

Acts or omissions causing bodily harm or danger

s 304 Criminal Code

From 1 January 2021

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

agg	aggravated
att	attempted
AOBH	assault occasioning bodily harm
conc	concurrent
cum	cumulative
ct	count
dep lib	deprivation of liberty
EFP	eligible for parole
GBH	grievous bodily harm
imp	imprisonment
methyl	methylamphetamine
PCJ	pervert the course of justice
PG	plead guilty
poss	possession
susp	suspended
SW	search warrant
TES	total effective sentence
wiss	with intent to sell or supply

s 304(1) Acts/omissions (max penalty 7 yrs imp)

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
<p><i>Transitional provisions repealed (14/01/2009)</i></p> <p>Provisions were held to apply to the offence of s 304(2) despite the offence coming into operation after the enactment of the provisions (21/05/2004) in <i>Yates v The State of Western Australia</i> [2008] WASCA 144 overruling the majority decision in <i>The State of Western Australia v Wallam</i> [2008] WASCA 117 on that point.</p>					

s 304(2) Acts/omissions with intent (max penalty 20 yrs imp)

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
10.	<p><i>MYB v The State of Western Australia</i></p> <p>[2024] WASCA 53</p> <p>Delivered 13/05/2024</p>	<p>41 yrs at time offending. 43 yrs at time sentencing.</p> <p>Convicted after PG (15% discount).</p> <p>Significant criminal history in NSW, Qld, and WA; 2 x AOBH; unlawful poss weapons; dishonesty offences; agg burg; drug offences; breach of CBO and bail.</p> <p>Born in NSW; moved to WA in 2012.</p> <p>Left high school after yr 9.</p> <p>Established a car restoration business in WA; exposed to various criminals and illicit drugs; suffered workplace accident resulting in hospitalisation and chronic pain.</p> <p>History of substance use.</p>	<p>Ct 1: Strangulation. Ct 2: Act with intent to harm causing bodily harm.</p> <p>The victim of both counts of offending was the appellant’s de facto partner, V. The appellant and V were living together with their 9 mth old child. The appellant was on bail at the time of the offending.</p> <p>At the couple’s home, the appellant was intoxicated and became agitated about the prospect of V travelling. After V locked herself in the house, the appellant entered the residence through an unlocked window.</p> <p>The appellant grabbed V and threw her to the floor, then held her in a headlock until she could barely breathe. The appellant dragged V to the living room and punched her to the face several times. The appellant then threatened to kill V and dragged her into the walk-in wardrobe. The appellant continued to assault V, slamming her head against the wall, slamming her to the ground with his bodyweight, and punching her numerous times. The infant child was present in the bedroom during the assault.</p> <p>In self-defence, V bit the appellant and fled to the main bedroom. The appellant pursued her, pushed her head into the</p>	<p>Ct 1: 2 yrs 6 mths imp (conc). Ct 2: 5 yrs imp (conc).</p> <p>TES: 5 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge did not accept the appellant’s version of events, including the suggestion that the offending occurred in the context of a mutual fight, or that the appellant had acted in self-defence.</p> <p>The offending had a profound impact on V; she remains frightened of the appellant and fear his release.</p> <p>The sentencing judge found that the appellant showed some level of remorse; however, the remorse was heavily qualified in light of prison phone calls recording the appellant abuse V.</p> <p>In light of the appellant’s criminal history, the sentencing judge concluded that the appellant was not a person of good character.</p> <p>The appellant’s drug use was found to be a key factor in his offending.</p>	<p>Appeal dismissed (leave refused on both grounds).</p> <p>Appeal concerned length of sentence for ct 2 and the first limb of the totality principle.</p> <p>At [59] ‘amongst the factors that are relevant to the evaluation of the objective seriousness of an offence against s 304(2) are: the nature and seriousness of the appellant’s “intent to harm”; the nature and seriousness of the appellant’s “act”; the nature and seriousness of the actual “bodily harm” which the appellants’ “act” caused to the victim; and the inherent potential of the appellant’s “act” to have caused the victim more serious “bodily harm”.’</p> <p>At [60] ‘another factor relevant to the evaluation of the objective seriousness of an offence against s 304(2)(a) is that the victim, in this case, V, was the offender’s de facto partner.’</p> <p>At [63] ‘in <i>R v Kilic</i>, the High Court observed that current sentencing practices for offences involving domestic violence have changed over time, in line with changes in societal attitudes and towards domestic relations. The short and long-term psychological and physical harm caused by acts of domestic violence to victims, and to children who are present when such behaviour occurs, is much better appreciated now than it once was.’</p> <p>At [64] ‘... strangulation [is] a particularly dangerous form of domestic violence, and recent studies have consistently shown that it is both a predictive risk factor for future severe domestic violence and a relatively common cause of domestic violence-related homicide.’</p> <p>At [68] ‘the appellant’s submissions placed too much emphasis on the absence of very serious physical harm to V, and did not properly address the psychological effects of the offending on her; nor did the submissions adequately acknowledge the potential for the violence to have escalated with fatal consequences to V.’</p>

			corner and squeezed her neck until she could not breathe. The appellant mocked V as he strangled her. After the appellant released his grip, he picked up their child and handed her to V. The appellant then headbutted V and bit her left ear. The appellant instructed V to stay in the shower and hide from police.		At [79] ‘it is difficult to see how any weight could have been given to the appellant’s professed remorse in light of the statements he made to V during their telephone conversations while the sentencing proceedings ... were pending.’ At [81] ‘having regard to all of the relevant facts and circumstances ... the sentence of 5 yrs’ imprisonment was well within the proper exercise of her Honour’s sentencing discretion.’
9.	SKL v The State of Western Australia [2024] WASCA 32 Delivered 27/03/2024	35 yrs at time offending. 25 yrs at time sentencing. Convicted after PG (25% discount) No criminal history. Born in WA; three siblings. Left school at yr 10; later completed a university degree. Relationship with husband since 18 yrs; two children; adult stepson. No substance use. Complex psychiatric history; suffered from anorexia nervosa and obsessive-compulsive disorder with absent insight and delusional beliefs.	1 x Act with intent to harm which life, health or safety was endangered. The appellant had been suffering from poor mental health and was experiencing intrusive thoughts about killing herself as well as members of her immediate family. The appellant decided to stab a stranger so she would be arrested and kept in custody, which would stop her from acting on her thoughts. The appellant bought a large filleting knife from a camping store and went to a shopping centre. She entered the shop and saw the victim stacking shelves. The appellant approached the victim from behind, and stabbed her once to the lower right back, just above the hip. The knife went into the victim’s body to the hilt. The appellant then ran away.	4 yrs 4 mths imp. EFP. The sentencing judge found that the appellant’s offending was serious and concluded that it was above mid-range of offending. The offending was premeditated and senseless, and the appellant intended to at least endanger the victim’s health or safety. The sentencing judge accepted that the appellant’s ability to control her actions was impaired; however, did not accept the appellant’s ability to control her actions was significantly impaired. Offending had profound impact on victim; rendered immobile for weeks; experienced sleeplessness; panic attacks; suffered financially. Sentencing judge accepted the appellant’s mental health issues mitigated the extent to which she should be punished because her moral culpability was reduced on the basis of her impaired ability to control her actions. Sentencing judge found that the appellant was genuinely remorseful and had empathy for the victim. Sentencing judge also found the appellant had good prospects of rehabilitation.	Appeal allowed (Vandongen JA dissenting). Appeal concerned length of sentence. Resentenced: 3 yrs 3 mths imp. EFP. At [21] ‘the appellant’s moral culpability for the offence was reduced by reason of her mental illness. The appellant was cooperative with police, is genuinely remorseful, and pleaded guilty at the first reasonable opportunity ... By reason of her illness, the sentencing objectives of general and personal deterrence were moderated.’ At [22] ‘in combination, these factors pointed towards the imposition of a more lenient sentence within the range of sentences that could properly be imposed.’ At [23] ‘a key sentencing consideration stemming from the appellant’s illness was the risk of reoffending and the need for public protection. His Honour emphasised the need for public protection. We infer that the sentence he imposed was increased to accommodate this factor.’ At [29] ‘in some circumstances, the protection of the public may only be achieved by a longer period of incarceration, but this is not always the case. Public protection may also be achieved through rehabilitation programs and treatment, whether administered within the prison system or in the community.’ At [34] ‘in our opinion, the evidence before the sentencing judge showed that the significant need to protect the public could be managed, to an acceptable level, within the community.’
8.	SYO v The State of Western Australia [2024] WASCA 31 Delivered	38 yrs at time sentencing. Convicted after PG (25% for cts 1–3, 10% for ct 4). Minor criminal history; unlawful	Ct 1: Agg burg. Ct 2: With intent to harm, did an act which life health or safety of a person was likely to be endangered. Ct 3: Threat with intent to compel. Ct 4: Agg indecent assault.	Ct 1: 3 yrs 6 mths imp (conc). Ct 2: 3 yrs 6 mths imp (cum). Ct 3: 10 mths imp (conc). Ct 4: 5 yrs 6 mths imp (HS). Ct 5: No penalty.	Appeal dismissed (leave refused on grounds 2 and 3). Appeal concerned <i>Bugmy</i> principles, insufficient weight given to delay, and totality of sentence. At [66]–[72] discussion of <i>Bugmy</i> principles.

28/03/2024	<p>damage; breach of restraining order; agg burg; minor drug related offences; breach of violence restraining order.</p> <p>Raised by his mother; minimal involvement with his father; mother was physically abusive at times; often left home alone for days as a child; lived with grandmother from 13 yrs; unstable home; frequently saw violence perpetrated by uncles and aunts.</p> <p>Left high school at start of yr 9; completed TAFE course at 15 yrs.</p> <p>Worked in mining and construction since 14 yrs; FIFO work until voluntary separation in 2012.</p> <p>Several relationships of significance; one young daughter; most relationships marred by violence and drug use.</p> <p>No major history of illness or injury; testing indicated presence of antisocial personality traits.</p> <p>Used alcohol to excess from teenage yrs; cannabis use from 13 yrs; developed a methyl habit from late 20s; drug use escalated after losing his job.</p> <p>Positive personal references.</p>	<p>Ct 5: Stealing.</p> <p><u>Ct 1</u></p> <p>The appellant forced his way into the home of DB, a former partner. Once inside, the appellant walked into a bedroom which DB and PC were sleeping.</p> <p><u>Ct 2</u></p> <p>The appellant hit PC several times with a metal bar. The strikes were to PC's head, body, face, arms and legs. The appellant then ordered PC out of the bed and told him to move into the corner of the bedroom.</p> <p><u>Ct 3</u></p> <p>The appellant then demanded DB take off her pants. The appellant said he wanted to inspect DB's vagina to find out whether she had engaged in sexual intercourse with PC. When DB refused, the appellant slapped her and raised the bar above his head as if to hit her with it.</p> <p><u>Ct 4</u></p> <p>Fearing for her life, DB complied with the appellant's demands. The appellant used one of his hands to touch DB's vagina, moving her labia majora for a short time before removing his hand. The appellant again accused DB of having sex with PC and raised the bar in a threatening manner. The appellant again touched her labia majora with his hand.</p> <p><u>Ct 5</u></p> <p>The appellant demanded DB's phone so that he could check her text messages. Before he left, the appellant took her phone with him.</p>	<p>TES: 9 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant had accepted responsibility for his offending, had shown some insight into its impact on his victims, and had taken positive steps to rehabilitation.</p> <p>Offending had severe impact on DB; anxiety, panic attacks, depression and PTSD; sleeplessness; felt angry, helpless, degraded and fearful from appellant's conduct.</p> <p>The sentencing judge found the offending was principally related to the appellant's illicit drug use.</p> <p>The sentencing judge found that the appellant had suffered from some dysfunction and disadvantages during childhood; however such experienced were not to be characterised as profound childhood deprivation.</p>	<p>At [70] 'it may be appropriate to distinguish between two different classes of case. The first is where profound childhood deprivation has in some way impaired the capacity of an offender to behave lawfully... The second class of case is where the offender retains full capacity to make choices about unlawful behaviour, although the poor choices which the offender makes may be influenced by childhood experience.'</p> <p>At [105] 'having reviewed the material before the sentencing judge, we agree with his Honour's conclusion that the material did not establish, on the balance of probabilities, that any relevant capacity of the appellant was impaired by profound childhood deprivation which reduced his moral culpability for the offending or diminished the significance of personal and general deterrence as sentencing considerations.'</p> <p>At [106] 'the procedural history of this matter shows the appellant experienced some delay before he was finally sentenced.'</p> <p>At [125] 'there is nothing to suggest that his Honour... did anything other than sentence the appellant according to the rules of reason and justice... and within those limits which an honest person competent to discharge the duties of his office ought to confine himself. When that is appreciated, all that is left of the appellant's submission is a contention that the sentencing judge should have given more weight to the mitigatory effect of delay. It follows that the appellant's submissions cannot be accepted.'</p> <p>At [139] 'the offences committed by the appellant were extremely serious. The appellant entered his former partner's home without her consent, and in the very early hours of the morning, when she was asleep... The offence charged in ct 2 was particularly serious. In what was a completely unprovoked attack by a physically powerful man, the appellant used a metal bar to repeatedly strike the much younger PC, who was initially asleep and defenceless.'</p> <p>At [143] 'in relation to ct 1, it was necessary for the sentencing judge to give effect to the need for general deterrence in relation to offences of home burglaries, particularly those that involve the use of violence... It is also equally necessary to ensure that the sentences imposed for cts 2,3 and 4 reflect the importance of general deterrence in sentencing for offences involving violence, and in relation to cts 1,3 and 4, the use of violence by men on women with whom they are, or have been, in a domestic relationships.'</p> <p>At [151] [in considering the relevant factors] 'we are of the view that it is not reasonably arguable that the total effective sentence was unreasonable or plainly unjust.'</p>
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7.	<p>Gomboc v The State of Western Australia</p> <p>[2023] WASCA 115</p> <p>Delivered 24/07/2023</p>	<p>31-34 yrs at time offending. 38 yrs at time sentencing.</p> <p>Convicted after late PG (cts 2, 4, 6, 8, 10, 11, 12, 13, 15, 19, 22, 23, 26 & 32) (18% discount).</p> <p>Convicted after very late PG (cts 5, 7, 9, 28 & 29) (8% discount).</p> <p>Limited criminal history; previous conviction for common assault involving then fiancé.</p> <p>Only child; good upbringing; family remain supportive.</p> <p>Completed yr 12; experienced verbal abuse and bullying at school.</p> <p>Good work history; 7 yrs of army service; qualified scaffolder.</p> <p>Relationship with victim ended 2018; new romantic relationship commenced 2021; partner remains supportive.</p> <p>Good physical health; significant history of mental health problems; PTSD arising during time in military service.</p> <p>Heavy alcohol and cannabis use.</p>	<p>Cts 2 & 11: Agg AOBH. Cts 4; 10; 12-13; 15; 19; 22: Threat to harm. Ct 5: Act with intent to harm. Cts 6; 9; 23; 28-29 & 32: Threat to kill. Ct 7: Agg unlawful wounding. Ct 8: Wilful and unlawful damage. Ct 26: Armed to cause fear.</p> <p>Gomboc was in a relationship with the victim, which lasted for a number of yrs. They had purchased a house together.</p> <p>During the course of their relationship, Gomboc subjected the victim to regular physical and verbal abuse. He punched and kicked her, strangled her, negligently wounded her with a knife, smothered her with a pillow, threw objects at her, and repeatedly threatened to kill her, and was often armed when he did so.</p> <p>In addition to having taken photographs of several of her injuries, the victim regularly made audio recordings of the offending.</p> <p>The victim was left with severe anxiety and post-traumatic stress disorder, suffered physically, mentally, emotionally and financially</p>	<p>Ct 2: 10 mths imp (cum). Cts 4; 7 & 13: 12 mths imp (conc). Ct 5: 4 yrs 6 mths imp. Cts 6; 9; 23 & 28: 3 yrs imp (conc). Cts 8 & 12: 10 mths imp (conc). Cts 10 & 15: 14 mths imp (conc). Ct 11: 2 yrs 2 mths imp (conc). Ct 19 & 22: 16 mths imp (conc). Ct 26: 18 mths imp (conc). Ct 29: 3 yrs 6 mths imp (cum). Ct 32: 3 yrs imp (cum).</p> <p>TES 11 yrs 10 mths imp. EFP.</p> <p>The sentencing judge found there were a number of serious features of the appellant's offending as a whole; it persisted for three and a half years; there were 19 separate and distinct offences over that period of time and he had time to reflect on his conduct and choose not to do it again, but did not; he deployed a number of methods and weapons to clearly communicate to the victim that he could end her life at his hands and very quickly, so as to make her fearful of him; the appellant was physically stronger than the victim, who was vulnerable to his physical violence; the offending was in the context of a domestic relationship; the threats to kill or harm were often accompanied by the presence of weapons and physical violence, which no doubt elevating the fear of harm or death the victim experienced, and the fact that his offending routinely incorporated statements designed to degrade and humiliate the victim.</p> <p>The sentencing judge found the submissions made by the appellant's counsel served to minimise the responsibility for his offending and shifted the responsibility onto the victim; his physical and verbal abuse in a domestic setting was 'very entrenched behaviour' and he remained at risk of reoffending unless he addressed his attitude and behaviour.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence. Individual sentences not challenged.</p> <p>Resentenced:</p> <p>Cts 2; 6; 9; 23; 28 & 32: 3 yrs imp (conc). Cts 4; 7 & 13: 12 mths imp (conc). Ct 5: 4 yrs 6 mths imp (cum). Cts 8 & 12: 10 mths imp (conc). Cts 10 & 15: 14 mths imp (conc). Ct 11: 2 yrs 2 mths imp (conc). Cts 19 & 22: 16 mths imp (conc). Ct 26: 18 mths imp (cum). Ct 29: 3 yrs 6 mths imp (cum).</p> <p>TES 9 yrs 6 mths imp. EFP.</p> <p>At [9] ... it is clear that it was necessary that the appellant be sentenced to a very significant TES. The appellant's offending was abhorrent and sickening. Notwithstanding [his] pleas of guilty, his mental health issues and the otherwise high regard in which he was held by others, the persistent, callous and menacing nature of his offending required a long term of imp. The threatened and actual violence used by the appellant must be denounced by the courts in the strongest possible terms. ...</p> <p>At [194] ... Her Honour rightly recognised that the totality of the appellant's offending was extremely serious and called for a very substantial term of imp. It was necessary that a TES be imposed for the appellant's abhorrent and sickening offending that properly punished him and denounced offending like it in the strongest possible terms. ...</p> <p>At [198] ... we cannot avoid the conclusion that the TES imposed on the appellant did not bear a proper relationship to the overall criminality involved in all of the offences.</p> <p>At [220] In our view, this is truly one of those cases when the metaphor of taking one 'last look at the total, just to see whether it looks wrong' is apt. And when we take a last look at the sentence of almost 12 yrs, in light of the appellant's PGs and such potential for rehabilitation as he has, the sentence looks wrong.</p> <p>At [223] ... Nevertheless, as we have set out at length above, the</p>

				Offending profound impact on the victim; continues to require daily medication and ongoing therapy. Limited demonstrated remorse.	persistent, callous and menacing nature of his offending required a long term of imp. Offending of this kind must be denounced by severe penalties.
6.	Meadowcroft v The State of Western Australia [2023] WASCA 98 Delivered 21/06/2023	52 yrs at time sentencing. Convicted after trial (ct 1). Convicted after PG (cts 3 and 4). No prior criminal history; prior traffic convictions for alcohol-related driving offences; no offending for more than thirty yrs. Death of father mths preceding trial; carer for his mother, now in a nursing home; suffered financially, including loss of his home, due to providing assistance to his parents. Father of three; close family. Good work history; qualified painter; employed as a trainer for 7 yrs in a correctional services facility.	Ct 1: Act with intent to harm. Ct 3: Driver failing to stop after incident occasioning GBH. Ct 4: Driver failing to report incident occasioning GBH. The victim was cycling home and crossing a roundabout when Meadowcroft, driving a four-wheel drive utility vehicle equipped with a bull bar, came from the victim's left at speed. The victim was half-way across the road when he stopped on seeing Meadowcroft's vehicle approaching. Annoyed, that he was forced to ride around the front of Meadowcroft's vehicle, the victim made multiple obscene finger gestures at Meadowcroft. After passing the victim Meadowcroft did a U-turn. He then crossed to the incorrect side of the road, mounted the kerb and into the path of the victim. His vehicle struck the victim and his bike, causing the victim to fly through the air and into a fence. After the impact Meadowcroft drove from the scene. At no stage did he stop or report the incident to police. The victim suffered very significant injuries, including to his spine resulting in him being a tetraplegic and confined to a wheelchair.	Ct 1: 8 yrs imp. Ct 3: 2 yrs imp (conc). Ct 4: 1 yr imp (conc). Sentence for ct 1 to commence 6 mths after commencement of other sentences. TES 8 yrs 6 mths imp. EFP. The trial judge was satisfied beyond reasonable doubt that the appellant had an intention to endanger the life of the victim; this intention, combined with the act of driving 'speaks to the singular serious example of this particular offence'. The trial judge did not accept the appellant was only travelling at a little over 20 km per hr; he did not reduce his acceleration, nor did he apply his brakes before the collision; the appellant crossed to the incorrect side of the road, mounted the concrete kerb and continued to drive on the verge for a distance of 12 metres before making contact with the victim and his bicycle on the footpath. Injuries significant impact on victim's life; spent extended period in hospital engaged in rehabilitation; suffered PTSD and depression; unable to work since the collision. Time in custody likely to be more arduous as a result of previous employment with Department of Corrections. Demonstrated remorse; unlikely to reoffend; good prospects of rehabilitation.	Dismissed (leave refused – error in finding). Appeal concerned length of sentence and error in finding (appellant had a subjective intent to endanger the life of the victim). At [110] ... his Honour's findings regarding the intent of the appellant were plainly open. ... His Honour found that the appellant intended to drive close to [the victim] and, even if he did not intend to hit him, he did intend to drive in a manner that endangered the life of [the victim]. Having regard to the fact that the driving involved crossing the road, mounting the kerb, driving across the gravel verge and towards a cyclist on the footpath, that conclusion was, with respect, irresistible. At [116] His Honour was satisfied beyond reasonable doubt that the appellant intended to endanger the life of [the victim]. ... The risk of death was significant and aggravates the offending. At [117] ... the injuries inflicted amount to a very serious example of GBH, let alone bodily harm ... It is accurate to describe [the victim's] injuries as catastrophic. At [118] ... the potential for [the victim] to have been killed is readily apparent from the appellant's manner of driving a turbo-charged vehicle equipped with a bull bar at a cyclist. This significantly increases the seriousness of the appellant's offending. At [126] There is no doubt that the sentence of 8 yrs imp imposed on ct 1 was a severe one. However, having regard to the circumstances of the offence and the catastrophic consequences for the victim that sentence was appropriate. ... At [127] This was an offence involving a deliberate act intended to harm the victim. That places it into a more serious category than driving offences involving mere negligence.
5.	Cheeseman v The State of Western	35 yrs at time offending. 36 yrs at time sentencing.	<u>Indictment</u> Cts 1-3: Act with intent to harm.	Ct 1: 3 yrs 6 mths imp (cum ct 2). Ct 2: 4 yrs 6 mths imp.	Dismissed.

<p><i>Australia</i></p> <p>[2023] WASCA 78</p> <p>Delivered 19/05/2023</p>	<p>Significant criminal history.</p> <p>Convicted after early PG (25% discount).</p> <p>Eldest of two children; mother gambling problem, falsely attributed the families financial issues on appellant; distressed and harbouring anger and resentment left home aged 15 yrs; no contact with his parents until aged 21 yrs; since reconnected.</p> <p>Experience extreme anger and distress in early 20s on learning sister a victim of sexual abuse; became her main source of emotional and physical support.</p> <p>Completed yr 10; commenced working; employed various roles; completed trade pre-apprenticeship; limited employment history since aged 28 yrs due to imprisonment and substance abuse.</p> <p>Previously a member of an OMC.</p> <p>Three significant relationships; two children from first union; seriously violent to her; subsequently convicted and imp; no longer has contact with his children. Second relationship marred by drug use; in a relationship at time of sentencing; partner remains supportive.</p> <p>Commenced methyl use aged 18 yrs; alcohol use early 20s; under the influence of substances, including methyl, at time of offending.</p> <p>Suffered periods of depression, anxiety and trauma symptoms; prescribed antidepressant</p>	<p>Ct 4: Poss firearm without a licence. Cts 5, 7 & 8: Poss ammunition without a licence. Ct 6: Poss firearm reasonably suspected to be stolen.</p> <p><u>Section 32 Notice</u> Chs 1-2: Carried a controlled weapon. Ch 3: Poss of items intended to be used as a disguise with intent to commit an offence. Chs 4-5: Driving while MDL suspended.</p> <p><u>Indictment</u> Ct 1 Cheeseman drove into a carpark. An unknown male passenger and a firearm were in the vehicle. After parking the vehicle Cheeseman approached the victim, seated in the driver's seat of his car. Cheeseman did not know the victim. They had a brief conversation, during which Cheeseman asked for and was given a cigarette by the victim.</p> <p>Cheeseman returned to his vehicle and after about 15 minutes reparked next to the victim's vehicle. He asked the victim whether he had any drugs, before accusing him of being a police officer. After briefly moving his vehicle he again parked next to the victim's vehicle. Cheeseman again questioned the victim about being a police officer. Following this short exchange Cheeseman reversed his vehicle and drove towards the car park exit. As he did so the male passenger produced the firearm and fired one round at the victim's car. The bullet struck the rear windscreen, travelled through the vehicle and struck the rear-vision mirror, coming to rest on the vehicle's dashboard. When, in an effort to escape, the victim drove out of the car park Cheeseman followed him, before overtaking the victim's vehicle and driving away.</p>	<p>Ct 3: 4 yrs 6 mths imp (conc). Ct 4: 6 mths imp (conc ct 6; cum ct 2). Ct 5: 3 mths imp (conc cts 7 and 8; cum ct 2). Ct 6: 6 mths imp (conc ct 4; cum ct 2). Ct 7: 3 mths imp (conc cts 5 and 8; cum ct 2). Ct 8: 3 mths imp (conc cts 5 and 7; cum ct 2).</p> <p>TES 7 yrs 9 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the three victims were strangers to the appellant, all of whom were innocent and going about their own business, thus the offending was entirely unprovoked and gratuitous; the victims were vulnerable and could do nothing to protect themselves from the gunshots; the impact of the offending on the victims was likely to be grave; the firearm involved in the offending was stolen and, thus, was a firearm he should never had had and he was subject to a MDL susp at the time the offences were committed and, therefore, should not have been driving.</p> <p>The sentencing judge concluded that the appellant and another or others willingly engaged in random acts of life-endangering violence, which included having a firearm discharge at truly innocent victims.</p> <p>The sentencing judge observed that while committing the offences in company was not an agg factor, without a co-offender, the offences could not have been committed in the time, place and manner that they were.</p> <p>In the course of dealing with totality, the sentencing judge found cts 2 and 3 more serious than ct 1, as they were the second occasion he had deliberately and consciously decided to go and randomly shoot at innocent victims.</p> <p>Showed very little victim empathy; failed to provide the identity of the male shooter to police; high risk of re-offending.</p>	<p>Appeal concerned totality principle; errors in sentencing (appellant fired the shots) and fact (appellant not truly remorseful) and totality principle.</p> <p>At [62] In our view, the sentencing remarks cannot reasonably be understood as meaning that the appellant was sentenced on the basis that he had an equal degree of criminality to that of the person who fired the shots. ...</p> <p>At [69] When the sentencing remarks are considered as a whole, it is clear that her Honour sentenced the appellant on the basis that it was the unknown shooter, who was the passenger in the appellant's car, and not the appellant who fired the shots. The appellant was, as he acknowledged by his PG, criminally liable for the acts of the unknown shooter. ...</p> <p>At [75]-[76] In our view, the appellant's lack of acknowledgement of an insight into the impact of his offending on the victims weighed decisively against remorse as a mitigating factor. ... Had the appellant identified the unknown shooter to the police, that would, no doubt, have been a significant mitigating factor. ...</p> <p>At [86] As the sentencing judge observed, it was nothing more than good luck that the potential for serious harm was not realised. In relation to ct 1, the bullet entered the cab of the victim's vehicle and went perilously close to hitting him; it hit the driver's side of the rear view mirror in close proximity to the victim's head. On cts 2 and 3, while the bullet hit the tray of the victim's vehicle, given the speed of travel of the vehicle, the bullet could very easily have gone into the cab of the vehicle's vehicle and, in any event, a driver's reaction to the firing of a gun is inherently unpredictable.</p> <p>At [87] ... the separation in time and place between the commission of ct 1 and the commission of cts 2 and 3 reinforced the appellant's overall culpability. ... it was both appropriate and necessary to impose some accumulation between the sentences for ct 1 and the sentences for cts 2 and 3, to ensure that the sentence properly reflected the appellant's overall criminality.</p> <p>At [89] In evaluating the appellant's overall criminality, it is important to recognise that his offending also included a number of offences against the Firearms Act.</p> <p>At [94] Taking into account all the circumstances of the appellant's offending and his personal circumstances, and having regard to all relevant sentencing factors, we are satisfied that the appellant's TES was an appropriate reflection of his overall criminality. ...</p>
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		medication 6 yrs.; otherwise in reasonably good health.	<p>Cts 2 and 3 On the same day Cheeseman drove his vehicle with the same unknown male passenger in the backseat. He pulled alongside a vehicle being driven by the victim of ct 2 and the victim of ct 3 seated in the passenger seat. Cheeseman's passenger then pointed the firearm through the driver's-side window in the direction of the two victims. He fired a single round from the firearm at the two victims, striking the rear of their vehicle. Cheeseman then accelerated away.</p> <p>Cts 4-8 At the time of the offending the subject of cts 1-3 Cheeseman was subject to two MDL revocations and was suspended from driving.</p> <p>Cheeseman was arrested the following day and a search of his vehicle located a modified bolt action rifle, which had been stolen during a burglary. He knew this to be the case. Also located in his vehicle was a full box of .22 calibre ammunition and a jar containing loose .22 calibre cartridges, a pouch containing three rounds and one round within the rifle.</p> <p>A backpack containing two throwing knives, a butterfly knife, two bandannas and four face marks were also located in his vehicle.</p> <p>During a search of Cheeseman's home two shotgun shells and one 9mm cartridge were also located.</p>		
4.	<p><i>Hewins v The State of Western Australia</i></p> <p>[2023] WASCA 2</p> <p>Delivered 05/01/2023</p>	<p>20 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after late PG - cts 1-3 (3% discount). Convicted after trial (ct 4).</p> <p>Minor criminal history.</p>	<p>Cts 1 & 4: Agg burg. Ct 2: With intent to harm did an act resulting in bodily harm. Ct 3: Criminal damage.</p> <p>Mr Gornall and Mr Smith shared a house. Hewins and his brothers, Thomas, Samuel and Jacob, had visited</p>	<p>Ct 1: 5 yrs 2 mths imp (cum). Ct 2: 3 yrs imp (conc). Ct 3: 2 yrs imp (conc). Ct 4: 3 yrs imp (cum).</p> <p>TES 8 yrs 2 mths imp.</p> <p>EFP.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of sentence and totality principle.</p> <p>At [57] When all of the relevant facts and circumstances are considered in respect of c 1, including all of those which are favourable to the appellant, and bearing in mind the max penalty, it cannot reasonably be contended that the sentence imposed was</p>

		<p>Born UK; raised loving and supportive family.</p> <p>Educated to yr 10.</p> <p>Worked number of occupations.</p> <p>Birth of child while on bail.</p> <p>History of substance use; at time of offending under the influence of ecstasy and alcohol.</p>	<p>the house.</p> <p>Hewins, his brothers, Mr Gornall and a Ms Barlett were at a nightclub. Hewins was pursuing a romantic relationship with Ms Bartlett and he became angry when he perceived that Mr Gornall and Ms Bartlett were flirting with each other. When Hewins confronted Mr Gornall and head-butting him he was evicted from the premises.</p> <p>That same evening Mr Smith was at home. He went to bed at about 11.30pm, but some hrs later he awoke to find four men his bedroom. Three of the men physically assaulted him. Two of them punched him repeatedly while the third struck him with a baseball bat. A fourth man stood near the door of his room, pointing a gun at him. After the assault the man with the gun told him that if he said anything they would be back. The four men than left the scene in a vehicle.</p> <p>The house and some of its contents had been extensively damaged. The damage caused to the house cost \$20,342.84 to repair. This did not include the value of the furnishing that were damaged and not replaced.</p> <p>Mr Smith suffered bleeding and swelling to his nose, face and chest. He experienced difficulty breathing through his nose for a number of wks and migraine headaches and issues with his balance for a period of time after the incident.</p> <p>Later that afternoon Mr Gornall and Mr Smith returned home. A group of people came to help clean up. The group were sitting in the house when they heard yelling and screaming outside. Hewins and his brothers Thomas and Jacob had returned looking for Mr Gornall. They had brought with them a taser and a firearm.</p>	<p>The sentencing judge found the offences ‘very serious’; the appellant instigated both agg burglaries; they were premediated and he went to the house with his brothers as ‘back up’, taking weapons and intending to inflict harm; he personally used violence in the first burglary in circ where he was part of a group attack upon an innocent third party and it involved the use of a weapon and in circ where a gun was pointed.</p> <p>The sentencing judge found the seriousness of the appellant’s conduct was not reduced by the fact he was not personally armed in either agg burglary; he knew of the existence of the weapons carried by others and that they would be used; the appellant’s criminal culpability for both agg burglaries was ‘extremely high’.</p> <p>The sentencing judge found that despite the appellant having had the opportunity after the first agg burglary to reflect on his behaviour and conduct he went ahead and committed the second agg burglary.</p> <p>Lacked insight and victim empathy.</p>	<p>manifestly excessive. It was not unreasonable or plainly unjust. Implied error has not arguably been established.</p> <p>At [59] There can be no doubt that the appellant's overall criminality, having regard to the facts and circumstances of all of the offences, was very high. Having ... committed cts 1, 2 and 3, [he] and two of his brothers returned to the house later that day ... and committed another violent home burglary, terrorising Mr Gornall and those who had come to clean up after the earlier offences.</p> <p>At [60] Again, the offending was premeditated, violent and terrifying. Her Honour was correct to note that the offending the subject of ct 4 was a second separate instance of serious offending that justified some degree of accumulation.</p> <p>At [63] Having regard to the extremely serious nature of the offending, the sentence properly reflected the overall criminality of all of the offences after taking into account all relevant sentencing principles and factors, including the mitigating factors. The TES was not unreasonable or plainly unjust. Implied error has not arguably been established.</p>
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3.	<p><i>Billett v The State of Western Australia</i></p> <p>[2022] WASCA 158</p> <p>Delivered 01/12/2022</p>	<p><u>Billett</u> 27 yr at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history; prior conviction for violent offending.</p> <p>Parents separated aged 18 yrs; close relationship with mother and sister; little contact with alcoholic father, now in care suffering dementia.</p> <p>Struggled at school; left yr 10; recently completed a Certificate in community services; aspires to do youth work.</p> <p>Worked intermittently; unemployed past five yrs; undertaking volunteer work.</p> <p>Two significant relationships; three children, youngest aged 12 mths at time sentencing; current partner positive and stable influence..</p> <p>Long-term history of alcohol and substance abuse; allowed access to alcohol and firearms as a child; commenced binge drinking whilst at school.</p>	<p><u>Billett</u> Ct 1: Agg burg. Ct 2: Threat to harm. Ct 3: Unlawful damage. Ct 4: Agg burg. Ct 5: Act with intent to harm.</p> <p><u>Klinger</u> Ct 1: Agg burg. Ct 3: Unlawful damage. Ct 4: Agg burg. Ct 6: AOBH. Ct 7: Threat to harm.</p> <p>Billett, Klinger and another man were socializing at a tavern.</p> <p>During the evening Billett obtained an address for a Mr Scerri. Some wks earlier there had been an incident involving him and Mr Scerri. So Billett harboured a grievance against him.</p> <p>After Billett told TL and Klinger about the incident all three decided to go together to attend the address and confront Mr Scerri.</p> <p>After driving to the address all three got out of the vehicle. Billett had with him a machete, Klinger a 15-inch tyre wall tester and TL a tomahawk.</p> <p>The house was occupied by a Mr Sorell, who was house-sitting for the owner. Mr Scerri was living in a caravan</p>	<p><u>Billett</u> Cts 1 & 4: 18 mths imp (conc). Cts 2 & 5: 12 mths imp (conc). Ct 3: 7 mths imp (conc). TES 18 mths imp.</p> <p><u>Klinger</u> Cts 1 & 4: 18 mths imp (conc). Ct 3: 7 mths imp (conc). Cts 6 & 7: 12 mths imp (conc). TES 18 mths imp.</p> <p>The sentencing judge found the home burglaries serious, particularly as they involved forcible entry into premises known or suspect to be occupied and accompanied by threatened or actual violence.</p> <p>The sentencing judge found the offending the subject of cts 1 and 4 agg by the fact the respondents were in company with each, that they knew or ought to have known the premises were occupied, they were both armed and both made threats and did harm.</p> <p><u>Billett</u> Accepting of responsibility; understanding of seriousness of offending; steps taken to change his lifestyle; maintaining abstinence from alcohol and illicit substances.</p> <p><u>Klinger</u> Significant remorse and insight into his</p>	<p>Appeal allowed.</p> <p>Appeal concerned length of sentences cts 1, 4 and 5 and totality principle.</p> <p>Resentenced cts 1 and 4:</p> <p><u>Billett</u> Ct 1: 3 yrs imp (conc). Ct 4: 4 yrs 3 mths imp (conc).</p> <p>TES 4 yrs 3 mths imp. EFP.</p> <p>Cts 1, 2, 3 and 5 conc with the sentence imposed ct 4.</p> <p><u>Klinger</u> Ct 1: 3 yrs imp (conc). Ct 4: 4 yrs 3 mths imp (conc).</p> <p>Cts 1, 3 6 and 7 conc with the sentence imposed ct 4.</p> <p>TES 4 yrs 3 mths imp. EFP.</p> <p>At [57] ... the seriousness of the offending was self-evident ... There were a significant number of aggravating features: ... this was not opportunistic offending, but, rather, planned conduct with the respondents agreeing to attend at the premises and arming themselves with weapons before arriving; ... the offences were committed in company and at night; ... the offences were at residential premises where it was likely, and indeed the respondents fully expected, residents to be present; ... the purpose of the burglary offences was to enter and, at least, intimidate the occupant by threatening him with weapons; ... the burglary on the house involved threats to Mr Sorrell, and threatening behaviour with weapons; ... the burglary on</p>

		<p>Diagnosed with ADHD aged 8 yrs; medicated until aged 12 yrs; diagnosed and medicated with depression at 15 yrs; suffers sleep apnoea; use of cannabis to assist sleep.</p> <p><u>Klinger</u> 29 yrs time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history.</p> <p>Third child of four children; father 'a big drinker'; both father and mother frequently physical and emotionally abusive; parents separated when young child; lived with his mother until moving to live with his father aged 11 yrs.</p> <p>Attended high school until yr 9; educated special school leaving yr 10.</p> <p>Numerous jobs; difficulties maintaining employment; attempted to join the army; survived on Centrelink benefits.</p> <p>Number of intimate relationships; son born a short time prior to sentencing.</p> <p>History of alcohol abuse; increasing when he suffered depression.</p>	<p>parked at the front of the premises. Billett and Klinger entered the house through an unlocked door and to a bedroom occupied by Mr Sorrell. TL remained outside, acting as a lookout.</p> <p>Billett approach Mr Sorrell, pointing the machete at him and asked for the whereabouts of Mr Scerri. Mr Sorrell told him he was in the caravan. Billett told Mr Sorrell not to move and that he was a dead man, whilst pointing the machete at him. Mr Sorrell was in fear for his life. When Billett and Klinger left the room he ran from the house, jumped a fence and hid.</p> <p>Meanwhile, Billett and Klinger ran to the caravan. They smashed windows of the caravan then forced open the caravan door.</p> <p>Mr Scerri crawled onto his bed and curled into a ball to protect himself. He felt a couple of blows and then something harder all over his body. He recognised the voice of Billett telling him to stay away from his house and kids. Klinger then screamed words to the effect 'Do you want to die?'</p> <p>Mr Scerri att to get up to defend himself. He believed he saw three men, one he recognised as Billett. Mr Scerri could see one of the men had a tomahawk. Mr Scerri was able to chase the men from the caravan.</p> <p>Police arrived at the house to find Mr Scerri bleeding from a large cut to his ankle and numerous cuts to his body. He was taken to hospital by ambulance and treated for various injuries. The most serious a 5 cm laceration and fracture to his ankle that required surgery.</p>	<p>offending.</p>	<p>the caravan involved forcible entry and the breaking of windows; ... threats to Mr Scerri and a serious assault upon him; ... Mr Scerri was outnumbered and tramped, and thus vulnerable to the attack upon him; and ... the offences were, in essence, a revenge or vigilante attack ...</p> <p>At [58] ... offences committee as vigilante action are particularly serious. ... Plainly, Klinger was a willing and active participant in what he believed to be a revenge attack.</p> <p>At [60] The second burglary, that the caravan, was particularly serious because it involved forced entry and the smashing of windows and an assault upon an outnumbered victim on his bed at night. ... The fact that Mr Scerri curled upon his bed in an effort to protect himself is a good indication of the ferocity of the attack.</p>
2.	<i>Ridgway v The</i>	41 yrs at time sentencing.	Ct 2: Att PCJ.	Ct 2: 12 mths imp (cum).	Dismissed (leave refused).

<p><i>State of Western Australia</i></p> <p>[2021] WASCA 143</p> <p>Delivered 13/08/2021</p>	<p>Convicted after trial.</p> <p>Extensive criminal history; convicted wide variety of offences over more than 20 yrs; numerous sentences of imp.</p> <p>Parents separated aged 7 yrs; lived with his mother; childhood marred by father's substance use and violence.</p> <p>Left school during yr 11.</p> <p>Sporadic work history; unemployed time sentencing; full-time employment available upon his release from prison.</p> <p>Three children from three relationships; married ADT after this offending; wife and mother-in-law supportive.</p> <p>Long-standing history of illicit drug use, particularly heroin and methyl; attempts made to rehabilitate himself; past participation in drug rehabilitation programs, including naltrexone implants.</p> <p>Suffers anxiety; depression and antisocial personality disorder.</p>	<p>Ct 3: With intent to harm did an act resulting in bodily harm. Ct 5: Poss unlicensed ammunition.</p> <p>Ridgway was in custody on remand when a SW was executed at the home where he usually lived with his partner, ADT. A quantity of methyl was located at the home and ADT was charged with two offences, including poss of methyl wiss.</p> <p>Some days later Ridgway was released to bail and returned to live at the house. He arranged for the victim, STH, to sign a statutory declaration form, blank save for the details of the witness before whom he had purportedly executed the document.</p> <p>Ridgway later completed the factual details of the statutory declaration, falsely stating the methyl found during the search belonged to STH. He then provided the completed statutory declaration form to police.</p> <p>Two days later STH went to Ridgway's home. Ridgway was angry with him for not giving the false statutory declaration to the police. He grabbed STH by his shirt and neck chain and dragged him inside. He then punched STH a number of times to the face and body, forced him onto a couch and continued to beat him over a long period of time. He also sprayed aerosol degreaser onto STH's arm and set it on fire, causing a burn to his arm. STH fled the house and hid.</p> <p>Sometime later STH was found by police and taken to hospital. He sustained a broken nose, bruising and a small superficial penetrating wound to his arm, caused by Ridgway stabbing him with scissors.</p> <p>Ridgway was arrested the next day at his home. A SW located 42 rounds of .22 calibre ammunition hidden in a vent</p>	<p>Ct 3: 3 yrs 6 mths imp (cum). Ct 5: 6 mths imp (conc).</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending serious and it was an aggravating factor that the offending was committed while he was on home detention bail.</p> <p>The sentencing judge found the offence of att PCJ was pre-planned; he involved STH in the offence; although it was not carried out over a longer period of time and the police were not induced to act on the false statutory declaration.</p> <p>The sentencing judge found ct 3 towards the low to mid-end of the scale of seriousness; the violence against STH were acts of vengeance; the injuries sustained by STH were not serious or permanent, but the deliberate act of setting STH alight using a flammable substance had the potential to result in very serious consequences and was a high risk act.</p> <p>Some signs of remorse; participated in counselling while in custody; motivated to avoid further illicit substance use.</p>	<p>Appeal concerned errors of fact (injuries suffered and seriousness of victim's injuries); length of individual sentence ct 3 and totality principle.</p> <p>At [50] Having regard to the relevant testimony of STH, the six photographs and the evidence of Dr Wee, it was well open to the sentencing judge to make the findings he did about the injuries suffered by STH, including the impugned findings concerning bruising, tenderness and the small superficial penetrating wound to the left arm.</p> <p>At [52] ... Dr Wee identified one of the four wounds, being the 'small superficial penetrating wound to the left arm', as more recent. This was consistent with STH's evidence that he had been stabbed in the arm with scissors by the appellant. ... his Honour did not find that there were four penetrating wounds to the left arm. He referred only to one such wound. His Honour did not err in his finding ...</p> <p>At [54] – [54] There is no merit in the claim that his Honour erroneously assessed the injuries suffered by STH as being 'towards the low to mid-end of the scale' ... Finally, his Honour did not err in his finding that the act of setting STH alight using a flammable substance had the potential to result in a 'potential risk to [STH's] life, health and safety'. Such an act plainly had this potential. ...</p> <p>At [67] Ct 2 ... was a reasonably serious example of its type. The appellant hatched a plan in which he recruited STH to falsely take the blame for the offence committed by ADT. [He] had STH sign the blank statutory declaration form, then later completed the factual details in which STH purportedly stated that the methyl found during the search of the house ... belonged to him. ... Although the police were not actually deceived, the appellant's actions had the potential to divert the investigation away from its true path. This offending was committed separately to cts 3 and 5, and plainly warranted additional punishment in order to properly reflect the appellant's overall criminality.</p> <p>At [68] As to ct 5 ... The presence of the ammunition ... increases the appellant's overall criminality, even though the sentence was ultimately ordered to be served conc.</p>
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1.	<p><i>Thurston-Moon v The State of Western Australia</i></p> <p>[2021] WASCA 124</p> <p>Delivered 15/07/2021</p>	<p>41 yrs at time offending. 42 yrs at time sentencing.</p> <p>No prior criminal history.</p> <p>Convicted after PG (20% discount).</p> <p>Married; two children.</p> <p>Owner of lawnmowing and gardening business; well-regarded by those who know him.</p> <p>Good mental health.</p>	<p>Ct 1: Armed likely to cause fear. Ct 2: With intent to harm did an act resulting in bodily harm.</p> <p>The offending occurred in broad daylight in and about a shopping precinct on a suburban street. It was witnessed by multiple bystanders.</p> <p>Thurston-Moon was sitting with some work colleagues. The victim, GCH, was nearby, asking members of the public for money.</p> <p>Following a verbal argument with GCH, Thurston-Moon walked to his vehicle and armed himself with a line trimmer (commonly known as a whipper snipper).</p> <p>In the meantime, GCH entered a liquor store and was temporarily out of sight. However, on seeing GCH leave the store Thurston-Moon started the whipper snipper and walked towards him. GCH retreated into the store. Thurston-Moon shouted at GCH while revving the motor of the whipper snipper. Fearing for his safety GCH picked up a bottle for protection. Thurston-Moon briefly walked away so GCH put down the bottle and left the store.</p> <p>As GCH walked away Thurston-Moon continued to yell and pursue him, revving the motor of the whipper snipper. In the middle of the roadway he lunged at GCH with the whipper snipper, striking him on the arm. This did not cause him any injury.</p> <p>As GCH ran to the other side of the street, Thurston-Moon walked back in the direction of his colleagues. Then, without provocation, Thurston-Moon</p>	<p>Ct 1: 12 mths imp (conc). Ct 2: 18 mths imp (conc).</p> <p>TES 18 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending very serious; the appellant was at all times the aggressor and it was wanton, gratuitous violence which was totally unjustified.</p> <p>The sentencing judge found the offending premediated and sustained over a period of time; the appellant ignored the plight of the victim and the concerns of other innocent members of the public.</p> <p>No genuine remorse; no real insight into the seriousness of his offending; low risk of reoffending.</p>	<p>Dismissed.</p> <p>Appeal concerned error in finding (high degree of significant potential harm beyond that suffered by victim) and type and length of individual sentences.</p> <p>At [38] Clearly, the appellant was not using the whipper snipper in a manner for which it is intended to be used. [He] chose to use [it] as a weapon. He twice struck the [victim] with it by holding the spinning lines in a more or less horizontal position, hitting the victim on the arm and his buttocks. ... It is not uncommon for people to stumble, trip or fall in this process. An attacker may, himself or herself, suddenly change positions. In such unpredictable and sudden circumstances, the spinning lines of a whipper snipper could have potentially lacerated the victim in such areas as his genitals, hands or fingers and, if he had crouched or fallen, his face, eyes or ears, all with the potential to cause significantly more serious injury than that which he actually suffered.</p> <p>...</p> <p>At [41] In our opinion, having regard to the evidence ..., it was well open to his Honour to conclude, as he did, that by reason of the nature of the whipper snipper there was a high degree of significant potential harm which could have been caused to the victim over and above that which was actually suffered by him.</p> <p>At [52] His Honour's statement that the offending was, objectively, very serious, can hardly be disputed. Nor can his Honour's characterisation that the appellant's actions involved the unjustified infliction of gratuitous violence upon the victim. At all times, the appellant was the aggressor. He chose to walk to his work vehicle, pick up the whipper snipper from the trailer and, over a period of minutes, pursue his unarmed and vulnerable victim. ... It is clear from the appellant's words and actions that he was intent upon inflicting harm and, by giving his colleagues the 'thumbs up', was pleased with himself for what he had done.</p> <p>At [53] The laceration wounds were relatively low-level having regard to the range of injuries that may constitute bodily harm. However, as his Honour correctly found, the use of the whipper snipper had the potential to cause significantly more serious injuries than those that were actually inflicted. Furthermore, it is evident ... that the victim was pursued across a road on which cars were travelling, and then along a footpath, where he had to avoid a vehicle entering the road from a driveway or laneway. Thus, the victim was exposed to further potential injury as a result of being struck by a vehicle, either on the roadway or the footpath.</p>

			<p>again pursed GCH with the whipper snipper's line spinning. Lunging at GCH he struck him with the spinning line of the machine, inflicting multiple lacerations to his buttocks.</p> <p>Thurston-Moon walked back to his colleagues, smiling and gesturing to them with his thumbs up.</p>		<p>At [55] The mitigating factors identified by his Honour ... are significant, but, when weighed against the very serious circumstances of the offending and the need to denunciate and deter such conduct, they did not permit a shorter term of imp or leave open a susp or conditionally susp term of imp.</p>
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Transitional provisions enacted (31/08/2003)

Provisions were held to apply to the offence of s 304(2) despite the offence coming into operation after the enactment of the provisions (21/05/2004) in *Yates v The State of Western Australia* [2008] WASCA 144 overruling the majority decision in *The State of Western Australia v Wallam* [2008] WASCA 117 on that point.

Office of the Director of Public Prosecutions