

Sexual assaults – adult victims

ss 325 & 326 *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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
PNG	plead not 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
ct	count
TES	total effective sentence
ISO	intensive supervision order
TIC	time in custody
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
36.	<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. Whist 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>		
35.	<p><i>The State of Western Australia v Upkett; Oliver; Dimer</i></p> <p>[2013] WASCA 263</p> <p>Delivered 21/11/2013</p>	<p><u>Dimer</u> 18 yrs at time offending. 19 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Lengthy criminal record commencing at 13 yrs including agg assault, att robb & agg robb; poor compliance with previous orders.</p> <p>Dysfunctional and disadvantaged background; disrupted schooling; father to young child.</p> <p>Regular user of alcohol and cannabis since 13-14 yrs;</p>	<p>Ct 1: Aggravated robbery. Ct 2: Agg Sex pen w/o consent. Ct 3: Agg Sex pen w/o consent. Ct 4: Agg Sex pen w/o consent.</p> <p>The victim, a Canadian tourist was visiting Broome. She was aged 22 yrs.</p> <p>The victim had been drinking at a bar in Broome before becoming separated from her friends at 2:00am and getting lost on her way back to her accommodation. Unfamiliar with her surroundings, she took a wrong turn and became lost. There, she encountered a group made up of the three respondents as well as 2 juvenile co-offenders aged 17 and 12 yrs.</p> <p>Oliver brandished a broken glass bottle in the victim's face, demanding she hand over her bag or she would be killed. When she refused, Oliver</p>	<p><u>Dimer & Oliver</u></p> <p>TES 5 yrs 6 mths imp. EFP.</p> <p><u>Upkett</u></p> <p>TES 6 yrs 6 mths imp. EFP. *****</p> <p><u>Dimer</u> Declined to answer questions in 1st EROI; subsequent EROI admitted agg robb & penetrating victim's vagina (as he thought) with his penis; assisted</p>	<p>Allowed.</p> <p><u>Dimer</u> Re-sentenced to TES 7 yrs imp.</p> <p>EFP.</p> <p><u>Oliver</u> Re-sentenced to TES 7 yrs imp.</p> <p>EFP.</p> <p><u>Upkett</u> Re-sentenced to TES 8 yrs 6 mths imp.</p> <p>EFP.</p>

		<p>significant mental health issues.</p> <p>Harbours distorted views about women & lack of respect for them.</p> <p>At the time of offence was subject to susp imp order (2 days before the offending).</p> <p><u>Oliver</u> 18 yrs at time offending. 19 yrs at time sentencing.</p> <p>Convicted after late PG.</p> <p>Brief criminal record.</p> <p>Significant & extreme history of family dysfunction & unstable childhood; born whilst her mother was in prison.</p> <p>Did not attend school; never employed; little purpose or structure in her life.</p> <p>Commenced alcohol at 13 yrs; uses cannabis daily.</p> <p><u>Upkett</u> 18 yrs at time offending.</p>	<p>punched the victim in the face 2 or 3 times.</p> <p>The victim was pushed to the ground while Dimer and Upkett grabbed her bag before the group ran away.</p> <p>The victim followed the group into a park to get her bag back as it had her passport in it; however she was quickly surrounded by the three respondents and two juveniles, touched inappropriately and threatened before being sexually assaulted. Oliver stood nearby, threatened and laughed at the victim.</p> <p>As a result the victim sustained a tear to her anus, blood nose and bruising and swelling to her left cheek.</p> <p>Throughout the sexual offending, the respondents taunted the victim. After the respondents had left Upkett apologised to the victim.</p> <p>Upkett and Dimer were the instigators and principal participants in the sexual assault.</p> <p>Oliver played a pivotal role in the agg robb. She was the instigator.</p>	<p>authorities.</p> <p>Remorseful.</p> <p>High risk of re-offending.</p> <p><u>Upkett</u> Admitted being present during the robbery; denied committing any sexual offence.</p> <p>Remorseful; little insight into offence; prepared to participate in sex offender treatment program.</p> <p>Medium to high risk of sexual re-offending.</p> <p><u>Oliver</u> Admitted approaching victim but asking for cigarettes; admitted punching the victim twice to the face; denied holding a bottle or glass; denied witnessing any sexual offences.</p> <p>High risk of violent re-offending.</p>	<p>At [69] the same sentencing principles apply in every case, regardless of an offender's ethnicity. But where a person's ethnicity gives rise to disadvantage hardship that is a relevant mater to be considered in the exercise of the sentencing discretion.</p> <p>At [71] Offending by Aboriginal persons is not to be viewed as systematically less serious than offending by persons of other ethnicities...</p> <p>At [84] The robbery was serious enough example of its type, but having regard to the vulnerability of the victim, the nature of the sexual acts, the 'group' nature of the offending, the use of violence, both real and threatened, the multiple acts of penetration and their persistent and prolonged nature, the sexual offences were extremely serious examples of their type...</p>
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		'questionable'.			
34.	<p><i>Ackley v The State of Western Australia</i></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; 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>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 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</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 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>Dismissed – on papers.</p> <p>At [56] The offending was indeed very serious having regard to the nature and extend of the violence, physical and sexual, over an extended period.</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 victim.</p>

			<p>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 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>		
33.	<i>Munmurrie v The State of Western</i>	18 yrs 7 mths at time offending.	<p>Ct 1: Att sex pen w/o consent. Ct 2: Sex pen w/o consent.</p>	<p>Ct 1: 2 yrs 6 mths imp. Ct 2: 4 yrs 3 mths imp</p>	Dismissed – on papers.

<p><i>Australia</i></p> <p>[2013] WASCA 167</p> <p>Delivered 25/07/2013</p>	<p>19 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Lengthy juvenile criminal record; spent significant periods in detention; offences include armed robbery, being armed to cause fear and aggravated burglary.</p> <p>Dysfunctional and severely deprived upbringing; did not attend school and unable to read or write; immature.</p> <p>Illicit drug user and abuses alcohol.</p> <p>Extended family support.</p> <p>At the time of offence was under the influence of alcohol and his behaviour was unpredictable.</p>	<p>The victim was 34 yrs and walking home at night.</p> <p>The appellant approached the victim, requested sex and rubbed his erect penis under his shorts. The victim told the appellant that she did not want to have sex with him. His reply was to the effect that he wanted sex and she would give it to him.</p> <p>The appellant stood in front of the victim and prevented her from walking away. He grabbed her jacket and attempted to drag her into a laneway. The victim resisted. She managed to escape the appellant's grasp and ran along the street. She then hid in some bushes near vacant land. However, the appellant found her. He grabbed her hair and left arm, and dragged her towards the fence of a house in the street. The victim shouted at the appellant and told him to let go. The appellant continued to accost the victim for sex and she continued to reject his advances. He then pulled down his pants, removed his erect penis and attempted to force the victim to perform oral sex on him. She managed to avoid the attempted oral penetration.</p> <p>The victim, with a view to escaping, told the appellant that she lived nearby. They walked towards her home. She hoped that some of her family members, who ordinarily reside there, would be at home able to help her. Upon arrival, no one was there. The victim told the appellant to wait while she obtained her keys from the gas meter. She hoped to be able to get inside and lock the appellant out. However, after appellant retrieved the keys and opened the door, the appellant shoved her aside and</p>	<p>(conc).</p> <p>TES 4 yrs 3 mths imp.</p> <p>EFP.</p> <p>Lied in VROI.</p> <p>No remorse.</p> <p>Victim traumatised.</p>	<p>At [62] Ordinarily, an offender's youth is a significant mitigating factor.... However, youth must be weighed against the facts and circumstances of the offences which have been committed.</p> <p>At [65] The appellant's offending was very serious.</p>
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			<p>entered.</p> <p>Inside, the appellant grabbed the victim's hair, ordered her into her bedroom and shut and locked the bedroom door. In an attempt to deflect the appellant, the victim mentioned she had some cannabis. They sat down and smoked it together. The appellant then turned off the light and demanded sex. He grabbed her hair and removed her jeans and underpants. When the victim attempted to resist, the appellant punched her arm. He pushed her backwards onto the bed and kneed her in the leg. Despite the victim's resistance, the appellant physically subdued her and had intercourse for several minutes before ejaculating in her vagina.</p> <p>As the appellant got up and prepared to leave, he threatened to assault her if she told the police or anyone else what had happened.</p>		
32.	<p><i>Prempeh v The State of Western Australia</i></p> <p>[2013] WASCA 150</p> <p>Delivered 19/06/2013</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal record for dishonesty offences.</p> <p>Born in Ghana; came to Australia in 2004; as a child suffered sexual abuse.</p> <p>History of substance abuse.</p> <p>Graphic designer in Ghana; Periods of employment in</p>	<p>Ct 1: Agg burglary. Ct 2: Sex pen w/o consent.</p> <p>The victim and appellant were unknown to each other. The victim was a backpacker from the UK.</p> <p>The victim left Club Bayview, Claremont on her own and was waiting for a taxi. She had been drinking and was intoxicated. Whilst waiting for a taxi she was approached by the appellant who suggested they share a taxi. On arriving home the victim paid her share of the taxi fare and left. The appellant got out as well. The victim did not engage in conversation and went inside her house and fell asleep.</p>	<p>Ct 1: 4 yrs 6 mths imp. Ct 2: No penalty – s11.</p> <p>Sentencing judge described the offending as serious. The complainant was particularly vulnerable because she was affected by alcohol. He noted that the appellant's behaviour was persistent.</p> <p>Sentencing judge found</p>	<p>Dismissed - on papers.</p> <p>At [26] ... it is erroneous to view the sentence ... as if it were for an offence solely involving an act of digital penetration. The offending plainly involved more than that and should be seen for what it is – an aggravated burglary involving sexual violence.</p> <p>At [27] Speaking generally, home burglaries</p>

		<p>Australia as sign maker.</p> <p>Told author of PSR that he had ‘an insatiable appetite for sex and often [sought] the services of prostitutes to quell the urge’.</p> <p>Subject to a CBO at time of offences.</p> <p>Appellant’s defence at trial was that he had been invited into the house and that he did not sexually assault the victim.</p>	<p>The appellant entered the house and the victim awoke to find him pulling back her duvet and trying to get into her bed. She told the appellant to get out. One of the victim’s housemates confronted the appellant and told him to leave, which he did. Both the victim and her housemate went back to bed.</p> <p>The victim and her housemate heard noises from the kitchen and found the appellant had somehow re-entered. The housemate told the appellant to leave. She then sought assistance from two other housemates. Rather than leave, the appellant went to the victim. She awoke to find him crouching down next to her bed. A struggle ensued during which the appellant inserted his fingers into the victim’s vagina. This caused both physical injury and significant ongoing psychological trauma to the victim.</p>	<p>that the appellant’s intention throughout the events was to have sex with the complainant whether she wanted it or not.</p> <p>Co-operated during the trial.</p>	<p>which involve the commission of violence will be met with more severe penalties than those that do not.</p>
31.	<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</p>	<p>1 x Breach of susp imp (original term 12 mths).</p> <p>Ct 1: Threats to kill</p> <p>Ct 2: Dep lib.</p> <p>Ct 4: Sex pen w/o consent (pen vagina with penis).</p> <p>Ct 6: Sex pen w/o consent (pen vagina with penis).</p> <p>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</p>	<p>Breach: 12 mths imp.</p> <p>Ct 1: 12 mths imp cum.</p> <p>Ct 2: 12 mths imp conc.</p> <p>Ct 4: 4 yrs imp cum.</p> <p>Ct 6: 2 yrs imp cum.</p> <p>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>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</p>

		<p>AOBH, Breach VOR and Breach protective bail conditions.</p> <p>Exposed to domestic violence as a child.</p>	<p>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 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>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>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 aggravating factors. That would not put it into a less serious category for an offence under s325 of the <i>Criminal Code (WA)</i>. 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</p>
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			The defence at trial was that the sexual intercourse took place but was consensual and he denied the other allegations.		consensual sexual relationship. That is not a mitigating factor. At [100] There is no requirement, even where multiple offences arose out of a single transaction, that concurrent sentences be imposed.
30.	<i>THG v The State of Western Australia</i> [2012] WASCA 139 Delivered 13/07/2012	33 yrs at time offending. Convicted after trial. Significant prior criminal record – agg assaults; assault; dep lib; steal motor vehicle; threats to kill; numerous breach VRO and bail. Offending breached VRO. History substance abuse problems - under the influence of drugs and alcohol at the time of offending. Raised by relatives after witnessing his father kill his mother. History semi-skilled employment.	1 x Agg GBH. 1 x Agg sex pen (vaginal with object). Appellant and victim in de facto relationship of 14 yrs and had six children together. A VRO in place at time of offending with much of the appellant's previous violent offending being directed at the victim (32 reported domestic violence incidents since 2001). Victim was at her sister's house when the appellant has seen her leaving the property in a car with several children inside. Appellant entered the car through the passenger window and forced the victim to drive to the post office. When the appellant left the car, the victim drove off and the appellant then chased the car. Victim later returned and picked the appellant up. Victim then dropped the children off at her sister's house and drove the appellant to a friend's home. On arrival, the appellant took the keys from the car. On finding his friend was not at home, the appellant returned to the car and told the victim to drive out of town to Lake Douglas – the victim complied out of fear. Appellant made the victim stop the car at	2 yrs 6 mths imp. 10 yrs imp. TES 12 yrs 6 mths imp. EFP. No remorse; denied offending; high risk re-offending; no insight.	Dismissed. At [30] The finding that the sexual assault was in the worst case category means that the sentencing range established under the transitional provisions is not applicable. At [32] Sentence for GBH was specifically reduced from 4 yrs for reasons of totality.

			<p>the turn-off for Lake Douglas and took over driving the car. The appellant began to threaten and abuse the victim while driving at speed and erratically. The victim, fearing for her safety and unbeknownst to the appellant, rang the police. Victim attempted to escape from the appellant by jumping from the moving car – fracturing and dislocating her ankle on landing.</p> <p>The appellant stopped the car and helped the victim back into the passenger seat. Despite being asked by the victim to take her to hospital, the appellant refused to do so. The appellant drove a further 15 km into the bush and, after saying words to the effect of “This is what you get for not wanting me”, began to punch the victim in the face. The victim lost consciousness.</p> <p>On regaining consciousness, victim again rang the police without the appellant’s knowledge and tried to walk away. Due to her injuries, the victim fell over and the appellant began yelling at her again and dragged her back to the car. Victim then lost consciousness again and awoke in the back of the car to find that she had suffered severe injuries to her genitals – caused by the appellant repeatedly penetrating the victim’s vagina with the handle of the car jack. The appellant drove the victim to the hospital the next morning.</p> <p>Injuries described as horrendous – compound fracture and dislocation of the right foot; recto-vaginal tearing from the anus to the vagina making the area one hole (4th degree tear – most severe level associated with child birth) and a cut from the vagina to the cervix; multiple soft tissue injuries to the face and limbs.</p>		
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			Victim recanted her depositions following phone conversations with the appellant and was declared a hostile witness at trial.		
29.	<i>Ugle v The State of Western Australia</i> [2012] WASCA 104 Delivered 10/05/2012	18 yrs 9 mths at time offending (victim 78 yrs). 19 yrs at time sentencing. Convicted after early PG. Offending breached protective bail (4 x agg burg; 3 x stealing; 1 x steal motor vehicle). Prior criminal record – poss stolen property; steal motor vehicle; common assault. Never been sentenced to detention or imprisonment previously. Eldest of 6 children; childhood marred by violent father; family homeless while he was growing up. Entrenched history cannabis and alcohol abuse. Completed high school;	Ct 1: Agg burg. Ct 2: Agg AOBH. Ct 3: Agg sex pen (digital pen vagina). Ct 4: Agg sex pen (pen vagina with penis). Ct 5: Agg sex pen (pen anus with penis). Ct 6: Agg sex pen (pen vagina with penis). Ct 7: Agg sex pen (pen anus with penis). Ct 8: Agg sex pen (fellatio). Sentenced separately for: 1 x Give false details to police. 1 x Breach protective bail. Assault and sex offences at the upper end of the scale of seriousness. Victim lived alone in an accommodation complex for senior citizens. Victim was showering at approx 7pm when appellant entered the grounds of the accommodation complex by jumping a perimeter wall. Appellant entered victim's unit by smashing lounge room window after finding the rear door locked (ct 1). Appellant confronted by victim's small dog when he entered. Appellant locked the dog in a cupboard. Victim heard the noises the appellant made and her dog barking and got out of the shower. Appellant entered bathroom and confronted naked victim. Appellant struck the victim and pushed her to the	Ct 1: 2 yrs imp. Ct 2: 3 yrs imp. Ct 3: 5 yrs imp. Ct 4: 4 yrs imp. Ct 5: 6 yrs imp. Ct 6: 4 yrs imp. Ct 7: 6 yrs imp. Ct 8: 6 yrs imp. TES two charges 14 mths imp (cumulative on sentences above). TES 11 yrs imp. EFP. Limited victim empathy; no acceptance of responsibility some remorse and shame; some steps towards rehabilitation (attending Alcoholics Anonymous); posed a present danger to the community.	Dismissed. At [46]-[66] Discussion of comparative cases. At [71] Ordinarily, youth is a significant mitigating factor but, in some instances, despite youth a sentence needs to reflect the need to protect the public as wells personal and general deterrence. At [72] <i>“The degree of objective seriousness of the appellant’s offending required that the mitigating effect of his youth be significantly reduced in determining the appropriate sentencing disposition.”</i> At [90] Vulnerability of the victim is a significant factor in sentencing. At [91] Mazza J notes that

		minimum work history.	<p>floor. Victim fell and hit her head on the wall causing a laceration on the back of her head (ct 2). Victim screamed for help and appellant placed his hand over her mouth. While victim was on the bathroom floor, appellant removed his penis from his pants, positioned himself on top of the victim and put his fingers inside her vagina (ct 3). Appellant also rubbed her clitoris, causing her pain. Victim told appellant he was hurting her but appellant persisted. Appellant partially penetrated victim's vagina with his penis (ct 4) and then penetrated her anus with his penis, causing her to scream in pain (ct 5).</p> <p>Appellant then dragged victim into the bedroom, pushed her onto the bed and positioned himself over her. Appellant grabbed victim's necklace and ripped it from her neck – appellant later gave the necklace to his cousin. Necklace had two lockets on it and was of sentimental value to the victim. Necklace was not recovered.</p> <p>Appellant then partially penetrated victim's vagina with his penis (ct 6) and then partially penetrated victim's anus with his penis (ct 7). Appellant then demanded victim perform oral sex on him. Victim said she had not done that before. Appellant thrust his penis into victim's mouth for approx 5 minutes causing her to cough and choke. Appellant then ejaculated in victim's mouth, again causing her to choke (ct 8).</p> <p>Appellant then demanded money, got dressed and left the victim's home.</p>		the sentence imposed in <i>Cooper v The State of Western Australia</i> [2009] WASCA 37 is in the circumstances a lenient one.
28.	<i>FST v The State of Western Australia</i>	43 yrs at time offending. 44 yrs at time sentencing.	1 x Sex pen (penile pen vagina). Victim and two friends went to victim's boyfriend's	4 yrs imp. TES 4 yrs imp.	Allowed. TES reduced to 3 yrs imp.

	<p>[2011] WASCA 220</p> <p>Delivered 14/10/2011</p>	<p>Convicted after trial.</p> <p>No relevant prior criminal record.</p> <p>Studying psychology at university and near completion of degree at time offending.</p> <p>Stable relationship – partner supportive despite offending.</p>	<p>house to celebrate the end of their exams. Victim became very drunk and went to sleep in the spare bedroom. Victim woke up to find appellant sexually penetrating her vagina with his penis. Victim initially thought it was her boyfriend and, on realising it was the appellant, immediately protested. Appellant stopped and victim went outside and sat on the driveway. Appellant went out and spoke to victim and drove her part way home – victim distressed and yelling and swearing at appellant. On arrival home, victim rang boyfriend and told him what had occurred.</p> <p>Offending at low end of scale of seriousness - opportunistic offending and appellant stopped when victim protested.</p>	<p>EFP.</p> <p>Low risk re-offending.</p>	
27.	<p><i>Grubisic v The State of Western Australia</i></p> <p>[2011] WASCA 147</p> <p>Delivered 7/07/2011</p>	<p>34 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal record – illustrated a tendency to violent behaviour.</p> <p>Married; one child; normally resided in Victoria.</p>	<p>1 x Sex pen (digital pen vagina).</p> <p>Victim 19 yr old female staying with uncle and his de facto partner while on working holiday in WA.</p> <p>At [143] frightening assault done in privacy of victim’s own room which the victim could not defend – behaviour violent and abusive.</p> <p>Victim and friend went to local pub. Victim introduced to two men whom the victim’s friend later invited back to the house victim was staying at.</p> <p>At the house the group sat on the verandah and continued drinking. Victim’s uncle and de facto partner joined them. Victim went inside to call her boyfriend. Phone was low on battery charge so the victim went to her bedroom to put the phone in the</p>	<p>3 yrs imp.</p> <p>TES 3 yrs imp.</p> <p>EFP.</p> <p>No remorse.</p>	<p>Dismissed – severe but justified.</p> <p>At [149]-[150] The seriousness of each instance of pen must be determined according to particular circumstances. It is not inevitable that digital pen will be less serious than penile pen particularly where digital pen is forceful, serious in its consequences or intended to degrade or humiliate the victim.</p> <p>At [151]-[157] discussion</p>

			<p>charger. When appellant opened the door and entered her room she was lying on the bed. Appellant shut the bedroom door, forced himself on top of her and began kissing her neck and rubbing his hand between her legs. Appellant forced his hand into the victim's shorts. Victim told him to stop. Appellant forcibly digitally penetrated victim's vagina while continuing to kiss her neck and shoulder area. Victim tried to close her legs but the penetration was painful. Penetration lasted for a short period and appellant closed the blinds during that time.</p> <p>Appellant stopped when he heard footsteps in the hall. Victim's uncle, who was looking for appellant as he had been gone a considerable amount of time after stating he was going to the toilet, met the appellant as he came out of the victim's room. Appellant told victim's uncle he was just saying goodbye and said "you don't want to listen to what this young girl was saying. I'm 34 and you just don't listen to young girls". Appellant insisted that victim was making story up.</p> <p>Victim came out of her room and told uncle's partner what had happened. Police were then called.</p>		<p>of range of sentences for digital pen.</p> <p>At [105]-[138] Discussion as to role of evidence of distress and directions relevant to distress evidence when admitted.</p>
26.	<p><i>Juma v The State of Western Australia</i></p> <p>[2011] WASCA 54</p> <p>Delivered 14/03/2011</p>	<p>27 yrs at time offending. 28 yrs at time sentencing.</p> <p>No prior criminal record.</p> <p>Sole provider for wife, child, two brothers and elderly and sick mother.</p> <p>Fled Afghanistan (after</p>	<p>Ct 1: Agg sex pen (digital pen vagina). Ct 2: Agg sex pen (digital pen vagina). Ct 3: Agg sex pen (penile pen vagina). Ct 4: Sex pen (digital pen anus). Ct 5: Sex pen (digital pen anus). Ct 6: Att sex pen w/o consent (penile pen anus). Ct 7: Sex pen (penile pen anus).</p> <p>2 victims – both sex workers.</p>	<p>Ct 1: 4 yrs 8 mths imp. Ct 2: 4 yrs 8 mths imp. Ct 3: 5 yrs 4 mths imp. Ct 4: 4 yrs 8 mths imp. Ct 5: 4 yrs 8 mths imp. Ct 6: 2 yrs 8 mths imp. Ct 7: 5 yrs imp.</p> <p>TES 8 yrs imp. EFP.</p>	Dismissed.

		<p>Taliban captured father) and came to Australia in 1999 – in detention centre prior to be granted protection visa; relatively wealthy family.</p> <p>Had not told family full circumstances of imprisonment/absence.</p>	<p>Appellant came to WA on business. Whilst here, sought services of sex worker. Victim 1 agreed to provide service on condition appellant use condom and ejaculate only once. Appellant reluctant to use condom and victim 1 returned money and asked him to leave. Appellant grabbed victim 1's breast and shoved his fist into her vagina (ct 1), telling her 'let me fuck you with no condom on or I'll kill you now'. Appellant told victim 1 he would shove his hand up to her shoulder and she would bleed and die. Appellant then put hands around victim 1's throat and put her on the bed. Appellant again placed fist in vagina, using twisting motion (ct 2). Victim 1 pleaded for him to stop – appellant did not. Appellant inserted penis into vagina and engaged in sexual intercourse until ejaculating inside her (ct 3). Victim 1 asked appellant to use condom as she was not using birth control and feared pregnancy.</p> <p>Approx 6 weeks later, appellant again sought services of sex worker. Victim 2 transsexual sex worker. Appellant requested sex with no condom, victim 2 refused and returned money and opened door for appellant to leave. Appellant grabbed victim by neck and inserted 3 fingers into anus, repeatedly moving them in and out (count 4). Appellant then carried victim to bed, inserted 5 fingers in anus, again moving them in and out (ct 5). Appellant ordered victim 2 to undress – victim 2 complied. Appellant tried to insert penis into anus but not fully erect and victim moving around in attempt to escape (ct 6). Appellant pushed victim onto bed and inserted penis into anus for approx 5 seconds (ct 7).</p>	<p>Denied offences; no insight.</p>	
25.	<i>Lim v The State</i>	43 yrs at time sentencing.	15 x Sex pen.	TES 20 yrs 2 mths imp.	Dismissed (McLure)

	<p><i>of Western Australia</i></p> <p>[2010] WASCA 186</p> <p>Delivered 23/09/2010</p>	<p>Convicted after PG to 18 counts unlawful and indecent assault and after 4 ½ week trial of remaining counts.</p> <p>No prior criminal record.</p> <p>Some offending occurred while on bail for unlawful wounding charge – when appellant knew police had some video footage of assaults and his book containing details of the assaults.</p>	<p>29 x Unlawful and indecent assault. 1 x Unlawful wounding.</p> <p>22 victims.</p> <p>Offending period approx 4 yrs 4 mths.</p> <p>Offending calculated and premeditated against vulnerable victims unable to defend themselves.</p> <p>Appellant cruised streets looking for young men who were heavily intoxicated and sexually assaulted them. Appellant made recordings of some of the assaults (later used as masturbatory aid) and kept a book in which he recorded the details of the victims and the way in which he abused them. Some victims were so intoxicated they were not aware of assault until contacted by police who found footage of the assaults and identified them. Some assaults including degrading acts and appellant urinating on victims.</p>	<p>EFP.</p> <p>Limited insight. Medium-high risk re-offending.</p> <p>Psychiatric report – sexual deviancy, personal pathology, isolation, limited social support, physical and sexual childhood abuse.</p>	<p>dissenting – would have reduced total effective sentence to 16 yrs 8 mths).</p> <p>Very severe sentence but criminality was of extremely serious kind.</p> <p>NB: Appeal did not challenge individual sentences – only total sentence.</p> <p>Subsequent High Court special leave application refused.</p>
24.	<p><i>Lindsay v The State of Western Australia</i></p> <p>[2010] WASCA 142</p> <p>Delivered 30/07/2010</p>	<p>32 yrs at time sentencing.</p> <p>Convicted after PG – following changes to charges, plea negotiations and the withdrawal in writing of some of the allegation by the victim.</p> <p>Offending breached VRO.</p> <p>Extensive prior criminal</p>	<p>Ct 6: Agg sex pen (digital pen vagina). Ct 7: Agg sex pen (penile pen mouth). Ct 8: Agg sex pen.</p> <p>Appellant and victim in volatile de facto relationship approx 6 yrs.</p> <p>At [28] level of violence and degradation places offending higher level of seriousness.</p> <p>Appellant, after victim contacted him, went to victim's house. Appellant intoxicated and victim affected by inhalation of solvents.</p>	<p>Ct 6: 6 yrs imp. Ct 7: 7 yrs imp. Ct 8: 8 yrs imp.</p> <p>TES 8 yrs imp.</p>	<p>Dismissed.</p> <p>At [27] breach of VRO aggravates offending even where breach consensual.</p>

		<p>record – 5 x breach VRO (former partner); threatening behaviour; AOBH; common assault.</p> <p>Long history substance abuse – cannabis, LSD, heroin, amphetamine & ecstasy; began at 15 yrs; regularly abused alcohol.</p> <p>Diagnosed schizophrenia after offending – attributed in part to substance abuse.</p>	<p>Argument began, during which appellant violently and forcibly digitally penetrated victim’s vagina – victim asked him to stop as it hurt and appellant refused to do so (ct 6).</p> <p>Appellant then pushed penis into victim’s mouth (ct 7). Victim tried to push appellant away and appellant urinated in her face while yelling at her and then punched her on the nose with a clenched fist.</p> <p>Appellant tried to put penis in victim’s mouth again. Victim tried to push it away and appellant grabbed her hands and bit them, breaking the skin. Appellant then hit victim on the side of the head with a bottle, causing a deep cut. Appellant continued to push penis into victim’s mouth while hitting her on the head and telling her to suck it properly (ct 8). Appellant bit victim’s hands, arms and the back of her legs as she tried to fight him off. Victim lost consciousness and on awaking ran from the house.</p>		
23.	<p><i>Miles v The State of Western Australia</i> [2010] WASCA 93</p> <p>Delivered 18/05/2010</p>	<p>33 yrs at time offending (victim 17 yrs).</p> <p>Convicted after trial.</p> <p>Extensive prior criminal record.</p> <p>Offending breached ISO (procuring child to do indecent act – appellant whilst very intoxicated invited 11 yr old to touch penis).</p>	<p>1 x Sex pen (digital pen vagina).</p> <p>Victim and boyfriend (not appellant) went to bed on foldout bed – victim highly intoxicated. Victim woke up to find appellant lying next to her (on the other side to her boyfriend). Appellant moving two fingers in and out of victim’s vagina. Victim too scared to do anything. After short time appellant withdrew finger and turned away. Victim went back to sleep. Appellant still in bed when victim awoke in morning.</p>	<p>2 yrs imp.</p> <p>TES 2 yrs imp. Moderate risk re-offending due to alcoholism and loneliness.</p>	<p>Dismissed – not excessive in circumstances.</p>

		<p>Father died when 10yrs; alcoholic mother; domestic violence as child; bullied and teased at school.</p> <p>Alcohol dependence issues.</p>			
22.	<p>PAS v The State of Western Australia</p> <p>[2009] WASCA 210</p> <p>Delivered 27/11/2009</p>	<p>31 yrs at time offending. 33 yrs at time sentencing (victim 32 yrs at time offending).</p> <p>Initially PNG to all counts. On commencement trial, PG to 5 AOBH and was convicted after trial by jury of 5 counts sex pen. Serious prior criminal record of violence offences.</p> <p>Just prior to offences a restraining order initiated by victim against appellant was lifted (appellant threatened to kill victim if not allowed to see her).</p>	<p>Ct 1: AOBH. Ct 2: AOBH. Ct 3: AOBH. Ct 4: AOBH. Ct 5: Sex pen (pen vagina with penis). Ct 6: Sex pen (intro penis to mouth.). Ct 7: Sex pen (pen vagina with penis). Ct 8: AOBH. Ct 9: Sex pen (pen vagina with penis). Ct 10: Sex pen (pen vagina with penis). (all part of one act of offending)</p> <p>Offending extremely serious – victim suffered significant physical pain and emotional trauma.”</p> <p>Appellant and victim living together short time and had history domestic abuse (including previous instances sexual violence, assaults and threats to kill). On day counts 1-5 appellant been smoking marijuana and accused victim sleeping with other people. Victim denied accusation and appellant kicked her and carved ‘RN is a dog’ on her left breast and ‘RN sux’ on her left arm with a metal dart. Appellant finished engraving and told victim to sit on lounge or he would kill her. Victim did as told and appellant punched her in the nose. Later in day, both fell asleep and one count of sex pen w/o</p>	<p>Ct 1: 12 mths imp. Ct 2: 12 mths imp. Ct 3: 12 mths imp. Ct 4: 12 mths imp. Ct 5: 4 yrs imp. Ct 6: 3 yrs 4 mths imp. Ct 7: 4 yrs imp. Ct 8: 12 mths imp. Ct 9: 4 yrs imp. Ct 10: 4 yrs imp.</p> <p>TES 12 yrs imp.</p> <p>EFP.</p> <p>Continuing lack of remorse; high risk re-offending.</p>	Dismissed.

			consent occurred prior to that. The next morning appellant rubbed olive oil on wounds so they wouldn't scar. Later that afternoon appellant told victim he felt she was no longer attracted to him. Victim denied this and count oral sex pen w/o consent occurred. Then appellant assaulted victim and further count sex pen w/o consent occurred.		
21.	<i>Mountain v The State of Western Australia</i> [2009] WASCA 161 Delivered 31/08/2009	38 yrs at time offending (victim 19 yrs). Convicted after trial (acquitted on one count digital penetration). No prior criminal record. Good work history; married 10 yrs; one child; main income earner for family; supported aged mother and disabled brother. Depressive illness.	3 x Sex pen (digital pen to vagina). 1 x Sex pen (digital pen anus). 1 x Att sex pen (penis to mouth). Offences occurred in early hours of the morning in a nightclub. Victim went to disabled toilet as other toilets closed – did not lock door and did not use toilet because of state it was in. Appellant walked in to toilet as victim was at mirror. Appellant went to toilet, exposing genitals to victim in process. Victim then remembers feeling appellant's hand on her "bum" and the next thing she remembers is waking up in the corner of the toilet with the appellant crouched between her legs and his fingers inside her vagina. The victim's jeans and underwear were pulled off one leg and at the end of the other leg – she did not know how they came to be like that. Victim tried to resist and leave but appellant stopped her and continued assault. Appellant stopped and left when a friend of the victim knocked on the door looking for her. Described as opportunistic attack – no element premeditation.	2 yrs 8 mths imp each ct. 2 yrs 8 mths imp. 1 yr 4 mths imp. TES 5 yrs 4 mths imp. Evidence of remorse; low risk of re-offending.	Allowed. On the basis that the sentencing judge made a factual error in finding the facts for sentencing. Re-sentenced. 4 Cts Sex pen reduced to 2 yrs 4 mths imp. Sentences in relation to Cts 2 and 3 ordered to be served cumulatively. TES reduced to 4 yrs 8 mths imp.

			Disposed of clothes within a few days of the incident.		
20.	<i>Mearns v The State of Western Australia</i> [2009] WASCA 153 Delivered 25/08/2009	18 yrs at time offending (victim 18 yrs). Convicted after trial. No relevant prior criminal record. Continuous employment since school.	1 x Sex pen (pen vagina with penis). Offending at lower end of scale of seriousness. Appellant and victim had brief sexual encounter approx a year before offence in Geraldton. Appellant came to Perth and arranged to meet victim in Northbridge with victim's friends. Both consumed alcohol before returning to victim's house. Victim said appellant could sleep on futon bed in spare room. Appellant agreed but found bed uncomfortable and victim allowed him to sleep in her bed. Victim went to sleep and appellant sexually penetrated vagina with penis – stopped when victim awoke. Delay of 13 mths between offence and appellant being interviewed by police not attributable to appellant and therefore mitigatory. Accepted in sentencing offence out of character.	3 yrs 4 mths imp. TES 3 yrs 4 mths imp. EFP.	Allowed. TES reduced 2 yrs imp. EFP.
19.	<i>Warburton v The state of Western Australia</i> [2009] WASCA 113 Delivered 25/06/2009	41 yrs at time offending. Convicted after trial. Minor prior criminal record – drug and traffic offences. Occasional user of cannabis and amphetamine. Supportive family; positive references; varied work	1 x Agg sex pen (penile pen vagina). 2 x Indecent assault. Victim 47 yrs old mentally disabled woman – paranoid schizophrenic suffering from anxiety attacks; lived alone but required some level of care from daughter; vulnerable and intellectually challenged. Appellant was friend of victim's next door neighbour and would often speak to victim when visiting.	8 yrs imp. 2 yrs imp each ct. TEs 8 yrs imp. EFP. PSR – appellant would have difficulty in participating in programs as he had	Allowed. TES reduced to 6 ½ yrs imp. EFP after 4 ½ yrs imp. At [10]-[19] discussion comparable cases and general range sentences for offending of this kind.

		history.	<p>Offending occurred two separate occasions.</p> <p>Appellant entered victim's unit and forcibly kissed her, putting his tongue on her mouth (1st indecent assault). Appellant left when he heard a noise outside.</p> <p>The next day appellant returned to victim's unit and kissed her again (2nd indecent assault). Appellant then removed her shorts and underwear, rubbed liquid on his penis and vaginally penetrated her (agg sex pen). After a while he withdrew and ejaculated on victim's breasts (act likely to degrade or humiliate – circumstance of aggravation).</p> <p>Appellant claimed consensual.</p>	tendency to objectify women and sought to portray himself as a victim.	
<i>Transitional Provisions Repealed (14/01/2009)</i>					
18.	<i>The State of Western Australia v Akizuki</i> [2008] WASCA 267 Delivered 22/12/2008	<p>18 yrs at time offending (victim 17 yrs).</p> <p>Convicted after fast track PG.</p> <p>Unsettled upbringing – at 13 yrs sent to live with father when mother moved to Oman; at 15 yrs went to live with sister; at 16 yrs went back to mother's home in Perth, although mother still in Oman.</p> <p>Volatile relationship with</p>	<p>Ct 1: AOBH. Ct 2: Agg sex pen. Ct 3: Att agg sex pen. Ct 4: Att agg sex pen.</p> <p>Offences of utmost seriousness.</p> <p>Victim walking perimeter of reserve listening to music on headphones – evening habit. Respondent approached victim and asked time, victim told him and continued walking. Respondent ran after her, grabbed her by neck and threw her to the ground. Respondent pinned victim to ground by shoulders and punched her repeatedly in face when she screamed. Respondent pulled victim's shorts and underwear to knees, inserted finger in vagina.</p>	<p>Ct 1: 12 mths imp. Ct 2: 2 yrs 6 mths imp. Ct 3: 18 mths imp. Ct 4: 18 mths imp. TES 2 yrs 6 mths imp.</p> <p>No remorse or empathy - described offending as 'fun' and stated he had no regrets; admitted to long standing fantasies about brutalising women, extended to rape and murder; fits diagnostic criteria for</p>	<p>Allowed – on grounds of totality.</p> <p>TES increased to 5 yrs imp.</p>

		<p>father and remote relationship with mother. Left school in yr 11 and life 'unstructured' and 'unguided' since then.</p> <p>Regular drug and alcohol use since 13 yrs (cannabis, amphetamines & ecstasy).</p>	<p>Victim screamed and respondent punched her again. Respondent pulled down own pants and exposed penis, attempted to insert it in vagina. Victim broke free and ran away wearing only a singlet. Respondent ran after her and caught her then pushed her to ground. Attempted to insert penis in vagina but could not because victim struggling so violently. Two persons approached and respondent pulled off victim. Appellant then ran off but was caught.</p>	<p>Paraphelia Sexual Sadism.</p>	
17.	<p><i>The State of Western Australia v Richards</i></p> <p>[2008] WASCA 134 (2008) 37 WAR 229; (2008) 185 A Crim R 413; BC200805101</p> <p>Delivered 17/06/2008</p>	<p>27 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Minor prior criminal record – no violent or sexual offending.</p> <p>Member of Wanun community – approx 1,500km from Kalgoorlie in the desert; married; respected in community. Wanun dry community but respondent engages in binge drinking when away from community.</p> <p>Little formal education; not literate in English</p>	<p>1 x Sex pen.</p> <p>Victim 45 yr old woman who was a cousin of the respondent's father (aunt in Aboriginal culture).</p> <p>Victim looking for her daughter and respondent said he knew where she was, offering to drive her there. Respondent drove victim into remote bush area. Victim left car but respondent chased her, pushed her down and told her he wanted sex. Victim said no and pushed respondent away repeatedly. Respondent lay on top of victim, pulled off some of her clothing and forced his penis into her vagina while victim screaming 'no'. Respondent continued to have sex until victim able to push him away. Victim ran to car and told respondent she wanted to go home. Respondent drove her home.</p> <p>Offending caused victim much distress and shame which was compounded by family relationship between them.</p>	<p>3 yrs 6 mths imp.</p> <p>TES 3 yrs 6 mths imp susp 2 yrs.</p>	<p>Allowed – SIO quashed.</p> <p>TES 3 yrs imp substituted</p> <p>Discusses the approach that should be taken when sentencing Aboriginal offenders from remote communities.</p> <p>NB: double jeopardy applied to State appeals.</p>

<p>16.</p>	<p><i>Cavill v The State of Western Australia</i></p> <p>[2008] WASCA 108</p> <p>Delivered 8/05/2008</p>	<p>Approx 60 yrs at time offending (victim 23 yrs).</p> <p>Convicted after trial - acquitted 6 other sexual offences arising from same incident.</p> <p>No relevant prior criminal record –one traffic conviction.</p>	<p>1 x Sex pen (digital pen vagina).</p> <p>Victim, separated from husband in SA and travelling with 9 mth old child, staying at ex-husband’s house. Appellant came to house as guest at BBQ. As leaving BBQ, saw victim and ex-husband’s cousin arguing and victim being told to leave the house. Victim knew no-one in WA and had nowhere to go – her mother was in Mandurah staying with friends but was not able to come until the next morning. Appellant told victim she and baby could stay at his house that night. Appellant lay on bed with victim and placed hand on clitoris. Victim said no and appellant continued to touch outer lips vagina and clitoris. Phone rang and appellant left.</p> <p>Appellant’s wife was aware victim and child staying overnight and was upstairs at time assaults took place. Appellant drove victim and baby to taxi in morning.</p>	<p>TES 15 mths imp.</p> <p>Reduced 1 mth to allow for TIC prior to sentencing.</p> <p>Low risk re-offending.</p>	<p>Dismissed.</p> <p>At [265] any digital penetration of vagina, whether complete or not, is serious.</p> <p>At [266] no hierarchy of sex pen.</p> <p>At [267] digital penetration as an offence should not be under-rated in its seriousness.</p>
<p>15.</p>	<p><i>Alvarez-Pizalla v The State of Western Australia</i></p> <p>[2008] WASCA 105</p> <p>Delivered 8/05/2008</p>	<p>Convicted after PG on ct 2. Convicted after trial on cts 1 & 3, 5, 7, 8 & 9 (acquitted one ct att agg sex pen).</p>	<p>Ct 1: Dep lib. Ct 2: AOBH. Ct 3, 5, 7, 8 & 9: Agg sex pen (penile pen vagina). Victim and appellant had been in relationship. At time offending, relationship had been over for approx 3 mths and there had been no contact between victim and appellant during that time. Victim began new relationship. Appellant arrived unannounced at victim’s house one morning and found her inside with her new partner. Victim told her new partner to leave and he did. Appellant followed him and confrontation took place – the appellant learning that the relationship was a sexual one. Appellant returned to victim’s home and</p>	<p>TES 7 yrs 6 mths imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>Conviction on cts 7, 8 & 9 quashed - convictions of sex pen entered in their place.</p> <p>Re-sentenced to 4 yrs each ct sex pen.</p> <p>TES unaltered.</p>

			<p>confronted her. Victim admitted new relationship and stated it was none of the appellant's business. Victim, after taking son to school, was taken to appellant's house. Victim entered appellant's bedroom at his invitation and appellant has then closed the door (ct 1). Appellant then hit victim in eye (ct 2) and continued to hit her face. Appellant demanded sex and helped victim take clothes off. Appellant put mattress on floor, removed own clothing and sexually penetrated victim while she was on her back. Appellant told her to turn over so she was on her hands and knees and the appellant then sexually penetrated her again (cts 3 & 5). Victim then showered and appellant brought her a cup of tea and demanded she lie back on the mattress. Victim complied. Appellant then engaged in three separate acts penile penetration (cts 7, 8 & 9). Victim passed out or went to sleep and awoke in pain – sought medical help at emergency department of Fremantle Hospital.</p>		
14.	<p><i>Keating v The State of Western Australia</i></p> <p>[2007] WASCA 98</p> <p>Delivered 14/05/2007</p>	<p>47 yrs at time appeal (70 yrs at earliest release date).</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record - extensive history sexual and physical violence against women; sentenced in 1979 to life imprisonment for rape; in 1985 convicted further sex offences committed after</p>	<p>10 x Agg sex pen.</p> <p>2 x Agg indecent assault.</p> <p>2 x Threat with intent to compel.</p> <p>1 x Dep lib.</p> <p>3 x Threat to kill.</p> <p>1 x AOBH.</p> <p>Offences in worst category of offending – at [40] ‘...sustained sexual and physical violence of such savagery and brutality so as to mark the offending as exceptional.’</p>	<p>9 yrs imp each count agg sex pen.</p> <p>3 yrs imp each ct.</p> <p>4 yrs imp; 3 yrs imp.</p> <p>4 yrs imp.</p> <p>3 yrs imp; 3 yrs imp; 4 yrs imp.</p> <p>4 yrs imp.</p> <p>TES 24 yrs imp.</p> <p>To be served concurrently with life imp on rape charge</p>	<p>Dismissed – sentence fair and just reflection of criminality.</p>

		<p>escaped from prison and ordered to be detained at Governor's pleasure; convicted of further sex offences in 1987 whilst in custody.</p> <p>Terrible childhood – victim of physical and sexual abuse.</p>	<p>Offences committed against prison education office while appellant on pre-release program in minimum security prison environment. Appellant detained at Governor's pleasure at time offending.</p> <p>Offending was deliberate and planned and appellant armed with knife throughout.</p> <p>Facts in confidential annexure to judgement – access by application to CoA Registrar only.</p>	<p>currently serving.</p> <p>Very high risk re-offending.</p>	
13.	<p><i>McAlear v The State of Western Australia</i></p> <p>[2008] WASCA 39</p> <p>Delivered 28/02/2008</p>	<p>47 yrs at time offending. 49 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Prior criminal record – numerous convictions of wilful exposure.</p> <p>Entered arranged marriage at 26 yrs; 3 children; history forced sexual relation with wife; sexual feeling for daughter; marriage ended after incident involving that daughter and he did not see children for 6 yrs.</p> <p>Dysfunctional childhood; little stability; little parental love or support; subjected to physical violence by step-father; left home at 16 yrs.</p>	<p>Ct 1: Obscene act in public. Ct 2: Threat with intent to influence. Ct 3: Dep lib. Ct 4: Agg indecent assault. Ct 5: Att agg sex pen. s 32 offences: 7 x Indecent act in public (hid in bushes behind bus stop and masturbated in presence females at or near bus stop).</p> <p>Victim in cts 1-5 was a 47 yr old woman – invalid pensioner with mild intellectual disability that manifested itself in obsessive-compulsive disorder. As a result, victim was compelled to clean public bins in local area in early hours of the morning – appellant had seen her doing this on regular basis. Approx one week prior to offending, appellant developed sexual fantasy about victim and began to watch her closely. Appellant write note to victim telling her to clean a particular bin at certain time and promised her a cleaning contract if the job was done well. Appellant enclosed key in the letter purporting to be the key to unlock chains on bin in question. There was no bin at the location specified. In preparation, appellant cut strips from an old sheet</p>	<p>1 yr imp. 1 yr imp. 2 yrs imp. 2 yrs imp. 3 yrs imp.</p> <p>9 mths imp each ct.</p> <p>TES 8 yrs 9 mths imp.</p> <p>High risk re-offending – justified offending; lack accountability for actions.</p>	<p>Allowed.</p> <p>TES reduced 6 yrs 6 mths imp.</p> <p>EFP after 4 yrs 6 mths imp.</p>

			<p>to use to restrain victim and waited in bushes near the location until the victim arrived.</p> <p>Appellant saw victim approach and removed his clothing – using his underwear as a mask. Appellant confronted victim and masturbated until penis semi-erect (ct 1). Appellant threatened victim and said he wouldn't rape victim if she 'played with his dick' (ct 2). Appellant then grabbed victim and told her to shut up. Appellant grabbed victim's breasts (ct 4) and squeezed them hard then asked victim to perform oral sex. Victim refused and appellant pushed her to ground and tried to tie her hands. Victim hit appellant with stick but appellant overpowered her and tied hands behind her back (ct 3). Appellant forced victim face down onto ground and crouched over her and began to remove her clothing. Victim sustained bruising from resisting. Appellant heard police siren in distance and released victim, threatening her again before telling her to leave.</p> <p>Appellant sent another letter inviting victim to meet for sex and asking her to be his girlfriend. Letter contained 4 pornographic pictures.</p>		
12.	<p>McKerlie v The State of Western Australia</p> <p>[2006] WASCA 274</p> <p>Delivered 15/12/2006</p>	<p>44 yrs at time offending.</p> <p>No prior criminal record.</p> <p>Lawyer (struck off for events unrelated to offending).</p>	<p>Ct 1: Indecent assault. Ct 2: Sex pen (digital pen anus). Ct 3: Sex pen (penile pen vagina).</p> <p>Victim 20 yr old female looking for share accommodation. Victim answered an advert placed by appellant and went to appellant's house. Arrangements subsequently made for victim to move in. Victim's boyfriend assisted moving belongings.</p> <p>Appellant told victim he was having a welcome dinner for her and was expecting another girl to</p>	<p>Ct 1: 12 mths imp. Ct 2: 3 yrs 8 mths imp. Ct 3: 4 yrs 8 mths imp.</p> <p>TES 4 yrs 8 mths imp. EFP.</p>	<p>Dismissed.</p> <p>Sentencing Judge made errors and took into account factors not permitted to but a different sentence would not have been imposed by the Court of Appeal.</p>

			<p>attend as she was moving in as well (other girl did not move in but did not tell appellant until shortly before dinner due to start). Appellant asked victim to dress for dinner (had been for a run immediately prior). Victim returned after changing and saw table set formally with flowers and music playing in background. Appellant re-filled victim's wine continuously throughout meal and by end, two bottles wine had been drunk. Victim extremely intoxicated.</p> <p>Appellant left table, changed music and began dancing by himself. Victim, after sharing joint of marijuana with appellant, also started to dance. Appellant pulled her toward him but victim moved away. Appellant tried to pull her closer several times and victim, realising she was intoxicated decided to go to bed. Victim went to her bedroom and closed door – left clothes on as she felt uneasy. Approx 5 minutes later, appellant opened her door, dressed in silk robe. Appellant sat on her bed (victim lying with back to him in hope he would go away) and told her he would give her a massage. Began to rub her shoulders then straddled her and began to undo her clothing. Victim resisted and appellant tried to pull her shorts off. Victim moved over and wrapped a towel around herself. Appellant pulled towel off and sucked her breasts (ct 1). Victim pushed appellant away and began to cry and shouted at him to leave. Appellant apologised and left. Victim fell asleep after changing clothes. Victim awoke later to find appellant massaging her thighs. Appellant inserted finger and thumb into her anus (ct 2). Victim told appellant to get out. Appellant tried to force victim's legs apart. Victim screamed at him and punched him on the shoulder.</p>	
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			<p>Appellant left the room. Victim eventually went back to sleep on a sofa in the bedroom with the door shut. Awoke to find appellant in her room. Appellant told her to go to bed – victim, drunk and semi conscious, complied and fell back asleep on the bed. Awoke later to find appellant had his penis in her vagina (ct 3). Victim swore at appellant and told him to get out. Appellant left.</p>		
11.	<p><i>Free v The State of Western Australia</i> [2006] WASCA 259</p> <p>Delivered 28/11/06</p>	<p>44 yrs at sentencing.</p> <p>Convicted after fast-track PG on cts 1 & 2 BUN 113 of 2005 and early PG other offences.</p> <p>Cts 3 & 4 BUN 113 of 2005 committed while on bail for charge BUN 112 of 2005.</p> <p>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.</p> <p>Workplace injuries to head and knees lead to health issues and ongoing pain preventing appellant</p>	<p><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.</p> <p><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.</p> <p><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.</p> <p><u>BUN 113 of 2005:</u></p>	<p><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.</p> <p><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.</p> <p>TES 6 yrs 4 mths imp. EFP. Significant risk future offending.</p>	<p>Allowed.</p> <p>TES reduced to 5yrs imp.</p> <p>EFP.</p> <p>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.</p> <p>NB: Individual sentences not disturbed.</p>

		<p>working last 10 yrs.</p> <p>Viewing pornography that depicted sexual violence.</p>	<p><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 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>		
<p>10.</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>On parole at time offences committed (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>1 x Dep liberty.</p> <p>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] 'horrible, humiliating and violent ordeal.'</p> <p>Respondent went to victim's home at approx 5am, knowing she would not be there (living with her</p>	<p>4 yrs 6 mths imp each ct.</p> <p>Owed 490 parole days.</p> <p>TES 4 yrs 6 mths imp.</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></p> <p>8 yrs imp each first count penile pen, anal pen and oral pen.</p> <p>3 yrs imp each other count oral or digital pen.</p> <p>5 yrs imp each other count sex pen.</p> <p>6 mths imp dep lib.</p> <p>2 yrs 6 mths imp threat to kill.</p>

		Alcoholic; history violent offending when intoxicated.	<p>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 (including one over 1cm in length) – speaks to force used. At [29] Offending designed to 'demean, degrade and humiliate'.</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>
9.	<p><i>The State of Western Australia v Cameron</i></p> <p>[2004] WASCA 299</p> <p>Delivered 15/12/2004</p>	<p>21yrs at time offending.</p> <p>Convicted after trial.</p> <p>Substantial criminal history – included breaches CBOs and parole.</p> <p>Difficult childhood – alcoholism, feuding and instability.</p>	<p>3 x Agg sex pen. (one digital pen vagina; one digital pen vagina while co-offender penile pen vagina; oral pen – present but co-offender physically committed act)</p> <p>Respondent and three co-offenders sexually assaulted one victim.</p>	<p>3 yrs imp each count.</p> <p>TES 3 yrs imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>Key factor in turning the appeal was the State's failure to appeal the co-offender's sentences which, if appeal allowed, may cause parity issues.</p> <p>NB: double jeopardy applied to State appeals</p>

		Family tragedy at 16yrs led respondent to solvent, amphetamine, alcohol and cannabis abuse – some suggestion brain damage as a result but not so as to reduce moral culpability or criminal responsibility.			
8.	<i>Miller v The Queen</i> [2004] WASCA 84 Delivered 30/04/2004	<p>Convicted after trial on dep lib and sex pen.(acquitted threat to compel). Convicted after late PG to AOBH (at start trial).</p> <p>Offending occurred on day released from prison and while on parole.</p> <p>Prior criminal record – AOBH; GBH; assault; assault public officer; dang driving causing death.</p>	<p>Ct 1: AOBH. Ct 2: Dep lib. Ct 3: Agg sex pen (penile pen vagina).</p> <p>Appellant went to victim’s home – appellant and victim have children together. Appellant indicated wanted to have sex with victim. Victim made clear this wasn’t going to happen. As victim giving children lunch, appellant grabbed ponytail and pulled her into hall. Appellant punched victim in right eye and she hit the wall and fell to the floor. Appellant started to kick her in stomach, ribs and head until she blacked out. Victim regained consciousness on bed, which had been pushed against the door to prevent children entering. Appellant told victim to take pants off, seized victim by throat and pulled her pants down. Victim hit appellant and appellant hit her face whilst still holding her by neck in response. Appellant held the victim’ s arms to the bed and engaged in sexual intercourse.</p>	<p>Ct 1: 3 yrs imp. Ct 2: 2 yrs imp. Ct 3: 8 yrs imp.</p> <p>TES 11 yrs imp. EFP.</p>	<p>Allowed.</p> <p><u>Sentences on appeal:</u> Ct 1: 2 yrs imp. Ct 2: 16 mths imp. Ct 3: 4 yrs 8 mths imp.</p> <p>TES reduced to 6 yrs 8 mths.</p> <p>EFP. NB: sentenced prior to transitional provisions being implemented and appeal decided after enactment – sentences imposed on appeal reduced according to transitional provisions – TES10 yrs imp prior to transitional provisions appropriate.</p>
7.	<i>The Queen v Cleak</i>	18 yrs at time offending (victim 16 yrs).	1 x Sex pen (penile pen vagina).	18 mths imp.	Allowed - SIO quashed.

	<p>[2004] WASCA 72</p> <p>Delivered 8/04/2004</p>	<p>Convicted after PG made at conclusion of prosecution's opening address.</p> <p>No relevant prior criminal record.</p> <p>Unremarkable childhood – supportive family and good work ethic.</p> <p>Concern from family and friends as to alcohol consumption.</p>	<p>Respondent had known victim most of his life – victim considered him a 'brother'.</p> <p>Offending occurred at respondent's 18th birthday party. Victim intoxicated and falling asleep at table. Appellant said she could lie down on his bed as he was planning on staying up all night. Victim fell asleep on bed and woke at later point to feel someone tugging her jeans up. Respondent said to victim 'you're so sexy' and victim recognised his voice. Victim heard respondent zip up clothes and saw him leave the room. Victim became aware stinging sensation in vagina and realised respondent had had sex with her.</p> <p>Breach of trust aggravating factor.</p>	<p>TES 18 mths imp susp 12 mths.</p>	<p>TES 20mths imp substituted.</p> <p>NB: Double jeopardy applied to State appeals (sentence 3yrs appropriate without this factor).</p> <p>Sentence was also reduced 1/3 owing to transitional provisions.</p> <p>At [13] Range 6-9 yrs one act sex pen over 16 yrs upheld.</p>
<p><i>Transitional Provisions Enacted (31/08/2003)</i></p>					
6.	<p><i>Hopper v The Queen</i></p> <p>[2003] WASCA 153</p> <p>Delivered 18/07/2003</p>	<p>19 yrs at time sentencing.</p> <p>Convicted after fast-track PG – voluntarily returned from England where he normally lives for sentencing.</p> <p>No prior criminal record.</p> <p>Offending entirely out of character; influenced by alcohol at time offending which appellant hardly ever drank.</p>	<p>Ct 1: Sex pen. Ct 2: Indecent assault. Ct 3: Sex pen.</p> <p>Appellant met victim outside a hotel and agreed to accompany him and his two friends into Northbridge. Group spent some time together at a pub and victim decided she wanted to go home. Appellant offered to walk her to taxi rank. During walk to taxi, appellant kissed victim and placed his hands down the back of her underwear, forcing his fingers into her vagina causing pain (ct 1). Continued walking and victim sat on ground. Appellant knelt in front of victim, put his hand inside her top and bra and exposed her breast. Appellant then sucked nipple (ct 2). Victim pushed</p>	<p>Ct 1: 4 yrs imp. Ct 2: 2 yrs imp. Ct 3: 4 yrs imp.</p> <p>TES 4 yrs imp. Equivalent to 2 yrs 8 mths imp after implementation of transitional provisions.</p> <p>Remorse.</p>	<p>Dismissed.</p>

		<p>Intellectually disabled – impaired cognitive function and emotional communication; social and learning difficulties; dyslexic; difficulty interpreting verbal instructions; gullible; easily manipulated; shy; meets diagnostic criteria for autism and Asperger’s syndrome.</p> <p>Strong family support; member of English karate team</p>	<p>appellant away and walked away. Appellant asked victim if she wanted to have sex – victim replied no. Appellant came up behind victim, pulled down her pants and underwear and forced his erect penis between her legs, thrusting as he tried to enter her vagina. Appellant entered anus instead (ct 3) and victim began to cry and say ‘stop’. Appellant stopped thrusting and asked victim to suck his penis. Victim refused and appellant began thrusting again. Victim struggling and crying. Appellant stopped and pushed victim over – causing an abrasion on her elbow when she landed. Appellant tried to help victim but she refused his help. Appellant then ran off.</p>		
5.	<p><i>Barker v The Queen</i></p> <p>[2003] WASCA 70</p> <p>Delivered 14/03/2003</p>	<p>Convicted after trial.</p> <p>Prior criminal record - previous convictions for sex offence.</p> <p>Personal history ‘deprived and significantly abnormal’.</p> <p>Severe drug and alcohol abuse issues.</p>	<p>8 x Agg sex pen. 3 x Indecent assault. 1 x AOBH. 1 x Dep lib. 1 x Threat to harm. 3 x Threat to kill.</p> <p>Offences all part of one continuing course events over period approx 24 hrs and in different locations – same victim in each instance.</p> <p>At [5] offending involved ‘<i>astonishing violence and calculated cruelty involving elements of premeditation and the infliction of what must have been a terrifying experience of the kind from which it would be difficult to ever recover.</i>’</p>	<p>TES 13 yrs 6 mths imp. Equivalent to 9 yrs imp after implementation of transitional provisions.</p> <p>Not EFP.</p> <p>Complete lack of remorse & very significant danger to community.</p>	<p>Dismissed.</p> <p>NB only failure to order parole appealed.</p>

<p>4.</p>	<p><i>Slater v The Queen</i></p> <p>[2002] WASCA 366</p> <p>Delivered 2/12/2002</p>	<p>27 yrs at sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record - dating back to 12 yrs old; no convictions for sexual offences.</p> <p>On bail for AOBH at time offending.</p>	<p>1 x Agg sex pen (penile pen anus). 1 x GBH.</p> <p>Appellant and victim in de facto relationship – living together with 11mth old son. Appellant and victim consumed significant amount alcohol prior to offending. Argument developed and appellant became aggressive, pulled victim into house and threw her on the bed. Victim landed on her back and appellant sat on her stomach with his knees on her arms so she was pinned down. Appellant tried to kiss victim and she bit his tongue. Appellant started hitting appellant in face and head – child lying on bed at this point and started to cry. Appellant put hand over victim’s mouth and when she pulled her head free, appellant hit her numerous times on head and slapped her on upper thigh. Appellant forcibly removed victim’s jeans, ripped off her underwear and forcibly had anal sex with her. Victim passed out because of pain and did not wake until next morning. Went to hospital because of pain and blood. Appellant tried to prevent victim seeking medical treatment – police called and appellant arrested. Injuries received in course assault included severe bruising and swelling to face, eyes and neck; bruising to shoulders, arms, neck and leg; severe anal trauma likely to affect long-term ability to regain normal faecal continence.</p>	<p>7 yrs 6 mths imp. 4 yrs imp.</p> <p>TES 10 yrs imp – sentence above cum on 2 yrs 6 mths imp serving for AOBH at time sentenced. Equivalent to 6 yrs 8 mths imp after implementation of transitional provisions.</p>	<p>Dismissed – sentence in range and totality principle not offended.</p>
<p>3.</p>	<p><i>Fowler v The Queen</i></p> <p>[2002] WASCA</p>	<p>Convicted after trial.</p> <p>On bail drug charges at time offending.</p>	<p>1 x Sex pen (penile pen vagina).</p> <p>Appellant and victim estranged from each other. Victim and children still living in family home –</p>	<p>5 yrs imp.</p> <p>TES 5 yrs imp. Equivalent to 3 yrs 4</p>	<p>Dismissed.</p>

	296 Delivered 1/11/2002	Between date offence and sentencing appellant trying to get business back on feet. Emotional stress due to break up of relationship.	appellant unable to gain access to belongings or children because victim had restraining order in place. Appellant went to victim's home and phoned her from outside premises. Victim hung up when she heard his voice. Appellant broke into house and forced victim into bedroom. Appellant pushed victim onto bed and tried to prise legs apart. Victim resisted but eventually submitted and sex pen took place.	mths imp after implementation of transitional provisions. EFP.	
2.	R v Quartermaine [2000] WASCA 341 Delivered 8/11/2000	26 yrs at time offending. Convicted after trial. Offending breached parole (agg armed robbery; AOBH; dep lib; burglary) Lengthy prior criminal record – prior violent offending; dishonesty. Parents separated when appellant young; family involved in violent feud with another family. Alcohol and drug abuse – taken no steps to address.	Ct 2: Sex pen (fellatio). Ct 3: Indecent assault. Ct 4: Sex pen (penile pen vagina). Respondent went to home of acquaintance (victim's de facto partner) with a dozen stolen bottles of spirits. Group drank spirits and smoked marijuana. Late in the night, respondent and two others left and broke into a service station. Then returned to the house. At one point in the evening, the respondent began to beat one of the males present with his fists and a metal pole – instilling fear in victim. Approx 4 or 5am, respondent alone in secluded area outside house with victim and ordered her to remove her pants. Victim complied as she was terrified – complied with respondent's requests to say she loved him for the same reason. Respondent forced victim to engage in oral sex and sexual intercourse.	Ct 2: 2 yrs imp. Ct 3: 2 yrs imp. Ct 4: 4 yrs imp. TES 4 yrs imp. Owed 934 days parole and was serving 3 yrs imp (agg burg and robbery) at time sentenced. Equivalent to 2 yrs 8 mths imp after implementation of transitional provisions. Medium-high risk re-offending; denied responsibility for offending	Allowed. <u>Sentences on appeal:</u> Ct 2: 2 yrs imp. Ct 4: 5 yrs imp. TES all sentences and parole days increased to 11 ½ yrs imp. NB: double jeopardy applied to State appeals.
1.	Brockman v R Supreme Court Library No. 97044	32 yrs at time offending. Convicted after trial (acquitted assault and digital sex pen vagina).	1 x Sex pen (penile pen vagina). Victim former de facto partner of appellant – 5 children together.	4 yrs imp. TES 9 yrs 3 mths imp (4 yrs cum on term imp serving at time	Dismissed.

	<p>Delivered 4/02/1997</p>	<p>Prior criminal record – going armed in public; loitering; assault public officer; breach bail; GBH; attempt escape; served term imp previously.</p> <p>Left school at 10 yrs old; 9 children (5 with victim); sporadic employment history.</p>	<p>Appellant, with brother and his partner, who had all been drinking heavily, went to victim’s home at approx 11 pm. Victim in bed and her 6 children home. Appellant banged on door and victim let them in. Victim returned to bedroom and appellant followed her. Appellant forced victim engage in sexual intercourse – despite her protests and attempts to make appellant stop.</p>	<p>sentencing). Equivalent to 6 yrs 1 mth imp after implementation of transitional provisions.</p>	
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