

Attempted armed robbery & Assault with intent to rob

from an individual, committed on smaller establishments

ss 552, 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
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>Fitzgerald v The State of Western Australia</i> [2024] WASCA 58 Delivered 24/05/2024	44 yrs at time sentencing. Convicted after trial. 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. Born in Perth; good relationship with parents; parents and brother are supportive. Completed high school; worked for 16 yrs in mining and construction. Engaged to be married; in relationship for 10 yrs at time sentencing; adult child from previous relationship. Long history of substance use; cannabis from 13 yrs; other drugs to self-medicate; alcohol use. Sexually abused as a child; never received counselling. ADHD; history of depression, mood swings, and insomnia.	Ct 1: Agg burg. Ct 2: Crim damage. Ct 3: Agg threats with intent to rob. Ct 4: Agg threats with intent to rob. The appellant and the victim, A, were known to each other and lived in separate units in the same complex. <u>Cts 1 & 2</u> 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. 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. <u>Cts 3 & 4</u> 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.	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). TES 6 yrs 6 mths imp. EFP. The sentencing judge found that the appellant's criminal history required some weight to be given to specific deterrence and protection of the community. The sentencing judge found that there was a considerable risk of the appellant re-offending if he did not access psychological assistance. 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. The sentencing judge found that the appellant showed little remorse for the offending. The appellant was attending weekly Narcotics Anonymous meetings whilst in prison.	Appeal dismissed (leave refused). Appeal concerned length of individual sentences and first limb of totality principle. 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.' 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.' At [53] 'the present case involves a serious example of a home invasion burglary.' 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.' 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 for a single count of armed robbery.' 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.'
2.	<i>Momand v The State of Western Australia</i> [2024] WASCA 14 Delivered 07/02/2024	42 yrs at time offending. 46 yrs at time sentencing. Convicted after PG (5% for ct 1 and 10% for cts 2 & 3) Subject of 12-mth intensive supervision order at time offending.	Ct 1: Crim damage. Ct 2: Assault with intent to rob. Ct 3: Making a threat to unlawfully harm another. <u>Ct 1</u> The appellant drove his vehicle into the car park of a shopping centre. He drove out, then returned two minutes later.	Ct 1: 6 mths imp (cum). Ct 2: 18 mths imp (cum). Ct 3: 12 mths imp (conc). TES: 2 yrs imp. EFP. The sentencing judge noted that the appellant had originally been charged with attempted	Appeal dismissed (leave refused). Appeal concerned length of sentence for ct 1 and the discount imposed for cts 2 & 3. At [36] 'offences of criminal damage can occur in a wide variety of circumstances. The nature of the act that caused the damage and the value of the damage caused are relevant considerations. In this case, the appellant drove his car deliberately into another car in a car park. The act occurred in an area to which the public have access...It was

		<p>Significant criminal history: assault; breach of restraining orders; poss of unlicensed firearm; steal motor vehicle; AOBH; poss a controlled weapon; being armed in a way to cause fear.</p> <p>Living with mother at time offending; several siblings.</p> <p>Suffers from undiagnosed depression; acknowledged he was 'out of control' and did not understand the consequences of what he was doing.</p> <p>Previous drug use.</p>	<p>The appellant then drove his vehicle in a straight line directly into a parked vehicle. The appellant got out of his vehicle and walked into the shopping centre.</p> <p><u>Ct 2</u></p> <p>The appellant walked into a store and collected several items. He took those items to the checkout and placed them on the counter. When asked for payment, the appellant stated Kensington Police would pay and attempted to walk away with the items. The shop assistant came to the front of the count and tried to retrieve the items. There was a scuffle in which both the appellant and shop assistant were both holding the plastic bag.</p> <p>The appellant then punched the shop assistant to the face. There was a further scuffle and both men fell to the floor, wrestling.</p> <p><u>Ct 3</u></p> <p>The appellant then threatened to stab the shop assistant with whom he was wrestling and tried to pull a retractable knife from his trouser pocket. On seeing the knife, the assistant moved away.</p>	<p>robbery and following negotiations, the charge had been replaced by cts 2 and 3 on the indictment.</p> <p>The sentencing judge found that the criminal damage offence was plainly deliberate.</p> <p>The sentencing judge found that the appellant had used violence, when an attempt was made to stop the appellant from stealing the items.</p> <p>The sentencing judge found that the appellant had threatened to stab the attendant and then made a show of trying to pull the retractable knife from his pocket.</p> <p>The sentencing judge noted that the offending occurred in the early hours of the morning, and the people who work during these periods are vulnerable.</p>	<p>simply a random act of destruction carried out without any apparent concern for the consequences.'</p> <p>At [38] 'there was nothing in the appellant's personal history that mitigated the offending.'</p> <p>At [41] '... the sentence of 6 mths imprisonment imposed on ct 1 was plainly open to the sentencing judge.'</p>
1.	<p>Brooks v The State of Western Australia</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</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.</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).</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</p>

		<p>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 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 involvement in the offence.</p>	<p>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; the offending necessitated a sentence that sufficiently denounced the appellant’s</p>	<p>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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