

Armed robbery

smaller, more vulnerable targets eg pharmacy, post office, shop etc...

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
- Transitional provisions period
- Pre-transitional provisions period

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

agg	aggravated
att	attempted
burg	burglary
conc	concurrent
cum	cumulative
ct	count
EFP	eligible for parole
imp	imprisonment
PG	plead guilty
susp	suspended
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
3.	<i>Duff v The State of Western Australia</i> [2023] WASCA 124 Delivered 25/08/2023	47 yrs time sentencing. Convicted after very late PG (7.5% discount). Lengthy criminal history. Unhappy and disadvantaged childhood; exposed to domestic violence and alcohol abuse; lack of any proper family structure, support or guidance from a young age. Did not enjoy school; left as soon as he could. Some employment as qualified forklift driver. Four adult children; long-term relationship with current partner, although live separately; shares the care of her three children; partner remains supportive. Experienced long periods of homelessness; struggled during COVID-19 lockdowns. In financial difficulties; had borrowed money from various people.	1 x Robbery. At a jewellery store Duff asked to view a gold chain. He then asked to see another larger and more expensive chain, valued at \$5,299. When asked Duff refused to provide identification before being shown the chain. The store employee then retrieved the chain from a secure display cabinet but held onto it for Duff to view. The store manager observed Duff's interactions and positioned himself near the store's exit. As the chain was being returned to the display cabinet Duff snatched it from the employee's hands. He then ran towards the exit and directly at the manager, who att to block his way. Duff forcibly struck him with outstretched arms, knocking the manager off his feet and causing him to fall heavily onto the floor. Duff ran from the shopping centre and out of sight. The incident was captured on CCTV footage. The chain was never recovered.	3 yrs 2 mths imp. EFP. The sentencing judge found the appellant's offending serious; he entered the store with the intention of stealing an item of jewellery; the chain was not recovered; he used violence by forcibly pushing the store manager as he tried to back his exit; it was likely the store manager and employee were both traumatised by the incident and are likely to feel less safe in the future when undertaking their employment duties and people working in jewellery stores are vulnerable to this type of offending and are entitled to work without the fear of being subjected to physical violence. High risk of reoffending; little insight into his offending behaviour; not truly remorseful.	Dismissed (leave refused) - on papers. Appeal concerned length of sentence. At [27] The offence in this case was a serious example of robbery ... The offence was planned in that the appellant went to the jewellery store with the intention of stealing an item of jewellery. He may not have planned to use violence, but the risk that violence would be required to achieve his objective or to overcome resistance was obvious. Although the store manager received no serious injury, that was fortuitous. The value of the item stolen was significant and it was not recovered. Jewellery stores are particularly vulnerable to this type of offence and those who work in them have a right to expect that they will not be the victims of robberies.
2.	<i>Brooks v The State of Western Australia</i> [2021] WASCA 156 Delivered 03/09/2021	39 yrs at time sentencing. <u>Indictment -Supreme</u> Convicted after trial. <u>Magistrates Court</u> Convicted after PG (20% discount). <u>Indictment - District</u> Convicted after late PG (15% discount). Lengthy criminal history; including interstate offending.	<u>Indictment -Supreme</u> Ct 1: Agg armed robbery. Ct 2: Armed so as to cause terror. <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. Magistrate Court appeal commenced in Supreme Court referred to Court of Appeal. <u>Indictment – District</u>	<u>Indictment - Supreme</u> Ct 1: 4 yrs 4 mths imp (cum). Ct 2: 9 mths imp (cum). TES 5 yrs 1 mth imp (cum on sentence imposed by Supreme Court). EFP. <u>Magistrate Court</u> TES 1 yr 3 mths imp. EFP. <u>Indictment - District</u> Ct 1: 6 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 15 mths imp (conc).	Dismissed (leave refused) – on papers. <u>Indictment - Supreme</u> Appeal concerned length of sentence and totality principle. <u>Magistrate Court</u> Appeal concerned totality principles and error (allowing summary charges to not be dealt with by superior court). <u>Indictment - District</u> Appeal concern error in cum sentences; totality principle (crushing effect of accumulated sentences from different jurisdictions) and error (plea discount). 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

	<p>Traumatic childhood; experienced death of older sister when he was aged 6 yrs; mother a yr later.</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>Cts 1 & 3: Criminal damage. Cts 2 & 4: Stealing. Cts 5-6: Poss stolen or unlawfully obtained property. 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</p>	<p>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). 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;</p>	<p>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 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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		<p>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 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).</p> <p>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).</p> <p>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).</p> <p>During a burglary, a dinghy, boat trailer, boat engine and a fuel jerry can were stolen.</p> <p>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.</p> <p>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</p>	<p>the offending necessitated a sentence that sufficiently denounced the appellant’s conduct and provided appropriate personal and general deterrence.</p>	
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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 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).

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).

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).

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).

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>1.</p>	<p><i>Hiemstra v The State of Western Australia</i></p> <p>[2021] WASCA 96</p> <p>Delivered 02/06/2021</p>	<p>49 yrs at time offending. 51 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Substantial criminal history; recidivist offender; released to parole on seven occasions; parole cancelled six times.</p> <p>Childhood marked by trauma and disadvantage; two siblings; several half siblings; witnessed domestic violence; parents separate when aged 5 yrs; sexually abused by his mother as a child; alcoholic mother found unfit to care for him; placed in care of violent father.</p> <p>Struggled academically; regularly in trouble; attended three different high schools; ceased schooling halfway through yr 9.</p> <p>Worked number of yrs with his father; established his own scrap metal business; profitable until 2013 when he was imprisoned; unemployment benefits since this time.</p> <p>Three significant relationships; three children with whom he has little or no contact.</p> <p>Diagnosed with Fetal Alcohol Spectrum Disorder (FASD) in 2020; number of cognitive deficits.</p> <p>Commenced using illicit drugs and alcohol aged 13 yrs; under the influence of methyl at time offending.</p>	<p>1 x Agg armed robbery.</p> <p>Hiemstra and his co-offender, Morrison, entered the bar area of a returned services league premises. They were armed with a knife and handgun and both wore dark clothing and hooded jumpers to conceal their faces.</p> <p>The thirteen patrons on the premises were women, many of whom were retirees.</p> <p>Morrison brandished the handgun and ordered the patrons to lie on the floor.</p> <p>Hiemstra forced the bar attendant to open the till, pressing the knife against her arm as she did so. He took \$1,800 cash. When he asked about the safe the attendant told him she did not have the keys.</p> <p>Morrison, realizing his aunt was one of the patrons, directed Hiemstra to leave.</p> <p>When interviewed Hiemstra denied any involvement in the robbery. He later admitted that he was involved and that he and Morrison committed the offence 'in the spur of the moment'.</p>	<p>6 yrs 4 mths imp.</p> <p>EFP.</p> <p>The trial judge found the robbery premeditated and planned.</p> <p>The trial judge found the offending agg by the wearing of clothing to disguise their appearance; the appellant and co-offender obtained weapons before entering the premises; they had planned to perform separate roles after entering the premises; they took steps to evade detection and their collusion in arriving at a consistent version of events; they targeted the premises at a time when only women would be present, many of them elderly and frail, and in the expectation they would not encounter resistance and the number of victims was significant; the use of weapons was calculated to cause significant fear and to ensure the victims complied; they acted in company to reinforce their threats of violence, increasing the fear caused to the victims.</p> <p>The trial judge found the appellant swung the knife to reinforce the threats and to ensure the bar attendant complied with his demands; causing her injury and increasing the danger to her and the fear she felt.</p> <p>The trial judge accepted the FASD report and the findings the appellant had a number of cognitive deficits; but there was some 'incongruity' between the findings on the formal testing referred to in the report and what the appellant had demonstrated of his abilities in the past; in effect, on the balance of probabilities, there was not a causal connection between his FASD and the commission of the offence.</p> <p>Victims continue to suffer ongoing trauma and anxiety.</p> <p>Demonstrated late remorse.</p>	<p>Allowed [FASD and deprived background].</p> <p>Appeal concerned length of sentence and errors in failing to consider appellant's mental impairment (FASD) and deprived background.</p> <p>Resentenced:</p> <p>5 yrs 10 mths imp. EFP.</p> <p>At [97] – [98] It is apparent, in the context of all relevant sentencing considerations ..., that at all material times the appellant appreciated the gravity of his actions in planning for and committing the armed robbery with Mr Morrison. ... In any event, his Honour found (and was entitled to find) that even if the appellant's FASD made personal deterrence less appropriate because he did not have the capacity to learn or retain information, any reduction in the significance of personal deterrence as a sentencing factor was counterbalanced by the need to protect the community against the risk that the appellant would commit further offences of this kind upon his release from custody.</p> <p>At [118] The mitigation arising from the appellant's traumatic childhood, which the trial judge was required by the High Court in <i>Bugmy</i> to give 'full weight', included the appellant's FASD deficits in that those deficits decreased his moral blameworthiness for the offending.</p> <p>At [120] In our opinion, his Honour's error in relation to the application of the High Court's decision in <i>Bugmy</i> was 'material' in that the error was <i>capable of</i> affecting the actual sentence imposed It is therefore the duty of this court to exercise the sentencing discretion afresh. ...</p>
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Transitional Provisions Repealed (14/01/2009)

<i>Transitional Provisions Enacted (31/08/2003)</i>					

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