

# Children's Court sentence appeals

**From 1 January 2021**

## Glossary:

conc	concurrent
cum	cumulative
ct	count
CRO	conditional release order
EFP	eligible for parole
imp	imprisonment
IYSO	intensive youth supervision order
NFP	no further punishment as per s 67 <i>Young Offenders Act</i>
PG	plead guilty
PSR	pre-sentence report
sex pen	sexual penetration
SRO	supervised release order
susp	suspended
TES	total effective sentence
TOI	trial of issues

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No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
3.	<p><i>ARX v The State of Western Australia</i></p> <p>[2023] WASCA 169</p> <p>Delivered 21/11/2023</p>	<p>14 yrs at time of offending.</p> <p>Convicted after PG (25% discount).</p> <p>No criminal history prior to 2022; behaviour escalated quickly; three juvenile justice orders; offences of driving, stealing, and attempted armed robbery; subject of community-based order at time of offending; spent time in Banksia Hill Detention Centre during a turbulent period.</p> <p>Exposed to high levels of trauma and domestic violence; placed into the care of aunt from 4 yrs; returned to her mother's care from 2022; exposed to mother's violence from 2022; returned to aunt's care in a house of 16-17 other people.</p> <p>Performed well in primary school; not enrolled between 2016 and 2018; in 2022 had a 35% attendance rate.</p> <p>Used cannabis every day.</p>	<p>Ct 1: Threat to kill. Ct 2: Threat to kill. Ct 3: Armed in a way that may cause fear. Ct 4: Criminal damage.</p> <p>The appellant was at school after spending some time in another regional town. The appellant approached L and another student during recess, telling them another girl wanted to fight at the nearby shopping centre. L and another informed the teachers, and L was placed in a safe location.</p> <p><u>Ct 1</u></p> <p>The appellant went into a classroom where about 15 students aged between 12 and 14 yrs were taking a home economics class. The appellant grabbed a pair of sharp metal scissors and demanded to know where L was. The appellant threatened to kill the teacher and her students whilst waiving the scissors at them. A student in the classroom attempted to calm the appellant; the appellant screamed and chased the student with scissors, making a stabbing motion which came very close to stabbing her.</p> <p><u>Ct 2</u></p> <p>The appellant was ushered out of the main building. She then proceeded to another classroom where a chemistry class was being undertaken. Within the classroom was four teachers, and 16 students aged between 13 and 14 yrs. The appellant demanded to know where L was, and after a teacher approached her, threatened to burn the school down. The appellant left the room, but later returned with two pairs of scissors, demanding the location of L. The appellant threatened to stab all students and teachers within the classroom numerous times and stood within close</p>	<p>Ct 1: 5 mths imp (HS). Ct 2: 5 mths imp (conc). Ct 3: 5 mths imp (cum). Ct 4: 1 mth imp (conc).</p> <p>TES: 10 mths.</p> <p>EFP.</p> <p>Sentencing judge erred in misapprehending the maximum penalty for cts 1 and 2.</p> <p>Sentencing judge found a serious feature of the offending was the use of an improvised weapon which the school could not remove while still being able to teach children.</p> <p>The offender was subject to a youth community-based order at the time of offending, with only a few days remaining on the order.</p> <p>Sentencing judge recognised the importance of safety within the school community and the law must recognise this need for protection.</p> <p>Satisfied the appellant was remorseful, but not specifically in relation to the girls targeted.</p> <p>The offending had impacted the immediate school victims and the broader school community; some of the children would be scared to go to school and teachers may have been doubting their career choices.</p>	<p>Appeal allowed.</p> <p>Appeal concerned sentencing judge's error in sentencing offender with the incorrect maximum penalty for cts 1 and 2.</p> <p>Resentenced:</p> <p>8 mths intensive youth supervision order (without detention) with a supervision condition.</p> <p>At [53] 'the sentencing judge's error as to the applicable maximum penalty for the charged offence against s 338B of the Code was material to the exercise of his Honour's sentencing discretion.'</p> <p>At [54] 'the error in this case wrongly placed the appellant's offending into a more serious category than was warranted.'</p> <p>At [58] '[a youth diversion officer] describes steps she has taken to secure mental health treatment for the appellant, the enrolment of the appellant in a TAFE course ... and a pending application for the appellant to attend an alternative learning school in the Town. The appellant has been placed on a program which supports at risk children and their families. The appellant has been referred to a psychological service in the Town ...'</p> <p>At [61] '[the updated court report] indicates that the appellant has identified an interest in playing football ... and engaging in On Country activities, including fishing and swimming.'</p> <p>At [62] 'the appellant has discussed feeling noticeably healthier due to abstaining from cannabis use while in Banksia Hill Detention Centre ... she intends to remain abstinent in order to do well with football.'</p> <p>At [65] 'a detention management report ... indicates that the appellant ... has been participating and making progress in an introductory literacy course ... the appellant is trying her best and showing emerging leadership skills.'</p> <p>At [70] 'it is necessary to take account of the appellant's ... severely deprived childhood ... [and] the fact that the appellant shows potential to rise above her disadvantage'. A concrete plan has been formulated to seek to assist her to develop as an adult who does not regularly commit serious offences.'</p> <p>At [71] 'to any extent that the seriousness of the offending calls for punishment by way of detention, that sentencing purpose has largely been achieved by the 73 days the appellant has spent in custody.'</p>

			<p>proximity to a teacher whilst wielding the knife at should height.</p> <p>The appellant then collected pieces of paper and produced a cigarette lighter. She lit the papers while yelling that she would burn the place down.</p> <p><u>Ct 3</u></p> <p>Encapsulated by the facts of counts 1 and 2.</p> <p><u>Ct 4</u></p> <p>After leaving the chemistry classroom, the appellant walked into the school carpark. From the carpark, she walked to another building and smashed the scissors against various glass doors and windows, causing \$2420 of damage.</p>		
2.	<p><b><i>ALC v The State of Western Australia</i></b></p> <p><b>[2022] WASCA 96</b></p> <p>Delivered 03/08//2022</p>	<p>16-17 yrs at time offending.</p> <p>Convicted after trial (cts 1 &amp; 5). Convicted after PG (cts 2-4; 6-9). Cts 2-4 (20% discount). Ct 6 (15% discount).</p> <p>Long criminal history; charged first sex offence aged 12 yrs; lengthy periods juvenile detention.</p> <p>Dysfunctional and tragic childhood; only child to teenage mother; father died aged 3 yrs; exposed to extreme levels of domestic violence and substance abuse from young age; very sexualised home environment; relinquished into State care aged 12 yrs; limited contact with mother from aged 17 yrs.</p> <p>Completed yr 10 in detention.</p> <p>Never employed; aspirations to</p>	<p>Cts 1-6: Sex pen child 13-16 yrs. Cts 7 &amp; 8: Animal cruelty. Ct 9: Criminal damage.</p> <p>The victims, EH, JH and KP, were aged under 16 yrs at the time of the offending. At all times ALC was aware of the victims ages.</p> <p>All of the offences involved consensual sexual acts.</p> <p><u>Ct 1</u> The victim, EH, was 14 or 15 yrs of age. She and ALC knew each other. ALC and EH were both in State care. ALC and EH went into some bushes. ALC asked EH what position she wanted to do. She lay on the ground and removed her pants. ALC removed his pants and engaged in sexual intercourse with her.</p> <p><u>Cts 2-4</u> The victim, JH, was 14-15 yrs of age.</p>	<p>Ct 1: 12 mths imp. Ct 2: 10 mths imp (cum). Ct 3: 10 mths imp (conc). Ct 4: 3 mths imp (cum). Ct 5: 15 mths imp (cum). Ct 6: 11 mths imp (conc). Ct 7: 2 mths imp (cum). Ct 8: 2 mths imp (conc). Ct 9: 1 mth;s imp (conc).</p> <p>TES 3 yrs 6 mths imp.</p> <p>EFP.</p> <p>At all times the appellant was a reportable offender under the <i>Community Protection (Offender Reporting) Act 2004 (WA)</i> and, in respect of some of the offences, he was subject to a CRO in the Children’s Court.</p> <p>The sentencing judge found a serious feature of the offending was that each of the victims were very vulnerable young girls and the appellant took advantage of their vulnerability.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned totality principle (individual sentences not challenged).</p> <p>At [58] With respect to the sex offending, although there was not a great disparity in the ages of the appellant and the complainants, it is clear that [he] knowingly took advantage of their vulnerability and exploited each of them purely for his sexual gratification. He did so in a callous and manipulative way. The victims were exposed to the risk of pregnancy. The appellant possesses no insight into his wrongdoing and has no empathy for his victims. In respect of JH and KP, he offended on more than one occasion. He was at all times a reportable offender and, at the time [he] committed some of the offences, he was on a CRO .... The offending can properly be viewed as being sustained and premeditated. In our opinion, the sex offending engaged in by the appellant, while ... consensual, nevertheless involved a substantial degree of criminality.</p> <p>At [61] His Honour was correct to emphasise, in the present case, the sentencing objective of community protection, ... as his Honour found ... the appellant poses ‘a substantial danger to young women’.</p> <p>At [63] ..., his Honour was correct to order the appellant to serve some of the individual sentences cum. This was necessary in order to reflect the fact that [he] committed offences against more than one</p>

		<p>gain trade qualification and undertake further studies.</p> <p>Diagnosed with ADHD aged 11 yrs; attachment disorder and PTSD.</p> <p>Long history of substance abuse; alcohol from aged 9 yrs; cannabis use aged 11 yrs and amphetamines from aged 14 yrs.</p>	<p>Both ALC and JH were in State care.</p> <p>At a friend's house ALC and JH engaged in sexual intercourse.</p> <p>The following month ALC and JH again had sexual intercourse.</p> <p>On another occasion ALC and JH had sexual intercourse in ALC's bedroom at his group home. JH hid under his bed to avoid being discovered by the staff at the home.</p> <p><u>Cts 5 and 6</u> The victim, KP, had been in a relationship with ALC for a few days. At a fast-food restaurant they had sexual intercourse on the floor of a disabled toilet.</p> <p>On another occasion ALC and KP had sexual intercourse in a toilet block.</p> <p><u>Cts 7-9</u> ALC and others entered the grounds of a primary school. ALC used bolt cutters to gain entry to an area enclosing six chickens. Using a lighter and an aerosol can he deliberately set a chicken on fire and watched it burn before the chicken died. He then climbed up on the roof of a nearby building and deliberately threw a concrete block onto another chicken, killing it.</p> <p>The offence of criminal damage constituted the cutting of the wire around the area where the chickens were kept.</p>	<p>The sentencing judge found the fact the appellant was the subject of a CRO at the time of the commission of some of the offences made the offending more serious.</p> <p>Lack of victim empathy, remorse and insight into his offending.</p>	<p>complainant. Further, his Honour was correct to accumulate one of the sentences he imposed for the ill-treatment of animals. This was completely separate offending and involved a disturbing and cruel offence.</p>
1.	<p><b><i>DTN v The State of Western Australia</i></b></p> <p><b>[2021] WASCA 68</b></p> <p>Delivered 22/04/2021</p>	<p>16-17 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Supportive family.</p> <p>Employed at time offending.</p>	<p>3 x Sex pen child U13.</p> <p>The female victim was aged 9 and 10 yrs at the time of the offending. She was related to DTN.</p> <p>The offending occurred in the course of two separate incidents.</p> <p>On the first occasion DTN penetrated</p>	<p>10 mths imp each cnt (conc).</p> <p>TES 10 mths imp.</p> <p>EFP.</p> <p>The trial judge found the offending aggravated by the degree of force involved; the offending was committed in the course of two discrete and separate incidents; involved</p>	<p>Dismissed.</p> <p>Appeal concerned type of sentence.</p> <p>At [137] In our opinion, the sentences of ... imp imposed ... were commensurate with the seriousness of the appellant's offending. Each of the offences was serious. His Honour ameliorated the sentences by ordering that the individual terms of immediate imp be served wholly conc, despite there having been an interval of about 12 mths between [each] incident.</p>

		<p>No history of substance abuse or treatment needs.</p>	<p>the victim's vagina with his finger.</p> <p>On the second occasion DTN penetrated the victim's vagina with his finger. He then had sexual intercourse with her for a short period.</p>	<p>a breach of trust arising from their relationship as second cousins; the significant age disparity in that the appellant was about 7 yrs older than the victim and he was on the verge of adulthood.</p> <p>The trial judge found the seriousness of the offending removed any possibility of susp or conditionally susp the sentence.</p> <p>Offending significant impact on victim, suffered from depression and suicidal for a substantial period; continues to experience difficulties with schooling and sleep.</p>	<p>At [138] If the appellant had not been a child when he committed the offences and if he had not had good personal circ and antecedents, it would have been open to his Honour to have imposed significantly higher terms of immediate imp and to have ordered some accumulation of the individual sentences. ...</p> <p>At [140] ... his Honour did not err in being positively satisfied that it was not appropriate to susp or conditionally susp the individual terms of imp. The objective seriousness of the appellant's offending decisively outweighed the mitigating factors, ...</p>
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