

Property Laundering

s 563A Criminal Code

From 1 January 2014

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

agg burg	aggravated burglary
att	attempted
conc	concurrent
cum	cumulative
ct	count
circ	circumstances
CRO	conditional release order
EFP	eligible for parole
imp	imprisonment
ISO	intensive supervision order
PG	plead guilty
PNG	plea not guilty
poss	possess
PSR	pre-sentence report
SIO	suspended imprisonment order
susp	suspended
TES	total effective sentence
wiss	with intent to sell or supply

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
4.	<p><i>H v The State of Western Australia</i></p> <p>[2020] WASCA 211</p> <p>Delivered 16/12/2020</p>	<p>21 yrs at time offending. 22 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>No prior criminal history.</p> <p>Born Hong Kong; family and girlfriend in Hong Kong.</p> <p>Unhappy childhood.</p> <p>Educated in Malaysia; bullied at school.</p> <p>Employed mother's clothing shop on leaving school.</p> <p>Gambling addiction; in debt to loan sharks approx AUS\$10,000; came to Australia to commit the offence as a means of clearing his debt.</p>	<p>1 x Property laundering.</p> <p>H was jointly charged with the co-offenders X and L.</p> <p>L lived in Hong Kong and was approached by an acquaintance, F, who asked him if he wanted to earn extra money in Perth. L agreed to help F.</p> <p>X resided in QLD and was subsequently contacted by L, who asked her to go to Perth. X had a \$1,500 debt and she agreed to help L on the understanding her debt would be wiped.</p> <p>C was involved in a large-scale money laundering syndicate and on a number of occasions came to Perth from Singapore. On one of the occasions C was in Perth he arranged for four suitcases to be stored at the home of G. Two of the suitcases were wrapped in clingfilm and contained a total of \$2,027,892 in cash. G was unaware of the contents of the cases.</p> <p>Several mths later C arranged for H, X and L to collect the suitcases from G and to transport them out of WA. The three flew into Perth from Brisbane for this purpose.</p> <p>The two cling wrapped suitcases were collected and opened. H, X and L then counted the money and placed the cash into three suitcases.</p> <p>A vehicle was hired with the intention H, X and L would drive the three suitcases from Perth to</p>	<p>4 yrs 2 mths imp.</p> <p>EFP.</p> <p><u>L (30% discount)</u> 3 yrs 1 mth imp. EFP.</p> <p><u>X (30% discount)</u> 2 yrs 11 mths imp. EFP.</p> <p>X and L cooperated with law enforcement authorities; made full admissions and gave undertakings to testify against C.</p> <p>The sentencing judge found the offenders each played an equal role in the commission of the offence; their actions were deliberate and persistent; they were motivated by commercial gain; came from overseas and interstate to commit the offence; the money, over \$2 million, was a significant sum derived from an unknown offence or offence and was the proceeds of a 'large-</p>	<p>Allowed.</p> <p>Appeal concerned errors in finding appellant and co-offenders equally culpable and came to WA with intention of committing the offence.</p> <p>Resentenced: 3 yrs 6 mths imp. EFP.</p> <p>At [81] ... whether the appellant came to WA with the intention of committing the offence of property laundering or in the knowledge that he was likely to be undertaking illegal activity of some kind did not amount to a difference which affected or was capable of affecting the sentence imposed ...</p> <p>At [96] We are unable to accept that ... the appellant played an equal role with his co-offenders in the commission of the offence. It is clear from the evidence before his Honour that the appellant,</p>

			<p>Melbourne. The following day the vehicle, being driven by L, was stopped by police. X was in the front passenger seat and H was in the rear seat. A search of the vehicle located the cases, each containing large sums of Australian currency, bundled together and sealed in Cryovac bags in blocks of about \$100,000.</p> <p>X and L were also found in possession of \$2,000 and \$5,000 in cash, respectively.</p> <p>H declined to comment and made no admissions when interviewed by police.</p>	<p>scale money laundering syndicate orchestrated from overseas.</p> <p>Appellant remorseful; steps taken to address his gambling addiction and to rehabilitate himself while in custody.</p>	<p>... performed the tasks which were allocated to him, essentially at L's direction, and which were designed to assist either L or X, or both. There is no evidence that the appellant made any decision of his own to commit any of the acts which constituted the offence.</p> <p>At [97] ... the appellant had no contact with C or F. While it could not be said that the role played by the appellant was unimportant, ... it was of a lesser magnitude that the role played by L or, indeed, by X. ... It cannot be overlooked that, at the sentencing hearing, the State accepted that the appellant's role was less than that of L and X. ... For all of these reasons, his Honour erred in finding that the appellant was, with respect to the role that he played in the commission of the offence, 'equally culpable' with his co-offenders.</p>
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					<p>At [98] There is a further reason why his Honour's finding as to the appellant's culpability was erroneous. ... The appellant was, at the time he committed the offence, a youthful offender. ... He was indebted to loan sharks ... He was, by reason of his age and situation, vulnerable to exploitation by those above him in this criminal syndicate. By comparison, neither L nor X were as vulnerable to exploitation as the appellant. ...</p> <p>At [105] ... Although the appellant was, in our opinion, the least culpable of the offenders, his role was, nevertheless, significant, particularly having regard to his role in counting the approx \$2 million in cash, repacking the suitcases, and transporting the money on the intended journey to Victoria. ...</p>
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<p>3.</p>	<p><i>Phan v The State of Western Australia</i></p> <p>[2019] WASCA 163</p> <p>Delivered 21/10/2019</p>	<p>37 yrs at time offending.</p> <p>Convicted after PG (25% discount).</p> <p>Prior NSW criminal history; prior sentence of imp.</p> <p>Born Vietnam; impoverished background; limited education.</p> <p>Migrated to Australia in 2000.</p> <p>Some employment history.</p> <p>Partner; stepfather to two children.</p> <p>Deported on release from prison in NSW; returned to Australia illegally under a false passport.</p>	<p>Ct 1: Property laundering. Ct 2: Poss unlawfully obtained property. Ct 3: Fail to obey data access order.</p> <p>Phan and his co-accused flew to Perth from Melbourne. Over a four-day period Phan made seventy-two cash deposits, totalling \$431,825, into the bank accounts of persons unknown to him.</p> <p>The deposits were made as part of the ‘cuckoo smurfing’ method and Phan did so knowing the money was the proceeds of an offence.</p> <p>All except one of the deposits were under \$10,000. Amounts under \$10,000 not requiring the bank to report them.</p> <p>On the final occasion, Phan and his co-accused attended a bank and made numerous structured cash deposits into third party bank accounts. Their suspicious behaviour alerted bank staff who contacted the police. Police attended and the two were arrested.</p> <p>In Phan’s bag, wallet and hire car police located \$326,428.30 in cash.</p> <p>Phan refused to provide the access codes for two mobile phones also found in his possession. He failed to comply with a data access order for access to the two devices.</p> <p>The co-accused was found in possession of \$42,418.90 in cash. He and Phan were jointly</p>	<p>Ct 1: 4 yrs 2 mths imp. Ct 2: 1 yr 4 mths imp (cum). Ct 3: 9 mths (conc).</p> <p>TES 5 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant was not at the top of the syndicate; however he was trusted with well over \$1.5 million; he was to be paid; he knew the money was the profits of criminal enterprise and he was assisting in moving it overseas.</p> <p>The sentencing judge found the appellant’s offending while in Australia illegally and operating under a false name an agg feature of the offending.</p> <p>The sentencing judge found the seriousness of the appellant’s offending was such that a sentence of imp was the only appropriate sentencing option.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle and length of sentence (ct 1).</p> <p>At [35] The ... case represents a serious example of a property laundering offence. ... He was trusted with well over \$1.5 million in cash. While ... not given any particular authority, he was well aware that he was part of a larger organised operation, and that the money was the proceeds of criminal activity. The offence cannot be regarded as a result of naiveté, and was not an isolated lapse of judgment.</p> <p>At [41] ... we are not satisfied that the sentence imposed for ct 1 was unreasonable or plainly unjust. ...</p> <p>At [42] ... Some degree of accumulation of the individual sentences was clearly appropriate in this case, particularly having</p>
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			<p>charged with possession of the cash located in the car, being \$292,050.05.</p> <p>Investigations revealed that a number of cash deposits were made by other co-accused during that time. In total, over the four-day period, Phan and others made 254 deposits totalling \$1,278,420.</p>		<p>regard to the refusal to comply with the data access order.</p> <p>At [44] ... the sentencing judge did not impose a cum sentence for the offence of failing to comply with a data access order. ... that offence does add to the overall criminality involved in all of the offences, and remains relevant when considering whether the TES is disproportionate to that overall criminality. ...</p> <p>At [45] The offending the subject of ct 2 was also serious, involving a very significant amount of cash.</p>
2.	<p><i>Tan v The State of Western Australia</i></p> <p>[2019] WASCA 112</p> <p>Delivered 16/08/2019</p>	<p><u>Chee Tong</u> 24 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>No prior criminal history.</p> <p>Born and raised in Malaysia.</p> <p>University educated.</p>	<p>1 x Property laundering.</p> <p>The appellants, Chee Tong and Chee Siang, are cousins.</p> <p>Chee Tong came to Australia to work for his brother, assisting him to get money out of Australia to China.</p> <p>Chee Tong collected \$1.5 million in cash, the proceeds of an unknown offence or offences. He and Chee Siang then delivered \$1.347 million to two co-offenders.</p>	<p><u>Chee Tong</u> 5 yrs 9 mths imp. EFP.</p> <p><u>Chee Siang</u> 4 yrs 6 mths imp. EFP.</p> <p>The sentencing judge found the amount of money involved was significant; each of the appellant's played a significant and</p>	<p>Dismissed.</p> <p><u>Chee Tong</u> Appeal concerned length of sentence.</p> <p><u>Chee Siang</u> Appeal concerned length of sentence and error in finding (failing to find he was not essential to the success of the enterprise).</p>

		<p><u>Chee Siang</u> 24 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>No prior criminal history.</p> <p>Educated; diploma Penang college.</p> <p>Good work history.</p> <p>Good health.</p>	<p>The two co-accused were later found in possession of \$1,332,110 in cash.</p> <p>Chee Siang delivered a further \$150,000 to a Mr A.</p>	<p>active role in the laundering of the money; however Chee Siang's role was significantly less than Chee Tong's role.</p> <p>There was no evidence the appellants had any involvement in, or specific knowledge of, the offence or offences by which the \$1.5 million in cash was obtained.</p> <p>Both appellants demonstrated acceptance of responsibility; co-operative and remorseful.</p>	<p>At [51] ... taking into account ... Chee Tong's place in the hierarchy in the commission of this offence, his sentence is high. ... However, we have not been persuaded that the sentence is so high as to reveal implied error. Serious features included ... The very substantial quantity of cash involved ...; His commercial motive for the offence. ... While he followed the instructions of his brother ... [his] role, and what he did, was nevertheless significant. ... He was the person in charge of the process of moving the cash ... and was entrusted to take possession of it to effect that purpose. ... There was a degree of sophistication in the operation in which he was engaged, ...</p> <p>At [64] ... The judge was not required to make, ... a finding as to whether Chee Siang's role was essential. ...</p>
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					At [73] ... Chee Siang's role was significantly less than that of Chee Tong. Nevertheless, he assisted Chee Tong in the process of moving a very substantial quantity of cash, namely \$1.5 million, between different places and persons. In the course of that process, he was entrusted to deliver \$150,000 in cash to the person identified as [Mr A]. There was a commercial element in his motive for doing so in that he believed he would be paid about \$2,000 for participating in the offending. ...
1.	<p><i>Wong v The State of Western Australia</i></p> <p>[2019] WASCA 8</p> <p>Delivered 16/01/2019</p>	<p><u>Chiu</u> 25 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>No prior criminal history.</p> <p>Born Hong Kong; limited English.</p> <p>Positive and normal upbringing; close family.</p>	<p><u>Chiu</u> Cts 1 & 2: Property laundering. Ct 3: Poss methyl wiss 3.855 kg between 75% - 79% purity. Ct 4: Poss methyl wiss 7.606 kg between 5% - 81% purity. Ct 5: Poss unlawfully obtained property (\$400,938.50).</p> <p><u>Chuen</u> Ct 4: Poss methyl wiss Ct 5: Poss unlawfully obtained property (\$400,938.50).</p>	<p><u>Chiu</u> Ct 1: 6 mths imp (cum). Ct 2: 12 mths imp (conc). Ct 3: 14 yrs imp (cum). Ct 4: 2 yrs imp (cum). Ct 5: 2 yrs imp (conc).</p> <p>TES 16 yrs 6 mths imp. EFP.</p> <p><u>Chuen</u> Ct 4: 13 yrs imp (conc). Ct 5: 2 yrs imp (conc).</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence (ct 3); totality principle and parity principle.</p> <p><u>Chiu</u> Re-sentenced to:</p> <p>Ct 1: 12 mths imp (cum). Ct 2: 12 mths imp (conc). Ct 3: 11 yrs imp (conc). Ct 4: 12 yrs imp (cum).</p>

		<p>Completed equivalent of yr 10 in Hong Kong.</p> <p>Married; no children.</p> <p>Employed in Hong Kong.</p> <p>Sound mental and physical health; no history of illicit substance use; rarely consumes alcohol.</p> <p><u>Chuen</u> 26 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>No prior criminal history.</p> <p>Born Hong Kong; limited English.</p> <p>Positive and normal upbringing; close family.</p> <p>Completed equivalent of yr 10 in Hong Kong.</p> <p>No significant relationships; no children.</p> <p>Stable employment history.</p>	<p>The appellants Chiu and Chuen are brothers.</p> <p>Chiu was recruited in Hong Kong to come to Australia, to undertake 'errands' involving the sale and supply of illegal drugs. He was paid for the tasks he performed and provided with accommodation and food. In addition, he expected payment of a large sum of money on his return to Hong Kong.</p> <p>Chuen followed his brother to Australia some months later, knowing Chiu was involved in illegal activities.</p> <p><u>Ct 1</u> On instruction from his Hong Kong boss Chiu attended an arranged meeting place, where he delivered a bag containing \$100,000 in cash for the purchase of half a kg of drugs.</p> <p><u>Ct 2</u> On another occasion Chiu was instructed by his Hong Kong boss to deliver money. He was picked up and driven to an address, where he handed \$100,000 in cash to a male in a car.</p> <p><u>Ct 3</u> On another occasion, on instructions from his boss, Chiu attended a meeting point and collected a quantity of methyl from the boot of a motor vehicle.</p> <p>He was arrested before he could deliver the drug.</p>	<p>TES 13 yrs imp. EFP.</p> <p><u>Chiu</u> The sentencing judge found the appellant was not at the very top of the drug hierarchy; however he was towards the top end of the chain of distribution.</p> <p>Responsibility for his offending; lack of insight into seriousness of his offending.</p> <p><u>Chuen</u> The sentencing judge found the appellant was 'acting as a caretaker of the drugs and the money' and although not the mastermind behind the offending his role was important; but different to, and less culpable than that of his brother.</p> <p>The sentencing judge found the appellant's offending was motivated by financial gain.</p> <p>Lack of insight into seriousness of his</p>	<p>Ct 5: 2 yrs imp (cum). TES 15 yrs imp. EFP.</p> <p><u>Chuen</u> Re-sentenced to:</p> <p>Ct 4: 10 yrs imp. Ct 5: 12 mths imp (cum).</p> <p>TES 11 yrs imp. EFP.</p> <p>At [77] ... the offending in ct 3 was undoubtedly serious. However, the appellant's role was to take the drugs from the boot of the car, transport them to his house and keep them there until he received instructions from his boss. He did not own the drugs and was not in control of the operation.</p> <p>At [80] When all of the relevant factors and circumstances are taken into account, ... we have come to the conclusion that the sentence of 14 yrs' imp was manifestly excessive. ...</p>
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		<p>Gambling addiction; offending a means to repay gambling debts.</p>	<p>The drugs were valued at between \$720,000 and \$1 million.</p> <p><u>Cts 4 & 5</u> On the same date as ct 3 Chuen and another male left an address in a vehicle, with a number of suitcases, two of which belonged to his brother Chiu.</p> <p>The vehicle was stopped by police and in the suitcases various quantities of methyl were found, along with multiple mobile phones, unused clipseal bags, gloves, SIM cards, rubber bands and foreign currency.</p> <p>Cash and coins totalling \$400,938.50, as well as \$13,500 worth of casino chips were also located in the vehicle.</p>	<p>offending.</p>	<p>At [88] Chiu's position in the international criminal organisation in which he had involved himself was higher than his brother's.</p> <p>At [97] Chiu's overall criminality was substantially greater than Chuen. ... it is evident that Chiu, over a substantial period of approx eight months, played a vital role in the ongoing illegal activities being undertaken in WA by his superiors in Hong Kong. While Chuen's role in cts 4 and 5 was important, his role was restricted to his participation as a driver in those cts and his overall role was subservient to that of his brother.</p>
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