

Murder, Attempted Murder **and Attempt to Procure Another to Murder**

ss 279, 283 and 556 Criminal Code and repealed murder provisions

From 1 January 2021

Transitional Sentencing Provisions: The table is divided into two relevant periods of Sentencing Provisions:

- Post homicide amendments (post 1/08/08)
- Pre homicide amendments (pre 1/08/08)

Glossary:

AOBH	assault occasioning bodily harm
conc	concurrent
cum	cumulative
ct	count
dep lib	deprivation of liberty
EFP	eligible for parole
imp	imprisonment
min	minimum
PG	plea of guilty
TES	total effective sentence
TOI	trial of issues
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
4.	<i>Doohan v The State of Western Australia</i> [2024] WASCA 80 Delivered 05/07/2024	18 yrs 6 mths at time offending. 20 yrs at time sentencing. Convicted after PG. No criminal history. Oldest of two; biological father was aggressive and violent; subjected to verbal abuse from her father; mother entered a relationship with the appellant's stepfather; good relationship with stepfather. Completed schooling at end of yr 11; limited history of employment. Lived with maternal grandmother from 14 yrs; supportive of the appellant. Diagnosed with ADHD; exhibited hyperactivity, impulsivity, anger management issues and aggression; hospitalised for significant self-harming behaviour. Experts formed the opinion the appellant satisfied the criteria for narcissistic personality disorder and histrionic personality disorder. One expert formed the opinion the appellant met the criteria for dissocial personality disorder. Cannabis user from 15 yrs; used cannabis during pregnancy.	1 x Murder. The appellant was in a relationship with Mr H. The appellant and Mr H had a baby together, A. Shortly after A's birth, the appellant's mother noticed bruises on A. The appellant's younger brother had also observed the appellant violently shaking A. Further marks and bruising were also observed on A. While Mr H was in the shower, the appellant took A and vigorously shook her. The shaking inflicted serious injuries to A's head, brain, eyes, and spine. The head and neck injuries were the cause of A's death. When Mr H returned from his shower, the appellant asked him to take A out of the cot and bring her over to her. As Mr H took A out of the cot, he noticed she was unresponsive. He commenced CPR on A while the appellant rang triple zero. A was declared dead later that afternoon.	Life imp. EFP after 13 yrs. The offending had an extreme impact on Mr H; he felt responsible for A's death, believing she had drowned as he was in the shower; lapsed in an out of depression; dependent on drugs; attempted suicide. The sentencing judge accepted the expert opinion that there was a causal relationship between the appellant's upbringing, ADHD, personality disorders and the offending. The sentencing judge found the appellant became excessively frustrated with A's crying and shook her due to a failure to control her emotions. The sentencing judge found the appellant had failed to demonstrate any genuine remorse for the offence; however, the lack of remorse was a direct result of her psychological conditions. The sentencing judge found the seriousness of the offence was not commensurate with a sentence other than life imp.	Appeal dismissed (leave refused). Appeal concerned length of sentence. At [72] 'as his Honour observed, the appellant took the life of a completely vulnerable infant. A's vulnerability could hardly have been greater. Although the appellant did not intend to kill A, she violently shook A, intending to cause bodily injury. It was not the first time that she had shaken A and inflicted excessive physical force on her. The appellant's conduct was not a one-off, isolated incident in which excessive physical force had been used against A.' At [73] 'while the use of force ... was not pre-planned, the appellant shook her daughter at a time when Mr H was in the shower and could do nothing to stop her. Moreover, the appellant did nothing herself to raise the alarm after inflicting what she must have immediately realised were serious injuries. To the contrary, she placed A back in the cot and asked Mr H to pass the child to her when he returned to the room, thereby giving the false impression that she had not yet touched the child.' At [75] 'as found by his Honour, the mitigating circumstances are powerful.' At [76] 'the appellant was, at the time of the commission of the offence, barely an adult. She had no prior record of convictions...there is little to suggest that upon her release she will pose a risk to the community generally.' At [77] 'the moral culpability for the offending was reduced to some limited extent as a result of the causal relationship found between the commission of the offence and the appellant's immaturity, ADHS and personality disorders...' At [79] 'in our view ... the circumstances of the offending were simply too serious to justify anything other than life imprisonment, even when the mitigating circumstances are given full weight and effect.' At [92] 'in our view, the minimum non-parole period of 13 yrs imposed by the sentencing judge was appropriately lenient ... The crime committed by the appellant was very serious, and any minimum non-parole period needed to reflect this and properly denounce, punish, and deter such conduct.'
3.	<i>Austin v The State of Western Australia</i> [2023] WASCA 191	47 yrs at time offending. Convicted after PG. No prior criminal history.	1 x Att murder. EG is the youngest daughter of MG and BG. EG suffers from Aicardi-Goutieres syndrome, a rare disorder that results in severe mental and physical disability as	5 yrs 6 mths imp. EFP. The sentencing judge accepted that at the time of the offending the appellant was 'struggling	Appeal dismissed (leave granted on ground one). Appeal concerned the procedural fairness at sentencing and length of sentence. At [63] 'the sentencing judge did not inform defence counsel, either at

	<p>Delivered 13/11/2023</p>	<p>Born in South Africa.</p> <p>Medical practitioner: at time of offending was a GP.</p> <p>Self-diagnosed depression; self-prescribed medication; few months prior to offending had relapse of depression.</p>	<p>well as reduced life expectancy.</p> <p>The appellant was the family doctor for MG, BG and their children. The appellant would see EG on a weekly basis. On one occasion MG informed the appellant that she had attempted to smother EG, and asked the appellant for something to give her to end EG's life. The appellant did not comply with this request.</p> <p>EG was later discharged from hospital and deemed palliative. MG asked the appellant about the most humane substance to inject EG with to end her life. The appellant prescribed insulin and explained to MG how it was injected under the skin. MG obtained the insulin but did not inject EG with it.</p> <p>MG asked the appellant for another insulin prescription, which he gave her.</p> <p>MG later administered insulin to EG. BG arrived home earlier than expected, noticed something amiss with EG and took her to hospital. Hospital staff discovered EG had been injected with insulin.</p> <p>After his arrest, the appellant made full admissions to the police.</p>	<p>significantly' and was 'regularly overstepping professional boundaries' between him and his patients.</p> <p>Although accepting the appellant suffered from depression at the time of offending, the sentencing judge did not accept that the depression reduced the appellant's moral culpability.</p> <p>The sentencing judge, without informing the parties, erroneously obtained a copy of an article referred to in the addendum psychiatric report, and formed the view that the article did not support Dr Wojnarowska's opinion and took that view into account in rejecting Dr Wojnarowska's opinion.</p> <p>The sentencing judge found that the appellant came to see EG's situation as hopeless, and came to overly empathise with her mother's perspective.</p> <p>The sentencing judge found that the appellant's conduct was not engaged in out of any ill-will or malice; rather, subjectively the appellant considered he was trying to help.</p>	<p>the hearing on 30 January 2023 or before her Honour commenced her sentencing remarks on 3 February 2023, that: (a) her Honour had read the article (referred to in the addendum report); and (b) her Honour formed the view that the article did not support Dr Wojnarowska's opinion that there was a causal connection between the offending and the appellant's mental state at the time.'</p> <p>At [65] 'the sentencing judge's failure, in the circumstances as described, to inform defence counsel...of the matters set out at [63] above, occasioned material procedural unfairness to the appellant.</p> <p>At [79] 'in all the circumstances of this case the connection between the appellant's major depressive episode, on the one hand, and his offending on the other, does not significantly diminish his culpability for the offence of attempted murder. His major depressive episode at the relevant time is... an aspect an aspect of his personal circumstances and antecedents which, in combination, decrease to a moderate degree the extent to which he should be punished. General deterrence remains a relevant sentencing factor.'</p> <p>At [89] 'in the present case, the appellant's offending was extremely serious.'</p> <p>At [90] 'the following features demonstrate its gravity': (a) the appellant was a general practitioner, occupying a position of great trust; (b) the appellant used his knowledge as a general practitioner to facilitate the offending; (c) the appellant provided advice to MG in connection with the method of killing EG; (d) the appellant gave MG access to the insulin; (e) the appellant's actions were the product of a conscious decision; (f) the appellant had an opportunity to reflect on his conduct, and did not protect EG when he became aware of MG's intentions; (g) EG was an extremely vulnerable child; and (h) after becoming aware EG had been admitted to hospital, the appellant did not inform EG's treating doctors or police about had had happened.</p> <p>At [96] 'we are satisfied ... that the connection between the major depressive episode and the offending does not significantly diminish the appellant's culpability.'</p> <p>At [99] 'we are satisfied ... that the sentence imposed was the product of a proper exercise by her Honour of her discretion.'</p>
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<p>2.</p>	<p><i>Sturniolo v The State of Western Australia</i></p> <p>[2023] WASCA 147</p> <p>Delivered 20/10/2023</p>	<p>29 yrs at time offending. 39 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Very close relationship with her mother; abused as a child causing trauma throughout her life.</p> <p>Faced challenges at school; repeated some yrs; left after yr 11.</p> <p>Consistent work history; employed various retail positions.</p> <p>Married; two children who suffer from developmental disorders.</p> <p>Suffers depression; anxiety; intermittent mental health difficulties and sleep issues.</p>	<p>1 x Murder.</p> <p>The victim was Sturniolo's grandmother.</p> <p>The victim's son, Mr Baldwin, died of cancer and prior to his death was regularly taking medications, including MS Contin tablets.</p> <p>Sturniolo substituted Mr Baldwin's MS Contin medication into the victim's Webster-pak and placed the modified Webster-pak in the place where she knew the victim usually kept it.</p> <p>Over a period of about four days' the victim consumed eight MS Contin tablets from the Webster-pak, believing it to be her medication. As a result she became unwell and collapsed at her home.</p> <p>The victim spent seven days in hospital before she died from complications initiated by morphine toxicity.</p>	<p>Life imp.</p> <p>EFP after 20 yrs.</p> <p>The trial judge found the appellant was motivated by her animosity towards the victim; while a motive to gain financially may be regarded as a more severe agg factor, her conduct was morally inexcusable.</p> <p>The trial judge found the offending at a high level of seriousness and aggravated by an intention to kill; it was premeditated; the victim, being elderly and unwell, was vulnerable; the offending occurred in the victim's own home, where she was entitled to feel safe; as her granddaughter, she abused the trust inherent in the relationship and the effect of the MS Contin meant the victim would have been distressed and confused in the brief periods of lucidity while hospitalised.</p> <p>Low risk of violent reoffending.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [299] The appellant's offence had several agg features, as identified by the sentencing judge: ...</p> <p>At [300] ... the judge did not fail to take into account the effects of the appellant's sentence on her family. Rather, the judge applied the well-established principles that limit the circumstances in which, and extent to which, hardship to the family caused by an offender's imp can properly reduce the sentence to be imposed for the offender's offence, particularly where, as here, the offence is of a very serious character. The judge's approach to this aspect of the sentencing process does not reveal error.</p> <p>At [301] ... the delay between the commission of the offence and the charging of the appellant was not significantly mitigatory.</p>
<p>1.</p>	<p><i>The State of Western Australia v Phillips</i></p> <p>[2023] WASCA 104</p> <p>Delivered 05/07/2023</p>	<p><u>Phillips</u> 41 yrs at time of sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Significant criminal history; convictions for offences of violence; serving a sentence of 8 yrs 3 mths at time of offending.</p> <p>Parents separated when 2 yrs old; raised by his father; very limited contact with his mother; estranged from his sister; supportive father.</p> <p>Sexually abused aged 10 yrs.</p> <p>Initially bullied at school, later intimidated others; left in yr 8.</p> <p>Employed various jobs until most recent term of imp.</p>	<p>1 x Att murder.</p> <p>Phillips and Martin were both sentenced prisoners. The victim, 65 yrs old, was also serving a sentence in the same prison.</p> <p>Knowing the victim's offending history, Phillips and Martin planned to attack him.</p> <p>Martin fashioned two improvised knife-like weapons from materials he found within the prison. He hid the weapons and later informed Phillips where they could be located, knowing Phillips would use one or more of the weapons to attack the victim in the near future.</p> <p>On a number of occasions Martin told the victim he had permission to kill him and of Phillips intention to assault him.</p> <p>One afternoon Phillips approached the</p>	<p><u>Phillips</u> 9 yrs imp.</p> <p>EFP.</p> <p><u>Martin</u> 9 yrs imp.</p> <p>EFP.</p> <p><u>Phillips</u> The sentencing judge found the respondent's offending serious and aggravated by the fact it was committed while he was serving a term of imp for violent offending; the victim was targeted because he believed he was a paedophile, thereby engaging in vigilante behaviour; the attack was planned and premeditated; weapons were used to inflict serious injuries on the victim.</p> <p>No remorse or victim empathy; very high risk of future violent offending; does not have good prospects for rehabilitation.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence.</p> <p>Resentenced:</p> <p><u>Phillips</u> 12 yrs imp. EFP.</p> <p><u>Martin</u> 11 yrs imp. EFP.</p> <p><u>Phillips</u> At [103] Mr Phillips' offence had a number of features that made it, objectively, a very serious example of the offence of att murder.</p> <p>At [104] First, the attack was premeditated, being planned over a period of mths. Given the centrality of intention to the offence of att murder, the lengthy duration of Mr Phillips' intention to attack the victim is itself a seriously aggravating feature of his offence.</p> <p>At [105] Secondly, Mr Phillips used weapons in attacking the victim.</p>

		<p>Four children to three different partners; contact with two children from first partner; no contact with most recent partners and children.</p> <p><u>Martin</u> 42 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Significant criminal history; serving a sentence of 5 yrs imp at time of offending.</p> <p>Two younger sisters; raised by mother and stepfather who had substance abuse issues; transient upbringing; biological father sentenced to a lengthy term of imp when young; no relationship with him; involved with DCP from aged 14 yrs.</p> <p>Family supportive.</p> <p>Attended several different schools; left school yr 8.</p> <p>Employed various jobs.</p> <p>Two serious long-term relationships; three children.</p> <p>History of illicit substance use; prescription drugs, cannabis and methyl; introduced to heroin by his parents aged 13 yrs; addicted to opioids until aged 20 yrs.</p> <p>No significant physical health issues; diagnosed with and requires ongoing treatment for paranoid schizophrenia; borderline personality disorder and PTSD; history of non-compliance with antipsychotic medications; lack of insight into his schizophrenia and polysubstance abuse.</p>	<p>victim, who was standing near a garden in the prison block. Using the two weapons, he repeatedly stabbed the victim in the head and neck. He threw the victim to the ground and continued stabbing him repeatedly. He also kicked the victim on the chin, causing him to fall backwards. Phillips pushed the victim to the ground several times, continuing to stab him in the neck, back, stomach and kidney area. When the victim managed to stand and stagger away Phillips gripped him by the neck and sliced his neck and throat.</p> <p>After walking away, Phillips again approached the victim and again stabbed him repeatedly in the lower stomach.</p> <p>Phillips faced prison guards with the knives visible. He then stabbed the victim three more times before walking away and being detained.</p> <p>When searched a three-page handwritten note saying he intended to murder a paedophile was found in Phillips pocket.</p> <p>During the attack Martin, who was standing at the fence line in a different block, watched from nearby.</p> <p>The victim suffered a total of 47 wounds. He was not expected to survive, although, ultimately, he did. He has ongoing medical conditions from the injuries he received.</p>	<p><u>Martin</u> The sentencing judge characterised the respondent's offending as serious and aggravated by the fact it was committed while he was serving a term of imp; the victim was targeted on the belief he was a paedophile, thereby engaging in vigilante behaviour; it was planned and premeditated; he facilitated the offence by making two improvised weapons and then secreted them for Phillips to collect and use; the offending resulted in serious injury to the victim; although not the principal offender, his role was pivotal.</p> <p>Extensive admissions made prior to trial; accepted responsibility, but not remorseful and no victim empathy.</p>	<p>At [106] Thirdly, Mr Phillips' attack was persistent and remorseless. ... pursuing the victim and continuing to stab him while the victim tried to get away. [He] persisted in the attack even when guards approached.</p> <p>At [107] Fourthly, Mr Phillips stabbed the victim in areas – namely the neck, back and stomach – which, by their nature, were liable to cause fatal injury. ... [He] did everything he could to kill the victim.</p> <p>At [108] Fifthly, Mr Phillips caused very serious injury to the victim. ...</p> <p>At [109] Sixthly, Mr Phillips committed his offence while serving a term of imp for violent offending. ... The victim was also vulnerable by reason of his age; he was 65 yrs old.</p> <p>At [110] Seventhly, the offending was motivated by vigilantism ...</p> <p>At [111] Any offence that had the first five of these features ... would thereby be a very serious example of the offence of att murder, regardless of where the offence occurred and regardless of the motivation for it. The last two features in combination further elevate, to a substantial degree, the seriousness of Mr Phillips' offence and reinforce the need to give weight to deterrence and denunciation.</p> <p>At [118] In applying totality to moderate a sentence to be imposed for a serious offence committed by a person in the prison environment, it is important not to create any impression that, when a person is already in prison, the punishment for any offence they commit will be substantially discounted. ...</p> <p><u>Martin</u> At [141] Mr Martin's offence had a number of very serious features.</p> <p>At [142] First, together with Mr Phillips, Mr Martin planned the attack over a period of mths. He chose the victim of the attack. ... [He] crafted the weapons to be used in the attack, hid them for a period and then moved them to a location to enable Mr Phillips to obtain them.</p> <p>At [143] Secondly, Mr Martin thereby enabled Mr Phillips to use weapons in attacking the victim.</p> <p>At [144] Thirdly, as a result of the offending, serious injury was inflicted on the victim.</p> <p>At [145] Fourthly, Mr Martin planned and committed his offence in the prison environment</p> <p>At [146] Fifthly, Mr Martin chose the victim because he believed that</p>
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					<p>the victim was a paedophile.</p> <p>At [147] Thus, what is said in [109] - [110] above applies equally here. As with Mr Phillips, these features of Mr Martin's offending elevate, to a substantial degree, the seriousness of his offence and reinforce the need to give weight to deterrence and denunciation.</p> <p>At [153] ... having regard to all the circumstances of the case and the matters to which we have referred, the sentence imposed on Mr Martin was manifestly inadequate. ...</p>
2008 Homicide Amendments – effective 1 August 2008					

Office of the Director of Public Prosecutions