

# Attempt to pervert the course of justice and conspire to defeat justice

ss 143 and 135 *Criminal Code*

**From 1 January 2021**

**Transitional Sentencing Provisions:** Each of the two tables is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period (after 14/01/09)
- Transitional provisions period (31/08/03 to 14/01/09)
- Pre-transitional provisions period (before 31/08/03)

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
conc	concurrent
cum	cumulative
ct	count
EFP	eligible for parole
imp	imprisonment
PCJ	pervert the course of justice
PG	plead guilty
PSO	pre-sentence order
susp	suspended
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
5.	<p><b>The State of Western Australia v LSM</b></p> <p><b>[2023] WASCA 132</b></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 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>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.</p> <p>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, 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>Allowed.</p> <p>Appeal concerned length of sentence.</p> <p>Resentence (15% discount cts 1, 2, 3, 4 5 &amp; 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.</p> <p>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, 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</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>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>
4.	<p><i>NSA v The State of Western Australia</i></p> <p>[2023] WASCA 53</p> <p>Delivered 06/04/2023</p>	<p>49-55 yrs at time offending. 57 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Short and minor criminal history.</p> <p>Good childhood; supportive parents and younger siblings.</p> <p>Victim of sexual abuse aged 10 yrs.</p> <p>Dyslexic; left school yr 10.</p> <p>Regular employment history; worked variety of jobs.</p> <p>Two adult children in addition to S and T; at time of sentencing with current partner four yrs.</p> <p>Reasonable physical health.</p>	<p>Ct 1: Persistently engaged in sexual conduct child U16 yrs. Ct 2: Sex pen child U13 yrs (digital). Ct 3: Poss CEM. Ct 4: Att PCJ.</p> <p>The victims, S and T, are brother and sister and NSA's children. T has a cognitive impairment.</p> <p>By reason of a Family Court order S was placed in the care of her father. Over a period of five yrs, from the time she was 11 or 12 yrs old, NSA engaged in varying kinds of sexual conduct with S (ct 1).</p> <p>When S was 12 yrs old NSA penetrated her vagina with his finger (ct 2).</p> <p>In addition to the conduct the subject of cts 1 and 2 NSA would engage in other inappropriate conduct towards S.</p> <p>NSA's mobile phone was found to</p>	<p>Ct 1: 5 yrs imp (cum). Ct 2: 1 yr imp (cum). Ct 3: 4 mths imp (cum). Ct 4: 8 mths imp (cum).</p> <p>Ct 2 reduced from 3 yrs imp for totality and Ct 4 reduced from 18 mths imp for totality.</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending against S was prolonged and insidious having regard to the pretexts created by the appellant in order to cover his offending and his ongoing sexualisation of S; S was particularly vulnerable and T a very vulnerable young person by reason of his cognitive impairment.</p> <p>The sentencing judge found the att to PCJ serious; he enlisted the assistance of others close to his daughter to guilt her into withdrawing her assertions.</p>	<p>Allowed.</p> <p>Appeal concerned error in law (cum of sentence of ct 2 with ct 1). Individual sentences not challenged.</p> <p>Resentenced (20% discount):</p> <p>Ct 1: 5 yrs imp (cum). Ct 2: 3 yr imp (conc). Ct 3: 4 mths imp (cum). Ct 4: 11 mths imp (cum).</p> <p>Ct 4 reduced from 18 mths for totality.</p> <p>TES 6 yrs 3 mths imp.</p> <p>EFP.</p> <p>At [49] ... s 321A(13) precluded the sentencing judge from ordering the sentence she imposed on ct 2 to be served cum upon the term imposed on ct 1. ... it was not open to the sentencing judge to order the accumulation of the sentence on ct 2 with the sentence on ct 1. ...</p> <p>At [75] ... the sexual acts the subject of ct 1, ... did not include the offending the subject of ct 2.</p>

			<p>contain three photographs of T, aged about 12 years old, posing in women's lingerie and high-heeled shoes. The photographs were classified at Cat 1 (ct 3).</p> <p>In custody, NSA used intermediaries to suborn S to not cooperate in the prosecution against him (ct 4).</p>	<p>Demonstrated lack of victim empathy and insight into consequences of his behaviour.</p>	<p>At [120] ... the appellant's offending the subject of ct 1 had a number of serious elements. The appellant's offending involved an egregious breach of the position of trust occupied by the parent of a child. As the appellant's daughter, S was, ... 'particularly vulnerable'. The offending was extremely prolonged, occurring over a period spanning five yrs. The appellant engaged in a series of pretexts to facilitate his carrying out of the various sexual acts. Further, ... the offending has had a profound adverse effect upon S.</p>
3.	<p><b>Curry v The State of Western Australia</b></p> <p><b>[2023] WASCA 10</b></p> <p>Delivered 25/01/2023</p>	<p>31 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Long criminal history; on bail at time of offending.</p> <p>Dysfunctional childhood; father physically and psychologically abusive and drug user; close relationship with his mother who remains supportive.</p> <p>Qualified electrician.</p> <p>Entrenched drug problem; long term user of methyl.</p>	<p>1 x Conspiracy to PCJ.</p> <p>Curry, and the co-offenders Mr Taylor; Ms Taylor and Rodgers, conspired to PCJ by pressuring and prevailing a victim, V, to provide a false statement in a criminal prosecution.</p> <p>Curry and Mr Taylor were both in custody. They knew each other and were housed in the same unit. There was also a further connection in that Taylor's mother, Ms Taylor, was a friend of Curry's mother.</p> <p>When it became known that V was prepared to provide a new statement Mr Taylor discussed the situation with Curry, providing him with a version of events significantly minimising the incident and his involvement in it. Curry agreed with Mr Taylor that, upon his release from prison, he would approach V to prevail him to change his account of the incident.</p> <p>Two wks after Curry's release from custody he contacted V, informing him he was acting on behalf of people in prison. V understood the veiled threat and that he would cooperate.</p> <p>Curry reported to Ms Taylor, who in turn reported to Mr Taylor, that he had made contact with V and V would cooperate and change his account of the incident.</p> <p>Much then ensued with a view to having V see a lawyer to change his statement. Curry approached a solicitor,</p>	<p>2 yrs imp (cum).</p> <p>EFP.</p> <p>Cum on TES 7 yrs 2 mths imp already serving.</p> <p>TES 9 yrs 2 mths imp.</p> <p><u>Co-offenders:</u> Mr Taylor - 2 yrs imp, cum on existing TES 6 yrs imp. Ms Taylor – 2 yrs imp, conditionally susp 2 yrs. Rodgers – 3 yrs imp.</p> <p>The sentencing judge found the appellant played a critical role in carrying out the conspiracy; he was tasked with ensuring V substantially watered down his allegations and in letting V know that there would be unpleasant consequences if he was not cooperative; the conspiracy stood no chance of succeeding without his actions.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned parity and totality principles.</p> <p>At [67] There was no material disparity in the sentencing outcomes for Mr Taylor and the appellant. ...</p> <p>At [75] ... differences between Mr Taylor and the appellant did not justify a difference in sentencing outcome. ...</p> <p>At [101] It was necessary, to properly mark the appellant's overall criminality, to order a degree of accumulation of the sentence concerning the conspiracy to PCJ. A failure to do so would have been erroneous. ... the high order of seriousness of the appellant's offending, and the fact that he committed the offence of conspiracy to PCJ while on bail, required a degree of accumulation.</p> <p>At [106] The TES ... bears a proper relationship to the overall criminality involved in all of the offences, ...</p>

			<p>Rodgers and a number of attempts were made for V to see Rodgers. Eventually Curry drove V to meet Rodgers, resulting in a two-page handwritten statement written by Rodgers and signed by V. At the time Rodgers was well aware that V was there to falsely recant important parts of his earlier statements to the police.</p> <p>V provided the new statement to Curry, who provided it to Ms Taylor. Rodgers also provided a copy to the lawyer involved in the prosecution.</p> <p>V later contacted police and informed them what was happening.</p>		
2.	<p><b>Ridgway v The State of Western Australia</b></p> <p><b>[2021] WASCA 143</b></p> <p>Delivered 13/08/2021</p>	<p>41 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Extensive criminal history; convicted wide variety of offences over more than 20 yrs; numerous sentences of imp.</p> <p>Parents separated aged 7 yrs; lived with his mother; childhood marred by father's substance use and violence.</p> <p>Left school during yr 11.</p> <p>Sporadic work history; unemployed time sentencing; full-time employment available upon his release from prison.</p> <p>Three children from three relationships; married ADT after this offending; wife and mother-in-law supportive.</p> <p>Long-standing history of illicit drug use, particularly heroin and methyl; attempts made to rehabilitate himself; past participation in drug rehabilitation programs, including naltrexone implants.</p>	<p>Ct 2: Att PCJ.</p> <p>Ct 3: With intent to harm did an act resulting in bodily harm.</p> <p>Ct 5: Poss unlicensed ammunition.</p> <p>Ridgway was in custody on remand when a SW was executed at the home where he usually lived with his partner, ADT. A quantity of methyl was located at the home and ADT was charged with two offences, including poss of methyl wiss.</p> <p>Some days later Ridgway was released to bail and returned to live at the house. He arranged for the victim, STH, to sign a statutory declaration form, blank save for the details of the witness before whom he had purportedly executed the document.</p> <p>Ridgway later completed the factual details of the statutory declaration, falsely stating the methyl found during the search belonged to STH. He then provided the completed statutory declaration form to police.</p> <p>Two days later STH went to Ridgway's home. Ridgway was angry with him for not giving the false statutory declaration to the police. He grabbed STH by his shirt and neck chain and dragged him</p>	<p>Ct 2: 12 mths imp (cum).</p> <p>Ct 3: 3 yrs 6 mths imp (cum).</p> <p>Ct 5: 6 mths imp (conc).</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending serious and it was an aggravating factor that the offending was committed while he was on home detention bail.</p> <p>The sentencing judge found the offence of att PCJ was pre-planned; he involved STH in the offence; although it was not carried out over a longer period of time and the police were not induced to act on the false statutory declaration.</p> <p>The sentencing judge found ct 3 towards the low to mid-end of the scale of seriousness; the violence against STH were acts of vengeance; the injuries sustained by STH were not serious or permanent, but the deliberate act of setting STH alight using a flammable substance had the potential to result in very serious consequences and was a high risk act.</p> <p>Some signs of remorse; participated in counselling while in custody; motivated to avoid further illicit substance use.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned errors of fact (injuries suffered and seriousness of victim's injuries); length of individual sentence ct 3 and totality principle.</p> <p>At [50] Having regard to the relevant testimony of STH, the six photographs and the evidence of Dr Wee, it was well open to the sentencing judge to make the findings he did about the injuries suffered by STH, including the impugned findings concerning bruising, tenderness and the small superficial penetrating wound to the left arm.</p> <p>At [52] ... Dr Wee identified one of the four wounds, being the 'small superficial penetrating wound to the left arm', as more recent. This was consistent with STH's evidence that he had been stabbed in the arm with scissors by the appellant. ... his Honour did not find that there were four penetrating wounds to the left arm. He referred only to one such wound. His Honour did not err in his finding ...</p> <p>At [54] – [54] There is no merit in the claim that his Honour erroneously assessed the injuries suffered by STH as being 'towards the low to mid-end of the scale' ... Finally, his Honour did not err in his finding that the act of setting STH alight using a flammable substance had the potential to result in a 'potential risk to [STH's] life, health and safety'. Such an act plainly had this potential. ...</p> <p>At [67] Ct 2 ... was a reasonably serious example of its type. The appellant hatched a plan in which he recruited STH to falsely take the blame for the offence committed by ADT. [He] had STH sign the blank statutory declaration form, then later completed the factual details in which STH purportedly stated that the methyl found during the search of the house ... belonged to him. ... Although the police</p>

		Suffers anxiety; depression and antisocial personality disorder.	<p>inside. He then punched STH a number of times to the face and body, forced him onto a couch and continued to beat him over a long period of time. He also sprayed aerosol degreaser onto STH's arm and set it on fire, causing a burn to his arm. STH fled the house and hid.</p> <p>Sometime later STH was found by police and taken to hospital. He sustained a broken nose, bruising and a small superficial penetrating wound to his arm, caused by Ridgway stabbing him with scissors.</p> <p>Ridgway was arrested the next day at his home. A SW located 42 rounds of .22 calibre ammunition hidden in a vent in a bedroom.</p>		<p>were not actually deceived, the appellant's actions had the potential to divert the investigation away from its true path. This offending was committed separately to cts 3 and 5, and plainly warranted additional punishment in order to properly reflect the appellant's overall criminality.</p> <p>At [68] As to ct 5 ... The presence of the ammunition ... increases the appellant's overall criminality, even though the sentence was ultimately ordered to be served conc.</p>
1.	<p><i>Charles v The State of Western Australia</i></p> <p>[2021] WASCA 114</p> <p>Delivered 23/06/2021</p>	<p>33 yrs at time sentencing.</p> <p>Convicted after early PG (15% discount).</p> <p>Lengthy criminal history; large number of offences involving dishonesty.</p> <p>Difficult life.</p> <p>Diagnosed with borderline personality disorder; secondary diagnosis of PTSD; substance use disorder.</p> <p>Drug user.</p>	<p>1 x Att to PCJ.</p> <p>Charles was in contact with a Mr Salt, who was remanded in custody on serious drug offences. Salt was a schedule 2 offender for the purposes of the <i>Bail Act 1982</i> (WA) and needed to demonstrate exceptional circumstances to obtain bail.</p> <p>In support of his application for bail Mr Salt sent three letters to the Magistrates Court.</p> <p>One of the letters was purportedly written by Mr Salt's ex-partner. Her name and been misspelt and the mobile telephone number provided in the letter was registered to Charles.</p> <p>The author of the second letter was purportedly written by a Naomi Rodling Lester, who claimed to have taken care of Mr Salt's son and that work was available for Mr Salt. In fact, Mr Salt's son had never resided with Charles and there was no such offer of employment.</p>	<p>2 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the PG came late in the day in the face of an exceptionally strong case.</p> <p>Remorseful; accepting of responsibility for the offending; steps taken towards rehabilitation; addressing drug use and mental health issues.</p>	<p>Allowed.</p> <p>Appeal concerned error of fact (late PG).</p> <p>Resentenced (25% discount):</p> <p>22 mths imp.</p> <p>EFP.</p> <p>At [43] ..., the appellant's PG was entered at the first reasonable opportunity. The sentencing judge's finding that the plea was entered late in the day was a material error of fact. ...</p> <p>At [49] ... The offending was a planned course of conduct sustained over a number of days, involving the writing of three letters and the assumption of a number of false identities. It involved an att to mislead a court in the exercise of its judicial functions. However, it is relevant to note that the course of conduct was not designed or likely to result in the wrongful conviction or acquittal of any person of an offence. .... While the appellant's conduct was a serious example of the offence, it was not the most serious category of offending against s 143 of the <i>Criminal Code</i>.</p> <p>At [51] ... the seriousness of the offending was such that a sentence of immediate imp was the only appropriate kind of sentence.</p>

			<p>The third letters indicated a Ms Black was prepared to rent a property she owned to Mr Salt. The home was actually owned by a person in NSW, and was leased to Charles.</p> <p>Charles, claiming to be Ms Black, was subsequently interviewed by a Community Corrections officer preparing a home detention report.</p> <p>Some weeks later a search warrant was executed at Charles' home, where the original letters sent to the Magistrates Court were located. Drafts of the letters were also found.</p> <p>During the search Charles denied any knowledge of the letters, but admitted going by names which included Naomi Rodling Lester.</p>		
<i>Transitional Provisions Repealed (14/01/2009)</i>					
<i>Transitional Provisions Enacted (31/08/2003)</i>					
<i>Maximum penalty for attempt PCJ increased from 2 yrs to 7 yrs imp (16/12/1987)</i>					

Office of the Director of Public Prosecutions