

Unlawful Assault Occasioning Death

s 281 *Criminal Code*

Prior to 1 January 2014

Glossary:

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

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
12.	<p><i>The State of Western Australia v Loo</i></p> <p>ALB41 of 2012 District Court of Western Australia</p>	<p>33 yrs at time offending. 37 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record – no violent offences since 1999.</p>	<p>1 x Unlawful assault occasioning death.</p> <p>Victim was in a de facto relationship with offender’s sister. Offender’s sister had 6 children who looked upon the victim as their step-father.</p> <p>Originally charged with unlawful assault occasioning death in 2008 but the medical evidence was such that the State determined there was no reasonable prospect of conviction. The medical evidence was clarified during a later coronial hearing and the decision made to re-prosecute the matter in light of that evidence.</p> <p>Victim and offender had been at a family funeral. Following the funeral, a group including the victim and offender went to the offender’s home and began drinking alcohol. At approx 10.30pm, partner of the victim and partner of the offender joined the two men at a pub. The group left the pub between 1am and 2am and caught a taxi, returning to the offender’s home. The taxi driver described the victim as intoxicated on the ride home and described the offender as intoxicated, verbally abusive and agitated. On arriving back at the offender’s home, the group has continued drinking alcohol. Offender has become angry with a relative and this has</p>	<p>2 yrs 6 mths imp.</p> <p>TES 2 yrs 6 mths imp.</p> <p>EFP.</p> <p>Remorse; low likelihood re-offending; engaged in volunteer work and significantly reduced alcohol consumption following offending.</p>	<p>NOT APPEALED</p>

			<p>caused an argument to develop between the offender and his sister, the victim's de facto. The appellant's sister decided to leave and told her children to get ready to go. She then walked outside and the offender followed her with shouting occurring between them. The victim has walked out of the house some distance behind his de facto and had some form of contact and verbal altercation with the offender. In the course of the altercation, the offender has punched the victim once, causing him to fall to the ground unconscious. The victim was unable to be resuscitated and his life support was eventually turned off. Bleeding to the base of the brain caused by trauma to the neck or head was determined to be the cause of death together with broncopneumonia and alcohol intoxication (BAC 0.235%).</p> <p>Offender admitted to punching the victim and attempted to assist him immediately after inflicting the blow.</p>		
11.	<p><i>The State of Western Australia v Lillias</i></p> <p>[2012] WASC SR 100</p> <p>Delivered</p>	<p>33 yrs at time offending. 34 yrs at time sentencing.</p> <p>Prior criminal record – including serious violent offences.</p> <p>Raised as traditional</p>	<p>1 x Unlawful assault occasioning death.</p> <p>Offender was related to the victim's wife. The victim's wife committed suicide and the offender and his brother were pressured by family members into stabbing the victim as a form of payback for the death of his wife. The offender did not want to stab the victim</p>	<p>18 mths imp.</p> <p>TES 18 mths imp susp 18 mths. (NB: spent 286 days in custody prior to sentencing).</p> <p>State conceded that given time spent in custody to date that that offender</p>	<p>NOT APPEALED</p>

	26/06/2012	<p>Aboriginal; English is offender's 3rd language.</p> <p>Limited education; employed mostly in CDEP program.</p> <p>Separated from wife.</p>	<p>but was threatened that he would be hit and put in a wheelchair if he did not perform the payback.</p> <p>Offender and his brother called out to the victim that he was going to receive payback and the victim came out of the house to receive that punishment. The offender stabbed the victim in the thigh – cutting a vein and an artery. The victim collapsed and died shortly after.</p>	<p>should not receive a sentence which required him to spend further time in custody.</p>	
10.	<p><i>The State of Western Australia v Sinclair</i></p> <p>385 of 2012 District Court of Western Australia</p> <p>Delivered 25/05/2012</p>	<p>42 yrs at time offending. 43 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Prior criminal record – assault; agg assault.</p> <p>Offender intends to undergo traditional punishment on release from custody.</p> <p>Traditional Aboriginal man actively involved in Aboriginal community; respected elder within community.</p> <p>Stable upbringing; in de facto relationship for 30</p>	<p>1 x Unlawful assault occasioning death.</p> <p>Victim was a cousin of the offender's wife – no history of conflict between them.</p> <p>Three groups of people were at Boulder Camp drinking alcohol and socialising. The offender was with one group, along with his wife and daughter, and the victim in another along with the offender's niece and sister. There was animosity between the offender's daughter and his niece. Throughout the afternoon, there were heated verbal exchanges and at least one confrontation between the offender's daughter and his niece and sister. The offender involved himself in these disputes. Police were called and the offender was issued with a 24 hour police order on condition that he not remain at the camp. The offender did not leave the camp and the</p>	<p>20 mths imp.</p> <p>TES 20 mths imp.</p> <p>EFP.</p> <p>Genuine remorse; insight into offending.</p>	NOT APPEALED

		yrs; 4 children.	<p>disputes re-commenced about one hour after the police left.</p> <p>The offender and his niece began to argue and the victim, who was seated in a chair, stood up and approached the offender saying words to the effect of “stop it”. The offender pushed the victim in the chest and the victim fell backwards, striking his head on a concrete slab. The offender walked off.</p> <p>The victim was flown to Perth and an emergency craniotomy was performed. The victim died 2 days later after his life support was switched off.</p> <p>Both the victim and the offender were substantially affected by alcohol.</p>		
9.	<p><i>The State of Western Australia v Blurton</i></p> <p>1517 of 2011 District Court of Western Australia</p> <p>Delivered 23 February 2012</p>	<p>37 yrs at time sentencing.</p> <p>Convicted after fast-track PG.</p> <p>Extensive prior criminal record – stealing; stealing with violence; traffic offences; dangerous driving causing bodily harm; robbery in company; escape custody; AOBH; armed robbery; assault public officer.</p>	<p>1 x Unlawful assault occasioning death.</p> <p>Victim went to a friend’s home and was standing on the front porch talking to the friend when the offender arrived. The offender is the brother of the friend the victim was visiting. The offender’s brother told the offender to leave as he was in an aggressive mood. The offender then king hit the victim in the face for no apparent reason. The victim lurched backwards and fell unconscious to the ground. The offender then left. Victim suffered a fractured skull and bleeding to the brain. The victim was taken to hospital and died there a week later.</p>	<p>2 yrs 6 mths imp.</p> <p>TES 2 yrs 6 mths imp.</p> <p>EFP.</p> <p>Extremely remorseful.</p>	NOT APPEALED

		<p>Spent much of adult life in prison – somewhat institutionalised.</p> <p>Entrenched history poly-substance abuse.</p> <p>Educated to yr 9 at an Aboriginal school; some employment history but unemployed for several years prior to offending.</p> <p>Family supportive; current partner supportive; 11 yr old son.</p>	<p>Offender was close to the victim – regarded him as an uncle – and could not explain his actions.</p> <p>Offender had not taken his anti-psychotic medication in two months preceding the offending and was under the influence of methyl at time of offending.</p>		
8.	<p><i>The State of Western Australia v Jones</i></p> <p>[2011] WASC SR 136</p> <p>Delivered 20/09/2011</p>	<p>35 yrs at time sentencing.</p> <p>Prior criminal record – armed robbery; minor drug and traffic offences; assault.</p> <p>Raised by mother; no contact with father since 8 yrs old; childhood marred by domestic violence perpetrated by mother’s partners.</p>	<p>1 x Unlawful assault occasioning death.</p> <p>Victim was offender’s estranged wife and mother of his two children (aged 4 yrs and 10 mths). Victim was significantly smaller than the offender. Offender was self trained in martial arts. History of domestic violence – at time of offending, victim and children were living in a domestic violence refuge.</p> <p>Victim and offender had been separated for approx 4 mths with a shared custody arrangement for the children. Victim visited the offender’s home with their 10 mth old son</p>	<p>5 yrs imp.</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>Sentenced on basis did not intend to do victim serious harm and that her death was not foreseeable – State agreed with that factual basis.</p>	<p>NOT APPEALED</p>

		<p>Poor performance at school; poor employment history.</p> <p>History alcohol abuse.</p>	<p>for the purpose of seeing their 4 yr old daughter who was spending the weekend with the offender.</p> <p>Victim and the offender had an argument and the offender struck the victim in the temple with a clenched fist, causing her to fall to the ground. Offender continued to attack the victim as she lay on the floor until the cries of the 4 yr old caused him to stop. As the victim lay on the floor, injured and unresponsive, the offender lifted her shirt to enable the 10 mth old to breastfeed. The victim began to vomit and was unable to speak. The offender picked the victim up, took her to the shower and cleaned up the vomit and blood. The offender the carried her to the bedroom and covered her with a blanket. The offender checked on the victim the next morning and found that she had died during the night. The offender left the victim's body in the house for 12 days following the assault while living in the home with their two children. The victim was reported missing by the refuge and police attended the victim's home on several occasions – each time the offender denied the victim was there, refused to allow police to search the home and suggested she had run off with another man. Police advised the offender that they intended to obtain a search warrant, at which point the offender admitted that he had assaulted the victim and she had died.</p>		
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			<p>Offender intoxicated at the time of offending.</p> <p>The body of the victim was so badly decomposed that an autopsy could not determine the cause of death.</p>		
7.	<p><i>The State of Western Australia v Robinson</i></p> <p>[2011] WASCSR 59</p> <p>Delivered 20/05/2011</p>	<p>Approx 30 yrs at time sentencing (exact date of birth uncertain).</p> <p>Convicted after PG.</p> <p>Prior criminal record – AOBH; agg AOBH; common assault; street drinking; driving under the influence; false details; breach bail.</p> <p>Traditional aboriginal upbringing; son of important aboriginal elder.</p> <p>Willingly undertook tribal punishment in the form of spearing.</p> <p>Separated from long-term partner – some incidence of domestic violence; 2 children (7 and 12 yrs old)</p>	<p>1 x Unlawful assault occasioning death.</p> <p>Offender was socialising with a group of people in a park. Significant amounts of alcohol were being consumed. There were two other groups of people doing the same thing in the park at the time.</p> <p>A person from another group approached the offender and struck him, starting an altercation. The offender was holding a broken stubby bottle and attempted to strike the person who hit him with the bottle. The victim, a female significantly smaller than the offender, got between the offender and the other person and the broken bottle lacerated her wrist. The laceration caused severe damage to her radial artery and the victim died shortly afterwards from loss of blood, despite attempts to stop the flow.</p>	<p>16 mths imp.</p> <p>TES 16 mths imp.</p> <p>EFP.</p> <p>Empathy; remorse; insight into offending.</p>	<p>NOT APPEALED</p>

		<p>being cared for by offender's sister.</p> <p>Good employment history (including employment gained while on bail).</p>			
6.	<p><i>The State of Western Australia v Warra</i></p> <p>[2011] WASCSR 17</p> <p>Delivered 28/02/2011</p>	<p>37 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Lengthy prior criminal record.</p> <p>Long term alcohol abuse issues.</p>	<p>1 x Unlawful assault occasioning death.</p> <p>Offender and victim in de facto relationship – history of domestic violence.</p> <p>Offender and victim had verbal argument about offender's belief that victim was being unfaithful. Offender punched victim in the head and victim fell to the ground striking her head. Offender then kicked the victim in the head and struck her on the back and head with a metal kitchen chair.</p> <p>The following day the offender again physically assaulted the victim, this time as they were walking down the street and arguing. Offender struck the victim in the face and chest and the victim fell to the ground. Offender kicked her in the head while she was on the ground.</p> <p>The following day the victim went to a women's refuge and was taken to the hospital. Victim was asked to return to the hospital in two days to receive the results of the assessment undertaken. Victim was to stay at the refuge that night but returned to</p>	<p>5 yrs imp.</p> <p>TES 5 yrs imp.</p> <p>Not EFP.</p> <p>Remorse.</p>	<p>NOT APPEALED</p>

			<p>the offender.</p> <p>The following day, following the consumption of large quantities of alcohol by the offender and victim alike, the offender attacked the victim for no apparent reason as she was sitting on a chair. Offender kicked her to the face, causing her to fall off the chair and lose consciousness. Victim was assisted by her family and later went to sleep in a swag in the backyard. The offender later joined her. On awakening the following morning, the offender found the victim had died during the night.</p>		
5.	<p><i>The State of Western Australia v JWRL(a child)</i></p> <p>[2010] WASCA 179</p> <p>Delivered 10/09/2010</p>	<p>17 yrs at time offending. 18 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior good character.</p>	<p>1 x Unlawful assault occasioning death. (Acquitted of murder and manslaughter).</p> <p>Victim and friends at BP service station. Police drove past, member of group threw beer bottle at car and police stopped to investigate. Group fled.</p> <p>Friend of accused, JM, saw one of group members hiding and tried to avoid him but they met nonetheless. Group member punched JM several times and attempted to head butt him in an unprovoked attack. JM ran away as soon as he could.</p> <p>Shortly after, deceased arrived and, with another friend, RC, went on foot in the same direction JM had fled. Deceased stopped by police and forced to pour out beer carrying. JM afraid and rang a friend for help, AL.</p>	<p>2 yrs imp.</p> <p>TES 2 yrs imp susp 2 yrs.</p> <p>Spent total 94 days in custody prior to sentencing.</p> <p>Rehabilitation, lack prior record and youth key factors in suspension – significance upheld on appeal; noted on appeal responding to a situation not of his making with solid basis for fears.</p>	<p>Dismissed.</p> <p>Culpability lay in use of excessive force and this places the offence at the lower end of the range of seriousness for s 281 offences.</p>

			<p>Accused and AL responding to call for help, came across deceased and RC by chance as both walked through park. Deceased walked up to AL and grabbed collar. Deceased speaking aggressively, AL tried to get free but deceased drew back arm to punch AL, accused struck deceased on head with piece of wood he had been carrying. Blow knocked deceased unconscious and he died 5 days later in hospital, never regained consciousness.</p> <p>History of confrontation/violence between two groups.</p>		
4.	<p><i>The State of Western Australia v Anderson</i></p> <p>1082 of 2010 District Court of Western Australia</p> <p>Sentenced 10/09/2010</p>	<p>27 yrs at sentencing.</p> <p>Convicted after PG at earliest opportunity.</p> <p>No relevant prior criminal record.</p> <p>Good employment history. Good family support. Some medical issues (gout and gallbladder problem).</p> <p>Regular cannabis abuse since 12yrs age (smoked several 'cones' on night in question). Stopped drinking alcohol at 21yrs (when diagnosed gout).</p>	<p>1 x Unlawful assault occasioning death.</p> <p>Victim 2yr old boy. Appellant de-facto partner of victim's aunt.</p> <p>Victim was at appellant's home for a sleep-over. Victim fell asleep on fold out children's sofa on living room floor at approx 8.15pm. Appellant's partner and other children went to bed. Appellant playing on-line poker (and had been doing so the vast majority of the day). At approx 10pm, noise appellant made in reaction to a win caused victim to wake up. Victim remained awake playing and watching a movie for about 2hrs before going to the appellant who was still at the computer. Appellant tried to tire victim by playing with him – tickling him when he knocked his head on a beam on the couch. Appellant also tired and wanted to keep</p>	<p>3 yrs imp.</p> <p>TES 3 yrs imp.</p> <p>EFP.</p> <p>Statements made voluntarily by appellant to police directly resulted in charges and conviction – lack of forensic evidence and cause of death. Substantial factor in sentencing.</p> <p>Ashamed and remorseful.</p>	NOT APPEALED

		<p>Diagnosed depression at time sentencing.</p>	<p>playing poker but knew couldn't go to sleep until victim asleep. Appellant became frustrated that victim would not go back to sleep and picked him up, shook him and placed him forcibly on couch. Victim started to cry. Appellant placed hand over victim's mouth and told him not to cry and to go to sleep. Victim lay quietly on couch. Appellant's daughter came out and tried to rouse victim. Victim was sluggish in response but smiled as appellant started to play with daughter. Appellant gave daughter three or four 'milkshakes' when saw victim smiling – gave victim two 'milkshakes' and victim fell on couch, landed on bottom but fell backwards and hit head on floor. Victim sluggish and had difficulties after second 'milkshake' – began gasping and body limp. Victim began to cry or whinge and appellant put hand over mouth second time (for approx 5sec). Appellant walked away and heard victim trying to breathe. Picked victim up – body was limp. Appellant ran to partner and said victim not breathing and that victim tripped and fallen. Appellant rang 000 and partner held victim. Operator said send ambulance but appellant said quicker to drive to hospital and hung up. Appellant rang 000 back 40sec later as victim deteriorated and ambulance dispatched. Appellant started CPR at directions of operator – ambulance arrived 17min after first 000 phone call.</p>		
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			<p>Victim has no signs of life when ambulance arrived but they continued CPR until hospital. Efforts to resuscitate continued until 4.50am.</p> <p>No conclusive cause death able to be identified.</p>		
3.	<p><i>The State of Western Australia v Mako</i></p> <p>63 of 2010</p> <p>Supreme Court WA</p> <p>Sentenced 1/09/2010</p>	<p>76 yrs at time offending. 78 yrs at sentencing.</p> <p>Convicted after PG.</p> <p>No prior criminal record and no suggestion of violent tendencies – “led a quiet and blameless life until this offence”.</p> <p>Diagnosed delusional disorder – belief of conspiracy between Homeswest and victim precluding taking responsibility for actions and led to lack insight and potential non compliance with anti-psychotics prescribed. But mental illness not great factor in sentencing – did not reduce culpability; would not be exacerbated by prison, nor</p>	<p>1 x Unlawful assault occasioning death.</p> <p>Deceased and accused lived in same block of units – initially friends but accused believed deceased was spraying chemicals in an attempt to poison him or make him move (in conspiracy with Homeswest). On day offence accused and deceased had argument at the conclusion of which the deceased punch the accused. As deceased walked off, he allegedly insulted accused’s mother – enraged accused. Short time later, accused went to deceased’s unit and assaulted him – sustained and violent attack lasting by accused estimation 5-6 minutes. Accused did not believe deceased needed medical assistance when he left to return home – claimed conscious and talking but medical evidence did not support this.</p> <p>Accused went to police some time after attack and told them he wanted to report assault. Told police had altercation with deceased (punched him a couple of times in retaliation to a punch in own face) and was concerned as deceased was not answering</p>	<p>2 yrs 8 mths imp.</p> <p>TES 2 yrs 8 mths imp.</p>	<p>NOT APPEALED</p>

		<p>would treatment be impaired; not casually linked to offence.</p> <p>Physical health issues – hypertension, ischaemic heart disease and degeneration of spine. Not significant factor in sentence as nothing to suggest they would cause greater hardship or suffering in prison setting.</p>	<p>door now. Police did welfare check but got no response. Accused contacted by police and asked to check on deceased when returned home. Accused returned home, got no response from deceased and advised police. Further welfare check conducted and deceased’s body found.</p> <p>Deceased 83 yrs and physically smaller than accused.</p> <p>Inconsistencies between accused account and forensic evidence – especially with regard to movement of deceased onto the couch and condition deceased in when accused left.</p> <p>Level of violence deemed high – “seriously violent assault upon a defenceless man in his own home.”</p>		
2.	<p><i>The State of Western Australia v Indich</i></p> <p>211 of 2009 Supreme Court WA</p>	<p>42 yrs at sentencing.</p> <p>Convicted after early PG.</p> <p>Offending breached CRO (assault on same victim).</p> <p>Prior criminal record - previous conviction for assault.</p> <p>Removed from mother at</p>	<p>1 x Unlawful assault occasioning death.</p> <p>Victim and accused in de facto relationship (approx 3yrs).</p> <p>Accused outside drinking with friends. Victim in bed watching TV. Victim went into bedroom, drunk and angry that deceased eaten a meal without making one for him. Accused punched victim, as she sat in bed, in ribs with clenched fist. Victim got up and made meal for accused.</p>	<p>2 yrs10 mths imp.</p> <p>TES 2 yrs 10 mths imp.</p> <p>EFP.</p> <p>Remorse and acceptance of actions; recognised alcohol problem and willing to deal with it.</p>	<p>NOT APPEALED</p>

		<p>early age – traumatic and unstable childhood; shifted between foster homes and bullied and degraded.</p> <p>Educated to 13 yrs; some history of employment.</p>	<p>As result of the punch the victim suffered two broken ribs and lacerated spleen, caused bleeding in abdominal cavity. Victim had underlying medical conditions (heart disease, diabetes and asthma). Successful operation on ruptured spleen but due to underlying conditions, post-operative complications developed. Victim died two days after assault. Without underlying medical conditions, such injuries would normally not cause death. Held that punch inflicted by accused led to other existing health issues coming to the fore, causing her death. Unprovoked and deliberate attack on defenceless and vulnerable person.</p> <p>Death was neither foreseeable nor intended – irrelevant as neither are elements of s281.</p>		
1.	<p><i>The State of Western Australia v Zyrucha</i></p> <p>127 of 2009 Supreme Court WA</p> <p>Sentenced 4/12/2009</p>	<p>31 yrs at time offending.</p> <p>Convicted after PG at earliest opportunity.</p> <p>Prior criminal record - att agg armed robbery; stealing; possession of weapons and drugs; traffic offences.</p> <p>Recent family breakdown;</p>	<p>1 x Unlawful assault occasioning death.</p> <p>Deceased and accused in de facto relationship – deceased had two young children from previous relationship. Dept Child Protection involved with family – accused concerned children would be taken away again.</p> <p>In two days preceding offence, deceased and accused participated in a two day drug/alcohol binge – involving cannabis, methylamphetamine and prescription</p>	<p>3 yrs 6 mths imp.</p> <p>TES 3 yrs 6 mths imp.</p> <p>EFP.</p> <p>Strong remorse.</p>	<p>NOT APPEALED</p>

		<p>had not seen parents in 4yrs due to an altercation with father.</p> <p>History drug and alcohol abuse from young age – cannabis, methylamphetamine, barbiturates, morphine, heroin.</p> <p>Educated to year 10; in army from age 20 until 2001; PTSD developed as result service in Timor for which medication prescribed.</p>	<p>barbiturates.</p> <p>Day prior to offence, deceased, whilst substantially affected by drugs, crashed car – children were passengers; car greatly damaged and uninsured. Deceased treated at scene by ambulance officers (one of whom later attended at the scene of her death) and conveyed to hospital owing to obvious intoxication. Police later returned deceased home, into the care of accused. Medical evidence to effect that following accident only marks discernible on deceased were track marks and a small bruise near the left elbow. Deceased did not, according to medical evidence, complain of any further injuries.</p> <p>On two separate occasions during evening (separated by accused leaving house and attending a friend’s house to “smoke cones”), accused assaulted deceased. Extent of assault not admitted to by accused but evident in severity, number and distribution of injuries. Repeated and separate attacks on smaller, defenceless victim who had been involved in serious traffic accident. Both went to sleep in lounge room and accused awoke to find deceased “blue”. Accepted in sentencing no intent to harm to cause death and that attempted CPR before calling ambulance (crucial factor).</p>		
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			Large factor in sentencing was effect of deceased's pre-existing sarcoidosis and drug intoxication – the extent to which these contributed to death could not be determined (conflicting medical opinions).		
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Transitional Provisions Repealed (14/01/2009)