

Receiving stolen or fraudulently obtained property

s 414 *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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
PG	plead guilty
att	attempted
ct	count
TES	total effective sentence
EFP	eligible for parole
PSR	pre-sentence report
SIO	suspended imprisonment order
poss	possess
wiss	with intent to sell or supply
ISO	intensive supervision order
agg burg	aggravated burglary
CRO	conditional release order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
13.	<p><i>Wallam v The State of Western Australia</i></p> <p>[2012] WASCA 115</p> <p>Delivered 7/06/2012</p>	<p>28 yrs at time of offending.</p> <p>Convicted after PG.</p> <p>Lengthy prior criminal record – numerous agg burg, stealing, steal motor vehicle, armed robbery, assault, robbery, AOBH and traffic offences.</p>	<p>1 x Receiving (a large portion of property stolen from a residential burglary valuing \$40, 588 in total).</p> <p>Police attempted to pull the appellant over due to his manner of driving but the appellant did not comply. A high sped pursuit ensued, the appellant stopping only when his car engine caught on fire. Five or six occupants ran from the appellant’s car and the appellant was eventually found hiding in a residential backyard near the abandoned car. Police found numerous items from a burglary which occurred approx 45 minutes prior to the search – not all the property stolen was found in the car (several items of jewellery were never recovered). Police also found a jimmy bar and hammer in the car.</p> <p>Offending described as serious due to value of property, failure to recover all of the stolen property and proximity of possession to theft.</p>	<p>3 yrs imp.</p> <p>TES 3 yrs imp.</p> <p>EFP.</p> <p>No genuine remorse</p>	<p>Dismissed – leave refused on papers.</p> <p>At [13] Difficult to discern a range for receiving as the circumstances of offending can differ widely and considerations of totality often intrude on individual sentences.</p>
12.	<p><i>Dass v The State of Western Australia</i></p> <p>[2011] WASCA 271</p> <p>Delivered 23/12/2011</p>	<p>28 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Offending breached parole.</p> <p>Lengthy prior criminal record – drugs; receiving.</p>	<p>2 x Receiving (60 mobile phone and cash in total; value in excess of \$10,000).</p> <p>Appellant was given various items stolen from department stores by an associate to hold until the associate was able to dispose of them.</p>	<p>9 mths each ct.</p> <p>TES 9 mths imp.</p> <p>TES ordered cumulative with parole days owed.</p>	<p>Dismissed – leave refused on papers.</p>
11.	<p><i>Gullelo v The State of Western</i></p>	<p>Convicted after late PG.</p>	<p>1 x Receiving (motor vehicle).</p> <p>1 x Poss heroin wiss 10.1g at 24%.</p>	<p>9 mths imp.</p> <p>3 yrs imp.</p>	<p>Dismissed.</p>

	<p>Australia</p> <p>[2011] WASCA 261</p> <p>Delivered 30/11/2011</p>	<p>Offending breached parole.</p> <p>Significant prior criminal record – spent majority of adult life in custody.</p>	<p>Found in sentencing to be at lower end of drug distribution hierarchy.</p> <p>Appellant and co-offender under covert police surveillance and all phone calls they made and received were monitored. During that period, appellant and co-offender engaged in numerous street level drug trades.</p> <p>Appellant searched following police vehicle stop and 10.1g heroin found concealed in his underwear. Appellant also had \$1,406 cash in his wallet.</p> <p>Receiving offence unrelated to drug dealing and involved appellant placing his own license plates on a stolen vehicle he was given the keys to and driving it.</p>	<p>TES 3 yrs imp.</p> <p>Owed 1471 parole days at time sentencing – TES ordered to run concurrently.</p> <p>EFP.</p>	<p>No error in failure of sentencing judge to take into account 163 days appellant spent in custody solely in relation to the receiving and drug offences.</p>
10.	<p>Poduti v The State of Western Australia</p> <p>[2011] WASCA 169</p> <p>Delivered 4/08/2011</p>	<p>42 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Offending breached parole.</p> <p>Extensive prior criminal record – driving offences; forgery; fraud; drug offences; record of offending in Northern Territory.</p> <p>Long history substance abuse starting at 12 yrs.</p>	<p>1 x Receiving (furniture; retail value \$29,535; cost value \$13,129).</p> <p>1 x Breach SIO.</p> <p>14 s 32 offences (stealing; breach bail; driving related offences; false number plates).</p> <p>At [13] Circumstances of receiving place offending at higher end of scale of seriousness.</p> <p>Furniture stolen from furniture store found in a storage unit rented by appellant. The date of rental of the unit coincided with the day of the theft and the appellant also rented a furniture truck on the same day.</p>	<p>2 yrs imp. 7 mths imp.</p> <p>Sentence range \$250 fine – 6 mths imp.</p> <p>TES 3 yrs imp – concurrent with 129 parole days owed at time sentencing.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>At [13] Hard to identify sentence range for receiving offences as circumstances of offending vary and sentences often affected by totality considerations.</p> <p>At [15] Review of decisions shows 2 yrs imp for single offence receiving is towards higher end of sentences customarily imposed – circumstances of offending and offender</p>

					mean not manifestly excessive.
9.	<p><i>Eacott v The State of Western Australia</i></p> <p>[2009] WASCA 112</p> <p>Delivered 25/06/2009</p>	<p>Age not mitigating factor.</p> <p>Convicted after PG.</p> <p>Two instances of receiving occurred while on bail for earlier receiving charge.</p> <p>Antecedents 'not good' at [19].</p>	<p>1 x Receiving (Toyota Land Cruiser; approx value \$50,000).</p> <p>1 x Receiving (Mitsubishi truck).</p> <p>1 x Receiving (Toyota Land Cruiser; approx value \$15,000).</p> <p>1 x Receiving (Isuzu truck; approx value \$58,000).</p> <p>1 x Receiving (Shindaiwa brush cutter; approx value \$4695).</p> <p>1 x Poss cannabis wiss.</p> <p>While executing a search warrant, police found a stolen Toyota Land Cruiser (value \$50,000) in the appellant's back yard. It had been at the appellant's property for approx 11 days and specialised mining equipment (tyre, roof rack, sirens, safety lights and flags) had been stripped from it and stored in the appellant's garage. A stolen Shindaiwa brush cutter was also found during the search.</p> <p>A Mitsubishi Truck stolen from the Shire of Boyup had been driven to a property by the appellant and left there with people he knew. Appellant on bail in relation to receiving charge above when this offence committed.</p> <p>A second stolen Toyota Land Cruiser (value \$15,000) was used by the appellant for a period of approx 5 mths until the police searched his property. The appellant drove the Land Cruiser to the property the Mitsubishi Truck above was left at and left it there. The appellant had replaced the license plates of the stolen Land Cruiser with</p>	<p>9 mths imp.</p> <p>6 mths imp.</p> <p>9 mths imp.</p> <p>9 mths imp.</p> <p>3 mths imp.</p> <p>2 yrs 3 mths imp.</p> <p>TES 3 yrs 9 mths imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>At [15] Not easy to discern a sentencing range for offences of this kind due to varying value of property, circumstances of offending and totality considerations that often arise.</p> <p>At [16] Receiving very serious crime and often noted that if it were not for those willing to receive stolen property, there would be fewer thefts.</p> <p>NB: Individual sentences not challenged.</p>

			<p>license plates form an unserviceable vehicle he owned while using it.</p> <p>A stolen Isuzu Truck came into the appellant's possession while he was on bail for the first receiving charge. The appellant drove the truck to the same property the other stolen vehicles were taken to and left it there.</p>		
Transitional provisions repealed (14/01/2009)					
8.	<p><i>Ashworth v State of Western Australia</i></p> <p>[2006] WASCA 36</p> <p>Delivered 10/03/2006</p>	<p>33 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Prior criminal record - no criminal history before 2003 when drug addiction began.</p> <p>Provided some assistance to police.</p> <p>Married; three children (10, 7 and 6 yrs old).</p> <p>Alcohol and amphetamine abuse.</p>	<p>10 x Receiving. 2 x Burglary.</p> <p>1 x Breach CBO - assault police officer s 318(1)(d) <i>Criminal Code</i>.</p> <p>1 x Breach CSI – threats to injure.</p> <p>1 x Unlawful possession.</p> <p>1 x Breach bail.</p> <p>1 x Burglary.</p> <p>4 x Stealing.</p> <p>3 x Traffic offences.</p> <p>1 x Breach CBO – steal motor vehicle, no MDL.</p> <p>DETAILS FOR RECEIVING</p>	<p>2 yrs imp each ct. 2 yrs 8 mths imp each ct. 2 yrs imp.</p> <p>8 mths imp. 12 mths imp. 4 mths imp. 2 yrs imp. 2 yrs imp each ct. Fines. 2 yrs imp; \$200 fine.</p> <p>TES 6 yrs imp.</p> <p>EFP</p> <p>Undertaken courses in custody.</p>	<p>Allowed.</p> <p>TES reduced to 5 yrs imp.</p> <p>EFP.</p> <p>Sentences for receiving not appealed.</p>
7.	<p><i>Faure v The State of Western Australia</i></p>	<p>25 yrs at time offending.</p> <p>Convicted after very early</p>	<p>1 x Receiving</p> <p>Appellant's brother in law and father in law</p>	<p>2 yrs imp.</p> <p>TES 2 yrs imp.</p>	<p>Allowed.</p> <p>ISO substituted –</p>

	[2004] WASCA 315 Delivered 10/12/2004	PG and very extensive co-operation with police. No prior criminal record.	pressured him into holding a bag containing approx \$100,000 for them. The money was part proceeds of a robbery. Appellant banked a further \$10,000 into his own account. Appellant believed he would only have the bag for a week but had difficulties in getting his brother in law to take the bag back. Appellant did not know money stolen but believed it came from illegal activities. Appellant had been attacked 10 yrs earlier when people searching for his brother in law in relation to drug matters could not find him and attacked him in his place – suffered post traumatic stress and psychological difficulties as a result which were ongoing at the time he was asked by brother in law to hold money.	EFP.	appellant served 5 mths in custody prior to determination of appeal. <i>At [15] ‘It is clear that, generally speaking, offences of this kind would be visited with a substantial period of imprisonment.’</i>
<i>Transitional provisions enacted (31/08/2003)</i>					
6.	<i>Godden v The Queen</i> [2003] WASCA 150 Delivered 14/07/2003	Age not mitigating factor. Convicted after trial. Prior criminal record – fraud; stealing as servant charges. Gambling addiction – motivation for offending. De facto partner miscarried their first child at time sentencing.	1 x Agg burg. 1 x Fraud. 1 x Receiving (TV and video equipment). 1 x Fraud. Appellant and co-offender had been friends since school. Co-offender was discovered using money which belonged to his employer for private purposes and was required to repay the amount. In order to keep his job, co-offender enlisted the help of appellant to pose as the person who had received the misappropriated money. The appellant pretended to repay the money and make it appear the money had been received through no fault of the co-offender.	1 yr imp. 1 yr imp. 18 mths imp. 2 yrs imp. TES 4 yrs imp. Equivalent to 2 yrs 8 mths imp after implementation of transitional provisions. EFP.	Dismissed.

			<p>Appellant then told co-offender that someone had learned of their deceit and that they were now being blackmailed.</p> <p>Appellant and co-offender then broke into the co-offender's new place of employment and attempted to break into the safe. The attempt was unsuccessful but they later managed to open the safe and steal \$20,000 (\$10,000 of which was deposited in the appellant's bank account).</p> <p>Appellant duped a friend and house-mate of the co-offender into paying \$10,000 to a car dealer for a car for himself. The appellant was also found in possession of this victim's stolen TV and stereo equipment.</p>		
5.	<p><i>Pieri v The Queen</i></p> <p>[2002] WASCA 288</p> <p>Delivered 2/10/2002</p>	<p>Age not mitigating factor.</p> <p>Convicted after PG at first opportunity.</p> <p>Prior criminal record - armed robbery; breach bail; possess heroin.</p>	<p>1 x Receiving (TV set, video recorder, laptop computer and video camera).</p> <p>Appellant and co-offender went to house. Co-offender jumped fence and returned a while later carrying stolen items. Appellant later pawned one item at Cash Converters and was arrested when he returned to pawn remaining items the following day.</p>	<p>18 mths imp.</p> <p>TES 18 mths imp. Equivalent to 12mths imp after implementation of transitional provisions.</p> <p>TES ordered cumulative on term 6 yrs 6 mths imp appellant serving at time of sentencing.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>NB: Individual sentences not challenged.</p>
4.	<i>Lynch v Bowers</i>	Age not mitigating factor.	10 x Receiving (various items; total value approx \$7000).	12 mths imp each ct.	Offender's appeal dismissed.

	<p>[2002] WASCA 168</p> <p>Delivered 24/06/2002</p>	<p>Convicted after PG first opportunity and co-operated with police (supplied names of people bought property from).</p> <p>Offending breached CRO.</p> <p>Significant prior criminal record – including burglary</p> <p>Providing for de facto partner and 4 children.</p>	<p>1 x Unlawfully possess item.</p> <p>Receiving charges relate to three discrete occasions. Appellant, on each occasion, approached by same man to purchase various items that appellant knew to be stolen. Appellant paid total \$400 for items over the three occasions.</p> <p>Items included jarrah picture frames, BBQ, 8 horsepower engine, antique grandfather clock, tow-hitch, diving equipment, fridge, generator, microphones, assorted stickers and caps, portable arc-welder, air operated rattle-gun, jacket, shoes, hockey gloves, guitar and bolt cutters. Items could not be described as necessities.</p>	<p>6 mths imp.</p> <p>TES 18 mths imp. Equivalent to 12mths imp after implementation of transitional provisions.</p> <p>EFP.</p>	<p>At [5]-[7] and [23] Notes inherent seriousness of act of receiving stolen property and its link to the prevalence of crimes of burglary and stealing.</p> <p>At [16] Owing to seriousness of offences, dominant sentencing consideration is general deterrence.</p> <p>At [16] 12 mths imp for 10 offences of receiving is undoubtedly lenient.</p>
<p>3.</p>	<p><i>Sikaloski v The Queen</i></p> <p>[2000] WASCA 387</p> <p>Delivered 8/12/2000</p>	<p>Convicted after PG and some degree of co-operation with police.</p> <p>Minor criminal record.</p>	<p>28 x Receiving (various items from home and commercial premises; total value approx \$35,000). 1 x Poss meth (18.8g at 1%). 1 x Poss meth wiss (39.4g at 4%). 1 x Poss cocaine wiss (7.8g at 10%).</p> <p>Police conducted search of appellant's home and found variety stolen property. Items were identified as having been stolen from a variety of homes and businesses.</p> <p>Appellant essentially a professional fence for stolen items.</p> <p>Ct 2 related to an instance of receiving in which the appellant had received stolen property from a home in exchange for supplying drugs – regarded as</p>	<p>Sentence range 6 mths - 3 yrs imp each ct. 1 yr imp. 2 yrs imp. 18 mths imp.</p> <p>TES 7 yrs imp. Equivalent to 4yrs 8 mths imp after implementation of transitional provisions.</p> <p>Ordered cumulative on a term 4 yrs 6 mths imp appellant serving at time sentencing.</p>	<p>Allowed.</p> <p>Sentence range for receiving offences reduced 6 mths – 18 mths imp (ct 2 reduced to 9 mths imp).</p> <p>TES reduced to 6 yrs imp.</p> <p>EFP.</p> <p>Ordered to be served concurrently with term imp appellant serving at time of sentencing.</p>

			particularly serious as encouraged not only burglary but drug use.	Ct 2: 3 yrs imp.	At [28] <i>'As has been said on many occasions, in the case of persons who facilitate the disposal of stolen property and make it worthwhile for those committing burglaries and the like offences to continue to commit them, a deterrent sentence is called for.'</i>
2.	<i>Kobeissi v The Queen</i> [2000] WASCA 44 Delivered 11/02/2000	26 yrs at time sentencing. Convicted after trial. Previous convictions – mainly traffic and drugs. Good work record.	1 x Receiving (various stolen items retail value approx \$20,000). Appellant found in possession of stolen perfumes. The perfume had been stolen from a chemist, along with other toiletries and drugs in a professional burglary. Police found the perfume during a search of the appellant's home a few hours after the burglary occurred. At [17] appellant could not be categorised as a professional fence but nonetheless the offending was substantial.	18 mths imp. TES 18 mths imp. Equivalent to 12 mths imp after implementation of transitional provisions. EFP.	Dismissed. At [17] <i>'In cases of this kind reference to other decided cases is of little assistance because of the infinite variation in the particular circumstances of different cases.'</i>
1.	<i>Vassiliou v R</i> [1999] WASCA 140 Delivered 3/08/1999	22 yrs at time sentencing. Convicted after PG. Offending breached susp sentence. Prior criminal record – burglary.	10 x Receiving. Offending period lasted 8mths and involved receiving the proceeds of 10 different robberies.	3 yrs imp each ct. TES 3 yrs imp. Equivalent to 2 yrs imp after implementation of transitional provisions. EFP.	Dismissed. At [7] quotes and affirms view in <i>Harwood v R</i> CCA WA Lib No 950372 at [2] <i>'It remains the case...that the court should properly consider offences of receiving to be of a</i>

		Close friend recently died. Alcohol and illicit drug abuse.			<i>seriousness, equal to or greater than the offences by which the goods provided to the receiver are originally obtained. Those offences, involving the stealing of property, are in a very real sense facilitated by the capacity to dispose of stolen goods to a receiver.'</i>
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