

Arson, Breach of Duty by Person in Control of Ignition Source or Fire and Light Fire Likely to Injure

ss 444 & 445A *Criminal Code*

s 32(2) *Bush Fires Act*

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
AOBH	assault occasioning bodily harm
burg	burglary
cir	circumstances
conc	concurrent
cum	cumulative
ct	count
dep lib	deprivation of liberty
GBH	grievous bodily harm
imp	imprisonment
PG	plead guilty
susp	suspended

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
4.	<i>Aung v The State of Western Australia</i> [2022] WASCA 175 Delivered 20/12/2022	38 yrs at time sentencing. Convicted after PG (25% discount). Prior criminal history; including offences of violence, a number of which committed against ex-wife (the victim). Born in Burma; eldest of two sons; distant mother; alcoholic father who died suddenly when aged 13 yrs. Supportive family. Completed yr 12 high school. 10-yr-old son to ex-wife. Successfully completed cooking apprenticeship; strong employment history; good work prospects on release. History of depression; anxiety and problematic alcohol use.	2 x Wilful damage by fire. Aung and the victim were married. Their relationship had ended but some of the victim's clothing remained at the material home. Aung was served with a family violence restraining order (VRO). Some months later, early in the morning, Aung went to the victim's home in breach of the family VRO. He took with him some of the victim's clothes. The victim's car and her father's car were parked at the home. Aung placed some of the clothing near one of the tyres of the victim's car and then set the clothing alight. This led to the destructions of the clothing and heat damage to the car, rendering it unrepairable. Aung then placed clothing near a tyre of the victim's father vehicle and again set the clothing alight. Due to morning dew the clothing sustained only minimal damage and no damage was done to the vehicle. The victim called police. Aung was located at his home address that same morning.	Ct 1: 3 yrs imp. Ct 2: 18 mths imp (conc). TES 3 yrs imp. EFP. The sentencing judge found the offending serious; it occurred in the context of a history of domestic violence; at the time he was the subject of a family VRO; it was deliberate and persistent and occurred in a built-up residential area where the potential risk to people and property was catastrophic. The sentencing judge expressed concern the appellant had offended against the same victim in the past on multiple occasions, highlighting a concerning pattern. Offending adverse psychological and financial impact on victim and her.	Dismissed (leave refused). The appeal concerned length of individual sentences. At [42] ... The appellant committed ct 1 in the context of previous offences of domestic violence against the victim and while subject to family VROs protecting the victim, her father and other family members. The offending was deliberate and persistent. It was directed to the victim, who had already suffered domestic violence at the appellant's hands. While the appellant denied an intention to cause her fear and trauma, that was the very likely – if not practically inevitable – consequence of his offending behaviour. Given the location of the offending, there was a real risk of much more significant damage. At [53] While the damage caused in ct 2 is relatively minor, the offence nevertheless had other serious elements. ... The offence was premeditated and committed with the motivation and likely effect on the victim to which we have referred. There was a real risk that the fire would spread to the vehicle and set fire to fuel or other flammable material in the vehicle. The fact that, due to the weather conditions, this did not occur was despite the efforts of the appellant.
3.	<i>Hutton v The State of Western Australia</i> [2022] WASCA 133 Delivered 14/10/2022	38 yrs at time offending. 40 yrs at time sentence. Convicted after PG (20% discount). Prior criminal history; no previous sentences of imp. or violent offending. Parents separated when a baby; never met his biological father; mother physically and verbally abusive towards him; loving and	Ct 1: Arson. Ct 2: Manslaughter. Hutton believed the victim had sexually assaulted his daughter. He drove from Perth to Geraldton to confront him. Hutton went to the victim's home armed with a knife. During a confrontation he assault the victim, inflicting two, non-life threatening, knife wounds.	Ct 1: 18 mths imp (cum). Ct 2: 7 yrs 6 mths (cum). TES 9 yrs imp. EFP. The sentencing judge found the appellant's actions premediated and well planned and those of a vigilante and he did not provide or obtain medical assistance for the victim either in relation to the knife wounds or after he had ignited the fire. The sentencing judge found the offence of arson	Dismissed. Appeal concerned length of sentence ct 2 and totality principle. At [55] In our opinion, the appellant's contention that the sentence of ... imp for ct 2 was manifestly excessive does not have a reasonable prospect of success. That is the only conclusion reasonably open ... At [63] ... the appellant's offending on ct 1 and ct 2 occurred within a short period. However, we are satisfied that it was necessary in order properly to mark the seriousness of the appellant's overall offending, having regard to all relevant facts and circumstances and all relevant sentencing factors, to order some accumulation of the appropriate sentence for ct 1 and the appropriate sentence for ct 2. ...

		<p>carrying stepfather from aged 7 yrs who endeavoured to protect him from his mother's abusive behaviour.</p> <p>Supportive family and friends.</p> <p>Educated to yr 11; bullied; behavioural problems at school.</p> <p>Good work history; employed variety of occupations.</p> <p>Long-term relationship from aged 21 yrs; married; three children; separated.</p> <p>Mental issues on disintegration of his marriage; prescribed antidepressant medication.</p> <p>Cannabis use ages 15-22 yrs and after marriage breakdown; using cannabis at time offending.</p>	<p>Hutton then doused the victim's home with petrol and lit a fire inside the house by unknown means. He then left the premises, despite knowing the victim was injured.</p> <p>Firefighters attended and located the victim's body.</p> <p>The cause of the victim's death was determined to be the 'combined effects of fire and multiple injuries in a man with atherosclerotic heart disease'.</p>	<p>was serious; an accelerant was used; he targeted a house in a residential neighbourhood, where there was a significant risk of the fire spreading to adjoining properties or land and he put at great risk members of the fire and emergency services.</p> <p>Remorseful and accepting of responsibility; very sound prospects of rehabilitation; low risk of future violent offending.</p>	<p>We consider that a sentence of 3 yrs 3 mths imp for ct 1 (before considering totality) was lenient.</p> <p>At [64] In our opinion, the appellant's contention that the TES ... was unreasonable or plainly unjust does not have a reasonable prospect of success. A custodial term of that length was required in order properly to reflect the very serious character of the appellant's overall offending. The TES bears a proper relationship to the criminality involved in both of the offences, viewed together, and having regard to all relevant facts and circumstances and all relevant sentencing factors, including the seriousness of the overall offending, [the victim's] vulnerability [and] the short period within which the offending occurred, ...</p>
2.	<p>Jabbie v The State of Western Australia</p> <p>[2022] WASCA 10</p> <p>Delivered 09/02/2022</p>	<p>22-23 yrs at time offending. 24 yrs at time sentencing.</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). <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</p>	<p><u>IND 2405</u> Cts 4; 7 & 12: Agg robbery. 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</p>	<p><u>IND 2405</u> Ct 4: 2 yrs 3 mths imp (conc). 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</p>	<p>Dismissed (leave refused).</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>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>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 was hospitalised due to his injuries.</p> <p><u>Ct 8</u> 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.</p> <p><u>Ct 9</u> 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.</p> <p><u>Cts 10 and 11</u> That same day Jabbie entered the garage of the victim, aged 77 yrs, with</p>	<p>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>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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the intention of stealing his car. The victim went to investigate the noise and was confronted by Jabbe, who sprayed him with a fire extinguisher. Jabbe then tried to enter the house to find the car keys, however the victim pushed him back and closed the door. Jabbe then fled.

Cts 12 and 13

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

The victim walked to his place of work. Jabbe then went inside and confronted him again. This time demanding his watch. After a brief altercation he stole the victim's watch. The victim's employer intervened and asked Jabbe to return the victim's belongings, but he refused and left in the victim's vehicle.

Cts 14 and 15

Later that same day Jabbe 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.

Ct 16

The following day Jabbe attempted to gain access to the victim's house by kicking in the door. The victim heard

			<p>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>		
1.	<p><i>Seaton v The State of Western Australia</i></p> <p>[2021] WASCA 12</p> <p>Delivered 28/01/2021</p>	<p>50 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Stable early life.</p> <p>Completed yr 12 high school; nursing qualifications.</p> <p>Married aged 22 yrs; two adult daughters; relationship failed due to her alcoholism, instability and violence; lost custody of her two children.</p> <p>Estranged from most of her family.</p> <p>Not worked many yrs.</p> <p>Long term chronic alcohol and drug issues; diagnosed with alcohol dependence, alcohol abuse, alcoholism, drug induced psychosis, complex post-traumatic stress disorder and a delusional disorder.</p>	<p>1 x Wilfully lit fire under circ likely to injure or damage.</p> <p>Following a fight with her boyfriend Seaton was served with a police order, requiring her to leave his home. She returned to her unit on the first floor of an apartment block. Inside she called out 'help, help, he's attacking me'.</p> <p>A neighbour heard Seaton calling for help but did not respond, as she had called out in a similar manner before and on those previous occasions found her alone.</p> <p>Some young men in the unit below, not familiar with Seaton's behaviour, heard her cries for help. Finding the door to her unit locked they called out to determine if she was all right. She came to the door, unlocked it and let the men in. Nobody else was in the unit. She began saying 'help' and walked off to a bedroom and sat on a bed. She continued to ask for help and talked about the devil. The men left.</p> <p>About 15 minutes later, the same men heard the sound of breaking glass. On investigation they saw Seaton hanging half-way out of a window from her unit. Smoke could also be seen coming from the window.</p> <p>Seaton fell from the window into a garden bed.</p>	<p>2 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's behaviour very strongly suggested she was under the influence of drugs or alcohol or both and that the appellant had 'some significant mental health problems' that placed her at risk of further offending.</p> <p>The sentencing judge found the offence a serious example of its kind; the appellant's lack of care was of a very high order; her actions put the safety of others at risk and left residents homeless for a period of time and caused serious financial harm to an organisation that provides housing for people who would otherwise have difficulty obtaining it.</p> <p>The sentencing judge found the nature and seriousness of the offence was such that the only appropriate disposition was a term of imp; a suspended sentence was not an available option.</p> <p>Lack of remorse or contrition; continued to maintain a stance of denial and made efforts to blame the offending on another person; denied her treatment needs and any alcohol or illicit drug use; history of rejecting opportunities to deal with her drug and alcohol issues.</p>	<p>Dismissed.</p> <p>The appeal concerned length of sentence.</p> <p>At [40] In our opinion the sentence of ... imp was commensurate with the seriousness of the appellant's offending. Taking into account the max penalty of 15 yrs imp, the circumstances of the commission of the offence (including the agg factors relating to the amount of damage, that a residential building was involved and the risk to the safety of others), and the personal circumstances of the appellant, the sentence imposed was not unreasonable or plainly unjust.</p>

			<p>Attempts were made by the men to extinguish the fire, however it took hold very quickly and caused considerable damage, estimated to be approx \$263,000.</p> <p>An expert fire examiner determined that a mobile heat source, such as a cigarette lighter, was used to ignite something flammable in the bedroom.</p>		
<i>Amendments to s 444 Criminal Code (19/12/2009)</i>					
<p>Maximum penalty increased to life imprisonment (previously maximum penalty was 14 yrs imp or, in circumstances of racial aggravation, 20 yrs imp). Definition of property extended to include vegetation.</p>					
<i>Transitional provisions repealed (14/01/2009)</i>					
<i>Amendments to s 444 Criminal Code (8/12/2004)</i>					
<p>Offence amended to include damage committed in circumstances of racial aggravation (max penalty 20 yrs imp).</p>					
<i>Transitional provisions enacted (31/08/2003)</i>					

Office of the Director of Public Prosecutions