

Deprivation of Liberty

s 333 Criminal Code

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
PG	plead guilty
agg	aggravated
burg	burglary
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
ct	count
TES	total effective sentence
EFP	eligible for parole
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
29.	<p><i>Pool v The State of Western Australia</i></p> <p>[2013] WASCA 274</p> <p>Delivered 02/12/2013</p>	<p>34-41 yrs at time offending. 42 yrs at time sentencing.</p> <p>Convicted after PG (following negotiations) - Cts 1, 3-4 discontinued.</p> <p>Criminal record; none of which had attracted a term of imp; offences include trespass & unlawful use of optical surveillance device.</p> <p>Left school at 17 yrs; worked in various occupations.</p> <p>In early 30's commenced using cannabis & methyl.</p> <p>Suffered significant depression at various times; including when offending.</p> <p>Married since 2005; two sons; youngest suffers from mild cerebral palsy & frequent seizures.</p> <p>Psychiatric, Psychological & PSR Reports indicate the offences were committed in the context of marked amphetamine abuse &</p>	<p>Indecent deal child u13 yrs s320(4) <i>Criminal Code</i> x 1.</p> <p>Att indecent record child 13-16 yrs s552, 321(6), 321(8)(a) <i>Criminal Code</i> x 1.</p> <p>Indecent deal child 13-16 yrs s321(4), 321(8)(b) <i>Criminal Code</i> x 4.</p> <p>Agg burg in dwelling 401(2) <i>Criminal Code</i> x 2.</p> <p>Agg indecent record child 13-16 yrs s321(6), 321(8)(b) <i>Criminal Code</i> x 1.</p> <p>Indecent ass s323 <i>Criminal Code</i> x 3.</p> <p>Indecent record child s321(6), 321(8)(a) <i>Criminal Code</i> x 1.</p> <p>Dep lib s333 <i>Criminal Code</i> x 1.</p> <p>Agg sex pen s326 <i>Criminal Code</i> x 1.</p> <p>Sex pen s325 <i>Criminal Code</i> x 1.</p> <p>The offending occurred over a period of about 7 yrs and involved numerous acts of sexual violation against 5 victims.</p> <p><u>Ct 2:</u> The appellant and his wife were friends of the victim's mother and regularly babysat the victim. When the victim was 7 yrs old, she stayed at the appellant's home. Whilst his wife was asleep in the same room the appellant rubbed the victim's breasts and vagina.</p> <p><u>Ct 3:</u> The victim was aged 13 yrs. She was a neighbour of the appellant. One evening the victim stayed at the appellant's home and went to have a shower. The appellant attempted to record the victim showering from outside. The victim undressed and started to</p>	<p>TES 11 yrs 9 mths imp.</p> <p>EFP.</p> <p>High risk of sexual re-offending.</p> <p>Expressed some regret but has attempted to justify & minimise its severity.</p> <p>Each victim suffered significant & ongoing psychological trauma.</p> <p>Sentencing judge described appellant's attitude as 'predatory'.</p> <p>High risk of future sexual offending.</p>	<p>Dismissed.</p> <p>McLure dissenting.</p> <p>At [71] ... The humiliation and degradation ... was made worse by the appellant's use of a mobile telephone to record visual images of his assaults upon them.</p> <p>At [72] I accept, however that the appellant's individual offences against CLT and TJC were at the lower end of the scale of seriousness in child sex cases and that his individual offences against MJR and MT were not in the worst category of home invasion cases involving sexual violence.</p> <p>At [77] The number of victims, the duration of the offending, the planning, premeditation and persistence, the escalation in the seriousness of the criminal conduct, the appellant's lack of insight and his high risk of</p>

		<p>considerable psychological instability.</p>	<p>shower before noticing the appellant's phone.</p> <p><u>Cts 6-10:</u> The victim was aged 13 yrs and was the same victim as in Ct 3. The victim slept the night at the appellant's home. Whilst she slept the appellant touched her breast. The appellant then masturbated with his penis close to the victim's face, ejaculated and wiped the fluid on her lips. He then held his erect penis against her lips for a few seconds and again touched her breast. The appellant used a video camera to record his actions.</p> <p><u>Cts 11-13:</u> The 17 yr old victim was at her boyfriend's house; asleep and fully clothed. The appellant entered the house through an unlocked carport/ kitchen door. The appellant cut the victims outer clothing as she slept with scissors; exposing various parts of her body. He then rubbed her exposed vagina. The victim awoke after hearing a loud bang and the appellant ran from the house. Some months after the incident the victim noticed some videos on her mobile. The videos had been taken by the appellant during the burglary and included a depiction of his hand rubbing the victim's vagina. The victim and appellant were unknown to each other.</p> <p><u>Ct 14:</u> The victim was aged 14 yrs and unknown to the appellant. The appellant used a video camera to film the victim through her bedroom window. The victim noticed the appellant looking at her through the window. When the appellant was arrested about 14 months later; police found 3 cassettes hidden in</p>		<p>recidivism required the imposition of a very lengthy term of imprisonment.</p>
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			<p>the bodywork of his motor vehicle. The cassettes contained footage of the victim.</p> <p><u>Cts 15-19:</u> The victim was a 37 yr old woman. The victim and appellant were unknown to each other. The appellant entered the victim's house through an unsecured rear sliding door. After scrimmaging through the house he went to the victim's bedroom, placed his hand over her mouth, wrapped his hand around her throat, and tied her hands together and to the bed. He sexually assaulted and digitally penetrated her with his fingers and vibrator. At the same time he used his mobile to record and take photographs of the victim.</p>		
28.	<p>Ackley v The State of Western Australia</p> <p>[2013] WASCA 199</p> <p>Delivered 26/08/2013</p>	<p>27 yrs at time offending.</p> <p>Convicted after second trial. First trial was aborted because the appellant refused to answer bail on the 5th day and absconded interstate; later apprehended on a bench warrant.</p> <p>Criminal record reflects violence and sexual offending against women including serious GBH against de facto and agg indecent assault of intoxicated woman.</p> <p>Mother died when 12 yrs;</p>	<p>Ct 1: Deprivation of liberty. Ct 2: Threat to kill. Ct 3: Sex pen w/o consent. Ct 4: Sex pen w/o consent. Ct 5: Sex pen w/o consent. Ct 6: Sex pen w/o consent. Ct 7: Agg Sex pen w/o consent.</p> <p>The victim and appellant were known to each other as friends for a short period of time. The victim had been residing with the appellant at his house, since she returned to Australia some 4 weeks earlier. The victim had had consensual sexual intercourse with the appellant a few times since she returned; however told the appellant the relationship would not go any further and they were just friends.</p> <p>On the return from a party the appellant was behaving in an angry and aggressive manner. The victim attempted to leave the house but was stopped</p>	<p>Ct 1: 12 mths imp. Ct 2: 12 mths imp. Ct 3: 3 yrs 6 mths imp. Ct 4: 2 yrs 6 mths imp. Ct 5: 3 yrs 6 mths imp. Ct 6: 3 yrs 6 mths imp. Ct 7: 5 yrs 6 mths imp.</p> <p>Cts 1 & 2 conc with each other but cum on Cts 3 & 7 with balance served conc.</p> <p>TES 10 yrs imp.</p> <p>EFP.</p> <p>Did not accept any responsibility for the offending, maintaining</p>	<p>Dismissed – on papers.</p> <p>At [56] The offending was indeed very serious having regard to the nature and extent of the violence, physical and sexual, over an extended period.t</p> <p>At [57] ... The fact that the appellant put the victim through two trials, necessitated by him absconding five days into the first trial, is an aggravating circumstance. He caused an unnecessary and unjustifiable continuation of the ordeal which he inflicted on the</p>

	<p>raised by father.</p> <p>Finished school partway through Year 12; consistently employed.</p> <p>Problematic use of cannabis and amphetamines until he obtained work at 23 yrs.</p>	<p>by the appellant who pushed her away from the locked back door, causing her to fall on the floor. The victim wanted to leave but the appellant refused to let her leave and took her mobile phone from her. She made repeated pleas to the appellant during the course of the night to let her leave.</p> <p>Shortly after first detaining the victim and while she was on the floor crying, the appellant produced a knife and held it in front of the victim's face. He told the victim she was not going to leave and not to try anything stupid or he would kill her. The victim told the appellant that she did not want to have sex with him. He pulled her through various rooms of the house and despite her attempts to fight him off, she was eventually on the bed, naked. The appellant rubbed lubricant or gel on and inside the victim's vagina. The appellant grabbed the victim by the throat which caused her to have difficulty breathing. The appellant sexually penetrated her vagina with his penis, despite her resistance. The victim scratched the appellant's back, chest and arms and lost consciousness during intercourse. When she woke the appellant was still having sex with her. The appellant then pushed the victim towards the bathroom and forced her to have a shower to get rid of the skin under her finger nails. Whilst in the shower the appellant inserted his fingers into her vagina and washed it. The appellant then pushed the victim back onto the bed. He once again applied lubricant and penetrated the victim's vagina with his penis against her will. The victim screamed and the appellant grabbed her throat. He directed the victim to have another shower. She did. Back in the bedroom, the appellant said he was</p>	<p>his denial and continuing with his claim that the victim fabricated her allegations.</p> <p>No empathy or remorse.</p> <p>High risk of reoffending.</p>	<p>victim.</p>
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			<p>going to have sex with her again. She was feeling dizzy and frightened. Against her will, the appellant again penetrated the victim's vagina with his penis.</p> <p>Later the victim refused the appellant's request to perform oral sex on him. She was trying to fight the appellant off when he again inserted his penis into her vagina. On this occasion the appellant put a pillow over the face of the victim so she would stop screaming. The appellant removed semen from the victim's vagina and rubbed it on the victim's face and breasts.</p>		
27.	<p><i>KWLD v The State of Western Australia</i></p> <p>[No 4] [2013] WASCA 185</p> <p>On appeal from Children's Court</p> <p>Delivered 14/08/2013</p>	<p>15-17 yrs at time offences. 18 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record; breach VRO, make threatening statement, fraud, poss child exploitation material and stalking.</p> <p>Troubled childhood; born of a very brief liaison between his parents who were not in a relationship; little positive contact with biological father; Short term emergency accommodation by DCP from 13 yrs.</p> <p>Unresolved personal issues;</p>	<p>Ct 1: Att sex pen child 13-16 yrs. Ct 2: Sex pen child 13-16 yrs. Ct 3: Sex pen child 13-16 yrs. Ct 4: Sex pen child 13-16 yrs. Ct 5: Sex pen child 13-16 yrs. Ct 6: Sex pen child 13-16 yrs. Ct 7: Sex pen child 13-16 yrs. Ct 8: Involving a child in child exploitation. Ct 9: Poss child exploitation material. Ct 10: Agg burg. Ct 11: Agg burg. Ct 12: Dep liberty. Ct 13: Impersonating public officer.</p> <p>The sexual offences involved 4 different female victims. TB was 14 yrs, SM was 13 yrs and both MC and SW were 15 yrs.</p> <p><u>Victim MC:</u> At the time of the offences MC and the appellant were in a relationship. In June 2010 the appellant initiated contact with MC by electronic communication. He arranged to meet with her to</p>	<p>Ct 1: 18 mths imp. Ct 2: 12 mths imp (conc). Ct 3: 12 mths imp (cum). Ct 4: 9 mths imp (conc). Ct 5: 9 mths imp (conc). Ct 6: 9 mths imp (conc). Ct 7: 9 mths imp (conc). Ct 8: 6 mths imp (conc). Ct 9: 4 mths imp (conc). Ct 10: 15 mths imp (conc). Ct 11: 9 mths imp (conc). Ct 12: 12 mths imp (conc). Ct 13: 3 mths imp (conc).</p> <p>TES 30 mths imp. EFP.</p>	<p>Dismissed on papers.</p> <p>At [94] Based on the findings of the sentencing judge the appellant had engaged in a pattern of behaviour. This involved targeting girls who were younger and previously unknown to him. He then engaged in emotional coercion and persistence to obtain their compliance. Other than in the case of MC this did not occur in the context of a genuine relationship.</p> <p>At [104] – [105] An appeal is not an opportunity to seek new material with a view to retrying the issues on a different basis. The</p>

		<p>from young age been exposed to domestic violence, substance abuse and criminality.</p> <p>Intelligent and did well at school.</p> <p>At time of offending was likely to have been suffering a depressive illness; borderline personality disorder with significant anti-social personality traits.</p> <p>On bail at time of agg burg offences.</p>	<p>see a movie. After meeting they walked together to a secluded location where they had sexual intercourse until he ejaculated. MC asked the appellant to use a condom but he refused.</p> <p>After the incident the appellant and MC developed a relationship which lasted for about 3 months. The appellant sought information of a private nature from MC with the intention of ensuring her trust and dependency upon him.</p> <p><u>Victim SW:</u> SW was 1 of 40-50 girls in Perth randomly targeted by the appellant to engage in chat via social media with a view to becoming friends.</p> <p>In 2011 the victim initiated contact with SW through Facebook. She was previously known to him. The appellant manipulated the victim including threatening to terminate their friendship unless she sent sexually explicit photographs of herself to him. She did as requested and took photographs of herself, which she sent to him.</p> <p>In respect of the charge of poss child exploitation material this related to the photograph sent to the appellant by SW. In the course of his evidence the appellant conceded that he had wanted this photograph because he found it sexually arousing.</p> <p><u>Victim TB:</u> The appellant initiated contact with TB in 2011 using mobile phone texts and internet. He asked TB to meet with him at a beach and she agreed. Prior to meeting the victim the appellant said that if she did</p>	<p>Trial of Issues – there was a dispute as to whether each of the victims had freely and voluntarily consented to the relevant sexual acts.</p> <p>Sentencing judge viewed the offences against TB and SM as being the most serious and that the appellant had used the difference in age between he and the complainants and his own level of maturity to achieve his objective with them.</p> <p>Noted by judge that the appellant is an intelligent young man who was fully aware of the nature of the offences he was committing; high risk of re-offending.</p>	<p>general rule is that an appeal court must decide an appeal on the evidence and material before the court below... the test in an appeal against sentence is whether if the evidence had been before the sentencing judge a different sentence should have been imposed.</p> <p>At [113] ... It is far from clear that the habits or behaviour of young people in regards to social media are recognised fields of special expert knowledge.</p> <p>At [116] I have taken the opportunity to examine the extensive Facebook exchanges... When read in their entirety they amply support the conclusion that the appellant was engaged in manipulative behaviour. He maintained control by becoming angry, threatening to withdraw or threatening to tell others what had occurred.</p> <p>At [144]-[145] It is an error for a sentencing</p>
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			<p>not meet with him he would kill himself. After they met the appellant tried to coerce TB to engage in sexual behaviour. He attempted to sexually penetrate her with his penis. He then digitally penetrated her without her consent. After she walked home the appellant made contact with her by phone and made threats towards her, her family and himself.</p> <p><u>Victim SM:</u> The appellant initiated contact with SM in early 2011 by electronic media. He persuaded her to meet with him at a service station. They then walked back to her house. The appellant forced himself on her with threats of self-harm and manipulation. She complied and he penetrated her vagina until he ejaculated. The appellant was wearing a condom but it broke. He laughed at this.</p> <p>State's case was that in respect of each of the complaints the appellant had used emotional manipulation and persistence to achieve his objective.</p> <p><u>Agg burg:</u> The appellant and his co-offender formed a common intention to go to the victim's house and threaten and intimidate the occupants. The intention was that this would be done whilst he pretended to be a police officer conducting a search for drugs. The appellant dressed as a police officer armed with a knife sharpening implement, entered the house of 49B Dongara Street, Innaloo and declared he was a police officer and demanded to know where the drugs were.</p>		<p>judge to either reduce or extend a term of imprisonment based upon an assumption that the offender will be paroled... There is no reason to suppose that the sentencing judge imposed a sentence that was longer than was otherwise appropriate to take into account an assumption that the appellant would be released on parole.</p>
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			<p>The appellant left and met the co-offender who was leaving 49A Dongara Street. He grabbed her and pretended to place her under arrest. He then entered 49A declaring himself to be a police officer and yelled to the occupants, including a 10 yr old child to get on the floor and place their arms behind their backs whilst he demanded to know the location of their drugs.</p>		
26.	<p><i>Clarke v The State of Western Australia</i></p> <p>[2013] WASCA 67</p> <p>Delivered 12/03/2013</p>	<p>30 yrs at sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal record including an assault against a previous girlfriend in NSW; In WA convicted of several offences relating to the victim including a number of Breach of VRO and Agg AOBH.</p> <p>Offences committed in breach of a suspended term of imp imposed for Agg AOBH, Breach VOR and Breach protective bail conditions.</p> <p>Exposed to domestic violence as a child.</p>	<p>1 x Breach of susp imp (original term 12 mths). Ct 1: Threats to kill Ct 2: Dep lib. Ct 4: Sex pen w/o consent (pen vagina with penis). Ct 6: Sex pen w/o consent (pen vagina with penis). Ct 7: AOBH.</p> <p>(Acquitted of Cts 3 and 5 on indictment).</p> <p>The offences arose out of a dysfunctional relationship between the appellant and the victim. They were engaged for a time, but after that the relationship deteriorated. The victim successfully applied for a VRO against the appellant which she then removed after a few months. They reconciled for a short time. The relationship followed a pattern of argument followed by reconciliation up until 2011 when the offences occurred.</p> <p>The victim went to the appellant's house to collect money that was owed to her parents. When the appellant did not answer the door the victim entered. The appellant then came through the front door from outside the house and attacked her. He told her that she was going to 'die here tonight' a while holding her against the wall with his arm</p>	<p>Breach: 12 mths imp. Ct 1: 12 mths imp cum. Ct 2: 12 mths imp conc. Ct 4: 4 yrs imp cum. Ct 6: 2 yrs imp cum. Ct 7: 2 yrs imp conc.</p> <p>TES 8 yrs imp.</p> <p>EFP.</p> <p>Appellant spent 328 days on remand which was taken into account in relation to the sentence for Ct 6.</p> <p>No remorse.</p> <p>Lied to police in VROI.</p> <p>Assessed as presenting a medium to high risk of sexual re-offending.</p>	<p>Appeal against conviction and sentence dismissed – leave refused on papers.</p> <p>TES did not breach totality principle.</p> <p>Sentence on Ct 4 not manifestly excessive.</p> <p>At [92] Sentences for offences of sexual penetration without consent vary significantly.</p> <p>At [94] The appellant submits that the seriousness of this offence was reduced by the fact that there were no circumstances of aggravation. This submission has no merit because the 'starting point' of 4 to 6 years assumes that there are no</p>

			<p>against her chest and his other hand around her throat so that she could not breathe, swallow or speak. The victim tried to run towards the door, but the appellant attached her again and pushed her to the ground, holding her head down with his knees. He again told her that she was going to die.</p> <p>The appellant pushed the victim into the bathroom and pushed her against the wall. He held her by the back of the neck with one hand and pushed her head towards the bathroom sink. He held her around the waist so that she could not move. He forcibly penetrated the victim. The victim cried and asked him to stop.</p> <p>The appellant held the victim's arm while they stood on the front porch to look at the car. The victim wanted to check her sleeping child. The appellant then pushed her face against the wall and again forcibly had sex with her.</p> <p>The victim was eventually able to run to her car and leave the appellant's house. The victim sustained injuries throughout the ordeal.</p> <p>The defence at trial was that the sexual intercourse took place but was consensual and he denied the other allegations.</p>	<p>aggravating factors. That would not put it into a less serious category for an offence under s325 of the <i>Criminal Code</i> (WA). At the appeal hearing, counsel for the appellant emphasised that the period of offending was relatively short. He submitted that the brevity of the ordeal should have been reflected in the sentence. However long the ordeal lasted, it was certainly long enough for the appellant to sexually penetrate the victim without her consent in the circumstances outlined above. Counsel for the appellant also submitted that the offence was of a less serious nature because the parties had previously been in a consensual sexual relationship. That is not a mitigating factor.</p> <p>At [100] There is no requirement, even where multiple offences arose out of a single transaction, that concurrent sentences be imposed.</p>
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<p>25.</p> <p><i>Hishmeh v The State of Western Australia</i></p> <p>[2012] WASC 183</p> <p>Delivered 20/09/2012</p>	<p>29 yrs at time offending. 31 yrs at time sentencing.</p> <p>Convicted after trial (agg burg and dep lib cts). Convicted after PG (manslaughter – jury unable to reach verdict on murder charge).</p> <p>No relevant prior criminal record.</p> <p>4th of 7 children; family emigrated from Lebanon.</p> <p>Married; 2 children (6 yrs and 18 mths of age); owns/operates substantial and successful business</p>	<p>1 x Manslaughter. 1 x Agg burg. 2 x Dep lib.</p> <p>At [61] Offending at upper range of seriousness for offences of manslaughter.</p> <p>Victim 1 was known to co-offender 1 as a drug dealer. Victim 2 was at the home of victim 1 and engaged in a drug transaction at the time of the offending – a fact all offenders were aware of.</p> <p>Appellant and two co-offenders, after ascertaining that victim 1 was home, forced their way into victim 1’s home with the intent of robbing her of the money and drugs believed to be at her home. Appellant detained victim 2, as per the pre-arranged plan, so that he could not assist victim 1. Co-offender 2 punched victim 1 in the face and tied her up with plastic clip ties and proceeded to punch her in the face and head repeatedly. Co-offender 2 also choked victim 1. Victim 1 was also repeatedly struck with a hammer to her arms knees and thighs. Injuries suffered by victim 1 – both the assault and the choking – caused fatal haemorrhaging in her brain.</p>	<p>8 yrs 6 mths imp. 5 yrs imp. 2 yrs and 3 yrs imp.</p> <p>TES 8 yrs 6 mths imp.</p> <p>EFP.</p> <p>Genuine remorse; low risk future violence.</p>	<p>Dismissed.</p> <p>At [59] Court is no longer constrained in sentencing by effect transitional provisions had on the maximum penalty (ie in practice a sentence greater than 2/3 statutory maximum could not be imposed) but sentences handed down prior to the introduction of and subsequent repeal of those provisions are still of use in providing guidance as to the sentences properly imposed.</p> <p>At [70] Sentences imposed for manslaughter in last 10 years or so have tended to increase and that is consistent with the sanctity of human life.</p> <p>At [71]-[82] Some discussion of cases.</p>
<p>24.</p> <p><i>Thomas v The State of Western Australia</i></p> <p>[2012] WASCA 182</p>	<p>37 yrs at time offending.</p> <p>Convicted after early PG.</p> <p>Prior criminal record – driving under influence; reckless driving; dangerous</p>	<p>1 x Agg burg. 1 x Steal motor vehicle. 1 x Dep lib.</p> <p>Appellant and victim were separated and, at time offending due to past domestic violence, a VRO had been taken out by the victim against the</p>	<p>18 mths imp. 2 yrs imp. 12 mths imp.</p> <p>TES 4 yrs 6 mths imp.</p> <p>EFP.</p>	<p>Dismissed – leave refused on papers.</p> <p>At [27] General deterrence is a key factor so as to deliver a clear message that offences involving</p>

	Delivered 19/09/2012	driving occasioning bodily harm; common assault; disorderly conduct. Alcohol use problems.	appellant. In the days immediately prior to the offending, appellant had breached the VRO twice. Appellant, in an intoxicated state, went to victim's home and knocked on the door. Victim refused to let appellant in so the appellant removed a flyscreen and entered through a partially open window. Once inside, the appellant began to abuse the victim and demanded her car keys. Victim refused and appellant bit both of her hands in an attempt to get the keys from her. Once he had the keys, appellant forced the victim into the car. The victim attempted to escape but the appellant stopped her. Appellant then drove around erratically and at a high speed while the victim pleaded with the appellant to stop and let her out. Appellant drove onto Tonkin Highway, swerving through traffic and told the victim they were going to die. Appellant eventually lost control of the car, narrowly missed hitting another car and struck a tree. The appellant left the scene of the crash after apologising to the victim. Victim suffered whiplash and bruising. Victim had to borrow money to buy another car and, along with her children, had to move as she no longer felt safe in her home.	Minimum remorse; denied responsibility for offending by blaming victim; poor rehabilitation prospects. Sentence for dep lib reduced by 6 mths for totality reasons.	violence to family members will not be tolerated.
23.	<i>Johnston v The State of Western Australia</i> [2012] WASCA 18 Delivered	25 yrs at time offending. Convicted after trial. No relevant prior criminal record. Supportive family; good	1 x Murder. 2 x Dep lib (victim1; victim 2). 1 x Agg burg. Victim 1 was known to co-offender 1 as a drug dealer. Victim 2 was at the home of victim 1 and engaged in a drug transaction at the time of the offending – a fact all offenders were aware of.	Life imp. 4 yrs imp; 3 yrs imp. 5 yrs imp. TES life imp. Minimum non parole period 18 yrs.	Dismissed. Only minimum non parole period challenged. At [19] Imposition of minimum non parole period is a discretionary

	25/01/2012	employment history.	Appellant and two co-offenders, after ascertaining that victim 1 was home, forced their way into victim 1's home with the intent of robbing her of the money and drugs believed to be at her home. Co-offender 2 detained victim 2, as per the pre-arranged plan, so that he could not assist victim 1. Appellant punched victim 1 in the face and tied her up with plastic clip ties and proceeded to punch her in the face and head repeatedly. Appellant also choked victim 1. Victim 1 was also repeatedly struck with a hammer to her arms knees and thighs. Injuries suffered by victim 1 – both the assault and the choking – caused fatal haemorrhaging in her brain.	Low risk violent re-offending.	judgement – appellate court cannot intervene unless error shown. Establishing implied error in such circumstances onerous task.
22.	<i>The State of Western Australia v Cheeseman</i> [2011] WASCA 15 Delivered 19/01/2011	24 yrs at time offending. Convicted after fast track PG Prior criminal record – stealing; benefit by fraud; agg burg and stealing. History of violence - 2 yrs prior had been involved in a fight causing the death of the other party to the altercation - no charges were laid. Offending breached CBO (agg burg).	Ct 1: Dep lib. Ct 2: Dep lib. Ct 3: AOBH. Ct 4: Threat to kill. Respondent believed intimate relationship existed between his de facto (victim 1, 22 years) and victim 2 (20 years). Victim 1 and respondent separated at time offending. 4 weeks after the separation, respondent met with victim 1 and victim 2. Spoke for awhile then victim 2 left premises, victim 1 remained with respondent. Victim 1 and respondent then went looking for victim 2, found her, spoke to her, and left again. <u>Ct 1:</u> Respondent detained victim 1 in vehicle and drove to his home. Victim 1 attempted to escape to neighbours home, but respondent forced her back	Ct 1: 12 mths imp. Ct 2: 12 mths imp. Ct 3: Fine \$1000 Ct 4: 2 yrs imp. \$1,000 fine imposed for breach CBO. TES 2 yrs imp susp 18 mths \$2,000 fine. Spent 120 days in custody prior to sentencing. Genuine remorse; accepted responsibility	Allowed. TES 18 mths imp substituted. <u>Sentences on appeal:</u> Ct 1: 12 mths imp. Ct 2: 12 mths imp. Ct 3: 6 mths imp. Ct 4: 18 mths imp - reduced to recognise rehabilitative efforts since SIO imposed. Respondent and victim 1 had reconciled at time sentencing – erroneously identified by the sentencing judge as a

		<p>Breached bail for these offences by failing to comply with residential requirement – remanded in custody.</p> <p>Respondent and victim 1 have 2 yr old child together; educated to yr10; good employment history.</p> <p>Suffered from anxiety and depressive disorder - on medication; psych report estimated slightly below average intelligence.</p> <p>Under influence alcohol and cannabis at time offending.</p>	<p>by putting his hand over her mouth and carried her back into his home, placed her on the lounge, then armed himself with a spear gun and loaded with a barbed spear.</p> <p><u>Ct 2:</u> When victim 2 arrived respondent pointed speargun at her and forced her to enter. Then demanded that mobiles be placed on the kitchen table. Victim 2 tried to leave but respondent pushed his left shoulder into victim 2’s body to stop her. Respondent said ‘no one is leaving until I say so’ and he was ‘dying tonight’ and would be taking someone with him. He looked directly at victim 2 while speaking.</p> <p><u>Ct 3:</u> Respondent then demanded victim 2 give her car keys, when victim 2 refused and tried to leave, respondent punched her left cheek with sufficient force to knock her down. He then picked victim 2 up by the throat and placed her on the ground facing him. Then hit her in the same area of her face causing her skin to split. Victim 2 suffered bruising (face, arm and groin), a laceration to her cheek and a non displaced fracture to her cheek.</p> <p><u>Ct 4:</u> Victim 2 then threw her keys onto the table. Respondent forced victim 2 onto a kitchen stool, pick up a loaded spear gun and pointed it at her chest. He then said he could shoot her in the chest now, then call the police, or call the police first, then shoot her in the chest. He also said ‘You killed me, that’s why I have to kill you’. Respondent eventually surrendered to police.</p>	<p>mitigating factor.</p> <p>At [3] <i>“The hallmark of domestic or relationship related violence is the readiness of many victims to return to, or remain in, a relationship with perpetrator of the violence. The otherwise appropriate penalty should not be reduced because there is a return to the status quo that existed prior to the breakdown of the relationship which precipitated the violence. It is also circular to rely on the return to the relationship status quo as the route to rehabilitation.”</i></p> <p>At [92] variations in circumstances dep lib can be committed in means there is no ‘tariff’ for the offences itself – appropriate sentence dependent on individual facts.</p> <p>At [106] <i>“The usual sentencing disposition where a person is convicted of the offence of deprivation of liberty or</i></p>
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			Unprovoked assault over prolonged episode intimidation of victim 2 committed in the context of a domestic relationship with victim 1. Victim 2 suffered psychological difficulties as result of offending and moved towns to get away from respondent and his family.		<i>the offence of threatening unlawfully to kill, where the offender is armed with a weapon and the offending is otherwise objectively serious, is a term of imprisonment to be served immediately”.</i>
21.	<i>Fogg v State of Western Australia</i> [2011] WASCA 11 Delivered 18/1/2011	18 yrs at time offending. Convicted after PG. Co-operated with authorities. No prior criminal record.	1 x Agg armed robbery. 1 x Dep liberty. 1 x Agg burglary. 1 x Gain benefit by fraud. Appellant and two co-offenders travelling to Dunsborough in appellant’s car. On the way, one of the co-offenders suggested they stop at victim’s house to collect a debt allegedly owed by victim. Appellant did not know victim but agreed to go and collect debt. Arrived at house at approx 11pm, appellant and two co-offenders went to door and knocked. Victim opened door and appellant and two co-offenders pushed past victim and entered the house. Appellant and one co-offender armed with 60cm iron bars from the boot of the car. Victim ordered by one of the co-offenders (armed with a knife) to sit on the couch. Victim complied and appellant stood near him, holding the iron bar. Victim was threatened and hit in the face by co-offender and was visibly scared. Appellant went into kitchen, picked up 10cm knife and returned to his place near the victim – holding the knife in front of him. Appellant and two co-offenders removed a number of items from the house (eg TV, stereo,	2 yrs imp (reduced from 3 yrs for co-operation). 1 yr imp. 2 yrs imp. 3 mths imp. TES 2 yrs imp. EFP.	Dismissed.

			<p>DVD recorder). Some of the goods taken from the house were later sold at Cash Converters – the appellant and co-offenders using the money to buy alcohol and drugs which was then shared. Police also found some of the stolen goods at the appellant’s house.</p> <p>Appellant affected by drugs/alcohol; played a lesser role but was still a willing participant.</p>		
20.	<p><i>Royer v The State of Western Australia</i></p> <p>[2009] WASCA 139</p> <p>Delivered 6/08/2009</p>	<p>30 yrs at time offending (victim 62 yrs).</p> <p>Convicted after PG. Prior criminal record – drugs; fraud; stealing; and burglary; no violent or sexual offending.</p> <p>History substance abuse.</p>	<p>1 x Agg burg. 1 x Dep lib. 1 x Threat to kill. 1 x Agg sex assault (digital pen vagina). 1 x Agg sex assault (digital pen anus). 1 x Agg sex assault (pen vagina with penis). 1 x Agg AOBH.</p> <p>Offending in worst category and ‘horrendous’ in nature - justify ‘something approaching the statutory maximum penalty’.</p> <p>Appellant separated from de facto of 3 years approx one week prior attack. Under influence of drugs and alcohol. Entered through unlocked door, went to victim’s bedroom and forced her onto bed. Removed clothes and tied up victim then placed pillow over victim’s face and digitally penetrated vagina. Turned victim onto her stomach, spat on her anus and inserted fingers. Both digital penetrations were repeated, used more than one finger each time and caused severe lacerations, bleeding and immense pain. Appellant masturbated to achieve erection and penetrated vagina until ejaculated. Struck victim on</p>	<p>5 yrs imp. 3 yrs imp. 3 yrs imp. 8 yrs imp. 8 yrs imp. 8 yrs imp. 2 yrs imp.</p> <p>TES 16 yrs.</p> <p>EFP.</p>	<p>Dismissed – ‘severe’ but reflective of criminality.</p> <p>NB: original sentence, upheld by the Court of Appeal, was imposed whilst the transitional provisions were in force.</p>

			face, threatened to kill her if she told anyone and stole \$200 from purse before leaving. Victim was left naked and bound on her bed, eventually freed herself.		
19.	<p><i>The State of Western Australia v TIK</i></p> <p>[2009] WASCA 122</p> <p>Delivered 14/07/2009</p>	<p>TIK convicted after PG all counts. SNK convicted after PG to cts 1 & 2.</p> <p><u>TIK</u> No relevant prior criminal record.</p> <p>Depression; alcohol problems.</p> <p>Good employment history – employed as fly-in, fly-out mine worker at time offending.</p> <p><u>SNK</u> No prior criminal record.</p>	<p>Ct 1: Reckless conduct resulting in a child under care/control suffering harm s 101(1) <i>Children & Community Services Act 2004</i>. 2: Dep lib. Ct 3: AOBH.</p> <p>Two respondents – husband (TIK) and wife (SNK). Victim aged 6 yrs 9 mths.</p> <p>Victim’s mother was a friend of SNK. After leaving the hospital following the victim’s birth, the victim’s mother surrendered care of the victim to the respondents. The respondents were effectively the victim’s parents from birth.</p> <p>Department for Child Protection (DCP) officers attended respondents’ home. Respondents were not home but several of their children were. The victim was found in the garage attached to the house in a travel cot. The garage was dark (no natural or artificial light) and used for storage. The cot had a piece of wooden board attached to the top by ropes – the victim could not get out of the cot or stand up. The victim was found at approx 2pm and had been in the cot since the evening prior. Inside the cot was a screwdriver, a silver coloured saucepan, a hairbrush and a quilt. The screwdriver was given to the victim so he could bang on the saucepan lid when he needed to go the toilet. TIK stated that the victim was let out for 30</p>	<p>Ct 1: 2 yrs 8 mths imp. Ct 2: 2 yrs 8 mths imp. Ct 3: 6 mths imp.</p> <p>TES 3 yrs 2 mths imp (TIK) and 2 yrs 8 mths imp (SNK).</p>	<p>Allowed.</p> <p>TES increased to 7 ½ yrs imp (TIK) and 6 yrs imp (SNK).</p> <p><u>Sentences on appeal:</u> Ct 1: 6 yrs imp. Ct 2: 1 yrs imp. Ct 3: 6 mths imp.</p> <p>At [52] the appropriate sentence for ct 2 (dep lib) was 4 yrs imp – reduced only to avoid infringing totality principle as per <i>Mill v The Queen</i> (1998) 166 CLR 59.</p> <p>At [45] dep lib in these circumstances was an offence of the utmost seriousness.</p>

			<p>minutes each morning and put back in the cot when the respondents were out. In addition to being locked in the cot, the victim was fed irregularly, separately from the family and given inadequate food. When found, he was extremely underweight, had bruising on his back and forehead and was pale and cachectic. Medical examinations concluded the victim had failed to thrive and grow since he was 4 ½ yrs old and revealed the existence of old fractures.</p> <p>Victim was removed from school by SNK in 2006. Cupboards, fridges and freezers were locked so the victim could not access any food.</p> <p>TIK and SNK had 5 other children (3 together and 2 from SNK's previous relationship). Those children were clothed, fed, schooled and had their own bedrooms. The children were all subsequently removed from the respondents and placed in the care of DCP.</p>		
18.	<p><i>Miller v The State of Western Australia</i></p> <p>[2009] WASCA 79</p> <p>Delivered 02/04/2009</p>	<p>31 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record - agg burg; assault.</p> <p>Substance abuse issues; lack of family support.</p> <p>Under influence methamphetamine use at the time of offence.</p>	<p>Ct 1: AOBH. Ct 2: Dep lib. Ct 3: Assault with intent to rob. Ct 4: Armed robbery. Ct 5: Stealing a motor vehicle. Ct 6: Threat to kill. Ct 7: Agg burg. Ct 8: AOBH. Ct 9: Agg burg.</p> <p>13 x s 32 offences (arising from same facts). Appellant and victim in relationship and had been taking drugs for hours prior to offending.</p>	<p>Ct 1: 7 mths imp. Ct 2: 12 mths imp. Ct 3: 30 mths imp. Ct 4: 41 mths imp. Ct 5: 7 mths imp. Ct 6: 7 mths imp. Ct 7: 30 mths imp. Ct 8: 5 mths imp. Ct 9: 12 mths imp .</p> <p>TES 7 yrs 5 mths imp. EFP.</p>	Dismissed.

		PSR/ psych report suggested may have psychotic mental illness, and personality disorder causing fears of jealousy and abandonment – did not relieve moral culpability.	Appellant believed the victim was being unfaithful, was a prostitute and, as a result, wanted to kill him. Appellant forcefully removed victim from house and walked around the surrounding suburb for 3 hours. During this time the appellant attempted to steal a car. The appellant then succeeded in stealing a car and bankcard. At all material times the appellant was berating/ hitting victim, armed with knife, swung a blade at her, causing cuts to her hands, drove victim to bank and tried to force her to withdraw money using stolen bankcard. Victim escaped to nearby fast food outlet whose employees hid her. The appellant then broke into the fast food outlet by damaging premises and assaulted 2 employees. The appellant then got back into the car and was pursued by police, driving in excess of 140 km p/h. Appellant drove on wrong side of road, caused 4 separate traffic collisions involving six vehicles. Failed to assist the injured people in the collisions. When car was so damaged he could no longer drive it, he ran away. The appellant broke into another residence to steal another car. Police eventually located appellant, when interviewed he admitted the offences.	Remorseful; high risk of future violence.	
17.	<i>Pollock v The State of Western Australia</i> [2009] WASCA 121 Delivered 14/07/2009	29 yrs at time offending. Convicted after PG - part way through trial, after victim suffered ordeal of giving evidence. Prior criminal record - disorderly conduct; damage	1 x Agg Burg. 1 x Dep Lib. 1 x AOBH. 1 x Sex pen. 1 x Dep Lib. 1 x GBH. 1 x AOBH. 1 x Stealing. 1 x Stealing.	7 yrs imp. 3 yrs imp. 2 yrs 8mths imp. 8 yrs imp. 3 yrs imp. 3 yrs imp. 2 yrs 8mths imp. 2 yrs imp. 2 yrs imp.	Dismissed. <i>At [53] ‘I am not satisfied that the total effective sentence...was inappropriately long in light of the appellants offending or his personal circumstances.’</i>

		to property; dishonesty; drugs. Born in Kununurra; left school yr 8; abused drugs and alcohol from early age.	Offending at the high end of scale. Female victim went to party with appellant, met a female friend, D, and returned to house. Altercation occurred and D asked to leave by male victim. Victim went to bed. D returned to party and informed appellant and co-offender of altercation. As revenge appellant and co-offender, armed with knife and stick, entered house, tied up male victim, assaulted him and cut off his finger. Tied up and assaulted female victim and inserted unknown object into her vagina.	TES 14 yrs. EFP. Minimal acceptance responsibility; serious risk recidivism.	Nothing in appellant's circumstances indicating sentence more crushing than imposed on any other offender. If sentences had been made concurrent then criminality of the offences would effectively be unrecognised
<i>Transitional Provisions Repealed (14/01/2009)</i>					
16.	<i>Woodley v The State of Western Australia</i> [2008] WASCA 92 Delivered 24/04/2008	47 yrs at time offending. Convicted after trial. VRO against offender (victim and offender married but separated). Moderate prior record related to misuse of alcohol Aboriginal man; parents alcoholics; grew up on New Norcia mission. Started new relationship whilst awaiting trial, father of 6 month old child	1 x Agg Burg. 1 x AOBH. 1 x Dep lib. 1 x Sex Pen. Appellant travelled via car with three females to Muchea where victim resides with de facto. Found victim in bathroom, grabbed her by hair and punched her in head. Forced her into car and drove her back to Perth where he raped her at a house in Cloverdale.	2 yrs 8 mths imp. 12 mths imp. 12 mths imp. 4 yrs imp. Total effective sentence 6 yrs 8 mths imp. EFP. No insight; maintains denial and claims consensual.	Dismissed. <i>At [25] 'Total concurrency of the sentences would result in a total sentence of 4 yrs and that would be an inadequate measure of the total criminality of the appellant's conduct'.</i>

<p>15.</p>	<p><i>Thorn v The State of Western Australia</i></p> <p>[2008] WASCA 36</p> <p>Delivered 27/02/2008</p>	<p>23 yrs at time offending. 34 yrs at time sentence (DNA match after arrest).</p> <p>Convicted after late PG.</p> <p>Prior criminal record – arson; burglary; disorderly conduct; drug offences; trespass; breach of probation order.</p> <p>Schizophrenia and organic psychosis; made number of serious suicide attempts; moderate cognitive deficit resulting from trail bike accident.</p> <p>Various substance abuse problems - may have been intoxicated at time of offences with morphine and valium type substances.</p> <p>Psychiatric assessments provide partial explanation but no excuse, legal otherwise, for the gravity of offending, degree of planning that accompanied the criminality.</p>	<p>1 x Burglary. 1 x Dep lib. 1 x Dep lib. 1 x Att Agg Sex Pen. 1 x Agg Sex Pen. 1 x Agg Sex Pen. 1 x Agg Sex Pen.</p> <p>Offences in worst category of offences of the kind in question</p> <p>Broke into victim's home after disconnecting telephone. Entered bedroom armed with knife where victim sleeping with 4 yr old daughter. Sexually assaulted victim whilst daughter lay in bed next to her. Made victim come to lounge room where he sexually assaulted her again.</p>	<p>18 mths imp. 18 mths imp. 9 mths imp. 3 yrs imp. 6 yrs imp. 6 yrs imp.</p> <p>TES 7 yrs 6 mths imp.</p>	<p>Dismissed - total sentence within range; proportionate to criminality.</p> <p>At [49] <i>'The dominant sentencing considerations for offences of the kind in question are punishment of the offender, and specific and general deterrence.'</i></p>
<p>14.</p>	<p><i>Henderson v The</i></p>	<p>27 yrs at time offending.</p>	<p>Ct 1: Agg burg (victim1).</p>	<p>Ct 1: 20 mths imp.</p>	<p>Dismissed.</p>

	<p><i>State of Western</i></p> <p>[2007] WASCA 198</p> <p>Delivered 28/09/2007</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal record. Technical qualifications; excellent employment history; family support; long term relationship.</p> <p>Bouts of depression.</p>	<p>Ct 2: Dep lib (victim 1). Ct 3: Steal motor vehicle (victim 1). Ct 4: AOBH (victim 2). Ct 7: Dep lib (victim 1.) Ct 8: Dep lib (victim 2).</p> <p>Appellant loaned two victims \$8,000 as part of a drug deal they were all involved in. Appellant attempted to contact victims regarding the repayment of the loan but could not get in touch with them. Appellant and friend went to victim 1's house. Appellant entered the house after victim 1 refused to come out and punched victim 1 in the head (ct 1). Appellant was wearing knuckledusters. Appellant said he was going to see victim 2 and victim 1 was forced to accompany him (ct 1). Appellant and victim 1 drove in victim 1's car to victim 2's house (ct 3). On entering the house, the appellant punched victim 2 above the eye (ct 4). Appellant and both victims began talking and appellant eventually demanded the keys to victim 2's car. Appellant drove victims 1 & 2 to a carpark (cts 7 & 8). After failing to secure money to be able to repay the debt over the phone, victim 2 signed his car over to the appellant. Appellant told victim 2 he would not register the transfer yet and that he would give him more time to pay. Over the next few days the appellant returned some of victim 2's items that had been in the car and used the car as his own. Appellant was told the police were looking for him and the car and he abandoned the car.</p>	<p>Ct 2: 16 mths imp. Ct 3: 8 mths imp. Ct 4: 12 mths imp. Ct 7: 16 mths imp. Ct 8: 16 mths imp.</p> <p>TES 48 mths imp. EFP.</p>	<p>At [61] <i>'It is not easy to make comparisons for the offence of unlawful detention because, like crimes such a manslaughter, it covers a broad spectrum of possibilities.'</i></p> <p>At [61] Dep lib committed in tandem with sex offences are not properly comparable to those with no sex offences.</p>
13.	<p><i>Seroka v The State of Western Australia</i></p>	<p>33 yrs at time sentencing.</p> <p>Convicted after trial.</p>	<p>Ct 1: GBH with intent. Ct 3: Dep lib. Ct 4: AOBH.</p>	<p>Ct 1: 4 yrs imp. Ct 3: 3 yrs 4 mths imp. Ct 4: 2 yrs imp.</p>	<p>Dismissed.</p> <p>At [1] & [53] leniency of</p>

	<p>[2006] WASCA 284</p> <p>Delivered 22/12/2006</p>	<p>Prior criminal record – drugs; wilful damage.</p> <p>Dysfunctional family background.</p> <p>De facto relationship; 3 children (one with current partner); good employment history.</p>	<p>Barbaric and savage premeditated attack.</p> <p>Victim, co-offender and appellant were involved in manufacture methyl. Victim’s rural property was raided by police and lab equipment seized. Victim charged and released on bail.</p> <p>Appellant and co-offender confronted victim after his release on bail wanting compensation for the seized equipment. The victim was driven to a remote bush area and hit without warning on the head. Victim fell to the ground and was kicked repeatedly by appellant and co-offender. Co-offender armed with pick handle and appellant armed with piece of wood – attacked victim. Victim managed to escape after a period of time and was flown to Perth for surgery.</p> <p>Victim suffered numerous broken bones, bruised kidneys, blood in his urine, extensive bruising and soft tissue injuries.</p> <p>Victim discharged from hospital after 5 days in plaster casts and a leg splint and made arrangements to travel to Bunbury. Appellant and co-offender learned of travel plans and intercepted the car the victim was travelling in. They placed a shirt over the victim’s head and drove him to a vacant house where he was again beaten and threatened. Victim was assaulted with knuckleduster, had his feet burned with a metal poker, had cigarettes stubbed out on his skin, was spat on and restrained by being duct taped to a mattress. During this time the victim was forced to sign vehicle transfer papers. Victim escaped and sought help from neighbouring house.</p>	<p>TES 7 yrs 4 mths imp.</p> <p>EFP.</p> <p>No remorse.</p>	<p>TES noted.</p> <p>NB: individual sentences not challenged only TES.</p> <p>At [20]-[22] rejects ‘maximum individual sentence limitation’ whereby TES cannot be higher than the highest individual maximum penalty for the offences charged – sentence must reflect seriousness of total offending.</p> <p>At [56]-[61] totality principle is not breached where TES higher than normal level of sentences for the most serious offence.</p>
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<p>12.</p>	<p><i>The State of Western Australia v Turaga</i></p> <p>[2006] WASCA 199</p> <p>Delivered 5/10/2006</p>	<p>28 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Offending breached parole (dep lib and agg sex pen w/o consent involving same victim).</p> <p>Prior criminal record – armed robbery; agg sex pen (same victim).</p> <p>Alcoholic; history violent offending when intoxicated.</p>	<p>1 x Dep liberty. 1 x Threat to kill.</p> <p>15 x Agg sex pen (includes digital, oral and penile pen of vagina; one penile pen of anus).</p> <p>Victim was respondent’s former wife – 3 children together. VRO in place. Reconciled briefly when appellant released on parole but separated at time attack due to appellant’s alcoholism.</p> <p>Offending occurred over period approx 3hrs – at [3] <i>‘horrible, humiliating and violent ordeal.’</i></p> <p>Respondent went to victim’s home at approx 5am, knowing she would not be there (living with her father and only returning to own home in afternoons and evenings to turn security lights on and off). Respondent hid bike so victim would not know he was there and used key to enter house. Victim came to house at approx 8.45am and as she walked down hall saw respondent sitting in chair in bedroom. Victim went to leave house. Respondent stopped her. Spoke for a short time before respondent became aggressive and pulled a knife from behind his back. Respondent put knife to victim’s throat and demanded she walk to the bedroom. Victim pleading not to rape her. Respondent told victim remove all clothes, threatening to ‘run the knife through her’ if refused. Respondent then committed 15 acts sex pen. During offending rubbed genitals on face and chest, cut her hair, made her crawl throughout house on hands and knees, demanded she dance for him and express pleasure at sexual assaults. Sex pen caused lacerations to victim’s vagina</p>	<p>4 yrs 6 mths each count.</p> <p>Owed 490 parole days.</p> <p>Total effective sentence 4 yrs 6 mths.</p> <p>EFP.</p> <p>Medium-high risk re-offending in a sadistic as well as sexual way.</p>	<p>Allowed.</p> <p><u>Sentences on appeal:</u> 8 yrs imp each first count penile pen, anal pen and oral pen. 3 yrs imp each other count oral or digital pen. 5 yrs imp each other count sex pen. 6 mths imp dep lib. 2 yrs 6 mths imp threat to kill.</p> <p>TES increased to 7 yrs 4 mths.</p> <p>EFP.</p> <p>NB: double jeopardy applied to State appeals (appropriate TES without this consideration 8 yrs 6 mths imp).</p> <p>At [12] no tariff for sexual offending but range 6 yrs-9 yrs single act penile pen vagina reaffirmed. Noted that 6 yrs often imposed after mitigating factors considered.</p>
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			(including one over 1cm in length) – speaks to force used. At [29] offending designed to ‘demean, degrade and humiliate’.		
11.	<i>Free v The State of Western Australia</i> [2006] WASCA 259 Delivered 28/11/06	44 yrs at sentencing. Convicted after fast-track PG on cts 1 & 2 BUN 113 of 2005 and early PG other offences. Cts 3 & 4 BUN 113 of 2005 committed while on bail for charge BUN 112 of 2005. Minor prior criminal record – no sex offences but was convicted being on premises without lawful excuse when attempting to view 3 girls dressing at home. Workplace injuries to head and knees lead to health issues and ongoing pain preventing appellant working last 10 yrs. Viewing pornography that depicted sexual violence.	<u>Indictment BUN 112 of 2005:</u> Ct 1: Dep liberty. Ct 2: Threats with intent to influence. Ct 3: Indec Assault. Ct 4: Indec Assault. <u>Indictment BUN 113 of 2005:</u> Ct 1: Agg indec assault. Ct 2: Agg indecent assault. Ct 3: Indec Assault. Ct 4: Dep liberty. <u>BUN 112 of 2005:</u> Victim walking alone in early hours of morning. Appellant knocked victim onto her back and into some bushes. Appellant pinned victim down, told her to shut up or he would rape her and demanded her bag. Victim resisted and appellant put hand over her nose and mouth. Appellant grabbed victim’s crotch and breast area. Appellant grabbed bag off shoulder and ran off. Victim asked for keys and appellant gave them to her. Victim recognised appellant as person she had previously met. <u>BUN 113 of 2005:</u> <u>Counts 1 & 2:</u> Victim and boyfriend had argument and police were called. Boyfriend jumped in river to avoid police and victim walked along shore trying to talk to boyfriend. Appellant knocked victim into bushes, pinned her to ground and put	<u>BUN 112 of 2005:</u> Ct 1: 16 mths imp. Ct 2: 1 yr imp. Ct 3: 2 yrs imp. Ct 4: 2 yrs imp. <u>BUN 113 of 2005:</u> Ct 1: 2 yrs 4 mths imp. Ct 2: 2 yrs 4 mths imp. Ct 3: 2 yrs imp. Ct 4: 2 yrs imp. TES 6 yrs 4 mths imp. EFP. Significant risk future offending.	Allowed. TES reduced to 5 yrs imp. EFP. Appellant’s actual sexual misconduct, as distinct from threatened misconduct, at low end of scale seriousness – acceptance by appellant of problem and willingness to engage in specialist treatment key deciding factor in reducing term. NB: Individual sentences not disturbed.

			<p>hand over her mouth. Appellant told her if she wanted to live to do as he said. Appellant said he didn't want sex just to 'lick your pussy'. Victim tried to call for boyfriend and appellant told if her she wanted to live she should calm down. Appellant then said 'just let me suck your nipples'. Appellant then sucked her nipples. Victim managed to escape and run off.</p> <p><u>Counts 3 & 4:</u> Victim walking home alone after night out with friends. Appellant approached from behind and put hand over mouth and arm around throat and forced her to ground. Appellant said 'I want your purse and I want you'. Appellant placed hand on outside clothing of vaginal area. Victim broke free and ran to police station.</p>		
10.	<p><i>Kometer v The State of Western Australia</i></p> <p>[2005] WASCA 131</p> <p>Delivered 13/07/2005</p>	<p>27 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No relevant prior criminal record.</p> <p>Good work history; 3 children (paid maintenance but did not live with any of their mothers)</p>	<p>1 x Dep lib.</p> <p>4 yrs gap between offending and trial and 2 yrs between offending and charges being laid. Delay attributable in part to legislative changes regarding identification evidence and election of appellant to have preliminary hearing and time taken to list matter for jury trial. Delays in this instance did not entitle appellant to leniency in sentence.</p> <p>Victim and a friend were drinking in a bar when they met several Gypsy Joker motorcycle group members. The victim and her friend went to another bar with the group and eventually to their clubhouse. Victim seated on barstool at the clubhouse when the appellant grabbed her wrists and led her away. Victim asked where she was being taken and the appellant replied said "come with me" and took her to a caravan on the property and prevented her from leaving. Victim was then</p>	<p>2 yrs 8 mths imp.</p> <p>TES 2 yrs 8 mths imp.</p> <p>EFP.</p>	Dismissed.

			<p>subjected to brutal sexual assault by numerous persons (appellant acquitted sex pen).</p> <p>Sentenced on basis that his presence in caravan while others engaged in sex offences constituted dep lib and that his presence also aided and abetted others in act dep lib. Behaviour of others in engaging in sex acts did not increase appellant's culpability in sentence.</p>		
9.	<p><i>Snider v The State of Western Australia</i></p> <p>[2005] WASCA 61</p> <p>Delivered 1/04/2005</p>	<p>Convicted after trial.</p> <p>Lengthy prior criminal record – break and enter; dishonesty; stealing; fraud; attempt pervert course justice.</p>	<p>Ct 1: Agg burg. Ct 2: Dep lib. Ct 3: Armed robbery.</p> <p>Appellant and co-offenders broke into a deli and stole two air rifles the deli owner lawfully owned. A few days later, appellant and co-offenders returned, wearing balaclavas and gloves and armed with firearms. Entered deli after owner answered a knock on the door, shortly after midnight, and demanded money from the safe. In the process, the owner of the deli was tied up and something placed over his head – he was left that way and it took 15-20min for him to free himself. The appellant and co-offenders left with \$30,000.</p>	<p>Ct 1: 1 yr 4mths imp. Ct 2: 1 yrs 4 mths imp. Ct 3: 4 yrs imp.</p> <p>TES 5 yrs 4 mths imp.</p>	<p>Dismissed.</p> <p>NB: co-offender also had sentence appeal dismissed <i>Munro v The State of Western Australia</i> [2005] WASCA 31 (sentence on ct 2 was 1 yr 4 mths imp; TES 6 yrs imp).</p>
8.	<p><i>Iveson v The State of Western Australia</i></p> <p>[2005] WASCA 25</p> <p>Delivered 23/02/2005</p>	<p>21 yrs at time sentencing.</p> <p>Convicted after PG at earliest opportunity.</p> <p>Prior criminal record</p> <p>Physically abused by step-father; left home at 14 yrs</p>	<p>Ct 1: Dep lib. Ct 2: AOBH. Ct 3: AOBH. Ct 4: Breach VRO.</p> <p>Victim was appellant's de facto partner – volatile 3 yr relationship.</p> <p>Appellant obsessed with belief that victim having</p>	<p>Ct 1: 2 yrs imp. Ct 2: 1 yr 4 mths imp. Ct 3: 2 yrs 8 mths imp. Ct 4: 2 mths imp.</p> <p>TES 4 yrs 10 mths imp.</p> <p>EFP.</p>	<p>Dismissed.</p>

		<p>and lived on the Kings Cross streets.</p> <p>History drug abuse (cannabis & amphetamine) and heroin addiction; drug-induced psychosis and tendency to violent behaviour resulted from drug use.</p> <p>At time sentencing was rebuilding relationship with natural father and had been drug free for 11 mths; mother also supportive at time sentencing.</p>	<p>sexual relationships with other men. Appellant, without cause or warning, has struck victim across back with a pole causing 3 abrasions (ct 2). The appellant then ran into the kitchen and grabbed a knife. Victim tried to escape through the front door but the appellant prevented him from leaving (part of ct 1). Appellant grabbed appellant around the throat and began to choke her, lifting her off the ground in the process. Victim fought back and tried to attract attention of neighbours through open front door. Appellant held her with one hand and closed the door with the other (part of ct 1). Victim passed out and awoke to find appellant forcibly removing her shorts and underwear. Victim lost consciousness again and when she awoke appellant was in another part of the unit. Victim ran from the unit screaming for help.</p> <p>Breach VRO unconnected to offending above – VRO taken out following offending and appellant phoned victim from prison in breach of that order.</p>	Genuine remorse.	
7.	<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>Appellant broke into victim 1's home, forced her to sit down, took a knife from the kitchen and threatened her with. Appellant refused to let victim leave and boasted about the bank robbery he had committed that day. Appellant handed her some money from the robbery and made her count it. Appellant entered home of victims 2 & 3 and again forced them to sit down and stay in the room with</p>	<p>7 yrs imp.</p> <p>8 yrs 6 mths imp.</p> <p>3 yrs imp 1st ct & 2 yrs imp each remaining ct.</p> <p>TES 9 yrs imp.</p> <p>PSR & psychol reports indicated high risk re-offending; little or no insight into effect on</p>	Dismissed.

		Long history poly-substance abuse – heroin at 16 yrs; amphetamines.	<p>him while he again boasted about the armed robbery. Victims 4 & 5 arrived while appellant holding victims 2 & 3 and the appellant forced them to sit and stay in the room as well. Appellant then asked them to drive him to meet an associate – two of them agreed to do so and appellant left them after being driven to the meeting spot.</p> <p>Armed robbery unconnected to other offences, although committed on same date.</p>	victims and tendency to externalise blame.	
6.	<p><i>Ahmad v The Queen</i></p> <p>[2003] WASCA 234</p> <p>Delivered 3/10/2003</p>	<p>26 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Minor prior criminal record.</p> <p>University educated.</p>	<p>Ct 1: Agg burg. Cts 2 – 7: Dep lib. Ct 8: Kidnapping. Ct 9: Extortion.</p> <p>Appellant and co-offender forced their way into a home while the family (father, mother and three of four children) were home. Appellant and co-offender wore dark clothing and balaclavas. One had gloved hands and the other had what appeared to be socks on his hands. The co-offender was armed with a rifle and the appellant armed with a hunting knife. The appellant bound the family's ankles and hands and the victim 1 (the mother) was taken to the bedroom. Appellant ordered her to take out all the jewellery and cash – which she did. Appellant questioned her about a safe – victim 1 replied they did not have one. Victim 1 returned to room where rest of family was an appellant asked same questions of victim 2 (the father). Became apparent to appellant no safe on premises but that the family had \$46,000 cash in the bank. Appellant arranged for a third and fourth co-offender to attend property. Victim 1 was</p>	<p>3 yrs imp. 3 yrs imp each ct. 7 yrs imp. 7 yrs imp.</p> <p>TES 13 yrs imp. Equivalent to 8 yrs 8 mths imp after implementation of transitional provisions.</p> <p>EFP.</p> <p>NB: Sentence imposed prior to enactment of transitional provisions.</p>	<p>Dismissed.</p> <p>At [39] In all the circumstances of offending neither the individual sentences nor the TES could be said to be manifestly excessive.</p>

			<p>blindfolded and taken to a van. She was then driven to the appellant's home, placed on a mattress and kept, blindfolded and tied, under armed guard. Appellant and one co-offender remained with rest of family at the house. Appellant told victim 2 he must pay \$46,000 to ensure safe return of his wife. Appellant gave him instructions on how to effect payment.</p> <p>Payment made and appellant directed victim 2 to a shopping centre where he said victim 1 had been left. Victim 1 was not there having been left by the appellant several miles away. Victim 2 and family spent many anxious hours before she was found. Money was not recovered.</p> <p>Appellant found to be the one who had devised the plan.</p>		
<i>Transitional Provisions Enacted (31/08/2003)</i>					
5.	<p><i>Ricciardello v The Queen</i></p> <p>[2001] WASCA 416</p> <p>Delivered 19/12/2001</p>	<p>38 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Armed robbery breached parole (heroin offences).</p> <p>Significant prior criminal record – assault; gaming; agg indecent assault; firearms offences; drugs.</p> <p>Supportive family; mother ill; father suffered 3</p>	<p>Ct 2: Robbery with violence.</p> <p>Ct 3: Dep lib.</p> <p>Ct 6: Agg burg.</p> <p>Appellant went to victim's work premises, assaulted him by repeatedly punching him and stole his phone, keys and \$580 cash.</p> <p>Appellant then took victim to co-offender's house, service station and back to victim's work premises against his will with the intent to gain more money from him.</p>	<p>Ct 2: 4 yrs.</p> <p>Ct 3: 5 yrs imp.</p> <p>Ct 6: 7 yrs 9 mths imp.</p> <p>TES 19 yrs 9 mths 22 days imp.</p> <p>Equivalent to approx 13 yrs imp after implementation of transitional provisions.</p> <p>Not EFP.</p> <p>Owed 2,212 breached</p>	<p>Allowed.</p> <p>TES reduced to 16 yrs 9 mths imp.</p> <p><u>Sentences on appeal:</u></p> <p>Ct 6: 4 yrs 9 mths imp (totality reasons only).</p> <p>Not EFP.</p> <p>Individual sentences all appropriate but TES when breach days taken into</p>

		strokes.		parole days at time sentencing to be served cumulatively on sentence above.	account excessive.
4.	<p><i>King v The Queen</i></p> <p>[2001] WASCA 198</p> <p>Delivered 19/06/2001</p>	<p>36 yrs at time sentencing.</p> <p>No relevant prior criminal record.</p> <p>Pathological gambling problem following workplace injury; good employment record.</p> <p>No previous violence in marriage.</p>	<p>Ct 1: Agg burg. Ct 2: Dep lib.</p> <p>Victim and appellant married for 13 yrs and have 3 children together (8, 5 & 3 yrs). Separated at time offending and VRO in place against appellant. Owing to appellant's violence and threats the victim moved (with children) to a women's refuge and subsequently moved to an address unknown to the appellant. Appellant found address out and went to the property and knocked on front door. When victim asked who it was, appellant replied "it's just a neighbour". Victim unlocked door and appellant pushed his way in knocking the victim over. Victim began to scream and appellant pulled her to her feet and slapped her. Victim ran screaming from house but returned as the children were there and the appellant had not followed her out. Appellant took victim to kitchen and sat her on a chair in the corner, telling her not to move, and began acting in a threatening manner. Appellant told children victim was a ghost and that they would see and smell her burn. When appellant was not looking, victim ran to lounge room to call the police but the appellant forced her to return to the kitchen (ct 2). Victim rang police when appellant went outside to tend to one of the children who had fallen off their bike.</p>	<p>Ct 1: 7 yrs imp. Ct 2: 3 yrs imp.</p> <p>TES 7 yrs imp. Equivalent to 4 yrs 8 mths imp after implementation of transitional provisions.</p> <p>Not EFP.</p>	<p>Allowed.</p> <p>EFP ordered – threat appellant will pose at time EFP matter to be assessed by Parole Board not sentencing judge.</p> <p>TES undisturbed.</p>

			Offending at upper end of scale of seriousness and only the actual infliction of physical violence could have made the offending worse. Offending was culmination of 2 mths of persecution of the victim by the appellant – it was not an isolated incident of offending.		
3.	<i>Cook v The Queen</i> [2001] WASCA 16 Delivered 6/02/2001	32 yrs at time sentencing. Convicted after trial. Employed; engaged to be married; supportive family. Offending out of character and committed while under the influence of alcohol.	1 x Armed robbery (armed with letter opener). 1 x Dep lib. Victim, 52 yrs, was an ex co-worker of the appellant at whom he was angry following his dismissal from work. Appellant went to victim's workplace wearing a disguise with the intent of stealing the days takings from the victim. Appellant pre-arranged an alibi. Appellant concealed himself in the manager's office and armed himself with a sharp letter opener. While he was waiting for the store to be locked up, the appellant slashed the office furniture. After the store was closed, the appellant approached the victim as she was counting the money. Appellant put blade of letter opener against victim's throat and threatened to kill her. Appellant stabbed desk with letter opener and tied victim's hands behind her back. Victim eventually able to free herself after appellant had left. Victim suffered severe post-traumatic stress and it was unclear at sentencing if she would ever properly recover to lead a normal life.	6 yrs 5 mths imp. 2 yrs imp. TES 6 yrs 5 mths imp. Equivalent to 4 yrs 4 mths imp after implementation of transitional provisions. EFP.	Dismissed.
2.	<i>Krencej v R</i> [1999] WASCA 20	19 yrs at time offending. Prior criminal record – burglary; stealing; robbery.	Ct 1: Stealing. Ct 2: Dep lib. Ct 3: Sex pen without consent. Ct 4: Armed robbery (money).	Ct 1: 8 mths imp. Ct 2: 5 yrs imp. Ct 3: 15 yrs imp. Ct 4: 4 yrs imp.	Allowed. TES reduced to 13 yrs 8 mths imp.

	<p>Delivered 19/05/1999</p>	<p>History breaching parole. Offending breached parole.</p> <p>Affected by alcohol, cannabis and amphetamine at time offending – significant history substance abuse.</p> <p>Educated to yr 8; limited numeracy and literacy skills; some periods of employment.</p>	<p>Ct 5: Armed robbery (car). Ct 6: Attempt pervert course justice. Ct 7: Attempt pervert course justice. 5 x s 32 offences.</p> <p>Appellant stole items from victim 1's house by removing flyscreen on kitchen window and reaching in (ct 1). Appellant then jumped several fences and entered property of victim 2 (59 yr old woman living alone). Appellant followed victim 2 into her house when she re-entered the house. Appellant removed a vest and a short from a drawer and used them to disguise his face. Appellant walked into victim 2's bedroom as she was dressing, produced a knife and demanded money. Victim 2 indicated a drawer for the appellant to open and appellant then bound victim's hands and legs using stockings (ct 2). Appellant penetrated victim 2's vagina with his penis and victim lost consciousness (ct 3). Victim 2 awoke and appellant forced her into the shower (still bound and clothed) and turned the water on. Appellant stole victim 2's keys, money and car (ct 4 & 5). Appellant later involved in car accident with victim 2's car and lied to police about his involvement (ct 6 & 7).</p>	<p>Ct 5: 1 yr imp. Ct 6: 1 yr imp. Ct 7: 1 yr imp. \$1,000 fines & 3 mths imp.</p> <p>TES 16 yrs 8 mths imp. Equivalent to 11 yrs 1 mth imp after implementation of transitional provisions.</p> <p>EFP.</p> <p>Lack victim empathy; high risk sexual re-offending.</p>	<p>EFP.</p> <p>Ct 3 reduced to 12 yrs imp for reasons of totality only.</p> <p>Allowed primarily owing to youth and the fact that the offending could not be said to fall into the worst case category.</p>
1.	<p><i>Sinclair v The Queen</i></p> <p>Supreme Court Library No 970088</p>	<p>Convicted after trial on ct 1. Convicted after late PG on ct 2.</p> <p>Prior criminal record – numerous assaults;</p>	<p>Ct 1: Dep lib. Ct 2: AOBH.</p> <p>Appellant and co-offender went to victim's house. Victim then willingly accompanied them to another house for the purpose of sorting out a debt owed by the victim to the appellant and others. On arrival at</p>	<p>Ct 1: 5 yr simp. Ct 2: 1 yrs 9 mths imp.</p> <p>TES 6 yrs 9 mths imp. Equivalent to 4 yrs 3 mths after implementation of</p>	<p>Dismissed.</p> <p>At p 5-9 discussion as to the limited usefulness of drawing comparisons between sentence for dep</p>

	Delivered 12/03/1997	burglary; GBH.	the house, victim was taken to a shed at the back of the property and punched in the face. Appellant said assault was because the victim had lied to him and that the victim could leave when things had been sorted out. Victim held in shed overnight with co-offender keeping guard. Victim was allowed to make a phone call to arrange money the next morning. Later that day the appellant became aware police had been conducting enquiries as to the location of the victim. Appellant, believing victim had alerted someone during the phone call to his situation, confronted victim and assaulted him (punched in body and face). As result police interest, appellant took victim to another house. Appellant held a further night and day – making total time held approx 2 days.	transitional provisions. EFP. High risk re-offending; threat to public.	lib when the detaining of the victim is not the gravamen of the offending (eg where the dep lib occurs in the context of a sex assault cases where the gravamen is the sexual acts) or when totality is a significant factor in the sentencing. At p 13 it is improper for the court on appeal to consider rehabilitative measure undertaken since sentencing when no error on the part of the sentencing judge has been shown.
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