

Armed With an Offensive Weapon Likely to Cause Fear

s 68(1)

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
CBO	community based order
conc	concurrent
cum	cumulative
ct	count
EFP	eligible for parole
imp	imprisonment
ISO	intensive supervision order
PG	plead guilty
PSO	pre-sentence order
susp	suspended
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
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 again pursued GCH with the whipper snipper's line spinning. Lunging at GCH he struck him with the spinning</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>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>At [55] The mitigating factors identified by his Honour ... are significant, but, when weighed against the very serious circumstances</p>

			<p>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>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>
<i>Transitional Provisions Repealed (14/01/2009)</i>					

Office of the Director of Public Prosecutions