

Deprivation of Liberty

s 333 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
AOBH	assault occasioning bodily harm
conc	concurrent
cum	cumulative
ct	count
dep lib	deprivation of liberty
EFP	eligible for parole
imp	imprisonment
PCJ	pervert the course of justice
PG	plead guilty
susp	suspended
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
8.	<i>Swift v The State of Western Australia [No 2]</i> [2024] WASCA 23 Delivered 12/03/2024	29 yrs at time offending. 33 yrs at sentencing. Convicted after trial. No criminal history. Police officer at time of offending. Raised in a good family home; loving and supportive family; engaged to be married. Undergraduate degree in science; graduated with distinction. Joined WAPOL in 2013; graduated with high distinction; highest student award. Symptoms of traumatic stress; loss of identity following separation from police.	Ct 1: AOBH. Ct 2: Dep lib. The appellant, then a serving police officer, was on duty with Officer O when they received a call to attend at the house of the victim and her partner. When the appellant and Officer O arrived, the victim's partner answered the door, and the victim arrived shortly after. The officers separated the victim and her partner to speak to them alone. The appellant accompanied the victim to the bedroom. After the victim became difficult, the appellant pushed the victim and told her she was under arrest. He then handcuffed the victim and pushed her to the ground. Officer O intervened and removed the handcuffs. The appellant began arguing with the victim, then pulled the victim onto a bed. The appellant then dragged the victim off the bed, over a box and onto the floor. The appellant then handcuffed the victim. The appellant then dragged the victim by the handcuffs along the floor out of the master bedroom and towards the front door and into the driveway. Officer O confronted the appellant. In response, he pushed his forearm into the victim's head, forcing her head against the side of the car. The appellant returned with the car and told the victim to get in the security pod. The appellant kicked the victim's feet to get her into the pod. Eventually, the victim moved into the pod and the door was closed.	Ct 1: 20 mths imp (conc). Ct 2: 2 yrs imp (conc). TES: 2 yrs imp. EFP. The sentencing judge found the deprivation of liberty occurred from the point of the first application of force up until the victim arrived at the police station. The sentencing judge found the appellant's actions were not motivated by personal anger towards, a desire to punish, the victim. Rather the appellant acted out of frustration, exasperation and irritation with victim and the situation. The sentencing judge accepted that the appellant was a person of prior good character and that there was little risk in reoffending is a similar way. The appellant had suffered adverse publicity, and any term of imprisonment would be difficult given his past employment as a police officer. The sentencing judge formed the view that the need for general deterrence was high.	Appeal dismissed (leave refused on ground one and granted on ground two). Appeal concerned weight given to general deterrence and type of sentence. At [57] '... having regard to the circumstances of the offending and, in particular, that the appellant was a police officer acting in the purported execution of his duty, general deterrence is plainly a relevant and important sentencing consideration, which was correctly given considerable weight.' At [65] 'public trust in the police force is crucial to its ability to undertake the functions of protecting the community, investigating alleged offences, and bringing offenders to justice. The ability of the police force to effectively perform these functions is undermined when police officers, in the execution of their duties, seriously depart from or abuse the powers given to them by law. In the context of the present case, it is important that the sentences imposed send a clear message to other serving officers that behaviour of the kind engaged in by the appellant will be met with a strong response, with the object of ensuring it is not repeated.' At [66] 'we do not accept counsel for the appellant's submission that general deterrence is not a matter of importance because the offences committed by the appellant are not prevalent.' At [85] '... in our opinion, the seriousness of the offending and the need for general deterrence are such that immediate imprisonment was the only appropriate disposition.'
7.	<i>The State of Western Australia v Riley</i>	24 yrs at time offending. 25 yrs at sentencing. Convicted after PG (20%	Ct 1: Agg threat to kill Ct 2: Agg AOBH Ct 3: Agg dep lib.	Ct 1: 14 mths imp (conc) Ct 2: 6 mths imp (cum) Ct 3: 20 mths imp (cum)	Appeal allowed. Appeal concerned length of individual sentences and totality.

<p>[2024] WASCA 11</p> <p>Delivered 02/02/2024</p>	<p>discount).</p> <p>Lengthy criminal history; number of offences against AB: agg home burglary; two counts of agg common assault; 16 breaches of restraining orders; offences of trespass and assault; declared a serial family violence offender.</p> <p>Significant dysfunction and disruption during childhood; parent's misused drugs.</p> <p>Longstanding substance abuse issues (methylamphetamine); affected by alcohol at time of offending; limited protective factors in the community; negative peer and family associations.</p> <p>Previously in a relationship with AB; have three children aged 6,4, and 3 at time of offending.</p> <p>Had a new partner; a job available in Northam; accommodation with maternal grandmother.</p>	<p><u>Cts 1 & 2</u></p> <p>AB received text messages from the respondent's sister, Ms M, asking if the respondent could come to AB's house to see their children. AB replied 'no'. That evening, AB heard a knock at the window and heard the voice of Ms M. Ms M then came to AB's bedroom and began talking about allowing the respondent to see the children.</p> <p>AB decided to go to her sister's bedroom (in the same house) to talk to her. While there she heard the respondent's voice inside the house. AB came out of the room and saw the respondent talking to their children. The respondent asked to talk to AB and she said 'no'. The respondent then asked for AB to come to his house. She refused.</p> <p>AB had arranged with her family that if the respondent came to her house, they were to immediately call the police. She went outside to allow this to occur. Her children and some other family members followed her to the front. The respondent continued to ask AB to come to his family home and became angry when she refused.</p> <p>The respondent then went inside the house and returned holding a 20cm bladed knife. He walked over to AB, and said 'I'm going to kill you if you don't get in the car'. The respondent then raised the knife and hit AB once to her upper forearm with it. The respondent then grabbed AB's forearms with his hands, causing her cigarette to fall from her mouth and onto her chest causing a small burn. AB suffered bruising on her forearms and a small burn from the cigarette.</p> <p>As this occurred, the respondent yelled at AB, 'get in the car, I'll stab you like your dad did your mum' and 'I'm a butcher now and I slit animals' throats</p>	<p>TES: 2 yrs 2 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found that whilst the respondent's criminal record, including many prior offences against AB, was not an aggravating factor, it underscored the need for personal deterrence.</p> <p>The sentencing judge found no evidence of remorse. The sentencing judge referred to the paramount importance of general and personal deterrence for offending of this nature.</p> <p>The sentencing judge found that the respondent offended whilst subject to a restraining order; while on bail; as a declared serial family violence offender; and while on parole.</p> <p>The sentencing judge concluded that the sentences must also reflect the appropriate degree of public denunciation of this kind of prevalent, abhorrent offending that exists in the community.</p>	<p>Resentenced:</p> <p>Ct 1: 18 mths imp (cum). Ct 2: 12 mths imp (conc). Ct 3: 3 yrs imp (cum).</p> <p>TES: 4 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [53] '... the sentencing judge accurately identified the many aggravating factors that accompanied this offending. Significant factors included that these offences involved breaches of a restraining order, that they were committed in the presence of young children and that they were committed in the context of a family relationship.'</p> <p>At [54] 'the threat to kill was made while the respondent was intoxicated, agitated and armed with a knife. The references to his employment [and AB's parents] ... added a chilling and very personal edge to the threat. The threat was made with the purpose of getting AB to comply with his demand ... The threat was a serious example of this type of offence.'</p> <p>At [55] '[the striking of AB with the knife] conveyed to AB the ability and willingness of the respondent to stab her if he wanted to do so ... the assault occurred whilst the respondent was demanding that AB go with him. The use of violence to reinforce such a demand places it into its proper context. The assault was at least a moderately serious example of its type.'</p> <p>At [56] 'the deprivation of liberty continued for about one and a half hours. During most of this time AB was essentially trapped...AB's vulnerability was increased by the fact that her young children were also in the car. She had no realistic opportunity to escape and had to rely on the hope the family had contacted the police.'</p> <p>At [66] 'this case clearly required that significant weight be given to personal deterrence. The respondent has a deplorable history of offending against AB. He has shown disregard, if not frank contempt, for court orders put in place to protect AB.'</p> <p>At [66] 'general deterrence also looms large...domestic violence is a scourge on society ... Persistent violence and intimidation in the context of family relationship must be strongly discouraged by appropriate sentences.'</p> <p>At [69] 'in this case the sentencing judge correctly identified the aggravating and mitigating factors ... However, the sentences imposed by her Honour did not properly reflect those factors.'</p>
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6.	<p>The State of Western Australia v LSM</p> <p>[2023] WASCA 132</p> <p>Delivered 01/09/2023</p>	<p>27 yrs at time offending. 28 yrs at time sentencing.</p> <p>Convicted after late PG (25% discount).</p> <p>No prior criminal history.</p> <p>Eldest of two children; parents separated when young; four half-siblings; close and supportive family.</p> <p>Dyslexic; struggled at school; completed yr 11 and trade apprenticeship.</p> <p>Hard working; consistent employment history; own business.</p> <p>Good physical health; history of alcohol and illicit drug use; struggled with alcohol and methyl use aged 19 – 25 yrs; relapsed into methyl use; coming down from methyl and significantly intoxicated with alcohol at time of offending.</p>	<p>Ct 1: Dep lib. Ct 2: Threat to kill. Cts 3-5: Agg sex pen without consent. Ct 6: Att PCJ.</p> <p>LSM subjected his wife, F, to a prolonged episode of physical and sexual violence.</p> <p>Whilst out celebrating F's birthday LSM became jealous and accused F of being unfaithful. On leaving to go home they argued, so F said she would order an Uber. At this point LSM grabbed the back of her neck and forced her to walk to their car. He then drove dangerously at speed and repeatedly told her he was going to crash the car with her in it. When F attempted to get out of the car several times, LSM prevented her from doing so by grabbing her arm or hair and pulling her back into the car. She repeatedly asked SLM to pull over or slow down, but he continued to drive dangerously.</p> <p>On two occasions SLM stopped the car. F was able to get out of the vehicle and call triple zero. However, on both occasions he forced her back into the car. F put her mobile phone under her seat, with the triple zero operator still</p>	<p>Ct 1: 9 mths imp (cum) Ct 2: 18 mths imp (conc). Ct 3: 18 mths imp (conc). Ct 4: 3 yrs imp (conc). Ct 5: 4 yrs imp (conc). Ct 6: 4 yrs imp (cum). Ct 7: 9 mths imp (cum).</p> <p>TES 5 yrs 6 mths imp. EFP.</p> <p>The sentencing judge found the respondent's offending 'incredibly serious'; the dep lib 'involved significant levels of ... control', including forcing F into the car and driving in a manner that caused 'very real danger'; the offending took place over a period of about two hrs.</p> <p>The sentencing judge found the sex offending occurred in the context that the respondent had already put F in danger; in circumstances where she was entitled to look to him for protection, as her husband; he was physically much bigger than F, who was not able to resist him and the offending took place in the family home, where she was entitled to feel safe.</p> <p>The sentencing judge found the respondent continued his violent behaviour towards F,</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence.</p> <p>Resentence (15% discount cts 1, 2, 3, 4 5 & 7 and 20% discount ct 6):</p> <p>Ct 1: 2 yrs imp (cum) Ct 2: 2 yrs imp (conc). Ct 3: 5 yrs imp (conc). Ct 4: 6 yrs imp (cum). Ct 5: 6 yrs imp (conc). Ct 6: 5 yrs 9 mths imp (conc). Ct 7: 18 mths imp (cum).</p> <p>TES 9 yrs 6 mths imp. EFP.</p> <p>At [4] 'it is clear that the respondent's sexual violence against his wife was a grotesque form of 'punishment' ... His sexual offences were calculated to demean his wife and assert his dominance over her. He was callously indifferent to her cries of pain and her pleas for him to stop ...'</p> <p>At [24]-[27] '... there were, in essence, three distinct categories of offending, each of which was inherently serious. All of the offences, ... had the underlying feature that they all involved the coercive control by the respondent of his wife ...'</p> <p>At [59] 'another very serious feature of the respondent's offending ... was the nature and quality of the violence he inflicted on F. Domestic and sexual violence can involve physical injury, sexual assault,</p>

			<p>on the line. The recording captured parts of the offending the subject of cts 3 - 6.</p> <p>Over the course of about 2 hrs SLM deprived F of her liberty, during which time he also committed cts 2-6.</p> <p>On arriving home SLM pushed F into the house, stripped her naked and forcefully penetrated her vagina with his fingers. This incident was captured by the triple zero recording and F could be heard pleading with SLM to stop and his reply, 'I'll rape you if I want'.</p> <p>SLM then forced F to perform fellatio, causing her to choke. He forced his penis into her mouth a second time, squeezing her throat with his hands while she did so, causing her to choke and experience difficulty breathing. The triple zero recording captured this incident.</p> <p>SLM then had sexual intercourse with F. This was again heard on the triple zero recording in which F is heard crying, exclaiming in pain, and repeatedly begging him to stop.</p> <p>A short time later F was able to run partially clothed from the house. SLM was arrested and was remanded in custody.</p> <p>While in custody SLM's telephone calls were monitored and on a number of occasions, during conversations with F, he sought to suborn her into dropping the charges brought against him.</p>	<p>who was calling out in pain and distress; the telephone calls constituting the att to PCJ, demonstrated the exercise of coercion over her; the whole of the offending has to be seen in the context of the family relationship.</p> <p>Respondent remorseful; offending out of character.</p>	<p>psychological injury and emotional trauma. Domestic and sexual violence is a major concern in Australia. ... The respondent's offending included behaviour that was calculated to intimidate, coerce and control F. Denunciation of the respondent's criminal conduct and personal and general deterrence were important sentencing considerations.'</p> <p>At [71] 'a very serious feature of the respondent's offending on cts 1, 2 and 7 (which also permeated his offending on cts 3, 4, 5 and 6) was the pattern of abuse that characterise his interaction with F ... All of those cts manifested behaviour by the respondent that was calculated to intimidate, coerce and control F.'</p> <p>At [127] 'because the respondent did not enter his PG on counts 1 – 5 and ct 7 at the first reasonable opportunity, her Honour did not have the statutory power to reduce the head sentences she would otherwise have imposed for these offences by 25%. ... her Honour erred in law in doing so. ... In respect of cts 1, 5 and ct 7, this error, regardless of grounds 2 and 3, would have enlivened this court's power to resentence the respondent.'</p> <p>At [147] '... while the respondent's personal circumstances were not to be ignored, they could not, when weighed against the 'incredibly serious nature of the respondent's offending, give rise to what, on any analysis, were unduly lenient individual sentences for cts 3 - 6 and an unduly lenient TES.'</p>
5.	<p><i>Ugle v The State of Western Australia</i></p> <p>[2022] WASCA 135</p> <p>Delivered 21/10/2022</p>	<p>44 yrs at time offending. 46 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Significant prior criminal history; subject to a CBO at time of offending.</p>	<p>Ct 1: Agg burg. Cts 2 & 3: Dep lib. Ct 4: Agg robbery. Cts 5; 6; 8-11; 13 & 14: Agg sex pen. Ct 7: Threats with intent to compel.</p> <p>The victims were Ms S and her friend, Ms P.</p>	<p>Ct 1: 5 yrs imp (cum). Cts 2 & 3: 3 yrs imp (conc). Ct 4: 4 yrs imp (conc). Cts 5; 8 & 13: 17 yrs imp (conc). Cts 6 & 9: 17 yrs 6 mths imp (conc). Ct 7: 2 yrs imp (conc). Ct 10: 18 yrs imp (conc). Ct 11: 16 yrs 10 mths imp (conc). Ct 14: 18 yrs 6 mths imp (cum).</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [95] In our view, it was reasonably open to the trial judge in the present case to regard some degree of accumulation of individual sentences to be called for to reflect the overall seriousness of all the appellant's offending. ...</p>

	<p>Co-offender:</p> <p><i>Herz v The State of Western Australia</i></p> <p>[2022] WASCA 73</p> <p>Delivered 27/06/2022</p>	<p>Chaotic, deprived and traumatic upbringing; absent father; predominantly raised by grandparents; childhood marred by alcohol abuse and domestic violence; sexually abused by relative from aged 8.</p> <p>Two sisters; mother in a nursing home at time sentencing.</p> <p>Completed yr 12 high school.</p> <p>Employed various roles; voluntary community work.</p> <p>Single; 11 children from three former partners.</p> <p>History methyl use; commenced using drugs aged 21 yrs.</p>	<p>Ugle had met Ms S on one occasion, to purchase drugs from her. He believed she kept a large quantity of cash at her home. With the intention of stealing the cash Ugle and the co-offender Herz and two unidentified males drove to her home.</p> <p>Ugle and Herz and one of the unidentified males approached the home. Ugle knocked on the door. When the door was partially opened they forced it open and Ugle and Herz entered the house. The other male remained outside acting as lookout. Ugle was carrying a tomahawk and covered his hands in socks.</p> <p>The victims were separated. Ugle, armed with the tomahawk, kept Ms S in one room and Herz stood over Ms P in another. Ms S was directed to hand over all mobile phones and the house and car keys.</p> <p>Ugle demanded cash from Ms S. When she told him she did not have any he demanded \$4,000 and stated if he did not get this sum he would steal her car and everything in her house.</p> <p>Ugle trashed the home looking for cash or items to steal. While this occurred Herz guarded the victims. Ugle loaded stolen items of property into the boot of Ms S's BMW.</p> <p>Both victims were terrified and helpless and feared being seriously harmed.</p> <p>On realising the home had CCTV cameras Ugle demanded the footage be deleted. Ms S was unable to do so, so he pulled out the CCTV recorder and hard drive and bundled them into the boot of Ms S's car.</p> <p>Ugle became agitated about the absence of cash so Ms P offered to withdraw money from her account. It was agreed</p>	<p>TES 23 yrs 6 mths imp.</p> <p>EFP.</p> <p>The trial judge found the appellant's offending agg by his use of the tomahawk axe, which he used to intimidate, threaten and coerce S into complying with his demands; he gained entry to the home by fraudulent means (identifying himself as a neighbour) and physical force; he was in company; it was premeditated, planned and could not be seen as opportunistic offending and it was not fleeting in nature; the offending destroyed the sanctuary and safety S ought to have felt within the confines of her home and he made multiple threats to harm and kill, adding an element of terror.</p> <p>The trial judge found the sex offending deplorable violations that destroyed, not only the sanctity of S's body, but the sanctuary of her home; the sex penetrations were violent and forceful in nature; while the offending constituted one course of conduct, it nevertheless was persistent, ongoing, repetitive and brutal; the appellant sex penetrated S persistently over the course of three to four hrs; collectively this offending included every conceivable type of penetration to the victim and he recorded the offences; he did not wear a condom; when the victim cried and pleaded with him to stop, it did nothing to deter him from continuing to violate her and he berated S for not acting like she was enjoying the abuse.</p> <p>Offending traumatic and ongoing impact on S and P; trauma to S, devastating and widespread; att suicide.</p> <p>No demonstrated remorse or victim empathy.</p>	<p>At [96] In assessing the overall criminality involved in the offending considered as a whole it is relevant to take account of the fact that the offences were all committed over a single period of about eight hrs. However, it is also relevant ... the sex offences against S extended over a period of hrs and involved a series of very traumatising sex pen without consent, which themselves justify individual sentences ... The agg home burglary offence was itself a serious example of that offence, involving a home invasion in company while armed ... which was used to threaten the victims. ... The agg robbery offence committed against a separate complainant, P, was itself an egregious offence. ... Forcing S to inject herself with methyl, after she had already done so earlier in the evening at the appellant's direction, represented a separate violation of S's personal autonomy and carried the risk of harmful effects. ...</p> <p>At [97] ... a TES of 23 yrs 6 mths' imp was within the discretionary range properly open to the trial judge. The TES ... did not infringe the first limb of the totality principle. It was not unreasonable or plainly unjust. ...</p>
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Herz would escort her to an ATM. Ugle held the tomahawk above Ms S's head and threatened to kill her and Ms P's family if she called the police or failed to return. Ms P withdrew \$1,000 from an ATM. This money was given to Ugle, who then demanded she withdraw \$1,000 each day, over the next three days. He told Ms P he would keep Ms S hostage until the full amount was paid. He made further threats to kill her and her family if she did not comply with his demands.

Ms P was eventually allowed to leave. Ugle then told Herz he could leave and he did so.

After Herz left Ugle, still holding the tomahawk, started touching Ms S's leg. She became extremely upset and told him she did not want to do anything with him. Angered by her response and ignoring her refusals he pulled down her leggings and recorded her with her underwear down. He asked for sex and she complied out of fear. He forced his finger deep inside Ms S, causing her pain. He then forced his erect penis inside her mouth and exposed and touched her vagina, while recording her.

Earlier Ms S offered methyl to Ugle and Herz, in the hope of de-escalating the situation. Concerned there might be something wrong with the drugs Ugle told Ms P to inject some of it. Instead, Ms S allowed Ugle to inject her.

Later Ugle arranged for Herz to return to Ms S's home with more methyl. Ugle injected himself with some of the drug and then directed Ms S to inject herself too. She refused. Angry, he threatened that if she did not do so he would make her take all of the drug. Compelled by Ugle's threats, and despite being fearful of an overdose, she injected herself.

Ugle then directed Ms S into the

			<p>bedroom. He tried to kiss Ms S, then removed her clothes. Ms S was crying and extremely upset. He filmed himself performing cunnilingus on M S. He then forced her to perform fellatio on him, ignoring her pleas when she told him she did not want to. Ugle then again inserted his penis into her vagina.</p> <p>Due to the aggressive manner in which Ugle was penetrating her Ms S began to bleed. He told her to take a shower. Inserting his finger into her anus before she did so. While Ms S showered he entered the ensuite and unsuccessfully att to insert his penis into her vagina from behind.</p> <p>Out of the shower Ugle again performed cunnilingus on Ms S. He then forcefully had intercourse with her. The tomahawk still next to him. Ms S was crying and clearly distressed. Ugle responded with fits of anger and told her to stop crying and to start acting like she was enjoying it.</p> <p>The sexual offending lasted three to four hrs. At the conclusion of the sexual assaults Ms S suggested to Ugle that they drive to her mother's home, where she could get the money he wanted. Ugle agreed. At Ms S's mother house he told her to collect the cash and to immediately return to the vehicle, while he waited in the car. Inside the house Ms S's mother saw her in a highly distressed state, crying and shaking. She told her mother she had been raped and she immediately called the police.</p> <p>Concerned Ms S was taking much longer than anticipated Ugle concealed the tomahawk in the car, left the vehicle and started to walk away. On hearing sirens he began to run. He was pursued by police, who apprehended and arrest him.</p>		
4.	<i>The State of Western Australia</i>	32 yrs at time offending. 33 yrs at time sentencing.	Ct 1: Agg burg. Ct 2: AOBH.	Ct 1: 2 yrs 8 mths (cum). Ct 2: No penalty.	Allowed.

	<p>v Krakouer</p> <p>[2022] WASCA 118</p> <p>Delivered 06/09/2022</p>	<p>Convicted after PG (20% discount).</p> <p>Very long criminal history; on bail for burglary offences time of offending.</p> <p>Aboriginal; born to young alcoholic mother; methyl-addicted father; raised by maternal grandmother.</p> <p>Left school year 9.</p> <p>No history of employment or job training.</p> <p>Stable relationship at time of sentencing; five children from prior relationships; no contact with his children.</p> <p>Long history of substance abuse; using drugs daily; no serious or enduring mental illness.</p>	<p>Ct 3: Dep lib.</p> <p>Early in the morning Krakouer entered the victim's home. Her partner had just left for work and she and her infant son were still asleep</p> <p>Inside the house Krakouer took poss of a knife, a baseball bat and a pair of scissors. He also put on the victim's hooded dressing gown.</p> <p>Awoken by her son crying the victim went into the kitchen. Krakouer appeared from behind the bench top and tackled her to the floor, causing her to bang the back of her head. When she screamed he placed a hand across her mouth and told her to stop. Once she stopped screaming he let her attend to her infant son.</p> <p>Krakouer told the victim she was going to drive him around to help him find his partner. She obliged out of fear.</p> <p>Krakouer, the victim and her son got into the victim's vehicle. Before doing so, he removed various items from within the house and placed them into a bag, which he placed in the car.</p> <p>Krakouer then directed the victim to drive him to various locations in the metropolitan area. He eventually got out of the car, apologising to the victim before walking off with the bag of items he had taken from the house.</p>	<p>Ct 3: 1 yr 2 mths (cum).</p> <p>TES 3 yrs 10 mths imp..</p> <p>EFP.</p> <p>The sentencing judge noted the respondent was a repeat offender for the purposes of s 401(4) of the <i>Criminal Code</i>.</p> <p>The sentencing judge found the offending persistent and committed over an extended period of time; the respondent was armed with three weapons; he confronted the victim with his face covered; he assaulted the victim; a child was present and he continued with the offending even after he was aware she was caring for her infant son.</p> <p>Offending severe psychological impact on the victim; diagnosed with PTSD and prescribed medication.</p> <p>Remorseful and accepting of responsibility; completed six-wk rehabilitation program in custody.</p>	<p>Appeal concerned length of individual sentences cts 1 and 3 and totality principle.</p> <p>Resentenced (20% discount):</p> <p>Ct 1: 5 yrs imp (cum). Ct 2: No penalty. Ct 3: 1 yr imp (cum).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>At [54] The agg home burglary offence charged in ct 1 was far from the least serious category of offending. The sentence imposed by the sentencing judge ... fails to reflect the position of the respondent's offending in the range between the least serious category of offending and the worst category of offending.</p> <p>At [56] ... the sentence ... for ct 1 is unreasonable or plainly unjust. The sentence failed by a significant measure to reflect the criminality involved in the offending ... the individual sentence imposed for ct 1 was manifestly inadequate ...</p> <p>At [58] ... we would note that the TES ... fails, in our view, to reflect the seriousness of the agg home burglary offence considered alone. ...</p>
<p>3.</p>	<p>Herz v The State of Western Australia</p> <p>[2022] WASCA 73</p> <p>Delivered 27/06/2022</p>	<p>54 yrs at time offending. 56 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history; no prior sentences of imp.</p> <p>Raised loving and supportive family environment.</p> <p>Educated to yr 11.</p>	<p>Ct 1: Agg burg. Cts 2 & 3: Dep lib. Ct 4: Agg armed robbery.</p> <p>The victims were Ms S and her friend, Ms P.</p> <p>The co-offender Ugle had sold drugs to Ms S and he believed she kept a large quantity of cash at her home. With the intention of stealing the cash Ugle and Herz drove to Ms S's home. Herz and</p>	<p>Ct 1: 4 yrs imp (cum). Ct 2: 2 yrs imp (conc) Ct 3: 2 yrs imp (conc). Ct 4: 3 yrs 3 mths imp (cum).</p> <p>TES 7 yrs 3 mths.</p> <p>EFP.</p> <p>Appellant sentenced on basis he was not the principle offender.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned error in sentencing (double punishment cts 1 and 4) and parity principle.</p> <p>At [42] ... Each offence (cts 1 and 4) had some significantly different circumstances. Notably, each theft involved a different victim. Each offence also involved some significantly different legal and factual elements. Although the offences occurred in the course of one overall series of criminal actions, there is nothing in the sentencing remarks to indicate that her Honour infringed the principle against double punishment. Each individual sentence for cts 1 and 4 was towards the</p>

		<p>Employed number of positions; owned and ran successful business.</p> <p>Previous long-term relationship; two adult children.</p> <p>Suffers back pain from degenerative spine; depression; 2008 suicide attempt.</p> <p>Cannabis use aged 16 yrs; commenced using methyl aged 39 yrs; abstinent from methyl eight yrs; recommenced using 2017; continued methyl use on bail in breach of bail condition.</p>	<p>Ugle were accompanied by two unidentified males.</p> <p>Herz, Ugle and one of the unidentified males approached the home. Ugle knocked on the door. When the door was partially opened he and Herz forced it open and entered the house. The other male remained outside acting as lookout.</p> <p>Ugle was carrying a tomahawk and covered his hands in socks.</p> <p>The victims were separated. Herz stood over Ms P in one room and Ugle, still armed with the tomahawk, kept Ms P in another. Ms S was directed to hand over all mobile phones and the house and car keys to prevent the victims from leaving.</p> <p>Ugle demanded cash from Ms S. When she told him she did not have any he demanded \$4,000 and stated if he did not get this sum he would steal her car and everything in her house. Ms S, scared and in shock began to cry.</p> <p>Ugle then trashed the home looking for cash or valuable items to steal. While this occurred Herz guarded the victims. Eventually Ugle loaded stolen items of property into the boot of Ms S's BMW.</p> <p>At some point Herz picked up the tomahawk.</p> <p>Both victims were terrified and helpless and feared being seriously harmed.</p> <p>When Ms P questioned whether they would be killed Herz told her if she did not do as she was told she would be.</p> <p>On realising the home had CCTV cameras Ugle demanded the footage be deleted. When Ms S was unable to do so he pulled out the CCTV recorder and hard drive and bundled them into the</p>	<p>The sentencing judge described the offending as 'serious criminal behaviour' and characterised the severity of the offending as being 'at the very least mid-range'.</p> <p>The sentencing judge found the appellant and Ugle committed the offences in company and armed with an offensive weapon and the victims' vulnerable women who were subjected to threats to kill.</p> <p>Victims severely and adversely traumatised.</p> <p>No finding of genuine remorse or victim empathy.</p>	<p>lower end of the range open ... on a proper exercise of her discretion.</p> <p>At [46] ... While the appellant's involvement in the offending was less than that of Mr Ugle, it was significant. He actively assisted Mr Ugle to forcibly enter (Ms S's) house. He offered support, encouragement and muscle in subduing the victims, both of whom were vulnerable, and terrifying them into submission. The appellant stood watch over [Ms S] and [Ms P] while Mr Ugle searched the house and stole various items. The appellant accompanied [Ms P] to the ATM to ensure she withdrew \$1,000 in cash and obtained from her the PIN to her ATM card, which Mr Ugle intended to use to withdraw, ... another \$3,000. ... The sentencing judge characterised the appellant's role with respect to ct 2 and 3 as 'crucial'. This characterisation is correct.</p> <p>At [48] Despite the fact that the offences were part of one criminal transaction, they were multi-faceted. Some accumulation was required in order to appropriately reflect the appellant's overall criminality.</p>
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			<p>boot of Ms S's car.</p> <p>Ugle became agitated about the absence of cash so Ms P offered to withdraw money from her bank account. Herz escorted her to an ATM. Prior to their leaving Ugle held the tomahawk above Ms S's head and threatened to kill her and Ms P's family if she called the police or failed to return with the cash.</p> <p>Ms P withdrew \$1,000 from an ATM and gave the money to Herz, who gave the cash to Ugle on his return to the house. Ugle then demanded that she withdraw \$1,000 each day, over the next three days. He told her he would keep Ms S hostage until the full amount was paid. Ugle made further threats to kill Ms S, Ms P and her family if she did not comply with his demands.</p> <p>Ms P was eventually allowed to leave, but not before Herz asked for, and received, the PIN to her account.</p>		
2.	<p><i>Houghton v The State of Western Australia</i></p> <p>[No 2] [2022]</p> <p>WASCA 7</p> <p>Delivered 03/02/2022</p>	<p>39 yrs at time offending.</p> <p><u>Ind</u> Convicted after trial.</p> <p><u>Summary offences</u> Convicted after PG.</p> <p>Stable upbringing.</p> <p>Supportive mother.</p> <p>Strong academic and employment history.</p> <p>Diagnosed and medicated for depression and PTSD.</p> <p>Increased use of alcohol following death of a friend six mths prior to offending.</p>	<p><u>Ind</u> 1 x Dep lib.</p> <p><u>Summary offences</u> Ch 1: Agg common assault. Ch 2: Obstructing public officers. Ch 3: Disorderly behaviour. Ch 4 & 5: Breach protective bail.</p> <p>The victim, LR, was aged 21 yrs. She was in a relationship with Houghton and had been for approx 18 mths. They did not live together.</p> <p>Houghton lived with his mother. At about 7:30pm LR arrived at the house. They had arranged to go out for dinner and she planned to stay the night. At the restaurant they got into an argument, so they left to walk back to Houghton's home.</p> <p>On the way back LR told Houghton she was going to collect her belongings and return home. On hearing this he threw a bottle of wine at a house. He grabbed</p>	<p><u>Ind</u> 18 mths imp; susp 18 mths.</p> <p><u>Summary offences</u> Ch 2: 3 mths imp; susp 18 mths. Fines imposed in respect of all other summary offences.</p> <p>The trial judge found the appellant's behaviour frightening and irrational; the offence involved the forcible detention of a vulnerable victim, as she was at his house and it was unfamiliar to her, and the fact that it occurred in a personal relationship increased the seriousness.</p> <p>Offending dramatic impact on the victim.</p> <p>Appellant expressed remorse; counselling and anger management programme undertaken subsequent to conviction.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of susp imp orders.</p> <p>At [232] In this case the detention was for a relatively short period, approx 30 minutes, though that must be attributed to the fact that the police attended promptly. Before the police arrived there was nothing to indicate that the appellant intended to cease detaining LR. Both physical force and implied threats were used to compel LR to remain at the house. The offence occurred in the context of a domestic relationship. LR was vulnerable, both because she was physically weaker than the appellant and because she was held in a house that was unfamiliar to her.</p> <p>At [237] ... The fact that no injury was caused to LR did not mean that an assault had not occurred, though it was a relevant consideration in assessing the seriousness of the offence. On the other hand, LR was extremely vulnerable, not least because at the time of the assault she was being held against her will in the appellant's mother's house, with which she was unfamiliar. She was both forced against the wall and pushed onto the bed. ...</p> <p>At [238] Given the nature of the acts constituting the assault, LR's vulnerability and the fact that the offence occurred in the context of a domestic relationship, a fine of \$3,500 when measured against the</p>

		<p>her by the arms and she had to ask him about three times to let her go.</p> <p>At Houghton's home LR went to collect her things from his room. However, he followed her, closed the door and started yelling and calling her names, while also pulling at his own hair and banging his fists on the walls. Frightened, LR gathered her bags and tried to leave, but he grabbed her and pushed her into the wall.</p> <p>Crying and telling Houghton she wanted to leave LR tried to retrieve her bag he had thrown against a wall, but he grabbed hold of her and pushed her, continuing to call her names and tell her that she was not leaving. When LR took out her mobile phone to call the police Houghton grabbed it and tried to remove the SIM card. He again physically prevented her from trying to leave the room and repeatedly told her she was not allowed too.</p> <p>At some point LR was able to retrieve her phone and text her mother, SP. A few minutes later SP telephoned and spoke to Houghton. He calmly told her everything was fine. SP then asked to speak with her daughter, so he passed her the phone, whispering to tell her mother that everything was fine. However, LR told her mother that if she did not message her in five minutes to call the police. Houghton snatched the phone and terminated the call.</p> <p>SP immediately called LR's phone. LR answered and, whilst crying, she told her mother to call the police. SP then heard her daughter scream and a loud thud before the line went dead.</p> <p>SP immediately telephoned '000'. After terminating the call Houghton screamed at LR, again calling her names, while repeatedly preventing her from leaving.</p>	<p>yardstick of the max statutory penalty ... does not suffer from implied error. That sentence was not plainly unreasonable or unjust.</p> <p>At [240] ... The appellant sat in the driveway in order to prevent police from moving LR's car and refused repeated requests to move. His behaviour during these events was highly abusive and threatening. ... In these circumstances, a susp term of ... imp could not be manifestly excessive. ...</p>
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At some point Houghton left the room, allowing LR to try to lock herself in the toilet, but he was able to force the door open. He then pushed her against the wall and demanded she call her mother to let her know she was okay. LR continued to cry and say she wanted to leave and did not feel safe. Each time she said this Houghton told her she was not allowed to leave.

At about 10:25 pm police arrived at the house. Houghton initially ignored them knocking on the door. The knocking continued and when LR told him they would force the door he began to move to the front of the house. When LR went to follow he put his hands on her chest and told her to stay where she was. However, she followed him as he walked to the front door.

Houghton told police that everything was fine. When one of the officers asked LR to step outside to speak to them Houghton continued to prevent her from leaving. Only with the assistance of police was she able to leave the house.

When questioned Houghton became irate and refused to answer. As he attempted to walk towards LR a male police officer moved to stand between them. Houghton tried to push past the officer, who moved him away. This angered Houghton who walked back inside, only to return a short time later with a mobile telephone to record the incident, while continuing to argue with the officer.

When an officer attempted to move LR's car from the driveway Houghton sat down behind the vehicle, preventing it from being reversed out. He was requested to move a number of times but refused to do so. When forcibly removed he started yelling and thrashing his arms around and yelling

			abuse. He refused to comply with the instructions from the police.		
1.	<p><i>The State of Western Australia v Chungarai</i></p> <p>[2021] WASCA 147</p> <p>Delivered 18/08/2021</p>	<p>38 yrs at time offending. 39 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Lengthy criminal history; prior convictions and sentence of imp for violent offending; including an offence against same victim.</p> <p>Born Derby; raised in regional community; one of eight children; parents separated when young; predominantly raised by his father; aged 17 yrs when mother died.</p> <p>Left school yr 10; basic literacy skills.</p> <p>Employed various roles; plans to return to work on release from custody.</p> <p>Two daughters; aged 5 yrs and aged 1 yr time offending.</p> <p>Long history alcohol abuse; commenced drinking after death of his mother.</p>	<p>Ct 1: Dep lib. Ct 2: Threat to kill. Ct 3: Agg AOBH. Ct 4: Agg unlawful wounding.</p> <p>Chungarai and the victim, aged 36 yrs, were in a domestic relationship and had two children together.</p> <p>At the time of the offending Chungarai was subject to protective bail conditions prohibiting him from contacting the victim. However, he was living with her and their daughters at the time.</p> <p>During the evening Chungarai consumed a substantial volume of alcohol and was in a very intoxicated state. The victim was also drinking alcohol, although nowhere near to the same extent as Chungarai.</p> <p>In the early hrs of the morning, they began arguing. Chungarai took a razor and shaved off most of the victim's hair, causing numerous lacerations to her scalp. This constituted the start of the protracted and agg AOBH the, which continued over the course of five to six hrs.</p> <p>The victim's screams awoke the two daughters. Outside, she made up a bed and lay down with the children. She was breastfeeding, while the other child lay asleep next to her, when Chungarai came outside and started hitting her, punching her twice in the face as she breastfed (ct 3).</p> <p>Chungarai demanded the victim bring their daughters inside. Scared and wanting to avoid being hit further, she complied. Sometime later, the pair resumed arguing. He warned the victim about calling the police. He also smashed an empty bottle and held the broken bottle in his hand while</p>	<p>Ct 1: 6 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 2 yrs imp. Ct 4: 18 mths imp (cum).</p> <p>TES 3 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending a very serious example of domestic violence; the sustained nature of the assault was an agg feature; the victim was vulnerable and the assaults brutal, humiliating and degrading to the victim.</p> <p>Offending ongoing psychological and emotional impact on victim and the eldest daughter.</p> <p>Remorseful; understands what he has done; efforts made to rehabilitate himself in custody.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentences cts 1 and 3 and totality principle.</p> <p>Resentenced (10% discount):</p> <p>Ct 1: 18 mths imp (conc). Ct 2: 22 mths imp (conc). Ct 3: 3 yrs 9 mths imp (cum). Ct 4: 2 yrs 3 mths imp (cum).</p> <p>TES 6 yrs imp. EFP.</p> <p>At [56] ... The [agg AOBH] offence was sustained over five to six hrs. It occurred in stages, which gave the respondent the opportunity to calm down and stop. ... The offence involved at least five incidents, all of which involved an assault and some of which could have been charged as a separate offence of AOBH: ... the victim was an intimate partner of the [respondent] and the offending occurred in front of her 5-yr-old child. ... Part of the assault was committed while the victim was breastfeeding ... magnifying the victim's vulnerability and meaning there was a risk of injury to the child. ... The attack was persistent, sustained, controlling and carried out in a way to cause maximum terror and humiliation to the victim. ... The victim's injuries were serious and extensive, ...</p> <p>At [57] ... the respondent's offending as a whole were very serious examples of domestic violence. ...</p> <p>At [61] The respondent's offence of dep lib had many serious elements ...</p> <p>At [65] – [66] ... the sentence for each of cts 1 and 3 was not merely 'lenient' or 'at the lower end of the available range'. In our opinion, the sentence for each of cts 1 and 3 was not commensurate with the seriousness of the offence. ... Each of those sentences was manifestly inadequate. ...</p> <p>At [67] ... Ct 2 had serious elements. The respondent's threat to kill ... came in the midst of, and not at the beginning of, his attack on the complainant. That magnified her vulnerability ...</p> <p>At [68] In our opinion, the TES for cts 1, 2, 3 and 4 fell well short of bearing a proper relationship to the overall criminality involved in all of the respondent's offences, ... In our respectful opinion, the TES was not merely 'lenient' or 'at the lower end of the available range'; it was unreasonable and plainly unjust. ...</p>

threatening to kill her (ct 2). Chungarai threw the bottle at a wall, smashing it, causing glass chips to land on the victim and their 1-yr-old child.

The victim repeatedly asked Chungarai to settle down and for a period he went to sleep. On waking, he smashed a wooden frame and, using the sharp part of the wood, stabbed the victim in her leg and back. She suffered two large cuts (ct 4).

Chungarai then pushed the victim, who was bleeding heavily from her injuries, into a wall and punched her. The victim went to the toilet and a substantial amount of her blood went onto the wall and toilet seat. He continued to punch her and told her to clean the blood up as he did so.

On two occasions Chungarai used electrical cord to tie the victim's feet together so she could not get away, while telling her that if she left, he would hit her even more (ct 1).

While the victim was tied up, Chungarai jumped on her feet. This conduct a continuation of ct 3.

At another point in the evening Chungarai threw a butter knife at the victim, hitting her in the face and causing a large split above her eye. This conduct also a continuation of ct 3.

Throughout the five to six hr period the victim was too scared to leave, as Chungarai threatened to harm their children if she did so.

The victim suffered deep lacerations to various parts of her face, superficial lacerations, bruising, swelling and tenderness. She was hospitalised for two days. One of her wounds developed an infection that required numerous treatments.

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