

Aggravated burglary

**Residential properties
(excluding home invasions)
s 401 Criminal Code**

From 1 January 2021

Glossary:

agg	aggravated
att	attempted
AOBH	assault occasioning bodily harm
burg	burglary
CBO	community based order
CSIO	conditional suspended imprisonment order
conc	concurrent
cum	cumulative
ct	count
EFP	eligible for parole
imp	imprisonment
PG	plead guilty
TES	total effective sentence
VRO/RO	violence restraining order/restraining order
wiss	with intent to sell or supply
YCRO	Youth Conditional Release Order

Office of the Director of Public Prosecutions

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
14.	<p><i>The State of Western Australia v Tawhitapou</i></p> <p>[2024] WASCA 25</p> <p>Delivered 15/03/2024</p>	<p>24 yrs at time offending (IND 815). 26 yrs at time offending (IND 92). 27 yrs at time sentencing.</p> <p>Convicted after PG (20% discount)</p> <p>Criminal history; mostly minor and traffic offences.</p> <p>Born in NZ; permanent resident status; arrived in Australia at 14 yrs old; moved to WA when he was 22 yrs old.</p> <p>Parents separated when he was 11; father abused alcohol and normalised domestic violence; grandparents raised him for some time before moving to Australia.</p> <p>Attended boarding school; bullied by students; completed high school in Queensland.</p> <p>Worked as a telecommunications technician, trades assistance and scaffolder.</p> <p>Alcohol and cannabis use from early age, increased consumption of substances prior to offending.</p> <p>On and off again relationship; one child from that relationship.</p> <p>Depression and anxiety.</p>	<p><u>IND 815</u></p> <p>Ct 1: Agg burg. Ct 2: Stealing. Ct 3: Agg burg.</p> <p><u>IND 92</u></p> <p>Ct 1: Agg burg. Ct 2: Agg armed robbery. Ct 3: Agg robbery.</p> <p><u>IND 815</u></p> <p>The respondent entered through the front door of SWS's home and stole various items from the living room the kitchen and the study. SWS was at home when the offence was committed. The total value of the property stolen was about \$650 (cts 1 and 2).</p> <p>During the same night the respondent burgled another home in an adjacent suburb. The respondent and a co-offender entered CS's premises by a gate and unsuccessfully attempted to enter the house through an exterior bedroom door. The respondent and the co-offender stole two cans of soft drink from a refrigerator in an undercover alfresco area (ct 3).</p> <p><u>IND 92</u></p> <p>EEC answered a knock at the front door of her house. As she opened the door, the respondent grabbed the flyscreen door and swung it open. The respondent punched EEC to the mouth, then punched her again and grabbed her by the throat. He then put EEC in a headlock and dragged her along the hallway (ct 1).</p> <p>BG heard the commotion and came to EEC's aid. BG and the respondent grappled, and a co-offender with a knife entered the house. BG ran towards the co-offender and attempted to push him out the front door. BG and the co-</p>	<p><u>IND 815</u></p> <p>Ct 1: 8 mths imp (cum). Ct 2: 4 mths imp (conc). Ct 3: 6 mths imp (conc).</p> <p><u>IND 92</u></p> <p>Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs 2 mths (HS). Ct 3: 14 mths imp (cum).</p> <p>TES: 4 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge erroneously referred to the offending the subject of ct 1 as occurring when the victims were not home.</p> <p>The sentencing judge found there was limited evidence of remorse, apart from the pleas of guilty. However, the respondent was still relatively young and had taken some positive steps towards rehabilitation.</p> <p>Offending had significant impact on EEC and BG. EEC has been prescribed a high dose of antidepressant medication; resulted in the need for psychotherapy. BG has experienced depression, and the offending has exacerbated his bipolar disorder.</p>	<p>Appeal allowed.</p> <p>Appeal concerned first limb of totality principle and factual error in sentencing.</p> <p>Resentenced:</p> <p>15% discount.</p> <p><u>IND 815</u></p> <p>Ct 1: 2 yrs 4 mths imp (conc) Ct 2: No penalty. Ct 3: 20 mths imp (conc).</p> <p><u>IND 92</u></p> <p>Ct 1: 2 yrs 4 mths imp (conc). Ct 2: 4 yrs 10 mths (HS). Ct 3: 2 yrs 2 mths imp (cum).</p> <p>TES: 7 yrs imp.</p> <p>EFP.</p> <p>At [58] '...the prosecutor's reading of the material facts was erroneously transcribed as "[t]he victim wasn't home at the time of the offence" ... However, his Honour found (presumably in reliance upon the erroneous transcription) that SWS was not at home at the time of offending.'</p> <p>At [72] 'in the present case, the respondent's offending, considered as a whole, was very serious. In particular, the respondent's offending the subject of the counts in IND 92 was egregious. The gravity of the respondent's offending the subject of the counts in IND 92 is obvious. In addition...the respondent committed the aggravated robbery against AMT while he was on bail for the other offences.'</p> <p>At [73] 'denunciation of the respondent's criminality and personal and general deterrence were important sentencing considerations.'</p> <p>At [81] '...the total effective sentence of 4 years' immediate imprisonment was not commensurate with the seriousness of the respondent's offending considered as a whole.'</p> <p>At [82] 'we consider that, when the total effective sentence is viewed from the perspective of: (a) the maximum penalties for the offences; (b) the facts and circumstances of the offences considered as a whole; (c) the vulnerability of the complainants; (d) the general pattern of sentences for the offences in question; (e) the importance of denunciation and personal and general deterrence; and (f) all other</p>

			<p>offender wrestled for control of the knife, and the co-offender pushed the knife into BG.</p> <p>The respondent grabbed BG around the neck and pulled him away from the co-offender. The respondent and the co-offender kicked BG to the head. The respondent then lay on top of BG and held his shoulders, shaking him and hitting his head on the ground.</p> <p>EEC saw the assault, and went inside to call the police. The co-offender forced his way into the house, held the knife towards EEC and demanded money. EEC gave the co-offender \$200 in cash. (ct 2).</p> <p>Whilst on bail for the above offending, the respondent encountered AMT at a carpark shopping centre. The respondent and a co-offender bumped into AMT, then chased him as he began to walk away. The respondent punched AMT to his face, causing him to drop his wallet. The co-offender took the wallet. As the co-offender began to punch AMT, the respondent told him to 'get the phone'. The co-offender grabbed AMT's mobile phone and ran to his vehicle; the respondent struck AMT several more times and grabbed AMT's other mobile phone (ct 3).</p>		<p>relevant sentencing factors...the total effective sentence was not merely lenient or at the lower end of the available range.'</p> <p>At [83] 'the total effective sentence was substantially less than the sentence that was open to his Honour on a proper exercise of his sentencing discretion.'</p>
13.	<p><i>Goddard v The State of Western Australia</i></p> <p>[2023] WASCA 164</p> <p>Delivered 28/11/2023</p>	<p>33 yrs at time offending. 34 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Significant criminal history; all offences dealt with in Magistrates Court; multiple convictions of driving without a licence; multiple convictions for steal MV and other dishonesty offences.</p> <p>Born in Perth; positive</p>	<p>Ct 1: Steal MV. Ct 2: Agg burg. Ct 3: Stealing. Ct 4: Agg burg. Ct 5: Stealing. Ct 6: Att agg burg.</p> <p><u>Ct 1</u></p> <p>The appellant and co-offender attended the victim's residence. They then entered his parked vehicle, and drove off in it.</p>	<p>Ct 1: 6 mths imp (cum). Ct 2: 18 mths imp (cum). Ct 3: 12 mths imp (conc). Ct 4: 3 yrs imp (cum; HS). Ct 5: 12 mths imp (conc). Ct 6: 12 mths (cum).</p> <p>TES: 6 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge did not make a finding of remorse, but accepted the appellant had expressed a level of victim empathy.</p>	<p>Appeal dismissed (leave refused).</p> <p>Appeal concerned the first limb of the totality principle.</p> <p>At [25] 'while it is true that the appellant did not damage the houses or actually confront the victims, these circumstances are not mitigating. The appellant's actions gave rise to the risk of confrontation, which is inherent in the conduct he engaged in. Offences such as those committed by the appellant engender in victims senses of fear, insecurity and vulnerability, which are heightened when the offences are committed at night while they are asleep.'</p> <p>At [26] 'it is well recognised that sentences for home burglary need to be firmed up.'</p>

		<p>upbringing; parents and sister are supportive; had two significant relationships with a daughter who was 8 yrs at time of sentencing.</p> <p>Completed yr 10; found school difficult due to ADHD and dyslexia; unemployed at time of offending; had previously worked for 8 yrs as a ceiling fixer.</p> <p>Long standing addiction to methylamphetamine; drug use since age of 15; completed counselling to address substance misuse; expressed desire to engage in further intervention.</p>	<p><u>Cts 2 and 3</u></p> <p>The appellant (alone) attended a house and gained access through an unlocked laundry door. Once inside, the appellant stole a briefcase, laptop, and wallet.</p> <p><u>Cts 4 and 5</u></p> <p>The appellant and co-offender entered a home through an unlocked door. The offenders stole various items to the value of \$3,600.</p> <p><u>Ct 6</u></p> <p>The appellant (alone) attended another residence with the intention of stealing property. The appellant woke the victim whilst trying to force open a pair of large French doors, resulting in the victim turning on the outside lights. The appellant fled on foot.</p>	<p>No specific findings of the appellant's prospects of rehabilitation.</p> <p>Sentencing judge had express regard to totality principle, reducing cts 1, 2, and 6 for reasons of totality.</p>	<p>At [29] 'while all of the offences were committed within hours...and could easily be considered a "spree", the appellant's counsel accepted some accumulation was necessary in order to properly reflect the appellant's overall criminality. In our opinion, having regard to all relevant sentencing factors, a total effective sentence of 6 years' imprisonment was a proper reflection of the appellant's overall criminality.'</p>
12.	<p><i>Thornley v The State of Western Australia</i></p> <p>[2023] WASCA 107</p> <p>Delivered 13/07/2023</p>	<p>32-33 yrs at time offending. 34 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Short criminal history; prior drug offending, including poss of a trafficable quantity of methyl wiss.</p> <p>Parents still together; family supportive.</p> <p>Regular employment history; small business operator.</p> <p>Long-time user of methyl; using approx 1 g of methyl a day; spending \$3,000 a wk on the drug; significant daily use of methyl coincided with significant escalation in seriousness of his offending.</p>	<p>Ct 1: Agg burg. Ct 2: Stealing. Ct 4: Receiving.</p> <p>The complainant and his wife owned a high-value dwelling. They lived overseas so employed caretakers to pack the furniture and the contents of the property prior to the home's renovation. Some antique furniture was placed in one of the main rooms of the home.</p> <p>From time to time the caretakers would check the premises, which were secured, including by locked gates.</p> <p>In the early hrs of the morning Thornley and his co-offender Beynon entered the home without the consent of the owners. They removed from the property numerous items, including furniture, household effects and wine.</p> <p>A short time later Thornley and Beynon were seen by police driving in separate</p>	<p>Ct 1: 18 mths imp (cum). Ct 2: No penalty. Ct 4: 10 mths 16 days imp (cum).</p> <p>TES 2 yrs 4 mths 16 days imp.</p> <p>Cum with sentence of 4 yrs 6 mths imp already serving.</p> <p>TES 6 yrs 10 mths 16 days imp.</p> <p>EFP.</p> <p>Co-offender Beynon sentenced to a TES 3 yrs imp.</p> <p>The sentencing judge found the offending 'a serious premeditated and sophisticated course of conduct'.</p> <p>Steps undertaken to address drug addiction while in custody.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned parity and totality principle.</p> <p>At [48] We are satisfied that the disparity between the appellant's sentence and that imposed on Mr Beynon did not infringe the parity principle or the principle of equal justice. The disparity was objectively a sufficient, even generous, reflection of their different circumstances. ...</p> <p>At [56] ... The appellant, while on bail and in company with Mr Beynon, took advantage of the fact that the complainant's home was unoccupied and committed a premeditated and well-organised burglary on the house, which resulted in the theft of a substantial amount of valuable property. ... Offences of the kind committed by the appellant and Mr Beynon are prevalent. This court has stated many times that sentences for this kind of offending must be firmed up. ... The TES imposed upon the appellant ... for the offences ... was, on any view, modest.</p> <p>At [58] The appellant has fallen a long way short of demonstrating that the overall TES ultimately imposed upon him infringed the first limb of the totality principle. ...</p>

			<p>vehicles. The vehicles were stopped and searched and a number of items were observed in each vehicle. Both were allowed to continue on their way.</p> <p>About one mth later, Beynon att to sell a chest on Gumtree. The chest had been stolen from the property and was of significant value.</p> <p>Thornley was captured a number of times on CCTV at his home address unloading property from his vehicle. The property was stolen from the complainant's house.</p> <p>The burglary at the complainant's home was not discovered for some wks. Fingerprints, identified as belonging to Thornley and Beynon, were found inside the house.</p> <p>A search of Thornley's home located a number of items, including several large items of furniture, that had been stolen from the complainant's house.</p> <p>The following day a search of Beynon's home recovered further items belonging to the complainant, including crockery and linen.</p>		
11.	<p>Beekman v The State of Western Australia</p> <p>[2022] WASCA 130</p> <p>Delivered 06/10/2022</p>	<p>40 yrs at time offending. 41 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Substantial prior criminal history.</p> <p>Parents separated aged 18 mths; resided with his mother until aged 11 yrs; dysfunctional relationship with mother and stepfather.</p> <p>Rebellious; placed into care aged 13 yrs; absconded.</p> <p>Did not enjoy school; left yr 9; later completed yr 12; moved frequently; attending numerous</p>	<p>Ct 1: Agg burg. Ct 2: Criminal damage.</p> <p>The victim, aged 68 yrs, was Beekman's mother. She lived alone. As a result of his behaviour towards her over a number of yrs she lived in constant fear of him.</p> <p>Several mths prior to the offending Beekman had been served with a family VRO protecting the victim.</p> <p>At the time of the offending Beekman was also the subject of a bail undertaking with the condition he not contact or att to contact the victim.</p> <p>During the night Beekman went to the</p>	<p>Ct 1: 3 yrs 6 mths imp (cum). Ct 1: 12 mths imp (cum).</p> <p>TES 4 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending behaviour unprovoked; he broke into the home knowing that his behaviour would frighten the victim and cause her great fear; the victim was vulnerable in that she was aged 68 yrs and lived alone; he relied upon the victim's vulnerability to commit the offences; the offences were not isolated, but were part of a history of criminal behaviour towards the victim for some yrs, resulting in her being constantly fearful of him; the offences occurred in breach of both a family</p>	<p>Allowed (but resentenced to same TES).</p> <p>Appeal concerned totality principle and error in sentencing (s 11 <i>Sentencing Act 1995</i> (WA)).</p> <p>Resentenced (15% discount):</p> <p>Ct 1: 4 yrs 6 mths imp. Ct 2: No penalty.</p> <p>EFP.</p> <p>At [49] ... the common law principle against double punishment and s 11(1) of the <i>Sentencing Act</i> precluded her Honour from punishing or sentencing the appellant for ct 2. Her Honour infringed the common law principle and s 11(1) by ordering the individual sentences for ct 2 be served cum upon the individual sentence for ct 1.</p> <p>At [56] ... It was significantly aggravating that the appellant's</p>

		<p>schools; regularly truanted and in trouble.</p> <p>Reasonable work history; periods of unemployment; more than one occasion employment terminated as a result of illicit drug use.</p> <p>A few intimate relationships; relationship difficulties due to illicit substance use.</p> <p>Good physical health; mental health issues.</p> <p>History of illicit substance abuse; including heroin; prescription medication and alcohol; drug use remains a significant issue.</p>	<p>victim's home. He thumped loudly and aggressively on a window. He then climbed onto the roof and walked around on the roof. He then beat loudly on the outside of the victim's door, smashed a window and entered the premises.</p> <p>The victim ran in fear out of her unit and to a neighbour's house.</p> <p>Inside the unit Beekman damaged the home and its contents. He smashed and broke property for about 15 min until police arrived.</p>	<p>VRO and the bail undertaking.</p> <p>The sentencing judge found the value of the damage was not insignificant.</p> <p>Belated expression of empathy.</p>	<p>offending was committed in breach of a family VRO and in breach of protective bail conditions. ...</p> <p>At [57] The appellant's offending in relation to ct 1 was undoubtedly very serious. ...</p>
<p>10.</p>	<p><i>The State of Western Australia v Krakouer</i></p> <p>[2022] WASCA 118</p> <p>Delivered 06/09/2022</p>	<p>32 yrs at time offending. 33 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Very long criminal history; on bail for burglary offences time of offending.</p> <p>Aboriginal; born to young alcoholic mother; methyl-addicted father; raised by maternal grandmother.</p> <p>Left school year 9.</p> <p>No history of employment or job training.</p> <p>Stable relationship at time of sentencing; five children from prior relationships; no contact with his children.</p> <p>Long history of substance abuse; using drugs daily; no serious or enduring mental illness.</p>	<p>Ct 1: Agg burg. Ct 2: AOBH. Ct 3: Dep lib.</p> <p>Early in the morning Krakouer entered the victim's home. Her partner had just left for work and she and her infant son were still asleep</p> <p>Inside the house Krakouer took poss of a knife, a baseball bat and a pair of scissors. He also put on the victim's hooded dressing gown.</p> <p>Awoken by her son crying the victim went into the kitchen. Krakouer appeared from behind the bench top and tackled her to the floor, causing her to bang the back of her head. When she screamed he placed a hand across her mouth and told her to stop. Once she stopped screaming he let her attend to her infant son.</p> <p>Krakouer told the victim she was going to drive him around to help him find his partner. She obliged out of fear.</p> <p>Krakouer, the victim and her son got into the victim's vehicle. Before doing so, he removed various items from</p>	<p>Ct 1: 2 yrs 8 mths (cum). Ct 2: No penalty. Ct 3: 1 yr 2 mths (cum).</p> <p>TES 3 yrs 10 mths imp..</p> <p>EFP.</p> <p>The sentencing judge noted the respondent was a repeat offender for the purposes of s 401(4) of the <i>Criminal Code</i>.</p> <p>The sentencing judge found the offending persistent and committed over an extended period of time; the respondent was armed with three weapons; he confronted the victim with his face covered; he assaulted the victim; a child was present and he continued with the offending even after he was aware she was caring for her infant son.</p> <p>Offending severe psychological impact on the victim; diagnosed with PTSD and prescribed medication.</p> <p>Remorseful and accepting of responsibility; completed six-wk rehabilitation program in custody.</p>	<p>Allowed.</p> <p>Appeal concerned length of individual sentences cts 1 and 3 and totality principle.</p> <p>Resentenced (20% discount):</p> <p>Ct 1: 5 yrs imp (cum). Ct 2: No penalty. Ct 3: 1 yr imp (cum).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>At [54] The agg home burglary offence charged in ct 1 was far from the least serious category of offending. The sentence imposed by the sentencing judge ... fails to reflect the position of the respondent's offending in the range between the least serious category of offending and the worst category of offending.</p> <p>At [56] ... the sentence ... for ct 1 is unreasonable or plainly unjust. The sentence failed by a significant measure to reflect the criminality involved in the offending ... the individual sentence imposed for ct 1 was manifestly inadequate ...</p> <p>At [58] ... we would note that the TES ... fails, in our view, to reflect the seriousness of the agg home burglary offence considered alone. ...</p>

			<p>within the house and placed them into a bag, which he placed in the car.</p> <p>Krakouer then directed the victim to drive him to various locations in the metropolitan area. He eventually got out of the car, apologising to the victim before walking off with the bag of items he had taken from the house.</p>		
9.	<p>Houlahan v The State of Western Australia</p> <p>[2022] WASCA 85</p> <p>Delivered 19/07/2022</p>	<p>21 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after very late PG (cts 1 & 2) (10% discount). Convicted after trial (cts 7-9).</p> <p>Very lengthy unenviable criminal history; frequently in detention or imprisoned since aged 14 yrs.</p> <p>Dysfunctional upbringing; parents separated aged 7 yrs; raised by mother; tumultuous relationship with father; exposed to alcohol and illicit drugs young age; antisocial behaviours and associations.</p> <p>Mother and sister supportive.</p> <p>Educated to yr 9.</p> <p>Introduced to methyl aged 13 yrs.</p>	<p>Ct 1: Steal MV. Ct 2: Fraud. Ct 7: Agg burg. Ct 8: Steal MV. Ct 9: Reckless driving.</p> <p>All offences committed over a period of 15 days.</p> <p>During a burglary, the victim's motor vehicle was stolen. It was not alleged Houlahan had taken part in the burglary. However, he drove the vehicle and put fuel in the vehicle, paying using the victim's debit card. The vehicle was later found damaged. A forensic examination located Houlahan's DNA on the steering wheel. The cost to repair the vehicle was \$2,310.</p> <p>In the early hrs of the morning the victim and his family were asleep in their home. Houlahan broke into the house through a window. He used a pair of socks as gloves. Inside the home he stole items of property, including the keys to a motor vehicle. He then drove the vehicle from the premises.</p> <p>That same morning Houlahan sped past an unmarked police car, who activated the car's lights to pull him over. He did not stop. When police activated both lights and sirens, he accelerated away from the pursuing police car. He drove in excess of 45 km p/hr over the speed limit in order to evade the police. At certain points he reached speeds of between 155 km p/h and 160 km p/hr. He also drove through a number of major intersections at high speed and on</p>	<p>Ct 1: 12 mths imp (cum). Ct 2: 6 mths imp (conc). Ct 7: 2 yrs 6 mths imp (cum). Ct 8: 15 mths imp (conc). Ct 9: 18 mths imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>MDL disq for life.</p> <p>The sentencing judge found the appellant's offending 'very serious'; he drove on suburban streets, often at extreme speeds, posing a very real danger to others and showing a total disregard for other road users; the agg home burglary was particularly serious, it occurred at night when people were in the house.</p> <p>The sentencing judge found the appellant had a continuing and entrenched disobedience of the law in very serious ways; nothing to indicate on the path to rehabilitation.</p> <p>Financial loss and great inconvenience caused to victims.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of individual sentences cts 1, 2 & 9 and totality principle.</p> <p>At [35] As to the sentence imposed on ct 2, having regard to all of the relevant circumstances, including the appellant's PG, ... and the modest amount [he] defrauded, the sentence of ... imp was not manifestly excessive, bearing in mind that [he] used the petrol he obtained by fraud to enable him to continue driving the stolen vehicle.</p> <p>At [36] As to the sentence imposed on ct 9, the submissions of the appellant substantially understate the seriousness of the offence. While the offence lasted between six and 10 min, it involved a very determined and sustained att to evade arrest. He was driving a stolen car and at one point had a passenger in the vehicle. In doing so [he] drove with extreme speed on a major highway and suburban streets in a manner which put the lives and safety of other road users in jeopardy. The driving involved a selfish disregard for the safety of others. ...</p> <p>At [44] In the present case, her Honour was correct to accumulate some of the sentences to properly reflect the appellant's overall criminality which encompassed five distinct offences in two separate incidents committed over a 15-day period. ... The TES was an appropriate reflection of the appellant's overall criminality, ...</p>

			<p>the incorrect side of the road. Police deployed a stinger device, which Houlahan deliberately evaded.</p> <p>At one point Houlahan stopped to let a passenger out of the vehicle.</p> <p>Eventually the vehicle came to rest against a tree. Houlahan ran from the vehicle and hid. He was eventually located by police.</p>		
8.	<p><i>Harris v The State of Western Australia</i></p> <p>[2022] WASCA 84</p> <p>Delivered 15/07/2022</p>	<p>22 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after trial; on pre-sentence order at time offending.</p> <p>Lengthy criminal history.</p> <p>Aboriginal; traumatic childhood; dysfunctional upbringing; profound childhood deprivation; born while mother incarcerated; father frequently in prison; raised by grandmother and sister; exposed to alcohol abuse and family violence.</p> <p>Death of grandmother aged 13 yrs had significant impact on him; time in care of DCP.</p> <p>Left home aged 18 yrs; resided with cousin who took own life; blamed for death.</p> <p>Attended school to yr 10; some further education and training.</p> <p>Never employed.</p> <p>Good physical health; experienced depression, suicidal thoughts; acts of self-harm.</p> <p>History of alcohol and illicit drug use; escalated following cousin's death.</p>	<p>Ct 1: Agg burg. Ct 2: Agg sex pen.</p> <p>In the early hrs of the morning Harris unlocked a security screen and gained entry to a house, occupied by L, and his partner, E.</p> <p>L was asleep, naked, on the couch. E was asleep in a bedroom.</p> <p>Harris knelt next to the couch on which L was sleeping. He took L's penis and performed fellatio on him. L presumed it was his partner.</p> <p>When L opened his eyes and saw Harris he punched him in the face. Harris said sorry, then ran for the door. L wrestled with Harris and tried to detain him. Harris picked up a torch and struck L in the head, causing a small laceration which bled. After a short scuffle Harris left the premises.</p> <p>Harris returned a few minutes later and requested the return of his thongs.</p> <p>At the time of the offending Harris was under the influence of alcohol, drugs and solvents.</p>	<p>Ct 1: 4 yrs imp (conc). Ct 2: 16 yrs imp (conc).</p> <p>TES 16 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the offending spontaneous or opportunistic behaviour that took place over a short period of time.</p> <p>The trial judge found the offending as 'towards the lower end of the scale for agg sex pen without consent', but not at the lowest level having regard to the agg factors.</p> <p>Genuinely remorseful; high risk of future sex reoffending.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of sentence ct 2.</p> <p>At [39] We do not accept the submission that, when the nature of the offence and the circumstances of the appellant are considered, ct 2 was a case in the least serious category.</p> <p>At [40] ... Adding to the seriousness of the offending was the vulnerability of L, who was naked and asleep in his own home. While the act of penetration was relatively brief in time, it could not be said to be fleeting and resulted in L ejaculating. The offence caused humiliation for L. The appellant, in an attempt to thwart his apprehension, struck L in the head with the ... torch causing a minor injury. Compared to other offences of its type, the objective facts and circumstances of the offending could not reasonably be said to be at the lowest end of the scale of seriousness.</p> <p>At [42] ... In our opinion it is not reasonably arguable that the sentence of 16 yrs' imp was manifestly excessive.</p>
7.	<p><i>Jabbie v The State of Western</i></p>	<p>22-23 yrs at time offending. 24 yrs at time sentencing.</p>	<p><u>IND 2405</u> Cts 4; 7 & 12: Agg robbery.</p>	<p><u>IND 2405</u> Ct 4: 2 yrs 3 mths imp (conc).</p>	<p>Dismissed (leave refused).</p>

<p>Australia</p> <p>[2022] WASCA 10</p> <p>Delivered 09/02/2022</p>	<p><u>IND 2405</u> Convicted after late PG – cts 4, 7-9 and 11-16 (18% discount). Convicted after very late PG – cts 5 and 10 (15% discount).</p> <p><u>IND 1443</u> Convicted after early PG (25% discount).</p> <p>Extensive criminal history; including offences of violence and dishonesty.</p> <p>Disadvantaged and difficult upbringing; born Liberia; only child; parents separated when young; largely raised by grandparents.</p> <p>Came to Australia to live with his father; arriving via refugee camp; troubled relationship with stepmother; offended against his stepsister; removed from the family home by Department of Communities until aged 17 yrs.</p> <p>Poorly educated; limited employment opportunities; some salesperson and gardening work.</p> <p>Two young sons from former relationship; relationship marred by violence; no contact with his children for over two yrs.</p> <p>Diagnosed with depression aged 19 yrs.</p> <p>Commenced alcohol and cannabis use aged 13 yrs; methyl aged 17 yrs.</p>	<p>Cts 5 & 11: Agg armed robbery. Cts 8 & 10: Agg burglary. Cts 9; 14-15: Stealing. Ct 13: Steal MV. Ct 16: Att agg burglary.</p> <p><u>IND 1443</u> Ct 1: Wilful damage by fire.</p> <p><u>IND 2405</u> <u>Ct 4</u> Jabbie approached the victim walking down the street. Without warning he hit the victim around the head, causing him to fall to the ground. He further assaulted the victim. Jabbie stole the victim’s mobile phone, headphones and wallet.</p> <p><u>Ct 5</u> Two days later, the victim, an Uber driver, agreed to drive Jabbie and three other males. Jabbie was in the front seat when he sprayed the victim in the face with an unknown substance as he was driving. The victim, in pain, stopped his vehicle, got out and ran away, before falling. Jabbie went up to the victim, searched his pockets and took his wallet and a sum of money. Jabbie then tried to leave in the victim’s vehicle, but he could not start it. The victim required treatment for his injuries.</p> <p><u>Ct 7</u> About nine days later the victim, aged 65 yrs, collected Jabbie and a female in his taxi. When he was unable to pay the fare at the end of the journey the victim told him he would return them to where he had picked them up. Jabbie became aggressive and punched the victim. He instructed the victim to stop the car. When he did so Jabbie continued kicking and punching him. The victim lost balance and was rendered unconscious.</p> <p>Jabbie then removed \$2,700 in cash from the victim’s pocket. The victim</p>	<p>Ct 5: 4 yrs imp (head). Ct 7: 3 yrs 6 mths imp (cum). Ct 8: 2 yrs 2 mths imp (conc). Ct 9: 1 yr 8 mths imp (conc). Ct 10: 2 yrs imp (conc). Ct 11: 3 yrs 4 mths imp (conc). Ct 12: 3 yrs imp (conc). Ct 13: 1 yr 6 mths imp (conc). Ct 14: 2 yrs 6 mths imp (conc). Ct 15: No further punishment. Ct 16: 1 yr’s imp (conc).</p> <p><u>IND 1443</u> Ct 1: 1 yr’s imp (cum).</p> <p>TES 8 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant’s overall offending ‘very serious; given the number of victims, some of whom were elderly, and the ongoing consequences for the victims.</p> <p>The sentencing judge found the offending the subject of IND 1332 was serious because of the risk of harm to others at the prison. The risk of serious injury or death caused by fire was considerably increased within the confines of the prison due to the significantly delayed ability to escape the area’s security mechanisms.</p> <p>Appellant remorseful; some insight into his offending; high risk of reoffending.</p>	<p>Appeal concerned lengths of individual sentences cts 5 and 7; totality principle and error in sentencing commencement date.</p> <p>At [73]-[74] Ct 5 involved a violent attack on a rideshare driver, using a weapon, while the appellant was in company. The appellant sprayed the victim in the face while the victim was driving, thereby endangering the victim and members of the public. The victim was providing a service to the public. He was vulnerable to an unexpected attack while he was driving. The offending has had profound and enduring effects on the victim, who has suffered PTSD and suicidal depression. ... the sentence of 4 yrs imp on ct 5 is comfortably within the range of sentences available on a proper exercise of the sentencing discretion. ...</p> <p>At [75]-[76] Ct 7 involved a violent attack on a 65-yr-old taxi driver. The appellant punched and kicked the victim, rendering him unconscious. Again, the victim was providing a service to the public. The appellant stole a large sum of money ... from the victim. The appellant’s offending has had significant medical, psychological and financial consequences on the victim, ... the sentence of 3 yrs 6 mths on ct 7 is well within the range of sentences available on a proper exercise of the sentencing discretion. ...</p> <p>At [80] The appellant’s offending caused serious harm to a number of different victims. He violently attacked the victims of cts 4, 5, 7, 11 and 12, many of whom continue to suffer significant adverse effects from the attack. ...</p> <p>At [81] Given the substantial number of serious offences the subject of [IND 2405], accumulation, to some substantial degree, was necessary to reflect the seriousness of the offending. ... Accumulation of the sentence on the offence the subject of [IND 1443] was necessary and appropriate, given that the offence was serious and was committed while the appellant was a sentenced prisoner.</p> <p>At [82] In our view, the TES ... was well within the proper exercise of the sentencing judge’s discretion.</p>
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was hospitalised due to his injuries.

Ct 8

Several days later Jabbie and a co-offender entered a house and stole a number of items valued at \$1,170. While inside the house the victim and her daughter returned. Jabbie tried to hide before fleeing.

Ct 9

After fleeing the home the subject of ct 8 Jabbie jumped a fence into the backyard of the neighbouring home. He stole two cans of soft drink from a fridge in a side room. He fled when the occupants returned home.

Cts 10 and 11

That same day Jabbie entered the garage of the victim, aged 77 yrs, with the intention of stealing his car. The victim went to investigate the noise and was confronted by Jabbie, who sprayed him with a fire extinguisher. Jabbie then tried to enter the house to find the car keys, however the victim pushed him back and closed the door. Jabbie then fled.

Cts 12 and 13

The next day Jabbie approached the victim's vehicle. The victim, aged 64 yrs, had just finished work and gotten into his car. Jabbie elbowed the driver's window, smashing it completely. The victim sustained a large cut to his arm. Jabbie took the keys to the vehicle. The victim got out of the car and an altercation ensued. After the fighting stopped Jabbie took the car keys and demanded property from the victim. The victim said he did not have anything and asked for his keys back. Jabbie refused and left on foot, taking the car keys with him.

The victim walked to his place of work. Jabbie then went inside and confronted him again. This time demanding his

			<p>watch. After a brief altercation he stole the victim's watch. The victim's employer intervened and asked Jabbie to return the victim's belongings, but he refused and left in the victim's vehicle.</p> <p><u>Cts 14 and 15</u> Later that same day Jabbie smashed a window of the victim's residential unit. He stole jewellery, including family heirlooms of sentimental value, with a value estimated at about \$30,000. Some of the jewellery was recovered, but a large amount remains outstanding.</p> <p><u>Ct 16</u> The following day Jabbie attempted to gain access to the victim's house by kicking in the door. The victim heard the noise and saw Jabbie on a CCTV camera and called the police. Jabbie left and did not gain access to the house.</p> <p><u>IND 1443</u> While incarcerated Jabbie put a sheet over a device he had set up through an electrical socket in his cell. The sheet ignited and the fire spread to the mattress before being extinguished. The fire caused around \$2,000 of damage.</p>		
6.	<p><i>Brooks v The State of Western Australia</i></p> <p>[2021] WASCA 156</p> <p>Delivered 03/09/2021</p>	<p>39 yrs at time sentencing.</p> <p><u>Indictment -Supreme</u> Convicted after trial.</p> <p><u>Magistrates Court</u> Convicted after PG (20% discount).</p> <p><u>Indictment - District</u> Convicted after late PG (15% discount).</p> <p>Lengthy criminal history; including interstate offending.</p> <p>Traumatic childhood; experienced death of older sister when he was aged 6 yrs; mother a yr later.</p>	<p><u>Indictment -Supreme</u> Ct 1: Agg armed robbery. Ct 2: Armed so as to cause terror.</p> <p><u>Magistrate Court</u> Offending comprised 19 offences on various dates, including breaches of bail, unlicensed possession of a firearm, no authority to drive, trespass, burglary and stealing.</p> <p>Magistrate Court appeal commenced in Supreme Court referred to Court of Appeal.</p> <p><u>Indictment – District</u> Cts 1 & 3: Criminal damage. Cts 2 & 4: Stealing. Cts 5-6: Poss stolen or unlawfully obtained property.</p>	<p><u>Indictment – Supreme</u> Ct 1: 4 yrs 4 mths imp (cum). Ct 2: 9 mths imp (cum).</p> <p>TES 5 yrs 1 mth imp (cum on sentence imposed by Supreme Court). EFP.</p> <p><u>Magistrate Court</u> TES 1 yr 3 mths imp. EFP.</p> <p><u>Indictment - District</u> Ct 1: 6 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 15 mths imp (conc). Ct 4: 15 mths imp (conc). Ct 5: 6 mths imp (conc). Ct 6: 12 mths imp (conc). Ct 7: 12 mths imp (conc) (no EFP).</p>	<p>Dismissed (leave refused) – on papers.</p> <p><u>Indictment - Supreme</u> Appeal concerned length of sentence and totality principle.</p> <p><u>Magistrate Court</u> Appeal concerned totality principles and error (allowing summary charges to not be dealt with by superior court).</p> <p><u>Indictment - District</u> Appeal concern error in cum sentences; totality principle (crushing effect of accumulated sentences from different jurisdictions) and error (plea discount).</p> <p>At [54] The Supreme Court judge was called upon to sentence the appellant only for two offences: ... It was well open to her Honour to order a degree of accumulation between [the] two offences, bearing in mind that they involved distinct criminality and had different victims.</p> <p>At [56] What occurred in the District Court, mths after the Supreme</p>

		<p>Lived with physically violent grandmother; subsequently lived with his father who was physically and emotionally abusive.</p> <p>Left school aged 13 yrs; commenced using drugs.</p> <p>Left home aged 15 yrs; reconciled with his family aged 28 yrs.</p> <p>Inconsistent early employment history; trade work late twenties; self-employed roof plumber early thirties.</p> <p>2 yr relationship at time offending; young son together; partner history of substance abuse and offending behaviour, reported to have made significant positive changes in her lifestyle; partner and her parents supportive.</p> <p>Severe symptoms of anxiety, depression and stress; diagnosed with PTSD.</p> <p>Entrenched drug use.</p>	<p>Ct 7: Escaping lawful custody. Cts 8 & 12: Robbery. Ct 9: Aiding a person to escape lawful custody. Ct 10: Assault public officer. Ct 11: Assault with intent to rob. Ct 13: Burglary. Ct 14: Agg Burglary. Ct 15: Steal motor vehicle.</p> <p><u>Indictment – Supreme Court</u> Brooks and a co-offender decided to rob a newsagency. With their faces covered and each carrying a knife they rushed into the newsagency.</p> <p>The co-offender shouted at the woman working behind the counter to give him money. When the co-offender went behind the counter the woman picked up a cricket bat, so he pushed the woman with force, causing her to fall on the floor. He put the knife near her neck and repeated his demand for money.</p> <p>The woman’s daughter heard her mother’s screams and began to telephone the police. Brooks screamed at her to put the phone away and pointed his knife at her, telling her that he would stab her.</p> <p>The co-offender grabbed the till drawer and took about \$450 in cash before running. Brooks pushed the daughter off balance and followed.</p> <p>When Brooks was chased by two men, he stopped and threatened one of them with his knife.</p> <p>Brooks hid some items of clothing in an att to avoid being caught. He was arrested some wks later. He denied any involvement in the offence.</p> <p><u>Indictment – District Court</u> Brooks drove a stolen truck up to the double gates of a business. After trying</p>	<p>Ct 8: 14 mths imp (cum on Supreme Court and Magistrates Court sentences). Ct 9: 6 mths imp (conc). Ct 10: 3 mths imp (conc). Ct 11: 3 mths imp (cum). Ct 12: 21 mths imp (cum). Ct 13: 15 mths imp (conc). Ct 14: 2 yrs imp (conc). Ct 15: 9 mths imp (conc).</p> <p>Sentenced in the Supreme Court, District Court and the Magistrates Court for a total of 36 offences. The most serious offences, were committed in a period of about three wks. The result of the three sentencing exercises:</p> <p>TES 9 yrs 6 mths imp. EFP.</p> <p><u>Indictment - Supreme</u> The trial judge found the armed robbery objectively very serious; the offence was planned; both offenders were armed and disguised; they chose a vulnerable target and threatened two vulnerable women, both shouting and screaming.</p> <p>The trial judge took into account time spent by the appellant on remand for the murder charge and time already spent in protective custody, and would in the future serve, for the current offending.</p> <p>Letter of apology tendered; otherwise no demonstrated genuine remorse; not at a low risk of reoffending; reasonable prospects of rehabilitation; steps taken to become a better father while on remand.</p> <p><u>Indictment – District</u> The sentencing judge found the appellant’s offending the subject of cts 1-4 serious and premediated acts of dishonesty; it would have been a terrifying experience for the victims of cts 11 and 12, were ordinary members of the community going about their daily business; the offending necessitated a sentence that sufficiently denounced the appellant’s conduct and provided appropriate personal and general deterrence.</p>	<p>Court judge imposed sentence, does not (and cannot) provide any basis to allege an infringement of either limb of the totality principle by the Supreme Court judge’s sentence. ...</p> <p>At [83] ... we are satisfied that there is no reason to suppose that, had the summary offences, and the indictable offences all been dealt with together, the overall disposition would have been any more favourable from the appellant’s perspective. ... the sentencing judge in the District Court was acutely aware of, and carefully weighed, the sentences that had already been imposed ... in determining what sentences should be imposed for the offences dealt with in the District Court.</p> <p>At [87]-[88] In our view, the appellant’s offending conduct that was the subject of his sentence in the Magistrates Court was of a nature and extent that demanded a sentence that was cum on the sentence in the Supreme Court to a not insubstantial extent. ... Not is it reasonably arguable that the sentences imposed by the Chief Magistrate produced a result that was, in the relevant sense, crushing, so as to infringe the second limb of the totality principle. ...</p> <p>At [117]-[119] The appellant was sentenced in the District Court for 15 offences. Several of them involved appalling offending that would have terrified or endangered members of the public. Further, [he] used violence to escape from legal custody. ... the appellant’s offending the subject of cts 7 – 12 of itself would ordinarily have justified and required a TES substantially higher than the TES ... imposed ... in the District Court. As the judge observed, cts 11 and 12 were each very serious offences in which the appellant used violence towards entirely innocent members of the public in an att to steal their cars, the second att of which was successful. ... Other elements of the appellant’s offending were also serious. ... the two home burglaries, ... were both serious offences warranting substantial terms of imp.</p> <p>At [126] ... the [District Court] judge did not err in failing to award a 25% discount for the appellant’s PG. Indeed, it was not open to the judge to have done so.</p>
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to break the padlock to the gates with bolt cutters, he att to smash through them with the truck. The gates and the linked chain fence were extensively damaged (ct 1).

Brooks drove a stolen truck to the entry of a business. After cutting the lock to a gate he drove to a parked caravan valued at \$45,000 and hitched the caravan to the back of his vehicle. As he drove away the chain snapped, so he left, leaving the caravan behind (ct 2).

At a car wash Brooks, driving the same stolen truck, reversed at speed into two industrial vacuum units causing \$29,358.20 in damage. He and his male passenger then att unsuccessfully to take one of the units. They left and returned a short time later with a chisel and hammer, which they used to separate one of the units from its base. They then carried it to the truck and left (cts 3 and 4).

During a burglary, a dinghy, boat trailer, boat engine and a fuel jerry can were stolen.

Brooks arranged to store a boat at a rural property. The owner agreed and a short time later he attended the property with a boat, a boat motor and fuel jerry can.

Some wks later a stealing offence occurred. The stolen items included a bobcat and trailer. The bobcat was fitted with a GPS tracking device. The same day Brooks attended the same rural property with the stolen bobcat to store it at the property. The bobcat was tracked to its location and police were alerted. A search of the property located the stolen bobcat (cts 5 and 6).

Brooks was apprehended in connection with an armed robbery (the Supreme Court offence). He was conveyed to a

			<p>police station and detained. His partner was also held in the same detention area. The two shouted at each other and became increasingly agitated. When an officer opened his cell door he grabbed the officer and during a struggle took the officer's swipe card. After freeing his partner he ran away (cts 7-10).</p> <p>After fleeing custody Brooks ran in front of a vehicle, opened the driver's door, grabbed hold of the driver and tried to forcibly remove her from the car. Fearing for herself and her passenger she accelerated away (ct 11).</p> <p>Brooks then got in the passenger seat of a stationary vehicle. He shouted at the driver to go and, fearing for his safety, he complied. He ignored the driver's request to get out and became more agitated. At a red light he told the driver to get out, which he did. Brooks threatened the driver if he called the police. The vehicle was later found extensively damaged (ct 12).</p> <p>Brooks gained entry to a home by smashing a sliding door. He cut the phone line and searched a bedroom. He left the premises by forcing open a rear window. No items were stolen (ct 13).</p> <p>On the same day Brooks broke into a different residence. The occupants were home at the time. Manipulating a locked door he entered the premises and stole an iPhone, a laptop and the keys to a vehicle. Using the car keys he stole the occupants vehicle. He was later seen by police driving the vehicle and failed to stop when requested to do so, leading to a police pursuit (cts 14-15).</p>		
5.	<p><i>Beynon v The State of Western Australia</i></p> <p>[2021] WASCA 153</p>	<p>32 yrs at time offending. 33 yrs at time sentencing.</p> <p><u>Ind 1237</u> Convicted after early PG (25% discount ct 1).</p>	<p><u>Ind 1237</u> Ct 1: Agg burg. Ct 2: Stealing.</p> <p><u>Ind 2149</u> Ct 1: Stealing. Ct 2: Agg burg.</p>	<p><u>Ind 1237</u> Ct 1: 12 mths imp (cum ct 2 Ind 2149). Ct 2: No punishment.</p> <p><u>Ind 2149</u> Ct 1: 3 mths imp (conc). Ct 2: 16 mths imp (conc).</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned totality principle.</p> <p>At [40] While the commission of each offence did not involve the agg features sometimes seen in offending of this kind, such as the use of weapons, direct confrontations with the occupiers of the house, or the</p>

	<p>Delivered 31/08/2021</p>	<p><u>Ind 2149</u> Convicted after PG (20% discount).</p> <p>Criminal history; dishonesty offences; numerous outstanding charges in New Zealand.</p> <p>Raised in New Zealand; mother multiple male partners with whom he did not get along.</p> <p>Left school aged 15-16 yrs.</p> <p>Worked a number of roles; joined New Zealand army; 3 yrs active service, including East Timor.</p> <p>Mother and younger brother killed motor vehicle accident.</p> <p>Struggled following sudden loss of mother and brother; experienced anxiety, nightmares and flashbacks on return from East Time.</p> <p>Commenced using ecstasy and methyl aged 21 yrs; regular user of methyl; some periods of abstinence; increased use of alcohol when not using methyl.</p>	<p><u>Ind 2149</u> Shortly after midnight Beynon went to the victim's home. From a vehicle parked in the driveway he stole a number of items, including the remote control to the home's garage roller door.</p> <p>Using the stolen remote control Beynon gained access to the garage. Once inside he placed a trolley underneath the roller door to prevent it closing. He then stole a mountain bike valued at about \$1,000. He left with all the stolen items.</p> <p>In the meantime, the victim, awoken by her dog barking, noticed the security light on. She also saw her vehicle was open. From inside the house she tried unsuccessfully to close the garage roller door. Afraid, she called her husband, who was overseas, and while on the telephone with him she investigated and discovered someone had broken into the garage and stolen the bike.</p> <p><u>Ind 1237</u> About a week and a half later Beynon and a co-offender were driving a stolen motor vehicle searching for open garages from which to steal property. In the early hrs of the morning, they stopped at the victim's home. Beynon entered the property through the garage door, while the co-offender waited in the vehicle as a lookout and getaway driver.</p> <p>Inside the victim's premises Beynon stole a number of items, including a purse, bank card, cash, sunglasses and some jewellery.</p>	<p>TES 2 yrs 4 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the two agg home burg offences 'particularly serious'.</p> <p>The sentencing judge accepted that in relation to the agg burg offences, no violence was used; there was no evidence the appellant was armed with any weapon and there was minimal damage to the properties.</p> <p>The sentencing judge found that some accumulation of the sentences was appropriate; the appellant engaged in two separate and distinct episodes of offending on different days and involving different victims.</p>	<p>theft of more valuable property, the offences were not without serious features. Each offence was committed at night when the occupant was at home and asleep. The appellant then proceeded to steal valuable property. In respect of the offence [the subject of Ind 2149], the mode of entry and the manner in which the appellant prevented the garage door from closing had a degree of ingenuity. It also instilled fear into the occupant of the house. The offence [the subject of Ind 1237] was premeditated and involved the use of a co-offender as a look-out and getaway driver.</p> <p>At [44] The appellant committed two serious agg home burglaries in the space of 10 days. Accumulation of the sentences was appropriate to properly reflect the total criminality of the offending. ... The allegation that the TES infringed the first limb of the totality principle is without merit and must fail.</p>
4.	<p><i>The State of Western Australia v Quartermaine</i> [2021] WASCA 145</p>	<p>22 yrs at time offending.</p> <p>Convicted after PG (25% discount).</p> <p>Extensive criminal history;</p>	<p>Ct 1: Agg burg. Ct 2: Steal motor vehicle. Ct 3: Agg burg. Ct 4: AOBH. Ct 5: Agg burg. Ct 6: Stealing.</p>	<p>Ct 1: 2 yrs imp (conc). Ct 2: 6 mths imp (cum). Ct 3: 2 yrs 6 mths imp (conc). Ct 4: 6 mths imp (cum). Ct 5: 2 yrs imp (cum). Ct 6: No penalty.</p>	<p>Allowed.</p> <p>Appeal concerned length of individual sentences cts 1, 3 and 5 and totality principle.</p> <p>Resentenced (25% discount):</p>

<p>Delivered 16/08/2021</p>	<p>previous terms of imp.</p> <p>Difficult up-bringing; raised family environment marred by domestic violence; drug and alcohol abuse.</p> <p>Difficult education; changed schools on a number of occasions; left aged 13 yrs.</p> <p>Relationship at time offending; two children aged 5 yrs and a new born.</p> <p>Substance abuse issues; commenced drinking alcohol aged 14 yrs.</p>	<p>Quartermaine was drinking excessively at his mother's home and was ejected from the premises at around midnight. Upset and wanting a vehicle to get home he went to a house occupied by a couple who, along with their 2 yr old son, were asleep inside. He entered the house by removing the flyscreen on an open window. Inside he stole the keys a BMW motor vehicle. He then went into the garage and stole a bag containing items valued at about \$400 from a vehicle. Next, he stole the BMW. He abandoned the vehicle after crashing it.</p> <p>Quartermaine was later identified by his fingerprints and DNA. He admitted the offences when interviewed by police (cts 1 & 2).</p> <p>Several hrs later Quartermaine went to another home. The victims, a couple and their 20 yr old daughter, were asleep in the home at the time.</p> <p>Quartermaine entered the home by kicking open the front door. This woke the victims. The male victim got out of bed and was confronted by Quartermaine, who demanded his keys and threatened to kill him. The victim repeatedly told him to leave. A scuffle ensued during which he punched the victim to the face about three times. The victim suffered soreness and a mark on his cheek. Quartermaine then ran from the house.</p> <p>Quartermaine was captured on CCTV footage and identified by one of the victims on a Digiboard. He made no admissions when interviewed by police (cts 3 & 4).</p> <p>Several wks later Quartermaine went to another home in the early hrs of the morning. The victim was asleep inside. After kicking open the front door to gain entry he stole a set of car keys.</p>	<p>TES 3 yrs imp.</p> <p>EFP.</p> <p>A 'repeat offender' as a result of offending subject of ct 5.</p> <p>The sentencing judge found the offending very serious.</p> <p>Remorseful; high risk of reoffending; alcohol and drug abuse needs to be addressed.</p>	<p>Ct 1: 12 mths imp (cum). Ct 2: 15 mths imp (conc). Ct 3: 4 yrs imp (cum). Ct 4: 10 mths imp (conc). Ct 5: 3 yrs 6 mths imp (conc). Ct 6: No penalty.</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>At [78] In our opinion, the sentence for each of cts 3 and 5 was not commensurate with the seriousness of the offence. The offending on ct 5 was not the least serious type of agg home burglary and, consequently, a sentence in excess of the statutory min penalty should have been imposed. ... We are satisfied ... that the length of each sentence was unreasonable or plainly unjust.</p> <p>At [80] The sentence for each of cts 3 and 5 was substantially less than the sentence that was open to her Honour on a proper exercise of her discretion. Each sentence was manifestly inadequate.</p> <p>At [83] In our opinion, the TES imposed on the respondent did not bear a proper relationship to the overall criminality involved in all of his offences, viewed together ... The TES imposed ... was unreasonable or plainly unjust. It was not merely 'lenient' or 'at the lower end of the available range'. ...</p>
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			<p>Awoken by the noise the victim got out of bed and confronted him walking through the house. Quartermaine fled the premises.</p> <p>Quartermaine was identified through a DNA match from blood recovered at the premises. When interviewed he made no admissions (cts 5 & 6).</p>		
3.	<p><i>Nannup v The State of Western Australia</i></p> <p>[2021] WASCA 140</p> <p>Delivered 18/05/2021</p>	<p>18 yrs at time offending and sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Lengthy criminal history; subject of YCRO at time offending; 173 days spent in in custody on remand; first time in adult prison.</p> <p>Offending not an isolated incident; four mths leading up to this offending committed 27 summary offences.</p> <p>Very difficult background; exposed to violence, substance abuse and offending behaviours in childhood; taken into care with twin brother aged 4 yrs; raised by step-grandmother until aged 10 yrs; then returned to live with his mother.</p> <p>Diagnosed with Foetal Alcohol Spectrum Disorder (FASD); microcephaly; mild intellectual disability; ADHD; significant language impairment and bipolar disorder.</p> <p>Commenced drinking alcohol aged 15 yrs; cannabis user.</p>	<p>Ct 1: Agg burg. Ct 2: Stealing.</p> <p>In the early hrs of the morning Nannup went to the victim's house. The victim and her three children, aged between 2 yrs and 6 yrs were asleep inside.</p> <p>Nannup removed a flyscreen from a kitchen window, slid it open and entered the house.</p> <p>Once inside Nannup looked for items to steal. He took various items, including a wallet and a set of house and vehicle keys.</p> <p>The victim and her children were awoken by the noises coming from the kitchen. On hearing one of the children crying Nannup fled the house via the window.</p> <p>Nannup was identified following a forensic examination of the scene.</p>	<p>Ct 1: 2 yrs imp, conditionally susp 15 mths. Ct 2: No penalty.</p> <p>The sentencing judge found the agg burg involved a serious invasion of the victim's home and her privacy and security; his presence would have been 'absolutely terrifying'.</p> <p>The sentencing judge found the appellant's mental and impairments and cognitive difficulties, particularly his FASD, reduced his moral culpability and his time in custody on remand more onerous for him than a person in normal health.</p>	<p>Appeal allowed.</p> <p>Appeal concerned length of sentence ct 1.</p> <p>Resentenced to 14 mths imp; conditionally susp 12 mths.</p> <p>At [62] The offence committed by the appellant was, by no means, the most serious agg burg. ... However, the offending was serious enough.</p> <p>At [64]-[65] Discussion of comparable cases. ... Having regard to these cases, it might be thought that the sentence imposed ... was within the range of sentences customarily imposed and could be characterised as lenient. However, despite the fact that the appellant's risk of reoffending is elevated, some leniency was justified in this case, having regard to the combination of mitigating circumstances identified by the sentencing judge and, in particular, the appellant's FASD and his other mental impairments, his youth and early PG. ...</p> <p>At [66] While we would have concluded that the length of the term of susp imp was high, we would not have interfered with it, but for the time already spent in custody by the appellant. ... As the sentencing judge was not able to backdate a conditionally susp imp order, time in custody could only be accounted for by reducing the length of the term to be imposed. In our opinion, this factor, considered together with all of the other mitigating factors, compelled the imposition of a term of imp shorter than the term actually imposed. ... the length of imp was manifestly excessive. ...</p>
2.	<p><i>NOI v The State of Western Australia</i></p> <p>[2021] WASCA 84</p> <p>Delivered 18/05/2021</p>	<p>39 yrs at time offending and sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history (convictions</p>	<p>Ct 1: Agg burg. Cts 2 & 3: Criminal damage.</p> <p>Charge subject of ct 2 the grounding offence for the agg home burglary charge.</p>	<p>Ct 1: 2 yrs imp (conc). Ct 2: No penalty. Ct 3: 4 mths imp (conc).</p> <p>TES 2 yrs imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence ct 1; type of sentence and miscarriage of justice (in finding offending a deliberate and intended act of intimidation and harboured feelings of entitlement consistent with domestic violence perpetrators).</p>

		<p>for breach of VROs protecting the victim the subject of current charges).</p> <p>Raised close and supportive family; family remain supportive and positive.</p> <p>7 yr relationship with victim; separated 8 yrs; two children from union, aged 13 and 12 yrs; eldest child living with him at time offending.</p> <p>Completed yr 12.</p> <p>Stable full-time employment history; worked family's supermarket on leaving school; licenced real estate agent and ran family-owned real estate business; employed family's supermarket at time of sentencing.</p> <p>Financially stable; able to provide for and support his family.</p> <p>Good health; past methyl use; ceased using drugs in his mid-30s.</p>	<p>The victim, aged 35 yrs, was NOI's former de facto partner.</p> <p>The victim and NOI had flexible care arrangements with regard to the children, who would stay with either parent at any time.</p> <p>Prior to the offending a three-day police order protecting the victim had been issued and served on NOI.</p> <p>Shortly after the expiration of the order NOI attended the victim's residence. The victim saw NOI's truck arrive and ran to check the front door was locked.</p> <p>NOI walked up to the door and kicked it in, causing the lock to come away from the door completely. He then entered the victim's home. (ct 1).</p> <p>The victim and NOI's son ran into the backyard. Inside the house he knocked a television onto the floor, damaging the device so that it would no longer turn on (ct 2). He then went into the backyard and yelled out to the victim that a RO would not make any difference. He then shouted at his son, 'you better get back here right now, or you're going to cop it'.</p> <p>The victim called 000 on her mobile phone. As she was talking to an operator NOI snatched the phone out of hand and smashed it, breaking the phone's screen (ct 3).</p> <p>NOI then left the premises. He was arrested and charged the following day.</p>	<p>The sentencing judge found the home burglary a serious offence; it was committed with the intent to intimidate and assert control over the victim and to instil fear in her.</p> <p>The sentencing judge found the offending serious; he used force to gain entry to the victim's home; smashed an expensive television; smashed the victim's phone, thus preventing her from seeking help and he made comments to her that a VRO was not going to make a difference.</p> <p>The sentencing judge considered the offending a form of domestic violence.</p> <p>Limited remorse; no significant insight into the conduct which caused his offending.</p>	<p>At [45] ... the sentencing judge was plainly correct to characterise the offending as a form of domestic violence. The victim was the appellant's former de facto partner and the mother of his two children [He] violently forced entry into the victim's home, when he knew she was present, by kicking in the front door. This occurred shortly after the expiry of a police order protecting the victim. [He] wilfully damaged her property, including a mobile phone which was a means of seeking help, while threatening that the victim obtaining a ... RO would make no difference. He was clearly using violence to intimidate his former partner ...</p> <p>At [54] In the present case, the sentence ... imposed for the home burg offence was only 10% of the available max penalty. In <i>Serukai</i>, the court referred to sentences in the range of 2 yrs 3 mths immediate imp and 4 yrs 6 mths immediate imp recently imposed or upheld by this court for agg home burg offences. The length of the appellant's sentence falls below that range, in the case of a home invasion committed with an intention to intimidate the occupants of the house. Such burglaries are generally regarded as more serious than a burg which involves simply an intention to steal.</p> <p>At [57] The seriousness of the appellant's offending in this case was aggravated by the fact that the appellant and the victim had been in a domestic relationship, and continued to share the care of their children. The fact that the offending was a response to the victim making a complaint to police which led to a police order, and was accompanied by threats that a ... restraining order would make no difference, were particularly agg features of the offending. Combined with the appellant's past record of breaching VROs protecting the same victim, these agg features of the appellant's offending elevated the significance of personal deterrence as a sentencing consideration.</p> <p>At [59] In our view, the sentencing judge was plainly correct to hold that the seriousness of the appellant's offending, even considered in light of the mitigating circumstances ..., was so serious as to make susp or conditionally susp imp inappropriate sentencing options. ...</p>
1.	<i>Drage v The State of Western Australia</i>	<p>42 and 44 yrs at time offending. 45 yrs at time sentencing.</p> <p>Convicted after early PG</p>	<p>Ct 1: Agg burg. Ct 2: Agg AOBH.</p> <p>The victim was Drage's de facto</p>	<p>Ct 1: 3 yrs 9 mths imp (cum). Ct 2: 3 yrs 9 mths imp (cum).</p> <p>TES 7 yrs 6 mths imp.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality principle and length of sentence ct 2.</p>

<p>[2021] WASCA 6</p> <p>Delivered 12/01/2021</p>	<p>(17.5% discount ct 1 and 20% discount ct 2).</p> <p>Long criminal history; terms of imp; no convictions of violence since 2004.</p> <p>Deprived background; regularly assaulted by alcoholic stepfather; left home aged 11 yrs; lived on the streets aged 14-16 yrs.</p> <p>Sporadic employment history; never worked more than 10 mths at a time.</p> <p>Prior 12 yr relationship; marred by domestic violence and substance abuse; four children.</p> <p>Cannabis use from aged 12 yrs; methyl use from 16 yrs; history of excessive alcohol use; exacerbated substance abuse following death of his teenage son in 2018.</p> <p>History of mental health problems; prescribed medication for depression.</p>	<p>partner, LM. Their relationship was marred with domestic violence.</p> <p>Drage and LM had both been drinking at home. Drage was verbally abusive and struck LM. LM's 10-yr-old son called the police who attended and served him with a police order, requiring him to stay away from the premises for 24 hrs.</p> <p>The same night Drage returned to the premises and entered the home by breaking a glass door. He went to the bedroom in which LM and her son were located. They braced themselves against the door to prevent him from entering the room, but he overpowered them. He then dragged LM out of the room, pushed her to the ground and kicked her several times. He verbally abused her 10-yr-old son.</p> <p>LM sustained bruising, lacerations and a bloody nose.</p> <p>Drage evaded police and was not arrested until some 16 mths later. After some mths remanded in custody he was granted bail, with a condition that he not behave in an intimidatory, offensive or emotionally abusive manner towards LM.</p> <p>Nine days after Drage's release to bail he attacked LM on and off over a two-day period. He punched and kicked her causing bruising and soft tissue injuries. He also ripped out her hair and made her walk around like a dog and punctured her thigh with a small knife.</p> <p>Police attended the premises to conduct a welfare check on LM. Drage was abusive and aggressive towards the officers and told them LM was not at home. The officers heard LM scream and cry for help and located her hiding under a bed, her face swollen and covered in blood.</p>	<p>EFP.</p> <p>The sentencing judge found the offending 'a protracted and cowardly attack of quite unbelievable savagery'; each attack, particularly the assault the subject of ct 2 was prolonged, sustained and repeated; neither was a one-off aberration; ct 2 was towards the higher end of the scale of offences giving rise to bodily harm; the victim was 'especially vulnerable' – a vulnerability that arose from being in a family and domestic relationship with the appellant.</p> <p>The sentencing judge found accumulation of both sentences was required to mark the obvious escalation in the offending and disregard for the law.</p> <p>No remorse or insight into his offending.</p>	<p>At [47] The offending the subject of ct 2 was very serious. First, the offending was protracted and sustained over a considerable period of time, was violent, resulted in serious injuries and was particularly degrading and humiliating of LM. Second, the offending involved a weapon and resulted in an open wound to LM's person. Third, the offending occurred whilst [he] was on bail for the offending the subject of ct 1.</p> <p>At [61] ... the two offences were quite separate in time. ... the offending the subject of ct 2 occurred more than 21 mths later ... The circumstances of the offences did not overlap. ...</p> <p>At [62] The ... agg home burg offence was a serious offence of its type. It involved a violent assault on the appellant's de factor partner, in the presence of LM's 10-yr-old son when, less than half an hr earlier, [he] had been issued with a 24-hr police order. The offending demonstrated disregard for the law and a preparedness to offend despite recent intervention of the police to defuse an earlier altercation that night. ...</p>
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