

Kidnapping

s 332 Criminal Code

Prior to 1 January 2014

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
agg	aggravated
burg	burglary
sex pen	sexual penetration without consent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
TES	total effective sentence
SIO	suspended imprisonment order
CBO	community based order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
7.	<p><i>Starr v The State of Western Australia</i></p> <p>[2011] WASCA 170</p> <p>Delivered 4/08/2011</p> <p>Co-offender of <i>Eriha v WA</i> [2011] WASCA 167</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal record – agg burg; threats to injure; resist arrest; poss smoking implement; agg AOBH; breach VRO; breach bail; assault police officer; AOBH; common assault; unlawful damage.</p> <p>Difficult childhood; victim violent abuse; left home at 14 yrs old and lived on streets; educated to yr 9.</p> <p>Some employment in various fields.</p> <p>Drug use.</p>	<p>Ct 1: Kidnapping. Ct 2: AOBH. Ct 4: Act likely to endanger health, life or safety.</p> <p>Victim 17 yrs at time offending and slightly built. Appellant and victim known to each other and appellant harboured considerable animosity towards victim prior to offending.</p> <p>Victim at service station waiting for a friend. Appellant and two co-offenders pulled into service station, all three got out of the ute and ran towards the victim. Co-offender 1 punched victim in side of face and victim fell to ground. Co-offender 1 then kicked victim numerous times in the head and chest – victim suffered lacerations and abrasions. Appellant and co-offender 2 then forced victim into the ute and drove him to a group of units. Victim dragged out of ute and carried into a unit by both appellant and co-offender 2, where he was forced to the concrete floor. While victim on floor, appellant and both co-offenders repeatedly kicked and punched him. Assault continued for 5-10 minutes and at end of assault victim in very bad physical condition – bleeding, difficulty standing and walking. Victim then taken back to ute, forced into it and driven to an isolated bush location. Appellant tied victim’s feet together and took off victim’s shirt. Appellant and co-offender 1 then urinated on victim.</p>	<p>Ct 1: 6 yrs imp. Ct 2: 2 yr imp. Ct 4: 3 yrs imp.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>No acceptance of responsibility; blamed co-offenders; no victim empathy.</p> <p>At [117] Considered by sentencing judge as least culpable of the three offenders but offending conduct described as ‘cowardly, brutal and sadistic.’</p>	<p>Dismissed – application for extension of time refused on papers.</p>

			<p>Ute had crane fixed to rear tray and appellant hooked victim's legs to crane and raised it so that victim was suspended upside down. Appellant and both co-offenders repeatedly kicked and forcefully kicked victim to head, chest and stomach as he was suspended upside down. Victim lowered to ground and a word was carved in his chest by one co-offender as a 'memento'. Victim thought that he was going to be killed at this point.</p> <p>Co-offender 1 then repeatedly struck victim with claw hammer on each hand – causing intense pain and serious permanent injury. Co-offender 1 then struck victim repeatedly in legs with metal tyre iron and struck victim's feet with hammer. Victim had by now been stripped to his boxer shorts and socks and could barely hobble.</p> <p>Appellant and both co-offenders got back in ute and drove away - deliberately leaving victim seriously injured with no assistance in remote location (ct 5). By time appellant and co-offenders left it was dusk – victim spent night in bush and at dawn next day managed to crawl 4-5m to dirt road. Victim seen by a man on his way home from motor biking with his son. Man has carried victim to his car and driven him to hospital (admitted suffering mild hypothermia, dehydration and serious injuries from the attack including split kneecap, multiple breaks in his shin bone, multiple fractures to his hands and extensive bruising and lacerations all over his body) – victim then transferred by air to Perth hospital. Required extensive treatment from orthopaedic and</p>		
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			<p>plastic surgeons and remained in hospital for 3 weeks.</p> <p>At time sentencing victim had limited use of hands, could not walk without leg pain, has suffered anxiety attacks, serious depression and has attempted suicide.</p>		
6.	<p><i>Eriha v The State of Western Australia</i></p> <p>[2011] WASCA 167</p> <p>Delivered 2/08/2011</p> <p>Co-offender of <i>Starr v WA</i> [2011] WASCA 170</p>	<p>22 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Prior criminal record – burglary; att burglary; AOBH; carry controlled weapon in manner likely to cause fear; had not previously served term imp.</p> <p>Difficult childhood; domestic violence; ran away from home at same time left school (part way through yr 11).</p> <p>Entrenched propensity for violence.</p>	<p>Ct 1: AOBH. Ct 2: Kidnapping. Ct 3: AOBH. Ct 4: GBH with intent. Ct 5: AOBH with intent.</p> <p>Offending within worst category of offences of this type.</p> <p>Victim 17 yrs at time offending and slightly built. Appellant and victim known to each other and appellant harboured considerable animosity towards victim prior to offending.</p> <p>Victim at service station waiting for a friend. Appellant and two co-offenders pulled into service station, all three got out of the ute and ran towards the victim. Appellant punched victim in side of face and victim fell to ground. Appellant then kicked victim numerous times in the head and chest – victim suffered lacerations and abrasions (ct 1). Two co-offenders then forced victim into the ute and drove him to a group of units (ct 2 – kidnapping extended for a period of several hours). Victim dragged out of ute and carried into a unit by both co-offenders, where he was</p>	<p>Ct 1: 1 yr imp. Ct 2: 5 yrs imp. Ct 3: 2 yrs imp. Ct 4: 9 yrs imp. Ct 5: 3 yrs imp.</p> <p>TES 11 yrs imp.</p> <p>EFP.</p> <p>High risk re-offending.</p>	<p>Dismissed.</p> <p>At [59]-[62] As offending fell within worst category, irrespective of previous sentences imposed, court entitled to impose sentence at or near the statutory maximum. Offending in this case involved criminality of highest order and demanded long custodial sentence on grounds denunciation, public protection and general and specific deterrence – appellant’s conduct cruel, deliberate, methodical and sustained.</p>

			<p>forced to the concrete floor. While victim on floor, appellant and both co-offenders repeatedly kicked and punched him. Assault continued for 5-10 minutes and at end of assault victim in very bad physical condition – bleeding, difficulty standing and walking (ct 3). Victim then taken back to ute, forced into it and driven to an isolated bush location. Co-offender 1 tied victim’s feet together and took of victim’s shirt. Appellant and co-offender 1 then urinated on victim.</p> <p>Ute had crane fixed to rear tray and co-offender 1 attached victim’s legs to crane and raised it so that victim was suspended upside down. Appellant and both co-offenders repeatedly kicked and forcefully kicked victim to head, chest and stomach as he was suspended upside down. Victim lowered to ground and a word was carved in his chest by one co-offender as a ‘memento’. Victim thought that he was going to be killed at this point.</p> <p>Appellant then repeatedly struck victim with claw hammer on each hand – causing intense pain and serious permanent injury (ct 4).</p> <p>Appellant then struck victim repeatedly in legs with metal tyre iron and struck victim’s feet with hammer. Victim had by now been stripped to his boxer shorts and socks and could barely hobble.</p> <p>Appellant and both co-offenders got back in ute and drove away - deliberately leaving victim seriously injured with no assistance in remote location (ct 5). By time appellant and co-offenders left it was dusk – victim spent</p>		
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			<p>night in bush and at dawn next day managed to crawl 4-5m to dirt road. At approx 8.30am victim seen by a man on his way motor biking with his son. Man has carried victim to his car and driven him to hospital (admitted suffering mild hypothermia, dehydration and serious injuries from the attack including split kneecap, multiple breaks in his shin bone, multiple fractures to his hands and extensive bruising and lacerations all over his body) – victim then transferred by air to Perth hospital. Required extensive treatment from orthopaedic and plastic surgeons and remained in hospital for 3 weeks.</p> <p>At time sentencing victim had limited use of hands, could not walk without leg pain, has suffered anxiety attacks, serious depression and has attempted suicide.</p>		
<i>Transitional Provisions Repealed (14/01/2009)</i>					
5.	<p><i>Wheeler v The State of Western Australia</i></p> <p>[2008] WASCA 111</p> <p>Delivered 14/05/2008</p>	<p>41 yrs at time offending.</p> <p>Convicted after PG except for the charge of conspiracy to commit murder which went to trial.</p> <p>Minor prior criminal record.</p> <p>Appellant voluntarily disclosed 8 incidents of offending which otherwise would likely have not been discovered.</p> <p>Sexually abused by grandfather</p>	<p>1 x Kidnapping. 9 x Agg indecent dealing.</p> <p>7 x Sex pen.</p> <p>1 x Sexual procurement. 1 x Encourage indecent act. 1 x Supply cannabis. 1 x Conspiracy to commit wilful murder. 1 x Att sex pen.</p> <p>Offending categorised as at the top of the range of seriousness.</p>	<p>8 yrs 10 mths imp. 10 mths on 7 cts; 12 mths imp; 2 yrs imp. 2 yrs 7 mths imp on 6 cts; 3 yrs imp. 3 yrs 3 mths imp. 10 mths imp. 14 mths imp. 5 yrs imp. 2 yrs 7 mths imp.</p> <p>TES 23 yrs 8 mths imp.</p>	<p>Dismissed.</p> <p>At [31] Appellant's maltreatment at the hands of others serves more to explain, rather than excuse, his conduct. Mitigation offered by minor criminal record and psychiatric difficulties outweighed by poor prospects rehabilitation and the danger he poses.</p>

		<p>between ages of 8-10 yrs; physically abused by father and previous partner; 5 yrs long sexual relationship with elderly man starting when aged 11 or 12 yrs old.</p> <p>Gender identity confusion – undergone hormone therapy with view to gender re-assignment surgery in the past.</p> <p>History substance abuse.</p> <p>Depraved and violent fantasies; diagnosed as sexual sadist.</p>	<p>Victim 14 yr old boy previously unknown to both offenders. Appellant and co-offender had been in a relationship for 5 yrs prior to the offending.</p> <p>Appellant and co-offender targeted victim at a train station for the purpose of satisfying their sexual desires.</p> <p>Appellant and co-offender grabbed the victim from the train station and took him to their house. The appellant held the victim while co-offender handcuffed the victim’s ankles and tied him to the bed. The victim was then gagged with a sock or handkerchief shoved in his mouth and secured with tape.</p> <p>The appellant and co-offender held the victim for 21 days and subjected him to a series of offences of “staggering depravity”. The victim was found when police raided the house.</p> <p>Appellant and co-offender had planned to kill the victim and had discussed places and ways to dispose of his body.</p> <p>Appellant was dominant offender and his fantasies were found to have been causative of the offending. Police found notes and drawings detailing what the appellant wanted to do to young victims.</p>	<p>No victim empathy; some minimising of responsibility; high risk re-offending; present danger to society on release.</p>	<p>At [37] TES is severe but the circumstances of the case are so exceptional that the totality principle has not been breached.</p>
4.	<i>Tubb v The State of Western Australia</i>	<p>21 yrs at time offending.</p> <p>Convicted after fast-track PG.</p>	<p>1 x Kidnapping. 1 x AOBH s 317(1) <i>Criminal Code</i>.</p> <p>Victim was taken by a group of men, including</p>	<p>5 yrs 7 mths imp. 2 yrs 7 mths imp. TES 5 yrs 7 mths imp.</p>	<p>Dismissed.</p> <p>At [14]-[18] Some discussion of comparative</p>

<p>[2007] WASCA 106</p> <p>Delivered 24/05/2007</p>	<p>Prior criminal record – poss controlled weapon (Tasmania); no convictions in WA.</p> <p>Only been in WA a few weeks before offending.</p>	<p>the appellant, from a pub to a house. The appellant was not aware that the victim was taken to the house against his will. On arriving at the house, the appellant joined in punching the victim. The main offender threatened the victim with a 20cm kitchen knife, pushing it against his chest. The appellant then produced a pocket knife which he offered to the main offender. The victim was handcuffed tightly with his hands behind his back by the appellant and the appellant and main offender then dragged the victim to the back shed. Once in the shed, the victim’s legs and feet were bound with masking tape and he was gagged (rag stuffed in his mouth), blindfolded and pushed onto a lounge with a box on top of him. The appellant kept watch outside the shed and when the victim freed his feet and spat out the gag, the appellant punched him in the face. Later on, the victim was dragged back into the house. By this point, the victim’s hands had gone numb owing to the handcuffs and he begged for them to be loosened to no avail. The appellant used his pocket knife to cut the victim’s shirt off, exposing chest injuries and dragged the still handcuffed victim into the bathroom where he was held under alternate hot and cold water in the bath. The appellant used his foot to push the victim under the cold water. Main offender told the appellant he had “one hour” and to ensure there was no blood. On orders from the main offender, the appellant later removed the tape and cuffs from the victim. The victim was ordered to clean the bathroom. Later that night a dog choker chain</p>	<p>EFP.</p>	<p>kidnapping cases.</p> <p>NB: Only kidnapping sentence challenged on appeal.</p>
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			<p>was put around the victim's neck and paper stuffed into his mouth and taped in. The offenders ordered pizza and the victim was forced to crawl around, still chained, and eat the crusts off the floor. Later, the appellant bound and handcuffed the victim again – forcing him to sleep on the couch that way. The next day, the victim's restraints were removed and he was allowed to move around the house but the door was padlocked. The victim was treated as a slave and made to clean the house and make the main offender's dinner, being taken outside only to use the toilet. In the evening, the victim was left to sleep on the couch. At some point during the night, when everyone else was asleep, the appellant removed the handcuffs. When the appellant fell asleep, the victim escaped and went to the police.</p> <p>The victim was held for 35 hrs and suffered extensive cuts, abrasions, swelling and tenderness over his whole body.</p> <p>Appellant sentenced on the basis not principal offender but second in charge acting, at times, under orders and, at times, independently.</p>		
3.	<p><i>Ahmad v The Queen</i></p> <p>[2003] WASCA 234</p> <p>Delivered</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.</p> <p>Cts 2 – 7: Dep lib.</p> <p>Ct 8: Kidnapping.</p> <p>Ct 9: Extortion.</p> <p>Appellant and co-offender forced their way into a home while the family (father, mother</p>	<p>3 yrs imp.</p> <p>3 yrs imp each ct.</p> <p>7 yrs imp.</p> <p>7 yrs imp.</p> <p>TES 13 yrs imp.</p> <p>Equivalent to 8 yrs 8</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</p>

	3/10/2003	<p>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 and 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.</p> <p>Appellant arranged for a third and fourth co-offender to attend property. Victim 1 was 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.</p> <p>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. 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>mths imp after implementation of transitional provisions.</p> <p>EFP.</p> <p>NB: Sentence imposed prior to enactment of transitional provisions.</p>	manifestly excessive.
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			Appellant found to be the one who had devised the plan.		
<i>Transitional Provisions Enacted (31/08/2003)</i>					
2.	<p><i>Payne v The Queen</i></p> <p>[2002] WASCA 186</p> <p>Delivered 17/07/2002</p>	<p>54 yrs at time offending.</p> <p>Convicted after PG.</p> <p>No prior criminal record.</p> <p>Distinguished career in British and Australian Armed Services; awarded Order of Australia.</p> <p>Diagnosed mental illness which affected judgment at time offending such that appellant not capable making informed or logical choices or rationalising consequences of his actions; illness fell short of rendering appellant incapable of knowing what he was doing was wrong or making his acts involuntary but was nonetheless causative of offending to a significant degree.</p> <p>Married; 3 adult children.</p>	<p>1 x Extortion. 1 x Kidnapping. 2 x Threats to kill.</p> <p>Offending categorised on appeal as near the top of the range of seriousness.</p> <p>Appellant demanded \$2,000,000 from Burswood Casino under threat that failure to pay would result in the detonation of explosive devices in the resort and casino capable of injuring anyone within a 50 foot radius of the devices.</p> <p>Following the initial letter of demand, the appellant rang the casino switchboard and used a pre-arranged code to establish his authenticity. Appellant then provided instructions as to how the money should be delivered to him. An undercover police officer (UCO) played the role as courier for this purpose and followed the appellant's instructions. Eventually, the UCO was met by the appellant. The appellant was dressed in dark clothing, hooded jacket and camouflage paint and was armed with a semi-automatic weapon and grenade. The gun and grenade were later found not to be genuine but the UCO believed they were real at all times.</p>	<p>6 yrs imp. 6 yrs imp. 4 yrs imp each ct.</p> <p>TES 12 yrs imp. Equivalent to 8 yrs imp after implementation of transitional provisions.</p> <p>EFP.</p> <p>Remorse; full acceptance of responsibility.</p>	<p>Dismissed.</p> <p>At [36]-[50] Discussion as to the place mental illness plays in sentencing and how to balance that against the objective seriousness of the offending itself.</p>

			<p>The appellant threatened to shoot and kill the UCO and then told him to drive to a shopping centre. The appellant then ordered the UCO to take the money out of the parcel and put them in his bag. The UCO was then ordered to drive to a nearby location where the appellant called the casino from a payphone to make sure they knew if an attempt was made to catch him, the UCO would be shot in the head. The appellant also made the UCO drink a liquid he said contained a sleeping drug under threat of being shot. After drinking the liquid, the UCO was ordered to walk along a creek bed, take off his clothes and run back to the vehicle with the warning that if he looked back he would be shot. UCO ran back to the car and drove off – he was intercepted by police and taken to hospital, the liquid he was forced to drink doing him no harm.</p> <p>Appellant was arrested a few days later when he returned to the area he was last at with the UCO. The reasons for his return were not fully clear.</p>		
1.	<p><i>Peters v The Queen</i></p> <p>[2000] WASCA 28</p> <p>Delivered 21/02/2000</p>	<p>Prior criminal record – reckless driving; stealing; poss smoking implement.</p> <p>History substance abuse issues.</p> <p>Offending breached a work release order.</p>	<p>1 x Kidnapping. 1 x Steal motor vehicle. 1 x Agg robbery.</p> <p>Appellant and co-offender decided to go to Kings Park to break into cars in order to obtain money to buy heroin but could not find any suitable vehicles. The victim, 72 yr old man, had parked in Kings Park intending to sit in the car and read his book. The doors were locked but the driver’s window was down approx 6</p>	<p>TES 9 yrs imp.</p> <p>Equivalent to 6 yrs imp after implementation of transitional provisions.</p>	<p>Dismissed – leave refused on papers.</p> <p>At [18]-[21] The gravity of certain offences can outweigh any mitigation to be found in youth or good antecedents. The appellant was of an age where he knew what he was doing was wrong yet he willing</p>

			<p>inches. Co-offender reached in the open window, unlocked and opened the door. Co-offender dragged the victim out of the car and the appellant helped push him into the back seat of the car. Appellant got in the back with the victim and the co-offender drove the car to an ATM. Appellant restrained the victim on the drive by forcing his head onto the appellant's lap and hitting him around the head and face. The restraint caused the victim difficulty in breathing and when the victim voiced this he was threatened by the appellant – the threats including being stabbed, killed, having his face smashed in and pricked with a blood filled syringe. Appellant took the victim's wallet from him and removed \$200 cash. The co-offender took a bank from the wallet and demanded the PIN. The victim told them the PIN after being threatened by the co-offender that if he gave the wrong PIN he would be killed and the co-offender withdrew \$1000 from the victim's bank. Co-offender then drove to a neighbouring suburb and ran off with the appellant.</p> <p>Following considerable media coverage, both the appellant and co-offender handed themselves in to police and made full admissions.</p> <p>Victim suffered cuts, abrasions and bruising which required medical treatment. Victim suffers panic attacks and anxiety as a result of the offending.</p> <p>Co-offender 41 yrs at time offending;</p>		<p>participated. The differences in the age and antecedents of each offender is of little consequence given the nature of the offending and their equal culpability. Therefore the imposition of the same sentence does not breach the parity principle.</p>
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			extensive prior criminal record but no violent offending; history substance abuse issues; convicted after fast track PG; remorse. Sentenced to TES 9 yrs imp.		
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