

Burglary

s 401 *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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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

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No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
2.	<i>HVA v The State of Western Australia</i> [2024] WASCA 156 Delivered 12/12/2024	<p>Early 40s at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Extensive criminal history; traffic, property, nuisance, weapons poss and drug-related offences; repeat offender (home burglaries).</p> <p>Youngest of three children; difficult childhood due to father's violence and alcoholism.</p> <p>Expelled from school in yr 10.</p> <p>Worked intermittently; mainly unemployed or in prison.</p> <p>Two children; intermittent contact with eldest child.</p> <p>Diagnosed ADHD, depression and anxiety.</p> <p>Cannabis use since 12 yrs old; methyl use since 13 yrs old; heavy user of methyl.</p>	<p>Ct 1: Burg.</p> <p>Ct 2: Poss methyl wiss 325.4 g at 74–81% purity.</p> <p>Ct 3: Poss unlawfully obtained property \$6,100.</p> <p>Ct 4: Poss methyl wiss 32.5 g.</p> <p><u>Ct 1</u></p> <p>The appellant drove a co-offender to the victim's home and parked outside the front gate of the house. A short time later, the co-offender entered the property and stole more than \$10,000 worth of assorted items while inside.</p> <p><u>Ct 2 & 3</u></p> <p>The co-offender then exited the house and got into the car driven by the appellant, who drove to a unit. The appellant retrieved a black Rip Curl bag from the boot of the car. The appellant then parked the car inside a garage at the unit. A short time later, police conducted a SW at the unit. Police located 325.4 g of methyl and \$6,100 inside the Rip Curl bag.</p> <p><u>Ct 4</u></p> <p>About six weeks later, police executed a search warrant at the appellant's unit. Police located a clip-seal bag containing 32.5 g of methyl.</p>	<p>Ct 1: 2 yrs imp (cum).</p> <p>Ct 2: 6 yrs imp (HS).</p> <p>Ct 3: 8 mths imp (conc).</p> <p>Ct 4: 1 yr imp (cum).</p> <p>TES: 9 yrs.</p> <p>EFP.</p> <p>The sentencing judge found that the appellant was a significant drug dealer who did not occupy a minor position in the hierarchy of drug dealing.</p> <p>The sentencing judge accepted that the appellant was genuinely remorseful, as evidenced by his attendance at counselling.</p>	<p>Appeal dismissed (leave refused).</p> <p>Appeal concerned length of sentence imposed on ct 2 and first limb of totality principle.</p> <p>At [33] 'in the present case the appellant was conducting a commercial drug operation from which he was found to have derived a substantial amount of money. For the purposes of that operation he was in possession of 325.4 g of methylamphetamine – over 11 times the threshold for a trafficable quantity of 28 g of methylamphetamine. The appellant had previously been sentenced to significant terms of immediate imprisonment in 2017 and 2021 for drug related offences. The offending the subject of count 2 was committed only shortly after the appellant's release from prison ... Even having regard to the appellant's early pleas of guilty, remorse and other mitigating factors which the record indicated the sentencing judge took into account, the sentence of 6 yrs imprisonment imposed for ct 2 cannot be regarded as unreasonable or plainly unjust ...'</p> <p>At [34] '... although the offences charged in counts 1-3 were committed on the same day, the home burglary offence was separate to the offending charged in counts 2 and 3. The offending charged in count 4 involved a continuation of the appellant's commercial drug dealing operation even after he had been released on bail for previous offending. At least some degree of accumulation of the appropriate individual sentences for counts 1, 2 and 4 was required to reflect the overall criminality involved in all of the appellant's offending.'</p> <p>At [35] '... having regard to ... [all relevant factors] a total effective sentence of 9 years' imprisonment was not unreasonable or plainly unjust.'</p>
1.	<i>Brooks v The State of Western Australia</i> [2021] WASCA 156 Delivered 03/09/2021	<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><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</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></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>Lengthy criminal history; including interstate offending.</p> <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>Appeal.</p> <p><u>Indictment – District</u> 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>Ct 1: 6 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 15 mths imp (conc). 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 premeditated acts of dishonesty; it would have</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 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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			police driving the vehicle and failed to stop when requested to do so, leading to a police pursuit (cts 14-15).		
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