

# Receiving stolen or fraudulently obtained property

s 414 *Criminal Code*

**From 1 January 2014**

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

## Glossary:

imp	imprisonment
susp	suspended
PG	plead guilty
att	attempted
ct	count
TES	total effective sentence
EFP	eligible for parole
PSR	pre-sentence report
SIO	suspended imprisonment order
circ	circumstances
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
4.	<p><i>Lovell v The State of Western Australia</i></p> <p>[2019] WASCA 169</p> <p>Delivered 01/11/2019</p>	<p>60 yrs at time offending. 62 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Significant prior criminal history; including drug offending.</p> <p>Single; two adult children.</p> <p>Work related injury; resulting in nerve damage; receipt of unemployment benefits.</p> <p>History of ongoing drug use; methyl addiction.</p>	<p>Cts 1 &amp; 7: Att poss methyl wiss 0.2 g. Ct 2: Poss methyl wiss 0.5 g. Cts 3-4 &amp; 12: Att poss methyl wiss 0.5 g. Cts 5 &amp; 11: Att poss methyl wiss 0.3 g. Ct 6: Att poss methyl wiss 0.8 g. Ct 8: Poss methyl wiss 0.8 g. Ct 9: Att poss methyl wiss 0.8 g. Ct 10: Att poss methyl wiss 1 g. Ct 13: Selling methyl 1.5 g. Ct 14: Poss methyl wiss 1 g. Ct 15: Att poss methyl wiss 3.5 g. Cts 16-17: Receiving. Ct 18: Poss stolen property.</p> <p>For a period of two mths, Lovell was involved in the supply of drugs into a regional community, encouraging the theft of goods to pay for drugs.</p> <p>Police intercepted Lovell's mobile telephone service. He ordered drugs from his supplier, and then supplied them to his own customers.</p> <p>The offending involved small quantities of methyl, generally less than one gram at a time; with the exception of the sale of 1.5 g of methyl and an att to poss 3.5 g of methyl.</p> <p>Lovell acted as a 'fence for stolen property' which he used in payment for drugs including receiving stolen jewellery worth \$1,200. On numerous occasions, he and another discussed receiving and exchanging stolen property for methyl.</p>	<p>Cts 1-5; 10-12 &amp; 14: 15 mths imp (conc). Ct 6; 8 &amp; 9: 18 mths imp (cum). Ct 7: 17 mths imp (conc). Ct 13 &amp; 15: 18 mths imp (conc). Ct 16: 2 yrs imp (conc). Ct 17 &amp; 18: 18 mths imp (conc).</p> <p>TES 5 yrs imp. EFP.</p> <p>The sentencing judge found the appellant played a very active and important role in the distribution of the drugs; with the smaller quantities revealing dealing at a street level facilitating the distribution of drugs imported by others.</p>	<p>Appeal dismissed.</p> <p>Appeal concerned totality and length of sentence.</p> <p>At [31] ... The TES bore a proper relationship to the overall criminality involved in all of the offences, having regard to all of the circumstances...</p> <p>At [33] ... the sentencing Judge's remarks make it plain that the appellant was sentenced for his criminal conduct in relation to the supply of drugs to the community and his receipt of stolen property as payment for the drugs he supplied... The appellant's history of serious drug offending was properly recognised as elevating the significance of personal deterrence as a sentencing consideration.</p>

<p>3.</p>	<p><b><i>Reynolds v The State of Western Australia</i></b></p> <p><b>[2017] WASCA 214</b></p> <p>Delivered 24/11/2017</p>	<p>38 yrs at time sentencing.</p> <p>Convicted after PG (20% discount) (ct 1).</p> <p>Convicted after trial (cts 2-3).</p> <p>Extensive criminal history; offending across four States; no significant gaps since age of 18 yrs.</p> <p>On bail for ct 1 at time of committed offences subject of cts 2 and 3.</p> <p>Abandoned by both parents at a young age; childhood dogged by lack of opportunity and homelessness.</p> <p>Sporadic history of employment as a mechanic.</p> <p>15 yr relationship; two children 13 and 8 yrs; 2015-2016 partner suffered cognitive deficits from brain aneurism.</p> <p>Insular and isolated family life; no friends or support within the community.</p>	<p>Ct 1: Receiving. Ct 2: GBH. Ct 3: Unlawful wounding.</p> <p><u>Ct 1</u> Police executed a search warrant at Reynolds' home and located various items, valued at about \$12,800, recently stolen from a home burglary.</p> <p><u>Cts 2 &amp; 3</u> Mr B's home was burgled and some of his CDs were stolen. He believed the CDs were at Reynold's home. Mr B, accompanied by Mr T, decided to go to Reynolds home to retrieve them.</p> <p>Mr B and Mr T went to a locked gate at the rear of Reynolds' property. His partner appeared and they asked for the return of the CDs. Mr B was told to go away.</p> <p>Reynolds came into the backyard and exchanged angry words with the two men, before going back into his unit and asking his partner to call police.</p> <p>Reynolds was already carrying a pocketknife but he armed himself with another and went back outside. As Mr B was looking through a hole in the gate Reynolds stabbed him in the eye with one of the knives (ct 2).</p> <p>As both victims walked away Reynolds jumped the fence and came towards Mr T, stabbing him twice in the back (ct 3).</p>	<p>Ct 1: 9 mths imp (cum). Ct 2: 5 yrs imp (cum). Ct 3: 12 mths imp (conc).</p> <p>TES 5 yrs 9 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the overall offending on cts 2 and 3 in the upper range of seriousness by use of a knife and there were two victims. The offences were unprovoked and did not occur in self-defence or defence of his household.</p> <p>Limited capacity for empathy; little remorse; justified his actions.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle and length of sentence.</p> <p>At [36] ... the offence of unlawfully doing GBH committed by the appellant was at the upper end of seriousness. The victim suffered the permanent loss of sight in his right eye. The consequences of this injury to the victim have been serious and profound. ... The use of a weapon is ... an aggravating factor. ... the offence was unprovoked. [Mr B] did not enter or attempt to enter the appellant's premises and posed no threat to the appellant or the appellant's family.</p> <p>At [39] The appellant's overall offending was very serious. Not only did he stab [Mr B] but he also stabbed [Mr T]. Although the injuries that [Mr T] suffered were not as serious as those suffered by [Mr B], the potential for</p>
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		Some mental health issues; illicit drug use from 12 yrs; fluctuated in and out of daily drug use since; time spent on methadone program for heroin addiction.	As a result of the attack Mr B was blinded in one eye. Mr T's two wounds were able to be sutured and glued.		serious injury is obvious. The receiving charge the subject of ct 1 was a serious example of its type.  At [40] ... It was well open to her Honour to impose some additional punishment for [ct 1], bearing in mind that it was committed some time before cts 2 and 3. ... it is aggravating that cts 2 and 3 were committed while the appellant was on bail for ct 1.
2.	<i>Newport v The State of Western Australia</i>  [2015] WASCA 224  Delivered 12/11/2015	32 yrs at time offending.  Convicted after PG to ct 1 and 2; convicted after trial for cts 3-5 and 7-11.  Offending breached SIO and bail.  Prior criminal history of summary offences.  Unemployed at time offending.  Two children from prior relationship; mother cares for children.	<u>Indictment</u> Ct 1: Burg (residential). Ct 2: Steal motor vehicle. Cts 3-5 and 7-11: Receiving.  <u>Section 32 Notice</u> Ch 1: Reckless driving. Ch 2: Failure to stop. Ch 3: No authority to drive. Ch 4: Steal motor vehicle.  <u>Cts 1-2</u> Newport smashed a rear bedroom window and entered the house. The victim was not home. He stole various items to the value of \$5,000.  Newport found car keys in the house and used them to steal a car parked at the house. The car was recovered from Newport's house.	<u>Indictment</u> Ct 1: 25 mths imp (cum). Ct 2: 8 mths imp (conc). Ct 3: 18 mths imp (conc). Ct 4: 9 mths imp (conc). Ct 5: 10 mths imp (conc). Ct 7: 18 mths imp (conc). Ct 8: 20 mths imp (cum). Ct 9: 17 mths imp (conc). Ct 10: 15 mths imp (conc). Ct 11. 18 mths imp (conc).  <u>Section 32 Notice</u> Ch 1: 3 mths imp (conc) and 24 mths driver's licence disqualification (cum). Ch 2: \$150 fine. Ch 3: 7 mths imp (conc)	Dismissed.  At [42] The burg represented a significant escalation in the seriousness of the appellant's offending; the appellant had a history of persistent offending.  At [50] ... the value of the property taken was 'not insignificant' and...some of the stolen items were of 'significant personal value' to the victim...  At [58] The appellant's offending occurred over a

		<p>Entrenched and significant substance abuse problem.</p> <p>History of poor problem solving, antisocial decision-making and low self-confidence.</p> <p>Failed to comply with prior requirements to undertake counselling and CBO.</p>	<p><u>Cts 3-11</u> The receiving offences committed over a period of approx. one mth.</p> <p>Newport received a 'Stinger' electrical circuit tester, a motorcycle and a 'Toyota Hi-Ace' van (cts 3-5). Newport knew the property had been obtained by a burg.</p> <p>Newport received from burgs various electrical and personal items (cts 7-11).</p> <p><u>Section 32 Notice</u> Newport drove a stolen motorcycle, without a licence. In order to evade police, Newport reached speeds in excess of 80km per hour in a 50km per hour speed limit zone and drove on the wrong side of the road.</p>	<p>and 16 mths driver's licence disqualification (cum). Ch 4: 10 mths imp (cum).</p> <p><u>Breach of SIO</u> 3 mths imp (cum).</p> <p>TES 4 yrs 10 mths imp.</p> <p>EFP.</p> <p>Remorseful and empathetic for his victims; some prospects of rehabilitation.</p> <p>Sentencing judge was not satisfied that Newport was shown to have been in the business of a fence (a distributor for reward of unlawfully obtained property).</p>	<p>relatively short period of time. However, the offences did not form a single criminal enterprise, apart from the offences alleged in cts 1 and 2 of the indictment. Rather, the offences constituted a course of persistent offending.</p>
1.	<p><b><i>Burrows v The State of Western Australia</i></b></p> <p><b>[2014] WASCA 147</b></p> <p>Delivered 12/08/2014</p>	<p>28 yrs at time sentencing.</p> <p>Convicted after late PG.</p> <p>Significant prior criminal history including stealing, receiving and steal MV.</p> <p>Poor compliance with court orders.</p> <p>Stable and supportive</p>	<p>5 x s 401(2) <i>Criminal Code</i> burglary. 5 x s 371A <i>Criminal Code</i> steal MV. 1 x s 414 <i>Criminal Code</i> receiving.</p> <p>The appellant committed a series of offences in a period of just over three weeks.</p> <p>The appellant used a stolen motor vehicle to commit a series of burglaries on four chemists and a computer store. Property stolen included cold and flu medication, sunglasses cash and laptop computers. In two of the burglaries the</p>	<p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>In ROI declined to answer many questions but did answer some; denied all offences except the stealing of one vehicle.</p> <p>Appellant accepted his offending was directly</p>	<p>Dismissed – on papers.</p> <p>At [32] Court found that the sentencing judge's failure to quantify the s9AA discount was not a material error and did not invalidate the sentence imposed.</p> <p>At [39] Each of the individual sentences was</p>

		<p>family.</p> <p>Entrenched history of methyl use.</p> <p>Made efforts towards rehabilitation whilst in custody.</p>	<p>appellant used a stolen vehicle to rip off the front of the shops.</p> <p>In that time the appellant also stole or used five stolen motor vehicles knowing they were stolen. Whilst in his possession, he had caused or permitted significant damage to them.</p> <p>Furthermore the appellant came into possession of some property from a burglary knowing that the items were stolen.</p>	<p>related to his drug use.</p> <p>The appellant was stealing medications with ephedrine or pseudoephedrine with a view to exchanging them for methyl.</p>	<p>separate and discrete and in those circumstances some accumulation was appropriate.</p> <p>At [43] Offending conduct of this type is deserving of an appropriately lengthy sentence of imprisonment</p>
<i>Transitional provisions repealed (14/01/2009)</i>					
<i>Transitional provisions enacted (31/08/2003)</i>					