

# Aggravated burglary

Commercial Premises

s 401 *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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
burg	burglary
conc	concurrent
cum	cumulative
EFP	eligible for parole
imp	imprisonment
PG	plead guilty
susp	suspended
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
2.	<p><i>Ritchie v The State of Western Australia</i></p> <p>[2023] WASCA 120</p> <p>Delivered 11/08/2023</p>	<p>28 yrs at time offending.</p> <p>Convicted after very late PG (10% discount).</p> <p>Prior criminal history; all offences punished by fines.</p> <p>Born New Zealand, moved to Australia aged 18 yrs.</p> <p>Supportive relationship; step-father to partner's two sons.</p> <p>Regularly employed since arriving in WA; worked for drilling services company at time offending; employed as a concreter while on bail.</p> <p>Good physical and mental health; illicit drug use, but not a factor in his offending.</p>	<p>Ct 1: Agg burglary. Ct 2: Stealing. Ct 3: Steal MV.</p> <p>About 85 kg of gold ore was stored in a locked shipping container at a mine site. A locked safe, which at the time, and unknown to Ritchie and his co-offenders, was empty, was also inside the container.</p> <p>Ritchie and his co-offenders drove to the mine site in a vehicle with a hydraulic loading crane.</p> <p>At the mine site their actions were captured on CCTV footage. They had covered their faces with balaclavas.</p> <p>Using an angle grinder Ritchie and the co-offenders cut open the padlocks on the shipping container. Then, using the hydraulic loading crane, they loaded the gold ore into the rear of their vehicle.</p> <p>They also attempted to cut open the safe using an oxyacetylene set and equipment from a nearby workshop. When this was unsuccessful they used a front end loader at the site to remove the safe from the container and load it onto a LandCruiser at the site.</p> <p>Ritchie and the co-offenders put the oxyacetylene set and equipment into the same vehicle as the safe. They then left the site in their vehicle and the LandCruiser.</p> <p>During the burglary one of the co-offenders walked around the site carrying a rifle with a cut down stock.</p> <p>Along with the gold ore, valued at \$275,500, they stole the LandCruiser valued at \$52,000, the safe valued at \$3,000, the oxyacetylene set and equipment at about \$1,300 and some chains, straps and the vehicle's car keys at \$250.00.</p>	<p>Ct 1: 4 yrs imp (cum). Ct 2: 2 yrs imp (cum). Ct 3: 12 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending was planned and premeditated; the appellant was in company, which ensured the gold was located and removed quickly and efficiently; the offending was protracted, persistent and committed at night; the appellant had att to conceal his identify; a co-offender carried a firearm as he walked around the site and a substantial quantity of property, with a total value of \$327,000, was stolen and a significant amount of the property was not recovered or destroyed by fire.</p> <p>No demonstrated 'real remorse'; opportunity to provide information as to the whereabouts of the unaccounted for gold and the firearm carried by his co-offender.</p>	<p>Appeal allowed.</p> <p>Appeal concerned error in sentencing (cum of cts 1 and 2 contravened s 11 <i>Sentencing Act</i>) and totality principle.</p> <p>Sentence for ct 3 not challenged.</p> <p>Sentencing error conceded.</p> <p>Resentenced (10% discount): Ct 1: 5 yrs imp (cum). Ct 2: No penalty. Ct 3: 12 mths imp (cum).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>At [64] 'in the present case, the grounding offence for the agg burglary offence charged in ct 1 was stealing gold ore, a safe, welding equipment, chains and car keys ... The property the subject of the stealing offence charged in ct 2 was no different from the property the subject of the grounding offence for the agg burglary offence charged in ct 1.'</p> <p>At [65] 'in the circumstances, the evidence necessary to establish the commission of ct 1 also established, without more, all of the elements of, and consequently the commission of, ct 2. No distinct additional evidence was required to establish the commission of ct 2.'</p> <p>At [66] 'consequently, the common law principle against double punishment and s 11(1) of the <i>Sentencing Act</i> precluded the primary judge from imposing additional punishment or sentencing the appellant for ct 2. Her Honour infringed the common law principle and s 11(1) by sentencing the appellant for ct 2 and ordering that the sentence for ct 2 be served cum upon the sentence for ct 1.'</p> <p>At [77] 'we have taken into account the serious features of the appellant's offending ... The combined effect of those features means that the offending on ct 1 was an especially serious example of agg burglary of commercial premises.'</p> <p>At [82] '... the overall seriousness of the appellant's offending on ct 1 and ct 3, having regard to all relevant sentencing factors, would not be adequately marked if the individual sentences were not wholly accumulated.'</p>

			<p>The stolen Landcruiser and safe were later found in remote bushland destroyed by fire.</p> <p>Only about 20 oz of gold from the gold ore was recovered.</p> <p>When arrested Ritchie denied any involvement in the offending.</p>		
<p>1.</p>	<p><b><i>The State of Western Australia v ADS</i></b></p> <p><b>[2021] WASCA 99</b></p> <p>Delivered 02/06/2021</p>	<p>23 yrs at time offending and sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history; on parole for previous offending at time offending.</p> <p>Born Europe; very young when came to Australia; normal childhood; loving family.</p> <p>Learning difficulties; left school after yr 9; struggles with reading and writing.</p> <p>Employment history adversely affected by drug use and time in prison; worked as a painter.</p> <p>One long term relationship; little contact with 6 yr old son.</p> <p>Illicit drug use from aged 15 yrs; commenced using methyl aged 16-17 yrs; affected by methyl at time of offending.</p>	<p>1 x Unlawful detention with intent to gain a benefit by threat or demand. Ct 2: Agg burg (commercial property). Ct 3: Agg robbery. Ct 4: Wilful destruction of evidence.</p> <p>The victim, Mr L, was aged 81 yrs and he walked with the aid of a walking stick. He owned a business dealing in firearms and military collectables.</p> <p>After closing the store for the day Mr L departed in his motor vehicle. ADS and his co-offender followed in a hired van, which ADS had earlier in the day fitted with stolen registration plates.</p> <p>At an intersection ADS and the co-offender deliberately drove the van into the rear of Mr L's vehicle. They directed Mr L to drive a short distance and park. After doing so Mr L got out of his vehicle and approached the offenders' van with the intention of exchanging details. ADS and the co-offender dragged and forced Mr L into the van.</p> <p>Mr L was punched in the face and threatened repeatedly that he would be killed if he did not provide them access to his store and the vaults of his business. He was handcuffed, his feet were tied together with cable ties and a cloth was placed over his head and secured with duct tape. He was also struck on the leg with an object and punched on various parts of his body and once on his head. They took his mobile phone and his bag containing</p>	<p>Ct 1: 3 yrs imp (cum). Ct 2: 3 yrs imp (conc). Ct 3: 3 yrs 4 mths imp (cum). Ct 4: 8 mths imp (cum).</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending involved planning and preparation and involved some persistence; the respondent was actively involved in the preparation to commit the offences, including carrying out surveillance of the store and the victim, he purchased items needed for the offending and obtaining the van and the stolen number plates; he was 'actively and willingly involved in all aspects of this offending' and was equally culpable; he participated for financial reward.</p> <p>The sentencing judge found the victim was vulnerable because of his advanced age and physical condition; they detained and restrained him; threatened him with actual violence and to kill him and inflicted bodily harm on him.</p> <p>Very traumatic affect on victim; continues to suffer emotional and psychological consequences, including trauma, recurring nightmares; difficulties sleeping and painful recurring problems with his back and shoulders.</p> <p>Expressions of remorse and victim empathy; medium risk of future offending.</p>	<p>Allowed.</p> <p>Appeal concerned length of individual sentences cts 1, 2 and 3 and totality principle.</p> <p>Resentenced (25% discount):</p> <p>Ct 1: 5 yrs imp (cum). Ct 2: 2 yrs 6 mths imp (conc). Ct 3: 4 yrs imp (cum). Ct 4: 9 mths imp (conc).</p> <p>TES 9 yrs imp.</p> <p>EFP.</p> <p>At [80] The facts and circumstances of each of cts 1, 2 and 3 were extremely serious.</p> <p>At [81] As to ct 1, the offenders monitored [Mr L's] movements for some time prior to the offending. They planned to ambush [him] when he was alone and most vulnerable. The staging of the traffic accident to lure [him] from his vehicle to the offenders' van was a pernicious feature of the offending. [Mr L] was subjected to a very frightening ordeal. He was physically assaulted and threatened, including by threats to kill. [He] feared for his life. He was unlawfully detained for a significant period, namely about two hrs. [Mr L] has suffered emotional and psychological consequences from the offending ... The kidnapping was undertaken to facilitate the commission of the planned agg burg and the planned agg robbery. Bearing in mind all of those features of the offending in relation to ct 1, there is no doubt that ct 1 was a very serious example of the offence ...</p> <p>At [82] As to ct 2, the manner in which the offenders gained entry to the store highlighted the seriousness of their offending against commercial premises.</p> <p>At [83] As to ct 3, the offending involved the offenders stealing a large quantity of firearms and ammunition, having a substantial commercial value, for the purpose of selling the firearms and ammunition on the</p>

		<p>personal items.</p> <p>ADS then drove the van to Mr L's store, where, acting under threats, he supplied the offenders with the alarm code to the security system and the access code to the vault.</p> <p>Mr L was locked inside the van as ADS and the co-offender entered the store and removed large quantities of firearms and ammunition. They then returned to the van and struck Mr L with an object, demanding the codes and keys to the safe. He provided those details to avoid being assaulted again.</p> <p>Mr L was then taken into the store and the handcuffs and blindfold removed. He was threatened with further violence if he did not provide the safe codes.</p> <p>When the safe was unlocked ADS and the co-offender removed a large quantity of handguns, which they loaded onto trolleys and wheeled out of the store.</p> <p>Mr L was able to lock the door to the store and activate the duress alarm. ADS and his co-offender then left. Police arrived a short time later.</p> <p>A total of 141 firearms, valued at \$215,000, were stolen, along with 10,700 rounds of assorted ammunition valued at \$6,000.</p> <p>Mr L was taken to hospital by ambulance. He suffered bruising/swelling to his leg, wrists, ankles and above his eye and a cut to one of his fingers.</p> <p>Later the same day ADS and the co-offender drove to a location where they burnt the clothing they had worn while committing the offences as well as items taken from Mr L, including his wallet, glasses and keys.</p>		<p>black market. ... If the firearms and the ammunition had been sold and distributed to criminals, there was a real risk that they may have been used for dangerous and life threatening activities.</p> <p>At [84] ... The fact that all of the offences were committed while the respondent was on parole for previous offending was an egregious feature of his conduct.</p> <p>At [86] In our opinion, the sentence for each of cts 1 and 3 were not commensurate with the seriousness of the offence. ... the length of the sentence for each of cts 1 and 3 was unreasonable or plainly unjust.</p> <p>At [90] In our opinion, the TES for cts 1, 2, 3 and 4 did not bear a proper relationship to the overall criminality involved in all of the respondent's offences, viewed together, and having regard to all relevant facts and circumstances and all relevant sentencing factors. ...</p>
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<i>Transitional Provisions Repealed (14/01/2009)</i>					
<i>Transitional Provisions Enacted (31/08/2003)</i>					

Office of the Director of Public Prosecutions