

Extortion

s 397(2) *Criminal Code*

Prior to 1 January 2014

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
agg	aggravated
att	attempted
TES	total effective sentence
SIO	suspended imprisonment order
CBO	community based order
OMCG	outlaw motorcycle gang
UCO	undercover operative

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
2.	<p><i>Manisco v The State of Western Australia [No 2]</i></p> <p>[2013] WASCA 190</p> <p>Delivered 20/08/2013</p>	<p>45 yrs at time offending. 46 yrs at time sentencing.</p> <p>Convicted after late PG (25% discount).</p> <p>Extensive prior criminal history; including conviction for serious drug and weapons-related offences.</p> <p>Supportive parents and fiancée.</p> <p>Good employment history; painter; studying certificate in civil construction.</p> <p>Long history of drug abuse; mainly steroids.</p> <p>Health issues; including degenerative back condition and problems from drug use.</p>	<p>1 x Extortion.</p> <p>The victim borrowed money from his girlfriend. The relationship ended and \$8,000 remained owing.</p> <p>Manisco and a co-offender, Stone, heard about the money owed. They went to the victim's workplace and told him they were there to collect the debt. They said they would return at midday in three days to collect it.</p> <p>The appellant and Stone were not armed with weapons and did not raise their voices at the victim, however he felt his personal safety and his workshop were at risk and contacted the police.</p> <p>Three days later Manisco and Stone attended the workshop. The victim was wearing video-audio devices and Manisco was recorded threatening him and telling him he had to come up with the money the following week or they would take his motor vehicles and shoot up his workshop.</p> <p>Manisco and Stone were arrested a short time later.</p>	<p>2 yrs imp.</p> <p>EFP.</p> <p>The judge found the offending persistent and premeditated; aggravated by the appellant being in company; threatening violence and detriment; the victim's vulnerability and that the victim did not know the identity of the appellant and Stone or what they might do for the purpose of extracting payment.</p> <p>Remorseful; ceased associating with negative peer group; positive steps taken towards a pro-social life.</p>	<p>Dismissed.</p> <p>Appellant appealed length and type of sentence.</p> <p>At [61] The offending was serious. The offence was committed in company. The appellant threatened violence ... and detriment. The complainant was a small businessman at his workplace. He was a vulnerable target and the amount demanded ... was substantial for him. The complainant felt intimidated. The demand for money was persistent in that a demand was made twice and the appellant intended to return ... on a third occasion. The offence was premeditated.</p> <p>At [65] ... the seriousness of the appellant's offending precluded the suspension of the term of imp.</p>
1.	<p><i>Barry v The State of Western Australia</i></p>	<p>28 yrs at time sentencing.</p> <p>Convicted after trial.</p>	<p>2 x Extortion.</p> <p>The appellant managed a tattoo shop and members of an OMCG were his customers.</p>	<p>2 yrs imp each ct (conc).</p> <p>EFP.</p>	<p>Allowed. (Newnes dissenting).</p> <p>Appellant appealed length</p>

<p>[2012] WASCA 175</p> <p>Delivered 31/08/2012</p>	<p>No prior criminal history.</p> <p>Educated to yr 10.</p> <p>Good employment history; completed tattoo apprenticeship.</p> <p>Steady long term relationship; engaged; two children.</p>	<p>The co-offender, Reker, was the ‘sergeant at arms’ of the club.</p> <p>Reker heard two males, the victims, were claiming connections to the OMCG. The appellant contacted the victims to find out what they had been saying.</p> <p>The appellant texted the victims asking them to come to his shop. On arrival they were met by three or four strongly built, tattooed men, including Reker, who demanded to know who had been talking about the club. The victims denied responsibility. Reker told the victims they had to bash someone and video the assault. If they failed they had to pay \$2,000 or be beaten. If they went to the police they would be killed.</p> <p>The victims did not comply and a few weeks later they began receiving text messages and calls from the appellant, including threats for the money. The appellant was told he would receive a share of the money.</p>	<p>The sentencing judge found the appellant had contacted the victims at Reker’s request, fully aware he was assisting to extort money with threats of violence. He had not declined to contact the victims and nor had he declined to carry out the instructions. The offending was persistent, occurring over a period of about 2 months, and was a continuing process to extort money by threats of violence.</p> <p>The sentencing judge accepted the appellant played a lesser role than Reker and accepted he was persistently pressured and intimidated in dealing with him.</p> <p>Remorseful; low risk of re-offending.</p>	<p>of sentence and raised parity.</p> <p>Re-sentenced on each ct to 14 mths imp (conc). EFP.</p> <p>At [59] There is clearly a difference between the culpabilities of the two offenders. Although the appellant acted at the behest of Reker, he did so partly because he was intimidated by his co-offender. The appellant himself did not make any demands or threaten the complainants, and tried to reassure them that the matter could be sorted out without any harm coming to them. The appellant was not a party to the meeting ... at the rear of the tattoo shop.</p> <p>At [60] ... the appellant’s culpability was very much less than Reker’s and, even taking into account that Reker will spend his time in custody as a protected prisoner, a disparity of 1 yr’s imp between the</p>
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Office of the Director of Public Prosecutions