

# Armed robbery

from an individual eg bag snatch, ATM, car-jacking

ss 392 and 393 *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 (from 14/01/2009 31/08/2003)
- Transitional provisions period (between 31/08/2003 and 14/01/2009)
- Pre-transitional provisions period (pre 31/08/2003)

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
4.	<p><b><i>Jones v The State of Western Australia</i></b></p> <p><b>[2024] WASCA 115</b></p> <p>Delivered 26/09/2024</p>	<p>31 yrs at time offending. 34 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history; violent offending; bail at time offending.</p> <p>Disadvantaged childhood; taken from mother's care at 6 yrs; sexually abused as child.</p> <p>Left school during yr 10; qualified in sheet metal fabrication; continuous work history.</p> <p>Diagnosed ADHD.</p> <p>Four children aged between 3 and 14 yrs; three different mothers; 9 yr old suffers from a significant neurological condition; oldest son in care of Department of Communities.</p> <p>Cannabis use since 11 yrs; cocaine use since 25 yrs; daily cocaine use form 29 yrs.</p>	<p>Ct 1: Agg burg. Ct 2: Agg armed robbery. Ct 3: Criminal damage. Ct 4: Steal motor vehicle.</p> <p><u>Ct 1</u></p> <p>The victim, JB was awoken by the sounds of two motorcycles in the driveway of the premises in which he lived. JB got up, turned on the living room light and opened the front door. JB saw the appellant pacing towards him wielding a baseball bat. JB retreated into the premises. The appellant and the two co-offenders followed JB; the appellant then struck JB to the head with the baseball bat.</p> <p><u>Ct 2</u></p> <p>JB eventually moved to the couch; there, the appellant struck him multiple times with the baseball bat. The appellant then demanded JB's car keys, and threatened to kill him if he did not comply. Once in possession of JB's keys, the appellant and the two co-offenders then left the building.</p> <p><u>Ct 4</u></p> <p>The appellant and the co-offenders then drove off in JB's vehicle.</p> <p><u>Ct 3</u></p> <p>During the incident, numerous glass windows of the residence were smashed, as well as the rear window of another occupant's vehicle.</p>	<p>Ct 1: 7 yrs 7 mths imp. Ct 2: 1 yr 2 mths imp (cum). Ct 3: 1 yr imp (conc). Ct 4: 2 yrs imp (conc).</p> <p>Cum upon 5 yr sentence already being served (<i>Jones v The State of Western Australia</i> [2023] WASCA 30).</p> <p>TES: 13 yrs 9 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found that the offending was a home invasion motivated by revenge.</p> <p>The sentencing judge found the appellant and the co-offenders attended the premises with the common intention of assaulting and threatening someone, if necessary. JB was not the intended target of the actions of the appellant and co-offenders.</p> <p>The sentencing judge found that the appellant instigated the offending, and that he escalated the violence. Accordingly, the appellant's culpability was 'extremely high'.</p> <p>The offending had a significant impact on the victim; embarrassment of injuries; lingering fearfulness; fears for safety upon the appellant's release.</p>	<p>Appeal allowed (leave refused grounds 1, 2, and 3).</p> <p>Sentence appeal concerned findings of fact from the sentencing judge, length of sentence imposed on ct 1, first limb of totality principle, and cumulation of sentence.</p> <p>Resentenced:</p> <p>Ct 1: 6 yrs 6 mths imp. Ct 2: 3 yr 3 mths imp (conc). Ct 3: 1 yr imp (conc). Ct 4: 2 yrs imp (conc).</p> <p>Cum upon 5 yr sentence already being served (<i>Jones v The State of Western Australia</i> [2023] WASCA 30).</p> <p>TES: 11 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [154] 'the appellant's actions at the Orange Avenue premises on the night in question plainly support the impugned finding...his actions demonstrated an intention to exact some form of revenge.'</p> <p>At [163] 'in the present case, the objective facts of the appellant's offending on ct 1 were egregious. The appellant went to the Orange Avenue premises late at night. He was armed and in company...The appellant entered the extension by kicking the security door and one of the other men assaulted JB with weapons. The assault continued for some time. The appellant told [JB's mother] that he would kill JB if he did not give him the keys to his vehicle. The appellant instigated the offending and escalated the violence.'</p> <p>At [164] 'there was limited mitigation. The appellant had a disadvantaged childhood...Nevertheless, the appellant obtained a number of trade qualifications and has worked continuously since leaving school.'</p> <p>At [165] '...the appellant was not youthful for sentencing purposes. He did not have the mitigation that a plea of guilty would have brought...The appellant was on bail for other violent offending when he committed the offending in question....'</p> <p>At [180] 'we accept that, in the present case, the sentence of 7 yrs 7 mths imp imposed on the appellant for ct 1 is towards the upper end of the range of sentences open to the trial judge on a proper exercise of her discretion.'</p> <p>At [181] 'however, in our opinion...the length of the sentence was not</p>

					<p>unreasonable or plainly unjust.’</p> <p>At [189] ‘the appellant’s complaint in the context of ground 3 is, in essence, that the individual sentences for cts 1 and 2 should have been ordered to be served concurrently.’</p> <p>At [190] ‘there is no substance in the appellant’s complaint. It was not artificial to separate the acts of violence committed by the appellant against JB into separate counts in the context of a single continuing assault.’</p> <p>At [193] ‘in the present case, although cts 1, 2, 3, and 4 were committed in close temporal proximity, it was necessary to order that part of the appropriate sentence for ct 2 to be served cumulatively upon the appropriate individual sentence for ct 1 in order to ensure the total effective sentence imposed on the appellant was commensurate with the seriousness of his overall offending.’</p> <p>At [207] ‘...we are persuaded that the overall total effect sentence of 13 yrs 9 mths imprisonment did exceed the overall total effective sentence that was required to satisfy all relevant sentencing factors, having regard to the overall seriousness of the offending and all relevant sentencing principles.’</p>
3.	<p><b><i>Fitzgerald v The State of Western Australia</i></b></p> <p><b>[2024] WASCA 58</b></p> <p>Delivered 24/05/2024</p>	<p>44 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Significant criminal history: property damage; disorderly behaviour; assault; armed in public; obstructing police; trespass; breach of bail; burglary; fraud; stealing; possession of drugs; traffic offences; breach of community-based orders.</p> <p>Born in Perth; good relationship with parents; parents and brother are supportive.</p> <p>Completed high school; worked for 16 yrs in mining and construction.</p> <p>Engaged to be married; in relationship for 10 yrs at time sentencing; adult child from previous relationship.</p> <p>Long history of substance use;</p>	<p>Ct 1: Agg burg. Ct 2: Crim damage. Ct 3: Agg threats with intent to rob. Ct 4: Agg threats with intent to rob.</p> <p>The appellant and the victim, A, were known to each other and lived in separate units in the same complex.</p> <p><u>Cts 1 &amp; 2</u></p> <p>Whilst A was in his own lounge room, the appellant smashed the patio sliding door and entered the unit wielding a samurai sword. The appellant demanded drugs from A, then charged at him with the sword.</p> <p>A ran and locked himself in a bedroom. The appellant followed, and repeatedly thrust the sword through the bedroom door, narrowly missing A on one occasion. The door eventually broke and A escaped the residence.</p> <p><u>Cts 3 &amp; 4</u></p>	<p>Ct 1: 4 yrs imp (HS). Ct 2: No penalty. Ct 3: 2 yrs 6 mths imp (cum). Ct 4: 2 yrs 6 mths imp (conc).</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found that the appellant’s criminal history required some weight to be given to specific deterrence and protection of the community.</p> <p>The sentencing judge found that there was a considerable risk of the appellant re-offending if he did not access psychological assistance.</p> <p>The offending had caused A to suffer depression and feel anxious about further attacks; experience infrequent suicidal thoughts; property damage has taken some time and cost to replace.</p> <p>The sentencing judge found that the appellant showed little remorse for the offending.</p>	<p>Appeal dismissed (leave refused).</p> <p>Appeal concerned length of individual sentences and first limb of totality principle.</p> <p>At [50] ‘there is no merit to the appellant’s submission that the individual sentence for the aggravated burglary charged in ct 1 is manifestly excessive.’</p> <p>At [52] ‘home invasions, which involve forcible entry into residential premises known or suspected to be occupied at the time, accompanied by threatened or actual violence, are generally significantly more serious than home burglaries which lack those characteristics. There has long been a recognition that sentences for home burglary need to be firmed up.’</p> <p>At [53] ‘the present case involves a serious example of a home invasion burglary.’</p> <p>At [56] ‘...having regard to the similarity of the elements [between ss 392 and 393 offences], cases dealing with the two kinds of offences are likely to be broadly comparable.’</p> <p>At [57] ‘this court has acknowledged that: the range of sentences commonly imposed for a single offence of armed robbery, depending upon the circumstances, was 4 to 6 yrs imprisonment. It is not unusual for a court to impose a sentence of 5 to 6 yrs imprisonment after trial</p>

		<p>cannabis from 13 yrs; other drugs to self-medicate; alcohol use.</p> <p>Sexually abused as a child; never received counselling.</p> <p>ADHD; history of depression, mood swings, and insomnia.</p>	<p>A returned to the unit with two males, R and S. The appellant was still inside A's unit with A's dog. The appellant was still holding the sword. The appellant walked towards R and S and demanded they hand over their phones. The appellant swung the sword from side to side and threatened to kill R and S if they did not hand him their mobile phones. R and S backed away, and another neighbour called the police. The appellant subsequently fled the scene.</p>	<p>The appellant was attending weekly Narcotics Anonymous meetings whilst in prison.</p>	<p>for a single count of armed robbery.'</p> <p>At [59] 'the sentence of 2 yrs 6 mths' immediate imprisonment imposed for each of cts 3 and 4 falls below that commonly imposed range.'</p>
2.	<p><b><i>The State of Western Australia v Tawhitapou</i></b></p> <p><b>[2024] WASCA 25</b></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</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>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-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>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 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>
1.	<i>Morley v The State</i>	27 yrs at time offending.	Ct 1: Agg assault with intent to steal.	Ct 1: 2 yrs 8 mths imp (cum).	Dismissed.

<p><i>of Western Australia</i></p> <p><b>[2021] WASCA 134</b></p> <p>Delivered 30/07/2021</p>	<p>28 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Limited criminal history; no prior sentences of imp; no offending between 2014-2019.</p> <p>Disadvantaged and dysfunctional upbringing; parents separated before he was born; exposed to domestic violence and parents' substance abuse.</p> <p>Long term relationship; two young sons; partner pregnant with twins; separated at time of offending; reunited prior to sentencing.</p> <p>Good employment history; working up until offending.</p> <p>Diagnosed and medicated for depression and anxiety.</p> <p>History of drug use; ceased using during his relationship; under the influence of drugs and alcohol at time offending.</p>	<p>Ct 2: Armed robbery.</p> <p>The victim was volunteering as a carpark attendant. She was wearing a bum bag in which she put cash received for parking.</p> <p>Morley formed a plan to rob the victim.</p> <p>Morley approached the victim and as he did so he pointed a knife with a 15cm long blade at her and demanded money. Taking hold of the strap of the victim's bum bag he persisted in trying to take it from her, all the while holding the knife. The victim frantically tried to take the bag off.</p> <p>Other volunteers approached so Morley let go of the bum bag and fled.</p> <p>One wk later Morley entered a fast-food store. The victim, a young female employee, was the only person in the store. Holding a boxcutter knife he walked around the counter and demanded the victim open the cash register. Out of fear the victim did what she was told. When the register was open Morley took \$323 in cash.</p> <p>Morley was arrested the next day.</p>	<p>Ct 2: 3 yrs 4 mths imp (cum).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending involved a degree of planning and premeditation; he was armed with a knife on both occasions; both victims were vulnerable, and he concealed his face with a scarf committing the first offence, reinforcing the distress for the victim.</p> <p>Remorseful; victim empathy; accepted responsibility for his offending; insight into factors contributing to his drug use; positive steps taken towards rehabilitation; unlikely to reoffend if able to maintain abstinence from drug use.</p>	<p>Appeal concerned totality principle.</p> <p>At [36] ... [The maximum penalties for the offences] are one yardstick of the seriousness of the appellant's offending.</p> <p>At [37] ... ct 1 had a number of serious aspects. It was premeditated. His use of a knife while wearing a scarf to conceal his face, would ... have made the incident a very distressing experience for the victim. There was a degree of persistence in the appellant's offending as, when the victim did not hand over the money in response to his demand, he took hold of the strap of the victim's bum bag, trying to take it from her. Such a confrontation had the potential for serious unforeseen injury to the victim. His offending came to an end only because of the intervention of others.</p> <p>At [38] Both victims ... were vulnerable people who were in the course of providing services to members of the public. ...</p> <p>At [39] The two offences were quite distinct, occurring a week apart and having no relationship. In the circumstances, accumulation of the sentences, at least to a substantial degree, was appropriate.</p> <p>At [41] The criminality of the appellant's offence the subject of ct 2 could well have justified an individual sentence for that offence which was longer than the sentence imposed by his Honour. ...</p> <p>At [42] ... the TES can fairly be said to be high. It was open to have imposed a lower TES. However, taking into account the matter outlined in [36] – [41] above, and giving full weight to the mitigating factors, we are not persuaded that error in the exercise of the sentencing discretion can be inferred. ...</p>
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