

Stealing as a servant or public servant

ss 378(7) and 378(6) *Criminal Code* or analogous instances of stealing

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
immed	immediate
susp	suspended
PG	plead guilty
att	attempted
ct	count
TES	total effective sentence
EFP	eligible for parole
CBO	community based order
approx	approximately
agg	aggravated

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
5.	<p><i>Petkov v The State of Western Australia</i></p> <p>[2019] WASCA 171</p> <p>Delivered 05/11/2019</p>	<p>35-37 at time offending. 37 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Minor criminal history.</p> <p>Educated to yr 10.</p> <p>Single: no dependants; living with parents at time sentencing.</p> <p>Prior emotionally and physically abusive relationship.</p> <p>Consistent employment history.</p> <p>Significant gambling addiction; alcoholic; suffering significant work stresses at time offending.</p> <p>Diagnosed with bipolar affective disorder and PTSD.</p>	<p>1 x Stealing as a servant.</p> <p>Petkov was employed as a bank manager. Over a period of mths he stole \$3,674,495.92. He initially stole amounts of \$50,000 in cash, eventually increasing to amounts of \$200,000 at a time.</p> <p>Petkov falsely balanced the treasury holdings to conceal his actions. He also electronically transferred funds to an ATM, entering false balances before stealing the cash. He used his knowledge of the internal systems and accounting procedures to conceal his actions.</p> <p>Petkov also engaged other staff, under his direction as the bank manager to assist him. The staff were unaware of his offending behaviour.</p> <p>Petkov used the money for gambling; none has been recovered.</p>	<p>5 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending in a ‘very serious category’ and agg as it occurred over a 20 mth period; was persistent and planned; was a significant and continuing breach of trust; he was a long-serving employee in a position of seniority; he manipulated systems to conceal his theft; involved staff members in his offending and the total amount stolen was very substantial.</p> <p>The sentencing judge found the appellant’s ‘mental illness...had a direct impact on his offending behaviour’.</p> <p>The sentencing judge found that the money was unlikely to be recovered.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [70] ... the appellant’s offending was very serious. It comprised numerous thefts...the offending was pre-meditated and planned. The appellant used his knowledge of...internal systems and accounting procedures to conceal his actions. He created false records. The appellant engaged other staff to assist him in his criminal conduct...[his] objective criminality was egregious and a serious abuse of the trust reposed in him by [the bank].</p> <p>At [71] ...the appellant’s offending does not fall within the ‘worst category’ of the offence of stealing as a servant...however his</p>

				Appellant cooperative; genuinely remorseful; efforts made to rehabilitate and low risk of re-offending.	offending, in the context of a single count with numerous thefts over a period of more than 18 mths and a very substantial total amount stolen, was so grave that it warranted the imposition of a sentence very close to the maximum penalty... At [76] ...the sentence was commensurate with the seriousness of the offence...The sentence was not unreasonable or plainly unjust.
4.	<i>Gallagher v The State of Western Australia</i> [2019] WASCA 108 Delivered 07/08/2019	39 yrs at time sentencing. Convicted after early PG (22% discount). No prior criminal history. Married; two young children; no contact with 18 yr old son earlier relationship. Almost completed Bachelor degree. Good employment history.	<u>Indictment 24</u> Ct 1: Att poss cocaine wiss 4.98g. Ct 2: Att poss MDMA wiss 6.93g. Ct 3: Poss cocaine wiss 10.28g. <u>Indictment 1167</u> Cts 1; 3-11: Stealing as a servant. Cts 2 & 12: Att stealing as a servant. <u>Indictment 24</u> A parcel, address to Gallagher and containing cocaine and MDMA, was intercepted at an Australia Post office. A controlled delivery of the parcel was made to his home address. It was collected from his mailbox.	<u>Indictment 24</u> Ct 1: 10 mths imp (conc). Ct 2: 10 mths imp (conc). Ct 3: 14 mths imp (conc). <u>Indictment 1167</u> Cts 1 & 2: 4 mths imp (conc). Cts 3 & 6: 2 mths imp (conc). Cts 4-5 & 7-9: 8 mths imp (conc). Ct 10: 18 mths imp (cum). Ct 11: 12 mths (conc). Ct 12: 6 mths imp (conc). TES 2 yrs 8 mths imp.	Dismissed. Appeal concerned early plea discount and type of sentence imposed. At [26] ... in all the circumstance ... it is appropriate to allow a discount of 22% in respect of the drug offences ... we consider the discount given ... to be appropriate in all the circumstances, including the time at which the appellant indicated he

		<p>Gambling and substance abuse problems.</p>	<p>The same day a search warrant was executed at Gallagher's address. The unopened parcel was located in his garage. His laptop contained material relating to the purchase of the drugs from the 'dark web', including a recent order for quantities of MDMA and cocaine.</p> <p>Gallagher also declared possession of three quantities of cocaine in his vehicle, of which he was to retain half for his own use and supply the other half to a co-purchaser (ct 3).</p> <p><u>Indictment 1167</u> These offences occurred while Gallagher was on bail for the above offences.</p> <p>Gallagher was employed as a sales representative. On various dates he altered invoices issued to customers, substituting his own bank account details for those of the company's account.</p> <p>On other occasions Gallagher altered invoices issued by a supplier to the company, substituting his own bank account details for those of the supplier.</p> <p>The amount stolen was \$53,845.60.</p> <p>On two other occasions Gallagher altered the account details but the invoices were not paid by the customer or the company.</p> <p>In total Gallagher sought to obtain \$60,291.30.</p>	<p>EFP.</p> <p><u>Indictment 1167</u> The sentencing judge found the offending had some degree of sophistication and deception and there was a degree of significant premeditation.</p> <p>Appellant genuinely remorseful; steps taken to address his substance abuse problems.</p> <p>Appellant's incarceration imposed financial and emotional strain on his family.</p>	<p>would PG to the drug offence. We also agree ... that a discount of 22% ... is appropriate in respect of the stealing offences.</p> <p>At [29] The drug offences were not at the upper end of seriousness on the scale of offending of this type. The quantities involved were relatively low, and the only supply was to a co-purchaser. Nevertheless, any poss of quantities of dangerous drugs with an intention to sell or supply them to another is a serious offence.</p> <p>At [31] ... the offending involved a series of premeditated and deceptive transactions over a period of mths, which resulted in a significant financial detriment ... The offences were agg by the fact that the appellant committed them while on bail ... a sentence of immed imp was clearly</p>
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3.	<i>Pflug v The State of Western Australia</i> [2018] WASCA 65 Delivered 17/01/18	44 at time offending. 46 yrs at time sentencing. Convicted after late PG (20% discount). No prior convictions. Born USA; Australian permanent resident; but not an Australian citizen. Married; ended relationship due to emotional, physical and verbal abuse; engaged in Family Court proceedings over 5 yr old daughter; significant debt with Australian Child Support Agency.	5 x Stealing as a servant, contrary to s378(7). Maximum penalty 10 yrs imp. Pflug was employed in a senior administrative role. On five occasions in a one-week period she transferred a total of \$68,992.59 from her employers' bank accounts to her personal bank account. Pflug stole the money by manually changing the accounting software programme by substituting her bank details for creditor's bank details, implementing a number of steps to defeat the software programme. Shortly after the offending Pflug travelled to the USA, using some of the money to fund the airfares and accommodation. She voluntarily returned to Australia some six mths later, surrendering to police and repaying \$12,000 of the stolen money.	Cts 1 & 2: 12 mths imp (conc). Cts 3-5: 15 mths imp (conc). TES 15 mths imp. EFP. The sentencing judge found the appellant's offending serious; it involved a number of transactions and was not merely one incident; she was a trusted employee; the victim was a small business and it involved a 'gross abuse of trust'. The sentencing judge	Dismissed. Appeal concerned type of sentence. At [67] In the present case, it was open to the sentencing judge to decide that the facts and circumstances militating against suspending the terms of imp decisively outweighed the facts and circumstances militating in favour of suspension. It was open to his Honour to be positively satisfied that it was not appropriate to select a lesser sentencing option

		<p>Three children living in USA with former husband.</p> <p>In supportive relationship at time sentencing.</p> <p>Employed full-time until offending.</p> <p>History of depression; 2016 suicide attempt; personality and alcohol use disorder.</p>		<p>accepted the appellant used \$16,258 to assist her ill mother in the USA, however, the very great bulk of the money had nothing to do with her mother, she spent it on herself, living expenses and paying off a debt.</p> <p>Remorseful; took responsibility for her offending; steps taken towards treatment.</p>	<p>(in particular, to suspend or conditionally suspend the terms of imp).</p>
2.	<p><i>Allie v The State of Western Australia</i></p> <p>[2016] WASCA 6</p> <p>Delivered 13/01/16</p>	<p>43 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior relevant convictions.</p> <p>Married with two children. Works full time.</p> <p>Happy upbringing; supportive parents; sexually abused in early teens and left home.</p> <p>Abnormal behaviour patterns.</p>	<p>1 x Stealing as a servant.</p> <p>Allie was employed as a store manager for Supa IGA.</p> <p>Allie used the store's computer ordering system to place an order for cigarettes to the value of \$17,175.00. He loaded the stolen cigarettes into the boot of his car and left the store. He was stopped by police and the cigarettes were recovered in full.</p>	<p>20 mth imp.</p> <p>The sentencing judge described the offending as serious as the appellant had breached the trust placed on him as store manager.</p> <p>Need for specific deterrence.</p>	<p>Dismissed.</p> <p>At [11] – [13] Discussion of comparable cases.</p> <p>At [15] ... his criminal record demonstrates that this offence was not an uncharacterised aberration... personal deterrence is a factor of particular importance in this case.</p> <p>At [16] ... offending involved a serious breach... of trust... It did not occur as the results of a spur of the moment decision, but was a calculated act of</p>

					dishonesty... The amount involved was... significant for a small business.
1.	<p><i>Carter v The State of Western Australia [No 2]</i></p> <p>[2015] WASCA 59</p> <p>Delivered 20/03/15</p>	<p>22 yrs at time offending and sentencing.</p> <p>Convicted after fast-track PG.</p> <p>No prior criminal history.</p> <p>Raised in a fragmented family; physically abused as a child.</p> <p>Single; 2-3 yr old son.</p> <p>High stress and anxiety caused by poor coping methods; poor self-esteem; engages in self-harm behaviours.</p> <p>Gambling addiction; taken steps to rehabilitate.</p> <p>Prior to sentencing: participated in victim-offender mediation; wrote an apology letter and repaid some money to victim.</p>	<p>1 x Stealing as a servant.</p> <p>Carter was employed by the victim. For three mths, he took possession of scratchcards to the value of \$17,647.</p> <p>Carter scratched the scratchcards and took money from the victim's cash register for the prize money on the 'winning' cards. She discarded the 'losing' scratchcards.</p> <p>Offending discovered after the victim identified discrepancies following an audit.</p>	<p>12 mths imp.</p> <p>Sentencing judge found the appellant had not shown significant remorse due to her attitude and demeanour in interview with police.</p> <p>Offending caused terrible harm to victim; fellow employee lost employment.</p> <p>Erroneously stated offences committed over 15 mths when in fact the offending was over three mths.</p>	<p>Allowed.</p> <p>Original sentence set aside.</p> <p>Re-sentenced to 9 mths imp susp 9 mths.</p> <p>At [60] I am satisfied that the error in question was material in that an offence of stealing as a servant which involves repeated theft over a period of about 15 mths will ordinarily be more serious than an otherwise comparable offence over a period of about three mths.</p>
<i>Transitional provisions repealed (14/01/2009)</i>					

<i>Transitional Provisions enacted (31/08/2003)</i>					

Office of the Director of Public Prosecutions