered and smashed an internal wall. Two co-offenders wanted to steal drugs and M assisted to receive \$50 (burg with intent).</p>	<p><u>Breach of SIO</u> Burg: 3 mths imp (cum). Burg with intent: 6 mths imp (cum). Burg with intent: 3 mths imp (cum). 2 x Unlawful poss: 3 mths imp each (conc).</p> <p><u>Breach of CBO</u> Breach police order: 3 mths imp (conc). Breach bail: no sentence. Damaging property: 6 mths imp (conc). Disorderly conduct: \$250 fine. 3 x Stealing: 3 mths imp each (conc). 1 x Stealing: no sentence (s 11).</p> <p>TES 4 yrs imp; \$250 fine.</p> <p>EFP.</p> <p>Sentences for breach of CBO made conc for totality reasons.</p>	<p>individual sentence for the Robbery offence, totality, and sentencing judge's failure to state discount provided for PG.</p> <p>At [40] While the robbery offence committed by the appellant was not at the upper end of seriousness of offences of robbery, it was not at the lower end of the scale and involved considerable criminality. The appellant used actual violence upon the victim to steal the iPad and the two bags. The offence was committed in the presence of the victim's wife and young child... The appellant was, at the time, subject to the CBO and the SIO. Specific deterrence and the need to provide public protection were matters of importance.</p> <p>At [41] The appellant ... has a very long and serious criminal history...</p>
--	---	--	---	---

			<p>M was found in poss of property worth in excess of \$500 (unlawful poss).</p> <p>M forced entry to a shopping centre and stole 189 SIM cards valued at \$378 from a kiosk (burg). M was found by police in poss of the SIM cards and other items (unlawful poss).</p> <p><u>Breach CBO</u> After the burg on the Indian restaurant subject to SIO, M smashed the glass panel to the doors (damaging property).</p> <p>M smashed a car window and stole property valued at approx. \$700 (stealing).</p> <p>M yelled obscenities and threats at his mother after being issued with a 72-hr police order prohibiting him from entering her house or approaching within 100 m of her (disorderly conduct). M was arrested and released on protective bail. He later hid in his mother's unit in breach of the police order and protective bail conditions (breach offences).</p> <p>M stole property valued at \$50 from a car (stealing). M returned to the same address and stole \$50 in change from another car (stealing).</p>	<p>Sentencing judge found that Mogridge's mental illness was not at the root of his offending; illicit drug use was the cause of offending.</p> <p>Not a good vehicle for general deterrence because of his mental illness.</p> <p>Very high risk of reoffending.</p> <p>No remorse; inability to accept responsibility for offending behaviour.</p>	<p>he suffers from a significant mental illness, but that illness was not causative of his offending, nor will it result in imp being more onerous for him than in the ordinary case. The appellant is not motivated to deal with his illicit drug use, which is the real driver of his offending, and he has no insight into the effects that his offending has on his victims. His prospects for rehabilitation appear to be very poor and he poses a very high risk of reoffending.</p> <p>At [45] Her Honour erred by overlooking to state the extent of the reduction for the PG. However, in this case, the error is not material. It is not reasonably arguable, having regard to all relevant sentencing considerations (including the PG), that different individual sentences, or a</p>
--	--	--	---	--	---

			M was charged with stealing for the stolen SIM cards he took in the burg subject to SIO (stealing).		different TES should have been imposed...
7.	<i>Garraway v The State of Western Australia</i> [2015] WASCA 240 Delivered 27/11/2015	32 yrs at time of sentence. Significant criminal history, including offences of violence and burglary. Deprived upbringing and limited education. Depressed and suicidal. Lengthy history of illicit drug and alcohol abuse. 5 young children from two relationships.	Ct 1: Armed Robbery. Ct 2: Burg. Ct 3: Stealing. Offences breached an SIO and CBO (for AOBH on partner). <u>Ct 1:</u> The appellant approached the victim and used the victim's mobile phone to make a call. After this the victim walked away. The appellant approached the victim again and asked to use his phone. The victim said no. The appellant pulled a syringe from his pocket, took off the protective cap and pointed it towards the victim, saying 'give us your phone or I'll stab you'. The appellant grabbed the phone and walked away. <u>Ct 2 and 3:</u> The appellant went to the Broome Boulevard Shopping Centre and smashed the glass fire door to gain entry. The appellant then smashed the glass window of Dick Smith store with a brick. He used the brick to break a glass cabinet and stole 15 mobile phones, to the value of \$11,300.	Ct 1: 2 yrs 10 mths imp. Ct 2: 1 yr 11 mths imp. Ct 3: nil. Breach of SIO: 9 mths imp. To be served cumulatively with cts 1 and 2. TES 5 yrs 6 mths imp. EFP. Sentencing judge not satisfied appellant demonstrated genuine remorse. Ct 1 not at high end scale of seriousness. Ct 2 and 3 characterised as 'significant' as it was planned and premeditated.	Dismissed – on papers. At [27]... the appellant has fallen well short of demonstrating that the total effective sentence imposed upon him infringes the first limb of the totality principle. Having regard to the appellant's total criminality and all of the circumstances of the case, including those factors referable to the appellant personally, the sentence... reflected a sound exercise of his Honour's sentencing discretion.
6.	<i>Newport v The</i>	32 yrs at time offending.	<u>Indictment</u>	<u>Indictment</u>	Dismissed.

<p><i>State of Western Australia</i></p> <p>[2015] WASCA 224</p> <p>Delivered 12/11/2015</p>	<p>Convicted after PG to ct 1 and 2; convicted after trial cts 3-5 and 7-11.</p> <p>Offending breached SIO and bail.</p> <p>Prior criminal history of summary offences.</p> <p>Unemployed.</p> <p>Two children from prior relationship.</p> <p>Entrenched and significant substance abuse problem.</p> <p>History of poor problem solving, antisocial decision-making and low self-confidence.</p> <p>Failed to comply with prior requirements to undertake counselling and CBO.</p>	<p>Ct 1: Burg (residential). Ct 2: Steal motor vehicle. Cts 3-5 and 7-11: Receiving.</p> <p><u>Section 32 Notice</u> Ch 1: Reckless driving. Ch 2: Failure to stop. Ch 3: No authority to drive. Ch 4: Steal motor vehicle.</p> <p><u>Cts 1-2</u> Newport smashed a rear bedroom window and entered the house. The victim was not home. He stole various items to the value of \$5,000.</p> <p>Newport took car keys and used them to steal a car parked at the house. The car was recovered from Newport's home.</p> <p><u>Cts 3-11</u> These offences were committed over a period of approx. one month.</p> <p>Newport received property, including a motorcycle and Toyota van, he knew had been obtained from a burg (cts 3-5).</p> <p>Newport received from burgs various electrical and personal items (cts 7-11).</p> <p><u>Section 32 Notice</u></p>	<p>Ct 1: 25 mths imp (cum). Ct 2: 8 mths imp (conc). Ct 3: 18 mths imp (conc). Ct 4: 9 mths imp (conc). Ct 5: 10 mths imp (conc). Ct 7: 18 mths imp (conc). Ct 8: 20 mths imp (cum). Ct 9: 17 mths imp (conc). Ct 10: 15 mths imp (conc). Ct 11. 18 mths imp (conc).</p> <p><u>Section 32 Notice</u> Ch 1: 3 mths imp (conc) and 24 mths driver's licence disqualification (cum). Ch 2: \$150 fine. Ch 3: 7 mths imp (conc) and 16 mths driver's licence disqualification (cum). Ch 4: 10 mths imp (cum).</p>	<p>At [42] ... the burg represented a significant escalation in the seriousness of the appellant's offending; the appellant had a history of persistent offending.</p> <p>At [50] ... the value of the property taken was 'not insignificant' and...some of the stolen items were of 'significant personal value' to the victim...</p> <p>At [58] The appellant's offending occurred over a relatively short period of time. However, the offences did not form a single criminal enterprise, apart from the offences alleged in cts 1 and 2 of the indictment. Rather, the offences constituted a course of persistent offending.</p>
---	--	---	---	--

			<p>Newport drove a stolen motorcycle, without a licence. In order to evade police he drove at speeds in excess of 80km per hour in a 50km per hour speed limit zone and on the wrong side of the road.</p>	<p><u>Breach of SIO</u> 3 mths imp (cum). TES 4 yrs 10 mths imp. EFP.</p> <p>The sentencing judge was not satisfied the appellant was shown to have been in the business of a fence (a distributor for reward of unlawfully obtained property).</p> <p>Remorseful; some prospects of rehabilitation.</p>	
5.	<p><i>Harding v The State of Western Australia</i></p> <p>[2015] WASCA 27</p> <p>Delivered 11/02/2015</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Significant prior criminal history including convictions of burg, stealing, stealing motor vehicle and reckless driving.</p> <p>Parents separated when appellant was 18 mths old; raised by father; minimal contact with mother;</p>	<p><u>Indictment</u> Burg (residential) x 1.</p> <p><u>Section 32</u> 17 charges.</p> <p><u>Indictment</u> The appellant was inadvertently released from custody for other charges on 21 March 2012.</p> <p>During the day of 29 March 2012 the</p>	<p><u>Indictment</u> 2 yrs imp.</p> <p><u>Section 32</u> Various imp terms totalling 4 yrs imp (cum).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>Error as to maximum penalty not material in this case.</p> <p>At [80] This is undoubtedly a serious offence... At the time he committed the offence he had been inadvertently released from custody.</p>

		<p>issues relating to abandonment by mother; issues arising from assertion of being sexually abused as a child.</p> <p>Sister died from heroin overdose when appellant was 14 yrs; appellant started performing badly at school and using heroin.</p> <p>Left school in year 10; largely unemployed.</p> <p>History of drug abuse; addicted to heroin at time offending; previous attempts to cure drug addiction failed.</p>	<p>appellant gained entry to the backyard of a house. He climbed the top of a structure over the patio at the rear of the house and climbed to a balcony at the first floor level. He forced open a partially open window and entered the house. He went systematically through all the rooms of the house, stealing various items to a total value of \$11,837.91.</p> <p><u>Section 32</u> On five dates between 17 October 2011 and 4 April 2013, the appellant committed assault with intent to prevent arrest, obstructing police officers and multiple property, drug and driving offences.</p>	<p>Repeat offender.</p> <p>Prone to reoffend within a short time of release due to drug addiction; lacks the skills to independently address the core issues of his substance abuse.</p> <p>Remorseful.</p> <p>Erroneously stated offence was agg burg with maximum penalty of 20 yrs imp, when in fact offence committed was burg with maximum penalty of 18 yrs imp.</p>	<p>This situation is analogous to someone who is on bail.</p>
4.	<p><i>McCull v The State of Western Australia</i></p> <p>[2014] WASC 300</p> <p>Delivered 22/08/2014</p>	<p>36 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Significant criminal history.</p> <p>Unfortunate upbringing.</p> <p>Recent tragedy involving his brother.</p> <p>Entrenched drug dependency.</p>	<p>Burg (residential) x 1. Burg (commercial) x 1 No MDL (suspended) x 1.</p> <p>The appellant entered the victim's house by smashing a railing and retrieving a lockbox which contained a copy of the house key. Inside he stole a number of items.</p> <p>The appellant and another were at a Supercheap Auto store. They entered the store's storage and staff room where the public are not permitted. They took items</p>	<p>20 mths imp. 9 mths imp (cum). 3mths (cum).</p> <p>TES 32 mths imp.</p> <p>Very high risk of re-offending.</p>	<p>Dismissed.</p> <p>Single Judge Appeal.</p>

		<p>Tried many drug programs without success.</p> <p>Breached virtually every order he has been on.</p> <p>Five occasions where parole was cancelled.</p> <p>The residential burglary was committed whilst on bail for other offences including the commercial burglary.</p>	<p>from the staff room table and left.</p> <p>The appellant was parked in a bus lane. Police identified that the appellant was subject to a surrender notice. In an attempt to speak to the appellant, police in an unmarked car pulled up being the appellant, activated their lights and called for him to stop. The appellant accelerated away heavily.</p>		
3.	<p><i>Burrows v The State of Western Australia</i></p> <p>[2014] WASCA 147</p> <p>Delivered 12/08/2014</p>	<p>28 yrs at time sentencing.</p> <p>Convicted after late PG.</p> <p>Significant prior criminal history including stealing, receiving and steal MV.</p> <p>Poor compliance with court orders.</p> <p>Stable and supportive family.</p> <p>Entrenched history of methyl use.</p> <p>Made efforts towards rehabilitation whilst in custody.</p>	<p>Burg x 5. Steal MV x 5. Receiving x 1.</p> <p>The appellant committed a series of offences in a period of just over three weeks.</p> <p>The appellant used a stolen motor vehicle to commit a series of burglaries on four chemists and a computer store. Property stolen included cold and flu medication, sunglasses cash and laptop computers. In two of the burglaries the appellant used a stolen vehicle to rip off the front of the shops.</p> <p>In that time the appellant also stole or used five stolen motor vehicles knowing they</p>	<p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>In ROI declined to answer many questions but did answer some; denied all offences except the stealing of one vehicle.</p> <p>Appellant accepted his offending was directly related to his drug use.</p> <p>The appellant was stealing medications with ephedrine or pseudoephedrine with a</p>	<p>Dismissed – on papers.</p> <p>At [32] Court found that the sentencing judge’s failure to quantify the s9AA discount was not a material error and did not invalidate the sentence imposed.</p> <p>At [39] Each of the individual sentences was separate and discrete and in those circumstances some accumulation was appropriate.</p> <p>At [43] Offending conduct of this type is</p>

			<p>were stolen. Whilst in his possession, he had caused or permitted significant damage to them.</p> <p>Furthermore the appellant came into possession of some property from a burglary knowing that the items were stolen.</p>	<p>view to exchanging them for methyl.</p>	<p>deserving of an appropriately lengthy sentence of imprisonment.</p>
2.	<p><i>Tela v The State of Western Australia</i> [No 2]</p> <p>[2014] WASCA 103</p> <p>Delivered 15/05/2014</p>	<p>18 yrs at time offending. 19 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Criminal history 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>Indictment</u> Ct 1: Agg burg. Ct 2: Agg burg. Ct 3: 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> The appellant 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> The appellant was riding an off-road motorcycle with others. Police received a number of calls from members of the public</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><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>Dismissed – on papers.</p> <p>At [19] The indictable offences were undoubtedly serious. They 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>

			<p>that there were several motorcycles driving around on roads with no lights on. Police pursued the appellant and two others in vehicles & by helicopter. The appellant rode his motorcycle at an excessively high speed, with lights off and drove on the incorrect side of the road. At the time the appellant's licence was cancelled.</p> <p><u>Ct 4:</u> The appellant assaulted the victim in an unprovoked attack. The appellant swung a baseball bat at the victim, narrowly missing the victim's legs. The appellant 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 face.</p>		
1.	<p><i>Gangemi v The State of Western Australia</i></p> <p>[2014] WASCA 39</p> <p>Delivered 20/02/2014</p>	<p>35 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Extensive criminal history of over 100 convictions; including 18 for burglary; spent most of adult life in prison.</p> <p>Entrenched drug problem.</p> <p>Unfavourable record in response to court orders.</p>	<p>Burg x 1.</p> <p>The appellant went to Scitech Discovery which is a not-for-profit organisation with the intention of stealing items to purchase drugs.</p> <p>He entered through an unlocked automatic sliding door and entered the office through other unlocked doors. Inside the appellant forced open a cupboard and took a number of electronic devices valued at \$16,220.00.</p> <p>The appellant put the items in a box and</p>	<p>4 yrs imp.</p> <p>EFP.</p> <p>Full admissions in ROI; traded the stolen property for drugs.</p> <p>Little understanding of the consequences & impact of his offending.</p> <p>Sentencing judge observed the appellant's</p>	Dismissed.

		<p>Unsuccessful in a number of drug treatment programmes without success.</p> <p>Committed further offences whilst on bail for this offence.</p> <p>Committed burglary whilst on bail for a large number of other offences.</p>	<p>carried them away. He was let out of the complex by a cleaner who unlocked a door which had been locked while the appellant was in the building.</p> <p>Only a small amount of the property was recovered.</p>	<p>repeated offending was associated with a long history of illicit drug abuse; Noted that the appellant did not appear to have the alternative social supports which would be necessary in order for him to change his lifestyle.</p> <p>High risk of re-offending.</p>	
--	--	---	---	--	--