

Sexual assaults – adult victims

ss 325 & 326 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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:

AOBH	assault occasioning bodily harm
agg	aggravated
att	attempted
burg	burglary
circ	circumstances
con	concurrent
cum	cumulative
ct	count
dep lib	deprivation of liberty
GBH	grievous bodily harm
imp	imprisonment
indec	indecent
ISO	intensive supervision order
PG	plead guilty
PNG	plead not guilty
sex pen	sexual penetration without consent
susp	suspended
TES	total effective sentence
TIC	time in custody
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
29.	<i>The State of Western Australia v Hussian</i> [2020] WASCA 186 Delivered 16/11//2020	<p><u>Hussian</u> 35 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Minor criminal history; poss cannabis; no prior criminal history outside WA.</p> <p>Born Myanmar; second of 10 children to father's two wives.</p> <p>Very basic education; cannot read or write; left school young age; worked parents' farm; very limited English.</p> <p>Married; not seen his wife or 10 yr old son about 10 yrs.</p> <p>Time in refugee camp; came to Australia 2013; held 12 mths in immigration detention.</p> <p>Difficulties obtaining consistent employment; relies on benefits.</p> <p>Medicated for condition</p>	<p>Cts 1; 2 & 3: Dep lib. Cts 4-9: Sex pen. Ct 10: Agg robbery.</p> <p>The victim S owned and managed a massage parlour. The victims B and C worked at the parlour.</p> <p>With the intention of stealing money and property Hussian and Pyu went to the parlour, armed with a knife and plastic tubing and cables. They decided that, if necessary, they would use threats of violence to facilitate the theft. They also intended to compel the women to engage in sexual activity with them.</p> <p>On arrival Hussian and Pyu discussed what services they wanted and selected B and C.</p> <p>When being led to his room Hussian placed his arm around B's neck and produced the knife. He then pushed, shoved and dragged B and S into the room. Hearing the screams C went to the room. Pyu followed. Hussian and Pyu tied the three victims' hands with the tubing and cables.</p> <p>When Pyu left the room to search the parlour for items to steal Hussian sexually offended against C (cts 4 and 5). During the assaults he continued to hold the knife and C's hands remained tied.</p> <p>Pyu returned and took C to another room and sexually assaulted her (ct 7) and (ct 8). C's hands</p>	<p><u>Hussian</u> Ct 1: 12 mths imp (cum). Ct 2: 2 yrs imp (conc). Ct 3: 4 yrs 6 mths imp (cum). Ct 5: 5 yrs 2 mths imp (conc). Ct 9: 5 yrs imp (cum). Ct 10: 18 mths imp (conc).</p> <p>TES 10 yrs 6 mths imp.</p> <p>EFP.</p> <p><u>Pyu</u> Ct 1: 12 mths imp (cum). Ct 2: 2 yrs imp (conc). Ct 3: 2 yrs imp (conc). Ct 6: 4 yrs 8 mths imp (cum). Ct 7: 4 yrs 2 mths imp (conc). Ct 8: 4 yrs 4 mths imp (cum). Ct 10: 2 yrs 4 mths imp (conc).</p> <p>TES 10 yrs imp.</p> <p>EFP.</p> <p>The trial judge found Hussian and Pyu engaged</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence and totality principle.</p> <p>Resentenced to:</p> <p><u>Hussian</u> Ct 1: 2 yrs 6 mths imp (cum). Cts 2 & 3: 3 yrs imp (conc). Ct 4: 7 yrs imp (conc). Ct 5: 8 yrs 6 mths imp (cum). Ct 9: 8 yrs imp (conc). Ct 10: 2 yrs imp (cum).</p> <p>TES 13 yrs imp. EFP.</p> <p><u>Pyu</u> Ct 1: 2 yrs 6 mths imp (cum). Cts 2 & 3: 3 yrs imp. Ct 6: 6 yrs imp. Ct 7: 5 yrs 6 mths imp (cum). Ct 8: 6 yrs 6 mths imp (cum). Ct 10: 3 yrs imp (cum).</p> <p>TES 12 yr imp. TE.</p> <p>At [109] The facts and</p>

		<p>resulting in intestinal bleeding.</p> <p><u>Pyu</u> 37 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Minor criminal history; drug convictions; no criminal history outside WA.</p> <p>Born Myanmar; one of a large number of children; good upbringing; good relationship with his parents; family financially comfortable.</p> <p>Two brothers killed in Myanmar; unknown whether parents and siblings alive.</p> <p>Limited education; left equivalent of yr 4; worked family farm.</p> <p>Time in refugee camp before arriving in Australia by boat operated by people smugglers 2013; 6 mths in immigration detention; itinerant lifestyle in Perth;</p>	<p>remained tied throughout the offending.</p> <p>While Pyu was out of the room with C, Hussian sexually offended against B. He was still holding the knife. (ct 9).</p> <p>Pyu returned with C, untied B from S and took B from the room. He then sexually assaulted B (ct 6) before returning her to the room.</p> <p>Pyu again searched the parlour for money and property to steal. Hussian, still holding the knife, remained in the room guarding the three victims.</p> <p>Pyu returned to the room and left with S, asking her where the money was. He asked S for sex, but she refused without a condom. He touched her breasts with his hands, before threatening someone would get hurt if she did not tell him where the money was. S pointed to a draw containing \$700, which he took, along with a gold necklace S was wearing (ct 10).</p> <p>Pyu and Hussian then left the parlour, leaving the victims tied up. They took with them the \$700 cash, jewellery, handbags and mobile telephones. They also took with them the hard drive from the parlour's CCTV system to prevent their identities being discovered.</p>	<p>in a very serious course of criminal conduct; it was premeditated and involved a degree of planning; the unlawful detention offences were relatively serious examples of their type; having regard to the period for which the three women were detained, the use of the knife to assist in detaining them and their conduct in tying the hands of the women with tubing and cables to further restrict their ability to escape.</p> <p>Pyu was the principal offender in the commission of the agg robbery.</p> <p>The trial judge found the sexual acts the victims were forced to engage in were significant, degrading and humiliating; the seriousness of the offences committed against C were agg by the fact that her hands were tied; the victims were subjected to a very</p>	<p>circumstances of the unlawful detention offences ... were very serious. ... The offences were premeditated and planned ... were committed in company. ... were committed at the victims' place of work. ... involved the use of physical force and threats of violence while Mr Hussian was armed with the knife. ... involved forcing the victims into a room where they would be guarded ... The victims were detained for about 2 hrs. ... after committing the offences, the victims remained physically restrained. ... S suffered bruising and pain on her wrists as a result of the restraints.</p> <p>At [113] In our opinion, the sentence ... for each of the unlawful detention offences ... was not commensurate with the seriousness of the offence ... the length of each sentence was unreasonable or plainly unjust</p>
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		<p>secure accommodation at time offending.</p> <p>Limited English.</p> <p>Married; not seen wife and two children since leaving refugee camp; regularly speaks to his family.</p> <p>Employed.</p> <p>Type 2 diabetic; suffers depression; prescribed antidepressant medication.</p>		<p>frightening and traumatising ordeal over an extended period; they were at their workplace; the offending occurred at night and they were extremely vulnerable.</p> <p>Victims suffered significant emotional trauma.</p> <p><u>Hussian</u> No demonstrated remorse; continued to deny offending; refusal to accept responsibility; limited language skills significant barrier to engaging in treatment programs.</p> <p>Subject to deportation upon release from prison.</p> <p><u>Pyu</u> No demonstrated remorse; continued stance of denial; limited English barrier to treatment options.</p> <p>Unlawful non-citizen; subject to deportation upon release from prison.</p>	<p>At [115] ... Each sentence was manifestly inadequate.</p> <p>At [123] The facts and circumstances of the sex offences committed by Mr Hussian and Mr Pyu were very serious. ...</p> <p>At [126] In our opinion, the sentence for each of the sex offences was not commensurate with the seriousness of the offence. ... the length of each sentence was unreasonable or plainly unjust.</p> <p>At [136] ... The agg rob offence was also serious. It was premediated and planned. The massage parlour was a vulnerable small business. It operated at night. No actual violence was used in committing the offence. However, none was necessary, having regard to the facts and circumstances that preceded it. The value of the property stolen was not insignificant.</p>
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<p>28.</p>	<p><i>The State of Western Australia v Syred</i></p> <p>[2020] WASCA 185</p> <p>Delivered 09/11/2020</p>	<p>26 yrs at time offending. 28 yrs at time sentencing.</p> <p>Convicted after PG (22% discount).</p> <p>Minor criminal history; no prior sexual offending or sentences of imp.</p> <p>Supportive family.</p> <p>Left school at yr 11.</p> <p>Good work history.</p> <p>Issues with cannabis and alcohol use.</p>	<p>Cts 1-2 & 4: Agg indec assault. Ct 3: Agg sex pen.</p> <p>The female victim was aged 19 yrs. The offending occurred at Syred's home.</p> <p>During the evening Syred and the victim consumed alcohol and had consensual sex. The victim, who was fatigued and intoxicated, then rolled over and went to sleep.</p> <p>Whilst she was asleep Syred took a total of 29 photographs and 9 videos of the victim on his mobile phone. The images included a selfie with his tongue out towards the victim's vagina (ct 1); photographs of her vagina (ct 2); video penetrating her vagina with his finger (ct 3); video masturbating himself and ejaculating over her body and further photographs depicting his semen on her breasts (ct 4).</p> <p>In the morning Syred and the victim again had consensual sex. He never told the victim about his sexual activities while she was asleep or the video and images he had taken.</p> <p>The victim left Syred's home later that day. They never had any further physical contact and a few mths later they ceased contact all together.</p> <p>Syred later bragged about the photos and videos he had taken and showed some of the images to his friends. The girlfriend of one of his friend's advised the victim.</p>	<p>Ct 1: 12 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 18 mths imp (conc). Ct 4: 18 mths imp (conc).</p> <p>TES 18 mths imp conditionally susp 18 mths.</p> <p>The sentencing judge found the seriousness of the offending agg by the humiliating and degrading manner in which he treated the victim; the 'sex pen itself in isolation was at the lower end of that sort of offence' and the offending the subject of ct 4 fell 'at least in the middle if not higher end of the range of offences of agg unlawful and indec assault'.</p> <p>Significant and on-going impact on victim's psychological wellbeing.</p> <p>Remorseful; steps taken towards rehabilitation; undertaken private counselling.</p>	<p>Allowed.</p> <p>Appeal concerned type of sentence.</p> <p>Resentenced (22% discount):</p> <p>Ct 1: 12 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 2 yrs 6 mths imp (cum). Ct 4: 6 imp (cum).</p> <p>TES 3 yrs imp. EFP.</p> <p>At [25] The ... offending on ct 3 was a relatively serious example of this kind of offending. It is true that the degree of intrusiveness of the sex pen in this case was not as egregious as that with which this court commonly deals. However, it was significant that the complainant was asleep at the time ..., which both placed her in a vulnerable position and made it abundantly clear ... that she was not consenting to any sexual activity at that time. ... That conduct,</p>
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			<p>When interviewed Syred initially lied about the location of his mobile phone, before providing it to police and admitting the offending.</p>	<p>which did actually degrade and humiliate the victim, significantly elevated the degree of criminality involved in the offending. While [he] did not generally circulate the images he created, it was an agg factor that he showed some of them to a friend who was also within the victim's social circle.</p> <p>At [29] In our view, the seriousness of the agg sex pen offence in this case was such that the sentencing judge was bound to conclude that it was inappropriate to conditionally susp the sentence of imp he intended to impose for ct 3. ...</p> <p>At [34] ... While the offending occurred during the one incident, in our view the agg indec assault offences do elevate the overall seriousness of the offending in a manner which requires some degree of accumulation of the sentences. ...</p>
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<p>27.</p>	<p><i>Thong v The State of Western Australia</i></p> <p>[2020] WASCA 182</p> <p>Delivered 30/10/2020</p>	<p>21 yrs at time offending. 34 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Born Malaysia.</p> <p>Unremarkable childhood.</p> <p>Consistent work history; own business.</p> <p>Married; young child; loving caring father; good provider.</p>	<p>Ct 1: Sex pen. Ct 2: Agg sex pen.</p> <p>The female victim, L, was aged 19 yrs. She went out with friends and consumed a large quantity of alcohol.</p> <p>L was intoxicated when her friends took her to a taxi rank so she could go home. In the vicinity of the taxi rank Thong approached L and took her to his vehicle.</p> <p>Thong then drove L to an area behind a shop complex and sexually penetrated her mouth with his penis (ct 1) and her vagina with his penis (ct 2). During the assault the subject of ct 2 he produced a knife, held it up to her throat, told her to shut up and threatened to kill her.</p> <p>Afterwards Thong telephoned a Mr Lim, who drove to the shop complex. Mr Lim saw L was naked from the waist down and clearly distressed. Mr Lim drove her home.</p> <p>L complained to her housemates that she had been sexually assaulted and was taken to police.</p> <p>At some point during the evening L lost her mobile phone. One of L's friends later rang the phone and when it was answered by Thong arranged to meet him. When Thong arrived at the scheduled meeting place he was met by police. Following questioning he was released without charge.</p>	<p>Ct 1: 2 yrs 6 mths imp (conc). Ct 2: 8 yrs 6 mths imp (conc).</p> <p>TES 8 yrs 6 mths imp.</p> <p>EFP.</p> <p>The trial judge characterised the offending as 'extremely serious' and 'at the very high end of offending for offences of this kind'.</p> <p>The trial judge found L was extremely vulnerable as a result of her intoxication; the appellant's actions were deliberate with 'nefarious intentions'; he took advantage of L's vulnerability; took her to an isolated place, thus placing her at an even greater disadvantage; he was not deterred by her resistance and used force to ensure he got what he wanted and showed scant regard for her after the commission of the offences.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence ct 2 and totality principle.</p> <p>At [214] ... ct 2 was a very serious offence that falls towards the high end of offending for offences of this kind. When the appellant came across L ... he took advantage of the fact that L was alone and highly vulnerable because of her intoxicated state. ... [He] took L to an isolated location, unfamiliar to her, and subjected her to a terrifying ordeal.</p> <p>At [215]-[216] After subjecting L to the acts which constituted ct 1, he proceeded to engage in a further act of sex pen, this time inserting his penis into her vagina. ... In order to overcome L's resistance, the appellant not only produced a knife, but held it to her throat and threatened to kill her. ... the appellant's penetration of L's vagina was clearly</p>
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			<p>Some nine yrs later, due to advances in DNA technology, further analysis of the clothing L wore on the night revealed the presence of DNA which matched Thong's DNA profile.</p>	<p>The victim suffered significant injuries; psychological effects on her devastating and profound.</p> <p>The trial judge found the appellant was without remorse; took no responsibility for his actions or its consequences; low risk of reoffending.</p>	<p>forceful ... What the appellant did to L was cruel and callous.</p> <p>At [225]-[226] ... the sentence imposed on ct 2, albeit at the higher end of the discretionary range, was not unreasonable or plainly unjust. The offence committed by the appellant was, as we have said, a very serious example of its kind. ... [he] was fortunate that her Honour ordered the sentences she imposed on the two cts to be served conc. Ct 1 itself constituted a serious offence. ...</p>
<p>26.</p>	<p><i>The State of Western Australia v Jacoby</i></p> <p>[2020] WASCA 150</p> <p>Delivered 09/09/2020</p>	<p>20 yrs at time offending. 21 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>No prior criminal history.</p> <p>No good role models in early yrs; parents separated; lived with mother; then his father following altercation with his step-father.</p> <p>Supportive family and friends.</p>	<p>1 x Sex pen.</p> <p>Jacoby and the victim, aged 26 yrs, were at a hotel. They did not know each other, but during the evening became acquainted and spoke to one another.</p> <p>Jacoby invited the victim to leave and have sex with him. She declined.</p> <p>When the hotel was closing the victim realized her friends had already left, so she started to walk to the hostel where she was staying.</p> <p>Jacoby had left the hotel and was driving his vehicle when he noticed the victim and stopped.</p>	<p>2 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending very serious. The respondent took advantage of a defenceless young woman; he took her to an isolated location; she was not familiar with the area; he ignored her protestations, including her screams for assistance; used a</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence.</p> <p>Re-sentenced to 4 yrs imp (25% discount).</p> <p>EFP.</p> <p>At [54] The facts and circumstances of the respondent's offending, ... were very serious. On numerous occasions the victim expressly and</p>

		<p>Educated to yr 10; some difficulties at school.</p> <p>Reasonable work history.</p> <p>Suffers anxiety and moderate depression; att suicide approx 12 mths prior to offending.</p> <p>Illicit drug use, including cannabis, MDMA and methyl from aged 15 yrs.</p>	<p>He again invited the victim to have sex. She again declined and told him she wanted to go home.</p> <p>Jacoby offered the victim a lift home and she accepted. Jacoby drove to a beach. The victim repeatedly asked him where they were going.</p> <p>Jacoby parked his vehicle. He att to kiss the victim. She rejected his advances and got out of the car. He followed her and again att to kiss her. Again she said, 'No'.</p> <p>Jacoby then forced the victim onto the sand and straddled her. As he att to remove her clothing, she began shouting out for help. He forcefully removed her mobile phone from her hand and threw it onto the sand.</p> <p>Jacoby removed the lower half of the victim's clothing. He put his hand around her throat, trying to quieten her screams for help.</p> <p>Forcing the victim's legs apart Jacoby had sexual intercourse with her for a few minutes. He did not use a condom.</p> <p>When Jacoby stopped the victim was able to find her mobile phone. She took photographs of his vehicle's registration plate, but when he saw what she was doing forced her to delete the images.</p> <p>Jacoby drove away, leaving the victim alone at a dark and remote beach at 2.30am.</p>	<p>significant amount of force to subdue her and attempted to prevent her from obtaining help by abandoning her and throwing away her mobile phone.</p> <p>Remorseful; cooperative; accepted responsibility for his offending; some victim empathy and engaged in counselling to address his substance misuse and mental health issues.</p> <p>Average to medium risk of reoffending.</p>	<p>unequivocally refused to consent to having sex with the respondent. [He] ignored the victim's unequivocal expressions of her absence of consent. ... the respondent had offered to drive her to her home. However, he drove to a remote location [He] was physically stronger than the victim. He used significant physical force to subdue her for the purpose of enabling him to have sex without her consent. That included holding one of her wrists with one hand and placing his other hand around her throat. [He] did not use a condom ..., a fact which gave rise to the risk for the victim of pregnancy and sexually transmitted disease. ... The respondent forced the victim to delete images the victim had taken on her mobile telephone which would have assisted in identifying him. [He] abandoned the victim at about 2.30 am in a dark and isolated location. The victim was</p>
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					highly vulnerable to offending of the kind committed by the respondent. ...
25.	<p><i>Taylor v The State of Western Australia</i></p> <p>[2019] WASCA 217</p> <p>Delivered 09/04/2020</p>	<p>59 yrs at time offending. 61 yrs at time sentencing.</p> <p>Convicted after late PG (15% discount).</p> <p>Prior criminal history.</p> <p>Parents separated aged 14 yrs; lived with violent alcoholic father; left home aged 17 yrs; no further contact with his father.</p> <p>Re-connected with his mother aged 28 yrs; her carer until her death 2018.</p> <p>Borderline intellectual functioning; learning difficulties; completed yr 10; educated in remedial/special classes.</p> <p>Employed number of factory occupations.</p> <p>Three intimate relationships; at least one son; no contact with his children.</p>	<p>1 x Sex pen.</p> <p>Taylor and the victim, aged 27 yrs, knew each other. They had never been in any form of a relationship.</p> <p>In the early hours of the morning Taylor and the victim went to a mutual friend's home to continue celebrations with others.</p> <p>Both had been drinking alcohol.</p> <p>After all others had left the house the victim went into a bedroom and went to sleep. She was wearing a singlet and pants.</p> <p>Whilst she was sleeping Taylor got into bed with the victim and digitally penetrated her vagina. The victim awoke. She was naked. On realising what was happening she rolled away, found her clothing and left the house. She was crying and upset.</p> <p>Shortly afterwards the victim reported the assault to police.</p>	<p>3 yrs imp.</p> <p>EFP.</p> <p>Sentenced on the basis that the appellant had an honest but unreasonable belief the victim was consenting in the context of his limited intelligence and his intoxication at the time.</p> <p>The sentencing judge characterised the offending as 'marginally less serious than a ct of penile pen but only marginally so' and that the absence of force or intimidation counterbalanced to a significant extent the serious abuse of the victim's vulnerability.</p> <p>The sentencing judge found that appellant's intoxication was a relevant factor in his offending and that he</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence and errors [failed to take into account appellant's borderline intellectual functioning; the characterisation of the offending and risk of reoffending].</p> <p>Re-sentenced to 2 yrs imp (15% discount).</p> <p>EFP.</p> <p>At [68] The sentencing judge took into account, appropriately, the appellant's borderline intellectual functioning. ...</p> <p>At [78] In our opinion, ... if the appellant had penetrated the complainant's vagina with his penis rather than his finger, and the other objective facts and circ were unaltered, the penile pen would not merely have</p>

		<p>History of alcohol addiction and abuse; heart problems requiring surgery; possibility of further heart surgery; medicated for heart and reduced kidney function.</p> <p>Abstained from alcohol since heart attack 2018.</p>		<p>failed to understand the impact of his offending on the victim.</p> <p>Low risk of reoffending in a sexual manner; concerns he may offend again if ever placed in a situation where he had access to a sleeping woman and where he had been drinking due to his intellectual understanding.</p>	<p>been ‘marginally more serious’ than the digital pen. The penile pen would likely have been perceived by the complainant as a materially greater affront to her personal dignity and bodily integrity than the digital pen. In the circ, the digital pen which actually occurred was materially less serious than penile pen would have been. It was not merely ‘marginally less serious’.</p> <p>At [75] ... the seriousness of the appellant’s offending is apparent from a number of circumstances. ... the complainant was highly vulnerable in that she was alone and asleep. She was unable, in those circ, to take any action to endeavour to avoid the commission of the offence. ... the appellant entered the bedroom and got into bed with [her] without any reasonable basis for any belief that [she] might welcome his presence or might be interested in any form of sexual interaction</p>
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					<p>with him. ... the complainant suffered significant emotional trauma as a result of the appellant's actions.</p> <p>At [84] ... her Honour was entitled to be apprehensive that if the appellant was ever placed in a situation where he had access to a sleeping woman and he had been drinking alcohol, he may reoffend in a sexual manner.</p> <p>At [98]-[99] ... the appellant's offending was serious. ... There were, however, some factors which mitigated the seriousness of his offending. ...</p> <p>At [102] ... A sentence of immediate imp of a materially shorter length should have been imposed. ...</p>
24.	<p><i>McNally v The State of Western Australia</i></p> <p>[2019] WASCA 93</p>	<p>41 yrs at time sentencing. 42 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Minor criminal history; no</p>	<p>Ct 1: Sex pen. Ct 3: Att sex pen.</p> <p>McNally and the victim connected with each through a dating application. They communicated extensively prior to meeting. In some of his</p>	<p>Ct 1: 6 yrs imp (conc). Ct 3: 4 yrs imp (conc).</p> <p>TES 6 yrs imp. EFP.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [55] ... the very serious</p>

	<p>Delivered 02/07/2019</p>	<p>prior offending of a sexual nature.</p> <p>Positive upbringing; supportive immediate and extended family.</p> <p>Mild paralysis on right side resulting from a head injury aged 2 yrs.</p> <p>Significant learning difficulties; bullied at school due to his physical disabilities.</p> <p>Left school yr 8.</p> <p>Sound work history; gainfully employed many yrs in security; successful driving instructor's business.</p> <p>Twice married; three children; little or no contact with them.</p> <p>Supportive current partner.</p> <p>No other medical issues; not medicated.</p>	<p>messages to the victim McNally stated he wanted to have anal sex with her. The victim made it clear to him that she did not wish to have anal sex, as it was acutely painful for her.</p> <p>The victim also informed McNally she had a medical condition that prevented her blood from clotting if she suffered a bleeding injury.</p> <p>By mutual arrangement McNally went to the victim's home. They had consensual sex. McNally then told the victim to turn over, before penetrating her anus with his penis. The victim cried out in pain and repeatedly told him to stop. After several minutes she was able to pull herself away (ct 1).</p> <p>McNally then had vaginal sex with the victim, again ignoring her when she struggled and told him she did not want to have sex with him (ct 2).</p> <p>The victim suffered pain and lacerations to her anal area. She had to immediately inject herself with a blood clotting agent to stem the bleeding.</p>	<p>The trial judge found ct 1 a particularly serious offence, it involved the appellant holding the victim down when she was clearly upset, resisting and asking him to desist.</p> <p>The trial judge found the appellant knew the victim was particularly vulnerable; that she had a medical condition; had had prior anal surgery and that anal intercourse would be exceptionally painful for her.</p> <p>Devastating effect on victim; suffered serious emotional trauma; continuing significant impact upon her.</p> <p>No demonstrated remorse or acceptance of responsibility; element of victim blaming; continued to deny the offending;</p>	<p>character of the appellant's offending, and the nature and extent of the complainant's vulnerability, are apparent ...</p> <p>At [56] ... the appellant did not simply sexually penetrate the complainant's anus with his penis without consent. [He] engaged in anal sex ... despite the complainant having expressly informed [him] previously that she did not wish to [do so] because of the medical condition from which she suffered. The complainant had also told the appellant that anal sex was acutely painful for her. The appellant applied physical force ... He continued to penetrate her ... for several minutes. [He] ignored [her] distress and her requests for him to stop. As a result ... [she] suffered lacerations It was necessary for her to inject a clotting agent to stem the bleeding.</p>
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					At [70] The TES bears a proper relationship to the overall criminality involved in both of the offences, ...
23.	<p><i>KNY v The State of Western Australia</i></p> <p>[2019] WASCA 89</p> <p>Delivered 28/06/2019</p>	<p>37 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; no prior convictions for sexual offending.</p> <p>Supportive family; excellent upbringing; diagnosed ADHA.</p> <p>Bullied at school because of his sexuality.</p> <p>Good employment history; retail and hospitality.</p> <p>History of cannabis and methyl use; problematic methyl use prior to his relationship with A.</p>	<p>Ct 1: Agg sex pen. Cts 2 & 3: Sex pen child 13-16 yrs.</p> <p><u>Ct 1</u> KNY and the victim, A, lived together in a same-sex relationship.</p> <p>KNY recorded himself sexually penetrating A, whilst A was unconscious. A discovered the video. He had no recollection of the encounter and was unaware he had been recorded and the recording kept by KNY. A asked KNY to delete the video file, he agreed, however he did not do so.</p> <p><u>Cts 2 and 3</u> The victim, B, was aged 15 yrs, and is A's younger brother.</p> <p>KNY and A had ended their relationship.</p> <p>In the weeks before B turned 16 yrs old KNY allowed B, B's mother and other members of his family to stay at his home.</p> <p>Shortly after moving into the home KNY began a sexual relationship with B. On two occasions KNY sexually penetrated B, knowing he was aged 15 yrs. On the occasion the subject of ct 3 B suffered bleeding from his anus following the</p>	<p>Ct 1: 6 yrs imp (cum). Ct 2: 2 yrs 6 mths imp (cum). Ct 3: 5 yrs imp (conc).</p> <p>TES 8 yrs 6 mths imp. EFP.</p> <p><u>Ct 1</u> The trial judge found the appellant committed 'a gross act of betrayal'; ct 1 was 'seriously aggravated by reason of the fact the appellant recorded the offence without A's knowledge'; the recording was 'brazen' and was made for his 'own prurient purposes' and this added substantially to A's humiliation.</p> <p>Offending substantial negative effect on victim A's mental health.</p> <p>Absolutely no remorse and no insight into his offending against A.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (ct 1) and totality principle.</p> <p>Individual sentences cts 2 and 3 not challenged.</p> <p>At [69] The circ of ct 1 were plainly serious. The appellant committed an act of sex pen upon A while A was clearly unconscious and not in a position to consent or to object. The appellant took advantage of A's vulnerability for his sexual gratification. The offending was substantially agg by the appellant video recording the offence. ...</p> <p>At [75] ... the sentence on ct 1 was not unreasonable or plainly unjust. ...</p> <p>At [78] The offences upon B were, in themselves, serious. The appellant,</p>

			incident.	<p><u>Cts 2 and 3</u> The trial judge found the appellant did not care that B was a child at the time the offences were committed; he took advantage of B, ‘a vulnerable young man’; there was a substantial disparity in age between the appellant and B and there was a significant power and experience imbalance between them; the appellant supplied B with drugs, including methyl.</p>	<p>knowing full well that the victim was under the age of 16, took advantage of B’s vulnerability and engaged in two acts of sex pen, one of which resulted in physical injury to B.</p> <p>At [79] The appellant’s overall criminality against A and B was of a high order, and has had serious psychological effects upon them.</p> <p>At [82] ... the TES imposed upon the appellant ... was an appropriate reflection of the ... overall criminality having regard to all of the circumstances, ...</p>
22.	<p><i>The State of Western Australia v TLP</i></p> <p>[2019] WASCA 66</p> <p>Delivered 24/04/2019</p>	<p>24 yrs at time offending. 25 yrs 6 mths time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>No prior criminal history.</p> <p>Unstable upbringing; parents separated before</p>	<p>Ct 1: Agg GBH. Ct 2: Agg AOBH. Cts 3-7 & 9: Agg sex pen. Ct 8: Att agg sex pen.</p> <p>TLP went to his grandparents’ home. His grandmother, P, aged 73 yrs, and his half-sister E, aged 17 yrs were home. P let him into the house. After a time, and without warning, he attacked P by grabbing her by the neck, throwing her to the ground and punching her repeatedly to her face</p>	<p>Ct 1: 3 yrs imp (conc). Ct 2: 16 mths imp (conc). Ct 3: 18 mths imp (cum). Ct 4-5 & 8-9: 18 mths imp (conc). Ct 5: 18 mths imp (conc). Ct 6: 5 yrs imp (cum). Ct 7: 2 yrs (conc). TES 6 yrs 6 mths imp.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence (cts 1, 3-5, 7-9) and totality principle.</p> <p>Re-sentenced to:</p> <p>Cts 1; 5 & 9: 4 yrs imp (cum). Ct 2: 16 mths imp (conc).</p>

		<p>aged 2 yrs; lived with various family and friends as a child (including grandmother, victim P); mother often lived elsewhere.</p> <p>Completed yr 10.</p> <p>Bullied at school; socially isolated; retreated into computer gaming world; accessed pornography at a young age, exposed to explicit pornography depicting incest and bondage.</p> <p>Employed various casual roles; unemployed 18 mths prior to offending.</p> <p>History of alcohol and illicit drug use; escalated prior to offending; intoxicated with alcohol and cannabis at time offending.</p>	<p>and head (ct 1).</p> <p>TLP then assaulted E by grabbing her by the hair and punching her in the face and head repeatedly (ct 2). He dragged E to where the victim P was still lying and, in her presence, he committed and att to commit acts of sexual violence against E (cts 3-9).</p> <p>During the sexual assaults he repeatedly told E and P that if they did not do what he said he would kill them.</p> <p>TLP then left, taking his grandfather's car. He was later arrested.</p>	<p>EFP.</p> <p>The sentencing judge characterised the offending as extremely serious; involving a sustained, prolonged, vicious and violent attack on P and E; his conduct 'obviously degrading'; it inflicted serious physical injuries and psychological trauma on the victims.</p> <p>Remorseful; co-operative with police.</p> <p>Moderate to high risk of re-offending in a sexual manner; particularly if alcohol and cannabis use not addressed.</p>	<p>Ct 3: 4 yrs imp (conc). Cts 4 & 7: 5 yrs imp (conc). Ct 6: 6 yrs imp (conc). Ct 8: 3 yrs imp (conc).</p> <p>TES 12 yrs imp.</p> <p>EFP.</p> <p><u>Ct 1</u> At [87] – [88] The circumstances ... of this offence ... are self-evidently extremely serious. The victim was the respondent's grandmother. She was 73 yrs old The respondent was much younger than his grandmother and there was a significant size difference between him and his victim. P was completely vulnerable. The respondent attacked her without warning. She had no ability or means with which to fight back. ... At the time the respondent was sentenced, P was still receiving medical and psychological treatment.</p> <p>At [89] The acts of the</p>
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					<p>respondent can fairly be characterised as callous, brutal and sustained. ... The respondent did nothing to help P, despite her injuries. Instead, he forced E to humiliate and then kick P. The respondent forced P to witness the respondent's sexual attacks on E.</p> <p><u>Cts 3, 4, 5, 7, 8 and 9</u> At [90] ... it is clear that the offending was at the upper end of the range of seriousness for offences of agg GBH.</p> <p>At [96] Each of the offences ... was a very serious example of its type. ... He did so with a high level of violence and while threatening to kill her. E's humiliation and distress in each case was compounded by the respondent committing the offence in the presence of P. The respondent traumatised E, who had not previously engaged in sexual intercourse. The respondent exposed her to</p>
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					the risk of pregnancy. Each of the offences ... was cruel and was committed without a modicum of pity for the ordeal he inflicted upon E. ...
21.	<p><i>Lakay v The State of Western Australia</i></p> <p>[2019] WASCA 46</p> <p>Delivered 08/03/2019</p>	<p>30 yrs at time offending. 33 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history; convictions for traffic offences.</p> <p>Loving and supportive family; did well at school; unsuccessful attempts at university study.</p> <p>Good employment history and work ethic; at time of sentencing ran his own business; plans to undertake a business degree.</p> <p>Supportive relationship; commenced after offending.</p> <p>Actively involved in playing football and cricket; contributed in the activities of his football club; positive references.</p>	<p>1 x Sex pen.</p> <p>The victim was aged 24 yrs. She and a friend, M, went out for the evening. They later went to a nightclub to meet one of M's male friends, who was with Lakay. Lakay was unknown to the victim.</p> <p>At the nightclub they all had drunk more alcohol and spent time socialising and dancing together. While dancing Lakay and the victim kissed on two or three separate occasions.</p> <p>In the early hrs the four returned to M's unit. When the decision was made to call it a night M went into her room and the victim into the spare room. So Lakay would not have to sleep on the couch she invited him to sleep in her room and to share the double bed. She made this offer without the intention of engaging in any sexual intimacy with him.</p> <p>The victim got into the bed, wearing underpants, leggings, a singlet and a hoodie. Lakay removed his shoes and got into the bed fully clothed. They kissed one or two times, after which she backed away from him and removed his arm from under her neck. They both then fell asleep.</p>	<p>3 yrs 9 mths imp.</p> <p>EFP.</p> <p>The trial judge found the appellant's offending opportunistic; it did not involve any careful planning on his part; however he made a deliberate decision to take advantage of a vulnerable and defenceless woman for his own sexual gratification; she was asleep and had no opportunity to prevent him penetrating her and he breached the trust she had placed in him by permitting him to sleep in the bed with her.</p> <p>The trial judge found the appellant did not inflict any non-sexual violence upon the victim, however, it was unnecessary for him to do so as she was</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [44] ... the appellant's offending has had a very significant adverse impact on the complainant's psychological wellbeing. The appellant engaged in unprotected penile-vaginal penetration with a woman he had only just met, who he knew was asleep and who he knew had not consented to sexual intercourse. While the trial judge identified the appellant's prior good character and low risk of reoffending as mitigating factors, those factors were to be balanced against considerations of the need for appropriate punishment and general deterrence. ...</p>

		No history of substance abuse or mental health issues.	<p>Some hrs later Lakay woke up. The victim was still asleep when he commenced unprotected sexual intercourse with her. The victim woke up. Shocked, she did not know how to react.</p> <p>Lakay continued to sexually penetrate her for about one and a half to two minutes. He ejaculated between her legs. When he had finished she remained in the same position for a short time, before turning her back on him, pulling up her clothing, grabbing her phone and leaving the room.</p> <p>The victim immediately texted M to come out of her room. She then told M what had occurred.</p>	<p>initially asleep and then too shocked to put up any substantial resistance.</p> <p>Significant adverse effect on the victim.</p> <p>No demonstrated remorse; low risk of further sexual or serious offending.</p>	
20.	<p><i>Kabambi v The State of Western Australia</i></p> <p>[2019] WASCA 44</p> <p>Delivered 06/03/2019</p>	<p>28 yrs at time sentencing.</p> <p>Convicted after late PG (20% discount).</p> <p>No relevant prior criminal history.</p> <p>Born Republic of Congo; raised in Rwanda; arrived in Australia 2001.</p> <p>Traumatic childhood; experienced civil war aged 10 yrs; kidnapped and used as slave labour aged 13 yrs.</p> <p>Father a political figure; aged 15 yrs when he was poisoned and died; assumed</p>	<p>2 x Sex pen.</p> <p>The victim was aged 32 yrs. She did not know Kabambi.</p> <p>The victim attended a party at Kabambi's home. In the early hrs of the morning, unable to find a taxi, she went to sleep fully clothed in a spare bedroom.</p> <p>Some hrs later Kabambi entered the room in which the victim was sleeping. Moving her underwear to the side he engaged in cunnilingus (ct 1). He then had sexual intercourse with her whilst she was still sleeping (ct 2).</p> <p>When the victim woke up she froze. Kabambi continued penetration for about 5 – 10 minutes. He eventually ceased when the victim yelled at him to stop several times.</p>	<p>Ct 1: 18 mths imp (conc). Ct 2: 4 yrs imp.</p> <p>TES 4 yrs imp.</p> <p>The sentencing judge found imp would involve greater hardship on the appellant given family who remain in Rwanda are unable to visit him; his childhood experience in a detention camp meant imp carried a greater burden on him than for other offenders; ct 1 would not have been detected but for his disclosure in his second interview with police.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (ct 2).</p> <p>At [25] ... the sentence imposed on the appellant is broadly consistent with the approach taken in previous cases.</p> <p>At [26] The offending involved the appellant sexually penetrating the vagina of a sleeping woman, who was a stranger to him ... The appellant took advantage of the complainant's vulnerable position for his</p>

		<p>role as head of family.</p> <p>Did not complete high school.</p> <p>Strong work ethic; good employment history; regularly sent money to family in Rwanda; member of a Christian group.</p> <p>Married traditional ceremony; due to be married under Australian law at time sentencing.</p> <p>Affected by methyl and alcohol at time offending.</p>	<p>Kabambi initially denied sexual contact with the victim. When interviewed a second time admitted the offences, but said it was consensual.</p>	<p>Genuinely remorseful; insight into seriousness of his offending and its impact on the victim.</p>	<p>own sexual gratification. There was no basis on which it might be thought the appellant honestly believed that [she] consented ... [It] involved unprotected sexual penetration with the associated risk of pregnancy and transmission of disease.</p> <p>At [27] ... Given the lateness of the PG, the 20% discount ... was extremely generous to the appellant. ...</p> <p>At [29] ... the fact that the sentences on cts 1 and 2 are to be served conc with each other moderates the practical impact of the sentence for ct 2. ... it would have been open to the judge to provide for some degree of accumulation of the sentences for the two offences.</p>
19.	<p><i>Costa v The State of Western Australia</i></p> <p>[2019] WASCA 3</p>	<p>54 yrs at time offending. 57 yrs at time sentencing.</p> <p>Convicted after trial.</p>	<p>3 x Sex pen.</p> <p>The victim, M, was aged 24 yrs and in Australia on a working holiday. She worked for Costa on his rural property and in return she was provided</p>	<p>Ct 1: 1 yrs imp (cum). Ct 2: 5 yrs imp (cum) Ct 3: 5 yrs imp (conc).</p> <p>TES 6 yrs imp.</p>	<p>Dismissed.</p> <p>Appeal concerned error in failure to consider conditions of incarceration;</p>

	<p>Delivered 15/01/2019</p>	<p>No relevant criminal history; traffic convictions.</p> <p>Close supportive family.</p> <p>Twice married; two adult children; grandchildren.</p> <p>Well educated; worked and studied overseas.</p> <p>Suffering acute and chronic stressors at time of offending; medicated for chronic depression; history of alcohol use.</p>	<p>with board and food.</p> <p>After the evening meal with another employee, Costa and M remained at the dining table. Two bottles of wine had been consumed and M was affected by alcohol.</p> <p>Costa spoke in a way which made M feel uncomfortable and he tried to hold her hand. She stood up in order to stop him.</p> <p>M next recalls lying on her bed. Over a period of at least two hours Costa performed cunnilingus on M, before twice engaging in sexual intercourse with her.</p> <p>M physically resisted the acts of penetration and voiced her lack of consent by screaming 'No'.</p> <p>M was incapable of freely or voluntarily consenting to the acts of sexual penetration due to her intoxication.</p>	<p>EFP.</p> <p>The sentencing judge found M was vulnerable and 'an easy target'; she had limited English; was in an isolated location; was physically smaller than the appellant; was intoxicated to the point of being unconscious and she was unable to defend herself.</p> <p>The sentencing judge found the offending occurred over a sustained period and involved three distinctive acts of sexual penetration; the appellant deliberately and opportunistically took advantage of M's extreme intoxication.</p> <p>The sentencing judge found the seriousness of the offending was such that only terms of immediate imp were justified.</p> <p>Some genuine remorse; low risk of reoffending in</p>	<p>length of sentence and totality principle.</p> <p>At [44] ... There was no evidence before the sentencing judge that the appellant would be required to serve the sentence imposed ... in conditions which were materially more restrictive when compared to the mainstream prison population, or that he was at any greater risk of assault than the ordinary mainstream prisoner.</p> <p>At [54] ... each offence was serious. The appellant took advantage of M's vulnerability and her intoxication. The offence were committed over a prolonged period. Insofar as M was able to express her lack of consent, she did so, both verbally and physically. The appellant nevertheless persisted. ... It is clear from the victim impact statement that M has suffered, and will continue to suffer in the future, a substantial degree</p>
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				a sexual manner.	<p>of psychological distress because of what the appellant did to her.</p> <p>At [55] ... no sentence short of immediate imp was appropriate in all of the circumstances of this case. ...</p> <p>At [56] ... the individual sentences ... imposed were not manifestly excessive as to type or length. They were not unreasonable or plainly unjust. ...</p> <p>At [58] – [59] ... some accumulation of the sentences imposed ... was appropriate, having regard to the separate acts of sex pen committed against M and the prolonged nature of the separate acts. ... The TES was not unreasonable or plainly unjust. ... a suspended term of imp was wholly inappropriate. ...</p>
18.	<p><i>Thomas v The State of Western Australia</i></p> <p>[2019] WASCA 4</p>	<p>25 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p>	<p>Ct 3: Sex pen.</p> <p>Ct 4: Agg sex pen.</p> <p>Thomas and the victim, H, were acquaintances.</p> <p>H was socializing at a bar with friends. When she</p>	<p>Ct 3: 5 yrs 4 mths imp (conc).</p> <p>Ct 3: 6 yrs imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle, individual sentences challenged.</p>

<p>Delivered 11/01/2019</p>	<p>Good upbringing and supportive family.</p> <p>Worked and travelled overseas; undertaking university studies in mental health.</p> <p>No physical or mental health issues; depressed and demoralised after charges laid; no issues with alcohol or drugs.</p>	<p>encountered her ex-boyfriend it upset her, so she left and went home.</p> <p>During her taxi ride home H updated her Facebook status, asking for someone to contact her so that she could talk. Thomas answered the call. Aware that H struggled with mental health issues he indicated that he was willing to support her.</p> <p>It was arranged Thomas would meet H at her home. He took some time to arrive, during which time her interest in having him come to her home waned so she withdrew her invitation. Thomas nevertheless went to her house.</p> <p>Thomas entered H's room, sat on the end of her bed and spoke with her. H was lying on her bed in the foetal position. Thomas lay next to her.</p> <p>Sexual intercourse occurred (subject of acquitted cts), during which H bit Thomas on the lip. He responded by strangling her. H believed she was going to pass out. Thomas rolled her onto her stomach, pressed her face into the pillow and penetrated her vagina with his penis from behind (ct 3).</p> <p>Thomas then anally penetrated H with his penis. She told him to stop, but he continued. She was able to push herself away from him. She then demanded he leave the house (ct 4).</p> <p>H's housemate and his friend heard the commotion, just as Thomas was leaving. They</p>	<p>The sentencing judge found the appellant abused the trust H had placed in him; the acts of penetration for which he was convicted were persistent, forceful and caused physical injury; he knew H had not consented to further sexual contact; the act of anal penetration displayed a disregard and disrespect for H; he only desisted when H was able to escape from him and the offences have had a significant negative psychological impact upon H.</p> <p>Continues to deny responsibility and maintains the sexual conduct was consensual; offences 'somewhat of an aberration'; low risk of reoffending.</p>	<p>At [48] ... both of the offences were serious examples of their kind. The appellant breached the trust H reposed in him. He took advantage of her when she was in, as he well knew, an emotionally vulnerable state. He put his hand around her neck, restricting her breathing. Then he forced himself on H when he knew that she did not want him to sexually penetrate her. He inflicted pain, discomfort and injury upon H. The appellant showed no regard for H's welfare. He persisted in violating H despite her telling him to stop. ... ct 4 was the more serious of the two offences, given that it was aggravated an offence, causing H bodily harm and involved an act of anal penetration....</p> <p>At [49] ... we are completely unpersuaded that the individual sentences that were imposed upon the appellant were manifestly excessive. Neither of the sentences</p>
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			found H curled up in a ball in the hallway, sobbing inconsolably. She told them she had been raped and ‘he would not stop’.		were unreasonable or plainly unjust. ... they were a sound exercise of the sentencing discretion.
17.	<i>Eravelly v The State of Western Australia</i> [2018] WASCA 139 Delivered 10/08/2018	<p>Convicted after trial.</p> <p>No prior criminal history in Australia; prior criminal convictions in USA for voyeurism and battery.</p> <p>Raised stable, hardworking and respected family.</p> <p>Held in high regard by family and friends.</p> <p>Good employment history; successful career as international airline pilot.</p> <p>Married three times; suffered loss of second wife due to illness; third wife remains supportive; two children.</p>	<p>Ct 1: Burglary. Ct 2: Dep lib. Ct 3: Unlawful wounding. Cts 4 & 8: Agg sex pen.</p> <p>Eravelly was a stranger to the victim.</p> <p>In the early hours of the morning Eravelly broke into the victim’s unit whilst she was sleeping. Once inside he threatened to cut her with a knife, tied her hands behind her back, blindfolded her and sexually penetrated her vagina, anus and mouth with his penis.</p> <p>The victim sustained cuts and abrasions, including a 2cm long laceration to her wrist that required suturing.</p> <p>Eravelly was identified many years later through an international DNA database.</p>	<p>Ct 1: 3 yrs imp (cum). Ct 2: 18 mths imp (conc). Ct 3: 1 yrs imp (conc). Ct 4: 4 yrs imp (cum). Cts 5-7: 5 yrs imp (conc). Ct 8: 6 yrs imp.</p> <p>TES 13 yrs imp.</p> <p>The trial judge found while the offending was not in the worst category, it was very serious; it was premediated; he arrived with a knife, a torch, a stocking to conceal his identify and a rope to bind his victim.</p> <p>The trial judge found the appellant was in denial and without remorse, with no insight into his offending or victim empathy.</p> <p>Average risk of reoffending.</p> <p>Accepted the appellant’s experience in prison</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [96] ... the appellant subjected the complainant to a sustained, humiliating and degrading series of sexual assaults. The attack was premeditated. It involved the appellant violating the sanctity of both the complainant’s home and her body. The attack engendered great fear into the complainant. The appellant broke into her unit at night and took advantage of the complainant’s vulnerability by attacking her while she was alone in the unit, asleep in her bed. ... This very serious sustained series of sexual assaults demanded a very significant term of immediate imp.</p> <p>At [99] ... the TES bears a</p>

				would be more isolating and difficult than usual as a foreign national.	proper relationship to the overall criminality involved in all the offences, viewed in their entirety and having regard to the circumstances of the case, ...
16.	<p><i>NPA v The State of Western Australia</i></p> <p>[2018] WASCA 131</p> <p>Delivered 02/08/2018</p>	<p>29 yrs at time sentencing.</p> <p>Convicted after trial (acquitted cts 1-3 & 6).</p> <p>Minor criminal history.</p> <p>Good family support.</p> <p>Completed yr 12; average student.</p> <p>Strong work history; employed while studying full time.</p> <p>New partner at time sentencing.</p> <p>Suffers depression and anxiety.</p>	<p>Cts 4-5; 8-10: Agg sex pen. Ct 7: Att agg sex pen. Ct 11: Threats to kill.</p> <p>NPA and the victim were in a relationship and lived together. NPA was controlling and manipulative and their relationship was described as 'on again, off again'.</p> <p>The offending occurred on three distinct occasions over a period of about 10 months.</p> <p>NPA and the victim were separated. The victim agreed to meet NPA and afterwards she invited him to her home. When she told NPA it was time he left he told her 'you know what I'm here for and I'm not leaving without it'. He called her names, pushed her onto a couch and had sexual intercourse with her.</p> <p>The victim tried to escape in her car, but NPA got into the front seat. She was crying and shaking. After driving him to a store she was able to convince NPA to get out of the vehicle.</p> <p>The second incident lasted eight or nine hours, during which time the victim was too scared to call anyone.</p>	<p>Cts 4 & 5: 6 yrs imp (cum). Ct 7: 3 yrs imp (conc). Ct 8 & 10: 6 yrs imp (conc). Ct 9: 4 yrs imp (conc). Ct 11: 6 mths imp (cum).</p> <p>TES: 12 yrs 6 mths imp.</p> <p>Willingness to engage in counselling and therapy; no demonstrated remorse.</p> <p>Moderate to high risk of reoffending.</p> <p>Victim suffered enormous emotional turmoil as a result of the offending.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle. Individual sentences not challenged.</p> <p>At [52] The appellant's offending is properly characterised as appalling. ... It involved multiple acts of penetration without consent, and a further offence of att sex pen without consent. ... The appellant used non-sexual violence and physical force to facilitate his offending. ... In the course of committing the offences the appellant taunted and threatened the complainant, using insulting and degrading language. This compounded his disregard for her bodily autonomy and dignity. ... He used acts of sex pen without</p>

			<p>The victim was at home when NPA texted her. She then saw him entering her backyard so she ran inside, locked the doors and watched him on the home's security cameras. NPA tried to force entry into the house before leaving. She then fled her home.</p> <p>The victim returned home. On the security cameras she noticed NPA had also returned. He entered through an unlocked door. They talked and she confirmed the relationship was over. Calling her names, he pushed her aggressively onto a couch and had sexual intercourse with her.</p> <p>NPA attempted to again sexually penetrate the victim, but she was able to stop him by gouging him in the eye. He then assaulted her, gagging her so she had difficulty breathing. He again tried, unsuccessfully, to penetrate her with his penis.</p> <p>Over the course of the day NPA continued to assault, abuse and threaten the victim. He again sexually penetrating her, twice with his penis and once with his fingers.</p> <p>After this incident the victim went to live with her parents and their relationship resumed.</p> <p>NPA accused the victim of sleeping with other people and threatened to kill her. In the early hrs of the following day NPA told the victim he was on his way to her home, so her mother and stepfather barricaded the house. On arrival NPA knocked on a window and threatened to smash it.</p>		<p>consent, in combination with physical violence, taunting of her, insulting and degrading language and threats, to attempt to assert his control over her. ... The ... offending has had a significant ongoing detrimental psychological effect on the complainant. ...</p> <p>At [55] ... It was appropriate that there was some substantial accumulation of the sentences for the offences for each of the three incidents.</p> <p>At [57] ... it cannot be said that the TES imposed on the appellant reveals implied error.</p>
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			He was arrested at the property.		
15.	<i>Alalyani v The State of Western Australia</i> [2018] WASCA 44 Delivered 10/04/2018	25 at time offending. 27 yrs at time sentencing. Convicted after trial. No prior criminal history. Born in Saudi Arabia; in Australia on a student/bridging visa; limited English. No family in WA. Studying; engaged in casual employment. Unmarried; no dependents.	1 x Sex pen. The victim was visiting WA from NSW and was staying with Mr B. Alalyani and others, including the victim and Mr B, went out for celebratory drinks. Later that evening the group continued to party and drink at Mr B's home. Whilst at the house Alalyani paid the victim unwanted attention, which she rejected. The victim and Mr B had already retired to a bedroom when Alalyani went home. Alalyani later returned to the house and into the bedroom where the victim was sleeping beside Mr B. He touched the victim before penetrating her. The victim woke up and saw Alalyani standing naked by the bed.	4 yrs imp. EFP. The sentencing judge characterised the offending towards the lower end of seriousness; the offender was intoxicated; the offending was not accompanied by physical force or violence. The sentencing judge found the appellant took advantage of a sleeping woman; the penetration of the victim was 'opportunistic and brief'. Time in prison likely to be more difficult. No remorse or victim empathy. Likely to be deported on release from custody.	Dismissed. Appeal concerned length of sentence. At [32] and [33] ... The appellant took advantage of the victim while she slept and was vulnerable. A need for personal and general deterrence. At [40] Having regard to the nature of the ... offence, and the circ in which it was committed, we are not satisfied that the appellant has shown that the sentence ... was unreasonable or unjust.
14.	<i>Plumley v The State of Western Australia</i>	48 yrs at time offending. 49 yrs at time sentencing.	Ct 1: Att sex pen. Ct 2: Stealing.	Ct 1: 4 yrs 3 mths imp. Ct 2: 6 mths imp (conc).	Allowed. Appeal concerned length

	<p>[2018] WASCA 33</p> <p>Delivered 19/03/2018</p>	<p>Convicted after early PG (25% discount).</p> <p>Prior criminal history; traffic and dishonesty offences; no prior violent or sexual offending; no prior sentences of imp.</p> <p>Close family; seven siblings; parents deceased; difficulties coping with grief after their deaths.</p> <p>Left school yr 9.</p> <p>Employed various unskilled jobs.</p> <p>Single at time offending; number of short term relationships.</p> <p>Homeless; living in his vehicle at time of offending.</p> <p>Medicated for depression.</p> <p>Abused alcohol from 17 yrs; ceased drinking aged 21 yrs; no history of illicit substance abuse.</p>	<p>The 32 yr old victim, a Chinese national, was in WA for a holiday. Plumley was not known to her.</p> <p>The victim was out walking near the river when she became aware Plumley was behind her.</p> <p>The victim went to a nearby public toilet to change, before going for a swim.</p> <p>When she finished her swim the victim returned to the toilet block. She was changing when Plumley entered the block. She shouted ‘what are you doing’ before running into a cubicle. The cubicle door did not lock so Plumley pushed it open and forced his way in.</p> <p>Forcing the victim to her knees Plumley attempted to get her to perform oral sex on him. She screamed so he eventually released her.</p> <p>As he left the toilet block he took the victim’s handbag, containing her passport, credit card and \$300 in cash.</p>	<p>TES 4 yrs 3 mths imp. EFP.</p> <p>The sentencing judge found ct 1 a serious offence and ‘outrageous conduct’. Whilst penetration did not occur it was not due to his lack of trying, rather it was due to the victim struggling and screaming.</p> <p>The sentencing judge found no sentence other than imp was appropriate and the term imposed needed to reflect the ‘brazen nature’ and ‘very serious’ circumstances of the offending.</p> <p>Little understanding of impact of his offending on the victim; at risk of re-offending unless underlying causes of his behaviour addressed.</p>	<p>of sentence on ct 1.</p> <p>Re-sentenced:</p> <p>Ct 1 3 yrs 3 mths imp. Ct 2: 6 mths imp (cum).</p> <p>TES 3 yrs 9 mths imp. EFP.</p> <p>At [47] The offence ... was an objectively serious example of an att to commit sex pen. ...</p> <p>At [50] ... the only reason that the appellant did not complete the offence was due to the resistance of the victim. However, that does not mean that he can be sentenced as if he had committed a completed offence.</p> <p>At [51] ... the length of the sentence did not properly reflect the PG and the maximum penalty for the offence. ... it must be concluded that the sentence imposed for ct 1 reveals implied error. The sentence imposed was not consistent with sentences imposed in</p>
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					<p>the comparable cases referred to ...</p> <p>At [54] ... Although the stealing was committed immediately following the att sex pen, it was a distinct offence that involved additional criminality.</p> <p>At [55] It was suggested ... that the stealing offence was opportunistic. This is an inappropriate description in circumstances where the opportunity to take the victim's handbag was created by the appellant. He forced her into the cubicle and to the ground. He knew that she was helpless to prevent the theft of her property. He took her money, credit card and passport leaving her desperate and causing her additional trauma.</p>
13.	<p><i>Atkinson v The State of Western Australia</i></p> <p>[2017] WASCA 154</p>	<p>45 yrs at time sentencing. 25 and 27 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p>	<p>Cts 1 & 5: Agg burglary. Cts 2, 6-8: Agg sex pen. Cts 3 & 9: Dep lib. Ct 4: Att agg robbery.</p> <p>The offences arise from two separate incidents. One in 1997 and the other in 1999.</p>	<p>Ct 1: 7 yrs 6 mths imp (head) Ct 2: 7 yrs imp (conc). Ct 3: 2 yrs imp (conc). Ct 4: 2 yrs imp (conc). Ct 5: 7 yrs 6 mths imp (cum ct 1).</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence, totality, failure to consider remorse and discount for voluntary disclosure of guilt on cts 1-</p>

<p>Delivered 17/08/2017</p>	<p>Minor criminal history.</p> <p>Dysfunctional family; parents separated when young adult; eldest sister epileptic; younger brother involved in heavy drug use; mother imprisoned for fraud.</p> <p>Strained relationship with mother for many yrs, now close; maintains some contact with father.</p> <p>Frequently truant at school; expelled in yr 10.</p> <p>Single; no children.</p> <p>Worked many yrs mining industry; currently unemployed.</p> <p>Long history of alcohol and illicit drug use.</p> <p>Diagnosed bipolar disorder; history of non-compliance with medication.</p>	<p><u>Cts 1-4 (1997)</u> The victim, N, was 18 yrs old and home alone. He forced his way into her home after knocking on her door wearing a balaclava on his face.</p> <p>Atkinson held a knife to N's throat, tied her up and covered her face before sexually penetrating her and demanding money, which she said she did not have.</p> <p>He warned her not to talk, scream or move before leaving the premises.</p> <p><u>Cts 5-9 (1999)</u> The victim, E, was 19 yrs old and home alone.</p> <p>Atkinson let himself into her home and covered her face, before tying her up and repeatedly sexually penetrating her.</p> <p>He told her not to phone anyone because he would be watching before leaving the premises.</p> <p>In 2016 Atkinson's DNA was matched to the 1999 offences. During a second police interview he voluntarily disclosed the 1997 offences to police.</p>	<p>Ct 6: 7 yrs imp (conc). Ct 7: 3 yrs imp (conc). Ct 8: 7 yrs imp (conc). Ct 9: 2 yrs imp (conc).</p> <p>TES 15 yrs imp. EFP.</p> <p>The sentencing judge noted the offences only came to light following a DNA match to the 1999 offences and it was to the appellant's credit that he made some admissions with respect to the 1997 offences.</p> <p>The sentencing judge found the appellant's cooperation indicated some degree of contrition and acceptance of culpability and that he understood the issues likely to have been confronted by the two victims. He took a neutral stance on the appellant's remorse as the psychologist and psychiatrist had differing views as to whether the appellant had victim</p>	<p>4. Re-sentenced:</p> <p>Ct 1: 5 yrs 6 mths imp. Ct 2: 5 yrs 2 mths imp. Ct 3: 1 yr 6 mths imp. Ct 4: 1 yr 6 mths imp.</p> <p>All other sentences and orders for cum, conc and EFP otherwise unaffected.</p> <p>TES 13 yrs imp.</p> <p>At [61] The offences were extremely serious offences of their type. They involved planning and the use of force to overwhelm young and vulnerable victims at night in their homes. Physical restraints and threats were used, including the use of weapons, in order to obtain the victim's compliance. The offences caused great psychological trauma to the victims and have had long-lasting effects.</p> <p>At [64] ... the appellant's disclosure of the 1997 offending was significant</p>
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				<p>empathy and was genuinely remorseful.</p> <p>Moderate to low-risk of reoffending.</p>	<p>because it was a disclosure to the authorities of otherwise unknown offences. ... It might be suggested that the appellant made the disclosure because he feared ... other undisclosed DNA evidence that would implicate him. However, there was no suggestion of that ... and in fact it was not the case. Whatever the appellant's motivations, and he said that he was motivated by remorse, the fact is that but for his disclosure there is no reason to think that the appellant would have been charged with the 1997 offences. In these circumstances his disclosure was a significant matter to the credit of the appellant to be taken into account in sentencing on cts 1 to 4.</p> <p>At [65] ... the individual sentences for cts 1 to 4 were the same as those imposed for the similar offending in cts 5 to 9. This cannot be accounted</p>
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					for by any significant difference in the offending. The two groups of offences were of a comparable level of seriousness. Indeed, the respondent accepted before this court that, if anything, the second group of offences were more serious.
12.	<p><i>WRN v The State of Western Australia</i></p> <p>[2017] WASCA 145</p> <p>Delivered 04/08/2017</p>	<p>30-32 yrs at time offending. 53 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Aboriginal from central Australia.</p> <p>De facto relationship 35 yrs; four children; grandchildren.</p> <p>Committed to his family; respected member of his community; cultural leader; mentor and traditional elder.</p> <p>Full productive life; held responsible positions in the community and workforce.</p> <p>Increasing and significant</p>	<p>2 x Sex pen.</p> <p>The victims, CPA, aged 16, and KAY, aged 20, are related to WRN by marriage. He knew them as children and they called him uncle.</p> <p>CPA went out drinking and ended up sleeping on a relative's couch. WRN was at the house. During the night she awoke to find WRN performing cunnilingus on her. She was unable to move because his weight was on the lower part of her body. He eventually stopped when she was able to push his head away.</p> <p>Some 2 yrs later KAY and some relatives had been drinking and ended up at WRN's house. She and WRN remained when the others went to the shops. During their absence an incident occurred between her and WRN. Upset she confronted WRN later that evening. He reacted forcefully, took her to a bedroom, pulled down her pants and had sexual intercourse with her. She resisted, tried to rip his hair, scratch his eyes and pinch him. Her attempts to resist were unsuccessful.</p>	<p>Ct 1: 2 yrs imp (cum). Ct 3: 5 yrs imp (cum).</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offences involved a significant breach of trust; there was a significant age disparity between him and the two victims and ct 3 was agg by the significant force used.</p> <p>The sentencing judge found the appellant's various health conditions would make incarceration more onerous; but could be treated adequately in prison.</p>	<p>Dismissed.</p> <p>Appeal concerned totality.</p> <p>At [33] ... in circ where the appellant was convicted after trial, the serious features of his offending meant that the TES of 7 yrs was within the range of an appropriate exercise of discretion.</p> <p>At [35] Both offences were committed against much younger females, both of whom were, by marriage, part of the appellant's family ... On each occasion the appellant and the victim were alone in the home of a relative. The victims were entitled to believe that they were in a safe environment. Further,</p>

		health problems likely to impact on his long term survival; diabetic; heart disease; chronic obstructive pulmonary and cerebrovascular disease; end stage renal disease requiring dialysis three times per week.			the appellant took advantage of CPA's vulnerability while she was asleep, and took advantage of her greater size and strength to force himself upon KAY. He had unprotected sexual intercourse ... and used force to do so. The offences have caused significant and enduring harm to the two victims.
11.	<i>Singh v The State of Western Australia</i> [2017] WASCA 47 Delivered 16/03/2017	27 yrs at time offending. 31 yrs at time sentencing. Convicted after PG (25% discount). Good character. Indian national; on student visa in Australia. Raised in a supportive environment, but with significant financial challenges. Attended school to the end of yr 10; completed Bachelor's degree; completed Master's degree in computer science in Australia.	Ct 1: Indec assault. Ct 2: Indec assault. Ct 3: Sex pen. Offending occurred against passengers while Singh was working as a taxi driver. <u>Ct 1</u> Singh persistently touched the victim's thigh in a sexual manner. He also asked the victim a number of sexual questions and regularly rubbed his groin throughout the journey. He asked the victim if she would like to do something with him and said that they could come to an arrangement other than payment for the journey. <u>Cts 2 and 3</u> Offending occurred on the same evening as ct 1. The victim was 18 yrs old and intoxicated. While driving the victim home, Singh stopped the	Ct 1: 18 mths imp (cum). Ct 2: 2 yrs imp (conc). Ct 3: 4 yrs imp. TES 5 yrs 6 mths imp. EFP. The sentencing judge found that the State case was so strong that the prospects of an acquittal were pretty much non-existent. The sentencing judge accepted Singh's cultural background likely played a role in the offending, but noted that such cultural matters were not free of controversy in	Dismissed. Appeal concerned length of individual sentence for ct 1, and totality. At [45] ... ct 1 had a number of serious elements... He was in a position of trust as a taxi driver. His victim was a vulnerable young woman. She did not have the option of getting out of the car until she got home. His offending was part of a course of conduct that persisted for almost the entire 28 minutes that the victim spent in the car with him. He persisted notwithstanding the victim

		<p>Singh's counsel submitted that Singh had little to no experience with women and that India has different cultural attitudes about women's manner of dress and what it might convey.</p>	<p>taxi at a park saying that he needed to check something. The victim sat on the bench for a smoke and Singh sat next to her. He placed the victim's hand on his groin and the victim resisted.</p> <p>Singh forced the victim onto her back, pinned her arms to her side and rubbed his groin against her crotch. He then ripped her underwear off and despite the victim's struggles and pleas, had unprotected sexual intercourse with her until he ejaculated inside of her. During the act, he kissed her neck and squeezed her breasts.</p> <p>Singh flew back to India the following day after being interviewed by police and released.</p>	<p>India.</p> <p>The sentencing judge found Singh did not mistakenly assume that his attention to the victims was welcome; the victims gave unambiguously clear indications that they were not interested and not willing; he physically forced his attentions on them and he misled the police in various respects.</p> <p>Moderate to high risk of reoffending.</p>	<p>making repeated efforts to make clear to him that she was not interested in him. His offending has had a significant impact on her. His offence in ct 1 was not an isolated or once-off aberration; very soon after it, he committed cts 2 and 3. He [had] ... a medium to high risk of reoffending...</p> <p>At [57] ... the agg features of the offending ... place the TES... well within an appropriate exercise of discretion... The appellant was a taxi driver, a role that has an element of trust. Both his victims were vulnerable young women; one ... was ... more vulnerable by reason of intoxication. The offending was persistent in the face of clear statements by the victims that they were not interested in him and for him to stop what he was doing. The appellant responded to the second victim's resistance by using force. He had unprotected sexual intercourse... Ct 2 in itself was a serious</p>
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					<p>offence of indec assault. The appellant's offending the subject of cts 2 and 3 followed soon after his conduct the subject of ct 1. Rebuffed by his first victim, he forced himself upon another young female passenger. Ct 3, standing alone, had many serious elements that could have justified a somewhat higher sentence. The appellant had a medium to high risk of reoffending. Personal deterrence remained an important factor.</p>
<p>10.</p>	<p><i>SJN v The State of Western Australia</i></p> <p>[2016] WASCA 215</p> <p>Delivered 06/12/2016</p>	<p>62 yrs at time sentencing. 54 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal history; minor offences. No prior offences of a sexual nature.</p> <p>Abandoned by his parents and physically abused as a child.</p> <p>Good employment history.</p>	<p>1 x Sex pen.</p> <p>SJN came upon the victim, aged 18 yrs, highly intoxicated and upset after separating from her friends following an argument.</p> <p>The victim accepted an invitation to SJN's home, where they drank alcohol and smoked cannabis.</p> <p>SJN offered the victim his bed while he slept on the couch. She lay down on the bed and passed out.</p> <p>Whilst asleep SJN removed her clothes and had sexual intercourse with her.</p> <p>In the morning SJN gave the victim his first name</p>	<p>5 yrs 6 mths imp. EFP</p> <p>The sentencing judge observed that while the offence was without violence, threats or coercion, he noted the 'particularly sinister and predatory character' of the offending.</p> <p>Highly adverse consequences to the victim.</p> <p>Low risk of reoffending;</p>	<p>Dismissed.</p> <p>Appellant challenged length of sentence.</p> <p>At [25] ... the appellant exploited a highly vulnerable young woman. He did so planning to engage in some type of sexual activity with her ... the appellant remained sober enough to be in control and plied the victim with more alcohol and cannabis... the appellant deliberately</p>

			<p>and telephone number.</p> <p>The victim later learned she was pregnant. She called SJN. He denied having sexual intercourse with her.</p> <p>The child was later DNA tested and SJN was revealed to be the father.</p>	<p>no remorse or victim empathy.</p>	<p>contributed to her intoxicated state for the purpose of taking advantage of her.</p> <p>At [26] ... the appellant engaged in unprotected sexual intercourse with the victim who became pregnant. As a result, she had a serious emotional conflict about whether to have the child, and now must face the very difficult prospect of what to tell her child about her father.</p>
<p>9.</p>	<p><i>AMH v The State of Western Australia</i></p> <p>[2016] WASCA 180</p> <p>Delivered 19/10/2016</p>	<p>31 yrs at time offending.</p> <p>PG to Ct 7 (10% discount). Convicted after trial remaining counts.</p> <p>Minor criminal history; no previous relevant offending.</p> <p>15-16 yrs witnessed his mother in a physically abusive relationship.</p> <p>Emotionally unstable as a result of a succession of family tragedies.</p> <p>History of heroin abuse;</p>	<p>Ct 1: Dep liberty. Cts 2, 6 & 7: Agg AOBH. Ct 3 & 4: Agg sex pen. Ct 5: Sex coercion.</p> <p>AMH and the victim, A, had a violent and abusive relationship. When they separated AMH spied and stalked A, and committed acts of violence upon her.</p> <p>The time between the initial offending and the report to police was approx 10 days.</p> <p>AMH tried to persuade A to attend a function with him. He drove to where she was staying, forced her into his car and drove towards Ravenswood (ct 1).</p> <p>During the drive and at an isolated area AMH</p>	<p>Ct 1: 3 yrs imp (conc). Ct 2: 1 yr imp (conc). Ct 3: 4 yrs imp (conc). Ct 4: 7 yrs 6 mths imp (cum). Ct 5: 3 yrs 6 mths imp (cum). Ct 6: 1 yr 6 mths imp (conc). Ct 7: 2 yrs 8 mths imp (conc).</p> <p>TES 11 yrs imp. EFP.</p> <p>The sentencing judge found the offending premeditated and very serious examples of their</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence; individual sentences not challenged.</p> <p>At [42] ... the appellant's overall offending was extremely serious. While it was not in the worst category of offending of its kind, it approached that level. The offending was premeditated, sustained, cruel and humiliating ... The appellant's post-offence conduct cannot be ignored and underscores the appellant's criminality.</p>

		<p>abstinent from the drug at time offending.</p>	<p>verbally abused and repeatedly struck A in the head (ct 2) and forced her to perform fellatio on him (ct 3). Threatening to insert a rusty tool into A's anus, he used it to strike A on the legs. He also kicked her in the ribs (ct 6). Forcing A, naked, onto all fours he inserted a spanner into her anus (ct 4). He forced A to put a drink bottle into her vagina and threatened to kick it in if she didn't push it all the way in (ct 5). He repeatedly bashed her to the head and ribs (ct 7).</p> <p>AMH burnt her with a cigarette or lighter. He placed the flame close to her genitals. He continued to threaten to harm A and her family.</p> <p>AMH forced A to telephone her employer and quit her job. At various points he got A to call and send text messages, so that police would not look for her. AMH took A to his mother's house and when police attended told her she had to get over the fence. She complied, despite being badly injured.</p> <p>A suffered a swollen ear, severely bruised eyeball and eye socket, and bruising and burns to her body. Her rib cage and left leg were badly injured.</p>	<p>kind and agg 'by his callous, selfish and ... cruel and evil behaviours after the event ...'.</p> <p>The offending was found to be not about sexual gratification, but about sexual dominance, embarrassment and humiliation.</p> <p>No remorse or victim empathy.</p>	
8.	<p><i>FWB v The State of Western Australia</i></p> <p>[2016] WASCA 118</p> <p>Delivered</p>	<p>47 yrs at time sentencing. 42-44 yrs at time offending for indictment 1.</p> <p>Convicted after PG (20% discount).</p> <p>Prior criminal history; no</p>	<p><u>Indictment 1</u> Ct 1-4, 6-10: Sex pen of de facto child U 16 yrs. Ct 5: Indec dealings with de facto child U 16 yrs.</p> <p><u>Indictment 2</u> Ct 1: Dep lib. Ct 2: Threat to kill. Ct 3: Agg sex pen.</p>	<p><u>Indictment 1</u> Ct 1-2 and 7: 2 yrs imp each (conc). Ct 3, 6 and 10: 6 yrs imp each (conc). Ct 4 and 9: 4 yrs imp each (conc). Ct 5: 1 yr imp (conc).</p>	<p>Allowed.</p> <p>Appeal concerned totality.</p> <p>Only re-sentenced on <u>indictment 1</u> to:</p> <p>Ct 8: 6 yrs imp (cum with</p>

	<p>11/07/2016</p>	<p>prior sexual offending.</p> <p>Left school aged 15 yrs.</p> <p>Recent steady employment.</p> <p>Regularly consumes alcohol and occasionally smokes cannabis. Daily use of amphetamines and heroin, but did not believe he had a substance abuse problem.</p> <p>FWB on bail for indictment 1 at time offending on indictment 2.</p>	<p>Ct 4: GBH with intent.</p> <p><u>Indictment 1</u> FWB had been the de facto father of the victim, M, since she was about 2 yrs old.</p> <p>When M was aged 11-12 yrs, FWB digitally penetrated her vagina twice (ct 1-2). He then penetrated her vagina with his penis (ct 3). He slapped M's face when she tried to escape. FWB then made M suck his penis, before masturbating and ejaculating on her face (ct 4). Later, M awoke with FWB touching her vagina (ct 5). The following night, FWB went into M's bedroom and had sexual intercourse with her (ct 6).</p> <p>When M was aged 12-13 yrs, FWB filmed himself sexually abusing M over two hrs. FWB put his fingers in her vagina (ct 7) and then had sexual intercourse with her (ct 8). FWB made M suck his penis (ct 9), before having sexual intercourse with her again (ct 10). FWB continued the abuse and repeated the acts until he ejaculated onto her stomach. M was crying and was fearful of FWB who threatened to harm her or members of her family.</p> <p><u>Indictment 2</u> FWB and H (M's mother) had been in a de facto relationship for 13 yrs, but had separated approx. 6 mths earlier.</p> <p>The dep lib charge (ct 1) was a continuing offence. When visiting H, FWB produced a knife and threatened to kill her, telling her that he loved</p>	<p>Ct 8: 6 yrs (cum ct 3).</p> <p>TES 12 yrs imp (cum with TES on indictment 2).</p> <p><u>Indictment 2</u> Ct 1: 1 yr imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: 8 yrs imp (conc). Ct 4: 5 yrs imp (conc).</p> <p>TES 8 yrs imp (cum with TES on indictment 1).</p> <p>Overall TES 20 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge described the offending against M as involving "the most gross breach of trust" and "at or near the top of the range of gravity, justifying the maximum penalty as a starting point".</p> <p>The sentencing judge found the offending occurred when FWB was alone with M and he sometimes engineered opportunities to be alone</p>	<p>2 yrs on ct 1).</p> <p>TES 8 yrs imp (cum with TES on indictment 2).</p> <p>TES 16 yrs imp.</p> <p>EFP.</p> <p>At [65] The charges in the first indictment were representative of a course of conduct.</p> <p>At [66]... in relation to the first indictment... The two episodes of offending involved planning and premeditation... The offending occurred in the family home, a relatively isolated farmhouse, where M was vulnerable and the appellant could abuse her for an extended period without fear of being discovered... The appellant filmed the offences the subject of cts 7, 8, 9 and 10. He had previously told M that once he had recorded the abuse he would stop offending against her. That was not the case... The</p>
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			<p>her, couldn't live without her and wanted her to suffer like she had made him suffer (ct 2). FWB tied H's wrists with cable ties, forced her into a car and drove her to the vicinity of a country town. FWB ordered H out of the vehicle, removed her clothing had sexual intercourse with her until he ejaculated (ct 3). FWB stabbed H in the chest (ct 4) and during the struggle she cut her finger on the knife. When H got out of the car FWB dragged her by the hair back into the car. FWB said he was taking her for medical assistance but H feared for her safety and jumped from the moving car and ran to a nearby house. As a result of being stabbed H suffered a 5cm wound that caused one of her lungs to collapse.</p>	<p>with her; the offending against M had features of sex pen without consent; offending was not the result of grooming.</p> <p>FWB's offending against H "was a terrifying ordeal" and involved "criminality of the highest degree".</p> <p>Moderate to high risk of future sexual offending; moderate risk of future violent offending, most likely family violence.</p>	<p>appellant's offending against M's mother... would have adversely affected M in view of the threats to harm her family which the appellant made in the course of his offending against M.</p> <p>At [69] The appellant claimed to have little or no recollection of the offending and, accordingly, little weight could be given to any remorse. No victim empathy was apparent.</p> <p>At [70] the TES of 12 yrs' imp, especially in the context of the PG, was not broadly consistent with reasonably comparable cases and was not commensurate with the overall seriousness of the offending... The proper exercise of the sentencing discretion required lesser accumulation of the individual sentences.</p> <p>At [90] ...the TES of 8 yrs' imp for the offences in the second indictment</p>
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					<p>was...well within the range open to the sentencing judge ... and reflects ... totality issues arising as a result of the appellant standing for sentence not only in relation to the offences in the second indictment but also the offences in the first indictment.</p> <p>At [91] the overall TES of 20 yrs' imp in relation to the first and second indictments, especially in the context of the PG, was not commensurate with the overall seriousness of the offending the subject of the first and second indictments.</p>
7.	<p><i>Scaddan v The State of Western Australia</i></p> <p>[2015] WASCA 173</p> <p>Delivered 02/09/2015</p>	<p>20 yrs at time offending.</p> <p>Convicted after late PG.</p> <p>Supportive family.</p> <p>Good employment record.</p> <p>Voluntarily participated in psychological counselling since offending.</p>	<p>Ct 1: Agg sex pen. Ct 2: Agg sex pen.</p> <p>H, aged 18 yrs, was in a fully committed relationship with Scaddan. The relationship was, at times, tempestuous.</p> <p>The offences occurred after a previous incident where Scaddan penetrated H's vagina with his fingers in circumstances where he mistakenly believed H had consented. He apologised for his behaviour and for a time he and H broke up.</p>	<p>Ct 1: 1 yr imp (conc). Ct 2: 2 yrs 8 mths imp (conc).</p> <p>TES 2 yrs 8 mths imp.</p> <p>EFP.</p> <p>Permanent VRO made in H's favour.</p> <p>Offences have had a significant adverse impact</p>	<p>Dismissed – on papers.</p> <p>At [27] The appellant's offending was unquestionably serious. It occurred against a backdrop of the earlier incident. H made it clear from the outset that she did not consent to engaging in sexual activity with the appellant. Despite H's repeated objections, he</p>

			<p>While they were in bed Scaddan reached over to H and put his hand inside her pants. Scaddan pushed his fingers inside her vagina without her permission (ct 1). H was visibly upset. Scaddan then rolled H onto her back, pinned her down, forcefully pulled down her pants and prised apart her legs. He then had sexual intercourse with her against her will for approx five mins until he ejaculated (ct 2). H repeatedly said “No” during the incident.</p> <p>Scaddan later apologised to H and her father. He admitted his wrongdoing to police.</p>	<p>upon H’s wellbeing.</p> <p>Genuinely remorseful; low risk of reoffending.</p>	<p>penetrated her vagina with his fingers and then with his penis. The second offence was committed with a degree of force... The act of sexual intercourse was more than momentary, and only stopped after he ejaculated. It was, upon any analysis, a traumatic experience which has had a substantial negative impact upon H. While the appellant later apologised for his conduct, his apologies were too little, too late.</p>
6.	<p><i>Williams v The State of Western Australia</i></p> <p>[2015] WASCA 110</p> <p>Delivered 03/06/2015</p>	<p>37 yrs at time offending. 38 yrs at time sentencing.</p> <p>Convicted after late PG (on second day of trial after defence counsel had cross-examined the victim and other State witnesses).</p> <p>Long criminal history, including numerous convictions for violent behaviour.</p> <p>Difficult and traumatic childhood.</p> <p>History of anxiety and</p>	<p>Ct 1: Agg sex pen. Ct 2: Agg sex pen. Ct 3: Attempted agg sex pen. Ct 4: Threat to injure. Ct 5: Wounding.</p> <p>The victim was 24 yrs old and was visiting a friend at a hostel. Williams was renting a campervan, which was parked permanently at the hostel.</p> <p>The victim and Williams arranged to go out and drink wine. They arranged for the victim to sleep in his campervan and for Williams to sleep on a couch in the hostel. After drinking a considerable quantity of wine the victim went to sleep in the campervan and Williams in the hostel.</p>	<p>Ct 1: 5 yrs imp. Ct 2: 3 yrs imp (conc). Ct 3: 4 yrs imp (cum). Ct 4: 2 yrs imp (cum). Ct 5: 2 yrs imp (conc).</p> <p>TES 11 yrs imp.</p> <p>EFP.</p> <p>The trial judge found it very difficult to give a great deal of weight to appellant’s claim of remorse.</p> <p>The trial judge did not accept the appellant’s</p>	<p>Dismissed.</p> <p>At [59] It is true that the appellant admitted the sexual activity, the subject of cts 1 and 2, and that, without his admissions...ct 2 would not have been discovered and...ct 1 would have been more difficult to prove. However, the appellant’s voluntary disclosure in the video-recorded interview with police was not indicative of any remorse or of a desire to purge his guilt. The appellant made</p>

		<p>depression.</p> <p>Long history of illicit drug and alcohol abuse.</p> <p>At time offending warrant outstanding for the appellant's arrest for alleged offences in SA.</p>	<p>A little later, Williams went to the campervan and penetrated the victim's vagina with his penis (ct 1) and performed cunnilingus on her (ct 2). The victim was unaware, as a result of her being intoxicated and having been asleep.</p> <p>The victim eventually awoke with Williams on top of her. Her shorts and underwear had been removed. Williams was pinning her down, with one of his arms across her throat.</p> <p>Williams pushed a shard of glass against the victim's throat, cutting her. She was extremely frightened. He then tried to force the victim's legs apart so he could again penetrate her vagina with his penis (ct 3). He said to her, 'Don't move or I'll cut your throat' (ct 4).</p> <p>Williams lost his grip on the victim and she bit his hand. After a struggle she escaped from the campervan and ran into the hostel's reception area. The victim was half naked and hysterical.</p> <p>The victim suffered cuts to her neck, arm and leg, caused by the shard of glass (ct 5).</p> <p>Williams claimed that the victim consented to at least some of the sexual activity.</p>	<p>claim that he thought the victim was awake and consciously consenting.</p> <p>The trial judge reduced the sentence for ct 2 because offending was revealed by what appellant admitted to police.</p> <p>Very high risk of re-offending; considerable danger to the public.</p>	<p>the admissions in connection with attempting to exculpate himself by fabricating a version of events...</p> <p>At [60] ...the TES of 11 yrs imp, with EFP, was condign punishment and towards the upper end of the range available to his Honour on a proper exercise of the sentencing discretion...The term of 11 yrs was required to give effect to the primary sentencing factors of appropriate punishment and personal and general deterrence.</p>
5.	<p><i>PSS v The State of Western Australia</i></p> <p>[2015] WASCA 98</p>	<p>15 yrs 11 mths at time offending.</p> <p>16 yrs 8 mths at time sentencing.</p> <p>Convicted after PG.</p>	<p>Ct 1: Agg burg.</p> <p>Ct 2: Sex pen.</p> <p>Ct 3: Common assault.</p> <p>Ct 4: Common assault.</p> <p>Ct 5: Poss prohibited dug.</p> <p><u>Ct 1 and 2</u></p>	<p>Ct 1: 3 yrs detention (conc).</p> <p>Ct 2: 3 yrs 9 mths detention.</p> <p>Ct 3: 3 mths detention (conc).</p> <p>Ct 4: 4 mths detention</p>	<p>Dismissed.</p> <p>At [26]-[30] Discussion of comparable cases.</p> <p>At [35] Having regard to the seriousness of the</p>

	<p>Delivered 19/05/2015</p>	<p>Committed cts 1-2 while on bail for cts 3-4.</p> <p>Prior criminal history; no prior violent or sexual.</p> <p>Turbulent childhood.</p> <p>Extensive cannabis use from age 13.</p> <p>Commenced sexual relations from age 12.</p>	<p>The victim was 24 yrs old. PSS was taller and heavier than the victim. He was under the influence of alcohol and cannabis.</p> <p>In the early hrs of the morning PSS climbed through a window into the victim's house. The victim was alone and asleep in bed. She woke from noises. PSS crawled into her bed, held her down and said, "I want sex". The victim began to cry loudly and replied that she could not as she was a Christian. She tried pushing him away but he stood his ground. He then forcefully demanded that the victim hug him. She was crying and shaking with fear, but agreed. PSS kissed the victim, forcing his tongue into her mouth. He then forced her onto her knees and forced her to perform oral sex on him until he ejaculated into her mouth. He then left the house.</p> <p><u>Ct 3 and 4</u> PSS was with two others at a train station. He approached the victim, who was standing with her partner. The victim's partner had been assaulted by a co-offender. PSS held the victim by her arms, restraining her from assisting her partner. When the victim stood in front of her partner to protect her partner from being assaulted further, PSS grabbed her by the arms and pulled her down to the ground.</p> <p>The second victim saw PSS attacking a person on the platform and ran down the stairs to try and prevent the assault. PSS ran at the second victim and punched and kicked him repeatedly.</p>	<p>(conc). Ct 5: NFP.</p> <p>TES 3 yrs 9 mths detention.</p> <p>Eligible for supervised release after 22.5 mths.</p> <p>The sentencing judge classified sex pen as a very serious offence of its kind. Penetration was violent, frightening, humiliating and degrading.</p> <p>Impact of offending on victim was serious and profound.</p> <p>The sentencing judge found appellant had some remorse and empathy.</p>	<p>circumstances of the sex pen offence, the sentence imposed by the sentencing judge was within the sound exercise of the sentencing discretion.</p>
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			<p><u>Ct 5</u> PSS was found in poss of a small bag of cannabis.</p>		
4.	<p><i>The State of Western Australia v Vartolo</i></p> <p>[2015] WASCA 53</p> <p>Delivered 18/03/2015</p>	<p>25 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Minor irrelevant criminal history.</p> <p>Supportive mother.</p> <p>Left school at 16 yrs; constant employment.</p> <p>Used synthetic cannabis and binge drinking at time offending; stopped using substances before sentencing.</p> <p>Favourable character references.</p>	<p><u>Indictment</u> Ct 1: Sex pen. Ct 2: Sex pen.</p> <p><u>Section 32</u> 1 x Stealing.</p> <p>After drinking at home with her boyfriend, the victim went to bed and fell asleep. Her boyfriend went out and later returned home in an intoxicated state with Vartolo. Vartolo was a complete stranger to the victim. The victim's boyfriend fell asleep in the bathroom.</p> <p>Vartolo entered the victim's bedroom and lay naked beside her. He fondled her breasts and used his fingers to rub her genitals, before penetrating her vagina with his fingers (ct 1). He then engaged in sexual intercourse with her (ct 2).</p> <p>The victim began to wake up. She initially thought Vartolo was her boyfriend, but soon realised she was wrong. Vartolo continued intercourse with her, until she pushed him off and went to find her boyfriend.</p> <p>Vartolo stole a laptop computer and an iPod and walked out of the unit.</p> <p>Vartolo denied being at the house until he was informed of CCTV contradicting his account. He admitted to having sex with the victim, but claimed it was consensual.</p>	<p><u>Indictment</u> Ct 1: 1 yr imp (conc). Ct 2 : 2 yrs imp (conc).</p> <p><u>Section 32</u> \$250 fine.</p> <p>TES 2 yrs imp.</p> <p>EFP.</p> <p>Lifetime VRO.</p> <p>Reports stated that the respondent minimised and blamed others for his offending; no victim empathy; no remorse; motivated by reduced sentence to PG; moderate to low risk of reoffending.</p>	<p>Allowed.</p> <p>Original sentence set aside.</p> <p>Re-sentenced to: Ct 1: 2 yrs imp (conc). Ct 2 : 3 yrs 6 mths imp (conc).</p> <p>TES 3 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [64] The circumstances of each offence were undoubtedly serious.</p> <p>At [65] While it is true that the respondent did not inflict violence or threaten violence towards H, such behaviour was unnecessary given her unconscious state... The absence of violence or threats of violence is not mitigating, it merely constitutes an absence of a further aggravating factor.</p> <p>At [71] Discussions of comparative cases.</p>

<p>3.</p>	<p><i>The State of Western Australia v Staniforth-Smith</i></p> <p>[2014] WASCA 170</p> <p>Delivered 05/09/2014</p>	<p>46-47 yrs at time offending. 50 yrs at time sentencing.</p> <p>Convicted after trial (Cts 1 & 3). Convicted after PG (Ct 2).</p> <p>No previous criminal record of significance.</p> <p>Hardworking; successful farmer.</p> <p>Following breakdown of marriage, led an isolated life.</p> <p>Good character; positive references and support from family.</p> <p>Voluntarily engaged in psychological counselling for almost 12 months prior to sentencing.</p> <p>Thoughts of self-harm following contact with police.</p> <p>Suffered depression.</p> <p>Habitual cannabis user.</p>	<p>Ct 1: Indec dealings child 13-16 yrs. Ct 2: Agg indec assault. Ct 3: Agg sex pen.</p> <p>The victim's mother married Staniforth-Smith, who then assumed the role of the victim's step-father. Following a breakdown in the marriage Staniforth-Smith continued to have contact with the victim.</p> <p>The victim was aged between 15 and 17 yrs.</p> <p><u>Ct 1:</u> Sometime in 2010 the victim stayed with Staniforth-Smith. During this time the victim confided to Staniforth-Smith that he was concerned about the presence of hair on his buttocks. Staniforth-Smith gave the victim some hair removal cream and the victim went to the bathroom to apply it. Despite the victim stating that he did not want assistance, Staniforth-Smith insisted and applied the cream to the victim's buttocks, anal and genital areas.</p> <p><u>Ct 2-3:</u> Cts 2 and 3 occurred on the same day about a year later when the victim lived with Staniforth-Smith. At this time the victim was between 16 and 17 yrs old. After both consuming alcohol and cannabis the victim fell asleep. Sometime later he woke to find Staniforth-Smith using a sex toy to masturbate his penis. Staniforth-Smith then placed the victim's penis in his mouth. The victim got up and left the room.</p>	<p>Ct 1: 4 mths imp (cum). Ct 2: 6 mths imp (conc). Ct 3: 14 mths imp.</p> <p>TES 18 mths imp.</p> <p>EFP.</p> <p>Voluntarily reported the matter to police but only after victim disclosed offences.</p> <p>Made significant admissions; did not fully recall or accept the entirety of what he did.</p> <p>Remorse; genuine concern for victim.</p> <p>Victim had attempted suicide and self-harm.</p> <p>Sentencing judge took uncharged act into account as indicating the existence of a sexual interest.</p> <p>Low risk of re-offending.</p>	<p>Dismissed.</p> <p>At [54] It is sufficient to say that there is no established range for offences of this nature and that the sentence imposed on count 3 is not so clearly inconsistent with other sentences as to indicate an error.</p> <p>At [55] Although an offender's personal circumstances in the case of sexual abuse of children do not generally carry as much weight as they might do in other cases, they are not irrelevant. In the respondent's case there were a number of mitigating factors that could, in combination, properly be characterised as unusual.</p>
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			At trial prosecution led evidence of an uncharged sexual act committed interstate when the victim was 15 yrs old.		
2.	<p><i>SDS v The State of Western Australia</i></p> <p>[2014] WASCA 109</p> <p>Delivered 22/05/2014</p>	<p>24 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after late PG (maintained PNG to trial but failed to appear at trial).</p> <p>Criminal record including multiple aobh, agg aobh, multiple breach protective bail conditions, common assault and criminal damage; previously served terms of imp.</p> <p>Family discontent and domestic violence were present throughout his formative years.</p> <p>Left school at end of year 9; completed TAFE courses.</p> <p>Employed for 6 mths at tyre company.</p> <p>History of alcohol and illicit substance abuse.</p> <p>Assessed as in 'mild' range for depression and anxiety.</p>	<p><u>Indictment</u> 1 x Agg sex penetration.</p> <p><u>Section 32</u> 1 x Agg common assault.</p> <p>The victim was 22 yrs. The victim and SDS had been in a de facto relationship for 2 yrs. They had a child together.</p> <p>SDS was at a house with a number of others. The victim went to the house to speak to SDS. During the evening SDS and the victim argued. He refused to permit the victim to leave the room, dragging her by the arm when she attempted to leave. He threw a doona over the victim and struck her to the head and body. During the assault he threatened her.</p> <p>The victim was able to leave the room when another occupant opened the door.</p> <p>Later the victim returned to the room to sleep. SDS went into the bedroom a few hrs later. He struck the victim to the head and face. SDS instructed the victim to remove her clothing. Frightened of SDS she removed her clothes and lay on the bed. SDS lit a cigarette while she was lying on the bed. He then pressed the lit cigarette against her labia minora for a few seconds. This caused pain and burn marks.</p>	<p><u>Indictment</u> 6 yrs imp.</p> <p><u>Section 32</u> 6 mths imp (conc).</p> <p>EFP.</p> <p>Denied committing the offences when interviewed.</p> <p>No real remorse; blamed victim and thought his offending was an appropriate way to respond to actual or suspected infidelity.</p> <p>The sentencing judge was satisfied beyond reasonable doubt that the appellant's sole purpose was to inflict pain and humiliation on the victim.</p> <p>The sentencing judge found the offence was a serious example and in the upper range of such offending.</p>	<p>Dismissed.</p> <p>At [52] There is no 'hierarchy' of sexual penetration and the seriousness of each offence of sexual penetration without consent must be determined by reference to its particular facts and circumstances.</p> <p>At [57] The facts and circumstances of the offending in the present case are very unusual.</p> <p>At [64] Personal deterrence was important because the appellant has a history of violence towards women with whom he is in a family or domestic relationship. This violence has escalated in severity.</p>

		<p>Two children from previous relationship.</p> <p>History of domestic violence in previous relationships.</p> <p>Took some steps towards his rehabilitation while on remand.</p>		<p>Medium/moderate risk of sexual and domestic violence reoffending.</p>	
1.	<p><i>The State of Western Australia v Doualeh</i></p> <p>[2014] WASCA 3</p> <p>Delivered 09/01/2014</p>	<p>18 yrs at time offending. 19 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal record including agg robbery and aobh.</p> <p>Parents separated when 14yrs.</p> <p>Completed schooling; commenced University.</p> <p>No physical or mental health issues; alcohol abuse problem.</p> <p>Psychologist considered respondent had 'an unhealthy attitude towards young women and regarded young, non-Muslim women as sex objects'.</p>	<p>1 x Agg sex pen.</p> <p>In the early hrs of the morning Doualeh was at a train station. He was under the influence of alcohol. The only other person at the station was the victim. She was under the influence of solvents. Doualeh sat down next to the victim and asked if he could sniff from one of her bottles of solvent. She said no. He then asked her to perform oral sex on him. She refused. He persisted in his requests and the victim continued to refuse.</p> <p>The victim tried to escape Doualeh but was overpowered. He punched her to the head and face in order to overcome her resistance. He managed to insert his penis in her mouth.</p> <p>The victim finally managed to force Doualeh away from her by pushing and kicking.</p>	<p>3 yrs 2 mths imp.</p> <p>EFP.</p> <p>Shown 'very belated' remorse and accepted responsibility.</p> <p>Sentencing judge described offending as 'very serious, involving a degrading sexual act on a clearly intoxicated and obviously vulnerable young woman late at night at a deserted train station'.</p> <p>Penetrated victim on 2 occasions but only charge in respect of the 2nd occasion.</p> <p>Clear from CCTV footage</p>	<p>Allowed.</p> <p>Re-sentenced to 4 yrs 6 mths imp.</p> <p>At [38] While the respondent has said that he intends to turn his life around, the conduct he exhibited while in prison after this offending is not encouraging. The psychological report indicates that the respondent has aggressive and antisocial tendencies, and that his unhealthy attitude towards young women was a major contributing factor to his offending. He was assessed as being at a high risk of sexual reoffending. Having regard to that assessment,</p>

		Intoxicated at the time of offence.		respondent was at all time in reasonable control of his faculties and fully aware that his conduct was wrong. High risk of further sexual offending.	the serious nature of the offending and the respondents' antecedents, the issues of personal deterrence and protection of the public are of particular significance in this case.
<i>Transitional Provisions Repealed (14/01/2009)</i>					
<i>Transitional Provisions Enacted (31/08/2003)</i>					