

Robbery & Aggravated robbery

s 392 Criminal Code

From 1 January 2021

Glossary:

agg	aggravated
att	attempted
burg	burglary
conc	concurrent
cum	cumulative
EFP	eligible for parole
imp	imprisonment
OMG	outlaw motorcycle gang
PG	plead guilty
susp	suspended
TES	total effective sentence

Office of the Director of Public Prosecutions

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
11.	<p><i>The State of Western Australia v Tawhitapou</i></p> <p>[2024] WASCA 25</p> <p>Delivered 15/03/2024</p>	<p>24 yrs at time offending (IND 815). 26 yrs at time offending (IND 92). 27 yrs at time sentencing.</p> <p>Convicted after PG (20% discount)</p> <p>Criminal history; mostly minor and traffic offences.</p> <p>Born in NZ; permanent resident status; arrived in Australia at 14 yrs old; moved to WA when he was 22 yrs old.</p> <p>Parents separated when he was 11; father abused alcohol and normalised domestic violence; grandparents raised him for some time before moving to Australia.</p> <p>Attended boarding school; bullied by students; completed high school in Queensland.</p> <p>Worked as a telecommunications technician, trades assistance and scaffolder.</p> <p>Alcohol and cannabis use from early age, increased consumption of substances prior to offending.</p> <p>On and off again relationship; one child from that relationship.</p> <p>Depression and anxiety.</p>	<p><u>IND 815</u></p> <p>Ct 1: Agg burg. Ct 2: Stealing. Ct 3: Agg burg.</p> <p><u>IND 92</u></p> <p>Ct 1: Agg burg. Ct 2: Agg armed robbery. Ct 3: Agg robbery.</p> <p><u>IND 815</u></p> <p>The respondent entered through the front door of SWS's home and stole various items from the living room the kitchen and the study. SWS was at home when the offence was committed. The total value of the property stolen was about \$650 (cts 1 and 2).</p> <p>During the same night the respondent burgled another home in an adjacent suburb. The respondent and a co-offender entered CS's premises by a gate and unsuccessfully attempted to enter the house through an exterior bedroom door. The respondent and the co-offender stole two cans of soft drink from a refrigerator in an undercover alfresco area (ct 3).</p> <p><u>IND 92</u></p> <p>EEC answered a knock at the front door of her house. As she opened the door, the respondent grabbed the flyscreen door and swung it open. The respondent punched EEC to the mouth, then punched her again and grabbed her by the throat. He then put EEC in a headlock and dragged her along the hallway (ct 1).</p> <p>BG heard the commotion and came to EEC's aid. BG and the respondent grappled, and a co-offender with a knife entered the house. BG ran towards the</p>	<p><u>IND 815</u></p> <p>Ct 1: 8 mths imp (cum). Ct 2: 4 mths imp (conc). Ct 3: 6 mths imp (conc).</p> <p><u>IND 92</u></p> <p>Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs 2 mths (HS). Ct 3: 14 mths imp (cum).</p> <p>TES: 4 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge erroneously referred to the offending the subject of ct 1 as occurring when the victims were not home.</p> <p>The sentencing judge found there was limited evidence of remorse, apart from the pleas of guilty. However, the respondent was still relatively young and had taken some positive steps towards rehabilitation.</p> <p>Offending had significant impact on EEC and BG. EEC has been prescribed a high dose of antidepressant medication; resulted in the need for psychotherapy. BG has experienced depression, and the offending has exacerbated his bipolar disorder.</p>	<p>Appeal allowed.</p> <p>Appeal concerned first limb of totality principle and factual error in sentencing.</p> <p>Resentenced:</p> <p>15% discount.</p> <p><u>IND 815</u></p> <p>Ct 1: 2 yrs 4 mths imp (conc) Ct 2: No penalty. Ct 3: 20 mths imp (conc).</p> <p><u>IND 92</u></p> <p>Ct 1: 2 yrs 4 mths imp (conc). Ct 2: 4 yrs 10 mths (HS). Ct 3: 2 yrs 2 mths imp (cum).</p> <p>TES: 7 yrs imp.</p> <p>EFP.</p> <p>At [58] '...the prosecutor's reading of the material facts was erroneously transcribed as "[t]he victim wasn't home at the time of the offence" ... However, his Honour found (presumably in reliance upon the erroneous transcription) that SWS was not at home at the time of offending.'</p> <p>At [72] 'in the present case, the respondent's offending, considered as a whole, was very serious. In particular, the respondent's offending the subject of the counts in IND 92 was egregious. The gravity of the respondent's offending the subject of the counts in IND 92 is obvious. In addition...the respondent committed the aggravated robbery against AMT while he was on bail for the other offences.'</p> <p>At [73] 'denunciation of the respondent's criminality and personal and general deterrence were important sentencing considerations.'</p> <p>At [81] '...the total effective sentence of 4 years' immediate imprisonment was not commensurate with the seriousness of the respondent's offending considered as a whole.'</p> <p>At [82] 'we consider that, when the total effective sentence is viewed from the perspective of: (a) the maximum penalties for the offences; (b) the facts and circumstances of the offences considered as a whole; (c) the vulnerability of the complainants; (d) the general pattern of</p>

			<p>co-offender and attempted to push him out the front door. BG and the co-offender wrestled for control of the knife, and the co-offender pushed the knife into BG.</p> <p>The respondent grabbed BG around the neck and pulled him away from the co-offender. The respondent and the co-offender kicked BG to the head. The respondent then lay on top of BG and held his shoulders, shaking him and hitting his head on the ground.</p> <p>EEC saw the assault, and went inside to call the police. The co-offender forced his way into the house, held the knife towards EEC and demanded money. EEC gave the co-offender \$200 in cash. (ct 2).</p> <p>Whilst on bail for the above offending, the respondent encountered AMT at a carpark shopping centre. The respondent and a co-offender bumped into AMT, then chased him as he began to walk away. The respondent punched AMT to his face, causing him to drop his wallet. The co-offender took the wallet. As the co-offender began to punch AMT, the respondent told him to 'get the phone'. The co-offender grabbed AMT's mobile phone and ran to his vehicle; the respondent struck AMT several more times and grabbed AMT's other mobile phone (ct 3).</p>		<p>sentences for the offences in question; (e) the importance of denunciation and personal and general deterrence; and (f) all other relevant sentencing factors...the total effective sentence was not merely lenient or at the lower end of the available range.'</p> <p>At [83] 'the total effective sentence was substantially less than the sentence that was open to his Honour on a proper exercise of his sentencing discretion.'</p>
10.	<p><i>The State of Western Australia v Slater</i></p> <p>[2023] WASCA 105</p> <p>Delivered 05/07/2023</p>	<p>25 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Reasonably lengthy criminal history; no prior sentences of imp.</p> <p>Subject of an 8 mths CBO at time offending.</p>	<p>1 x Agg armed robbery.</p> <p>Slater attended a supermarket and placed about \$100 worth of groceries into a shopping trolley. He proceeded to leave the store without paying for the items.</p> <p>Confronted by the store manager Slater pushed the trolley away and allegedly said 'Fuck off mate. I will smash you'.</p>	<p>2 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found it did not matter whether the threatening words were said as Slater had physically assaulted the store manager and threatened him with the syringe; the syringe was a serious weapon because it created fear of a serious blood-borne infection; offence not at most serious end</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [25]-[32] Discussion of comparable cases.</p> <p>At [33] There is no doubt that the offence committed by the respondent was serious. ... her Honour's characterisation of it as being not at the most serious end of the offending of this type is justified. Although the victim was shoved at one point, he was not physically injured. The respondent produced the syringe from his pocket, but did not brandish</p>

		<p>Raised 'Christian family'; parents and grandparents supportive.</p> <p>Educated to yr 7; left school after being assaulted by an employee of the school.</p> <p>Worked variety of jobs; unemployed at time offending.</p> <p>Long-term relationship since aged 16 yrs; four children from union.</p> <p>In good health; history of illicit drug use; cannabis from aged 13 yrs; introduced to methyl at same age; in grip of methyl addiction, using daily, at time offending.</p>	<p>He then shoved the manager backwards and tried to retrieve the trolley. The manager grabbed the trolley.</p> <p>At this point Slater pulled a capped syringe from his pocket and allegedly said 'I will stick you', a number of times. He repeatedly moved towards the manager, quickly and with a degree of aggression, while holding the capped syringe in his hand down by his side.</p> <p>The store manager released the trolley.</p> <p>At all times the syringe remained capped and he did not hold it up or in any other way brandish it towards the manager.</p> <p>The manager recorded Slater on his mobile phone. Slater responded by walking aggressively towards him a number of times.</p> <p>The entire incident lasted about a minute.</p> <p>Slater denied making any threats to the manager.</p>	<p>because value of what stolen was low, and the violence used and the level of threat was towards, although not at, the lower end. Moreover, victim was unhurt; the type of offending was too common in stores; Slater showed a degree of persistence acting aggressively even after the store manager let go of trolley; at the time Slater was on CBO; and although Slater needed food and was using amphetamines which badly affected his judgment, it was no excuse.</p> <p>The sentencing judge found given the seriousness of Slater's conduct and the need for deterrence the only appropriate sentence was a term of immediate imp.</p> <p>Prospects of rehabilitation; steps taken in custody to address his drug addiction and vocational and parenting skills.</p>	<p>it. The syringe remained capped at all times and, thus, the risk of the victim being injured or suffering a serious blood-borne infection was nowhere near as great as in other cases ... The offence was not premeditated and although somewhat persistent, lasted about a minute.</p> <p>At [35] The circumstances of the offending and offender were such that an immediate term of imp was inevitable. However, the mitigating circumstances were sufficient to justify a reduction in the term of immediate imp that might otherwise have been imposed. ...</p>
9.	<p><i>Ugle v The State of Western Australia</i></p> <p>[2022] WASCA 135</p> <p>Delivered 21/10/2022</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>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>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>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>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</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>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</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>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</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>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 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.</p>	<p>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>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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8.	<p><i>Creusot v The State of Western Australia</i></p> <p>[2022] WASCA 117</p> <p>Delivered 06/09/2022</p>	<p><u>Creusot</u> 56 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Substantial criminal history.</p> <p>Parents separated while young; primarily raised by grandmother; irregular contact with father;</p>	<p>Ct 1: Agg burg. Ct 2: Agg armed robbery.</p> <p>Creusot and Howell broke into a home unit, smashing a window to gain entry. One was armed with a handgun. They were both wearing hooded jumpers pulled tightly over their faces.</p> <p>The victim, on hearing a noise, called</p>	<p><u>Creusot</u> Ct 1: 3 yrs 4 mths imp (cum). Ct 2: 4 yrs 6 mths imp (cum).</p> <p>TES 7 yrs 10 mths imp.</p> <p>EFP.</p> <p><u>Howell</u> Ct 1: 3 yrs 4 mths imp (cum).</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of sentence (totality and double punishment). Individual sentences not challenged.</p> <p>At [191] ... ct 2 was, as the trial judge observed, a very serious example of agg armed robbery. The appellants disguised themselves and brought with them a loaded handgun. They used the gun in demanding money from the complainant. Further, one of the appellants deliberately discharged the gun.</p>

		<p>ongoing and supportive relationship with mother and sisters.</p> <p>Completed yr 10.</p> <p>Employed truck driver 25 yrs, until loss of his MDL.</p> <p>16 yr relationship; two children; history of domestic violence.</p> <p>Entrenched history of alcohol, cannabis and methyl use; willingness to engage in substance abuse counselling.</p> <p><u>Howell</u> 40 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Substantial criminal history. Repeat offender.</p> <p>One of four children; good relationship with mother and sisters; father mostly absent; witnessed violence and substance abuse.</p> <p>Attended school until yr 7.</p> <p>Never employed.</p> <p>22 yr relationship; acts of domestic violence against his partner; three children.</p> <p>Solvent and cannabis use from aged 12 yrs; methyl use; sustained from drugs in custody.</p>	<p>out and armed himself with a torch and can of pepper spray. When he discovered Creusot and Howell attempting to get in he attempted to fend them off by brandishing the torch.</p> <p>The handgun was pointed at the victim. Creusot and Howell then took turns searching for money, while the other held the gun at the victim and demanded money.</p> <p>They repeatedly asked the victim to identify the location of his money. He denied having any.</p> <p>In an effort to extract information from the victim, the gun was fired into a wardrobe, near to where the victim was sitting.</p> <p>Before leaving the unit, the victim was threatened he would be killed if he went to the police.</p> <p>Creusot and Howell were later identified by DNA from blood inside the house. They denied ever being at the unit.</p>	<p>Ct 2: 4 yrs 6 mths imp (cum). Conc with sentence already serving.</p> <p>TES 7 yrs 10 mths imp.</p> <p>EFP.</p> <p>The trial judge found the appellants' offending at the high end of seriousness for offences of this kind; it was premeditated; involved the use of a disguise and the bringing of a handgun; the use of violence in physically assaulting the victim was gratuitous, given the absence of resistance; the victim was vulnerable and the appellants were armed and the use of the gun was particularly serious as it was not only brandished, but it was fired.</p> <p>The trial judge found only a term of imp the only appropriate sentence given the seriousness of the offending.</p> <p><u>Creusot</u> Offending agg by fact one month before offending placed on CSIO.</p> <p><u>Howell</u> High risk of reoffending if unable to abstain from drug use.</p>	<p>At [195] ... if ct 2 were viewed in isolation from ct 1, the sentence imposed ... would be so low as to invite the question – why is the sentence so low? ... far from revealing the trial judge's failure to have regard to the need to avoid double punishment, the individual sentences imposed on ct 2 positively point to the conclusion that her Honour properly did so.</p> <p>At [192] These agg features of the appellants' offending distinguished it from the vast majority of agg armed robbery offences, underlining the seriousness of the appellants' offending.</p> <p>At [208] The appellants' offence by ct 1 was in the more serious category of a violent home invasion.</p> <p>At [222] ... it cannot reasonably be argued that the TES ... infringed the first limb of the totality principle. That total sentence bears a proper relationship to the overall criminality of each of the appellants' offending ...</p>
7.	<p><i>The State of Western Australia v McDonagh</i></p> <p>[2022] WASCA 108</p>	<p>35 yrs at time offending. 37 yrs at time sentencing.</p> <p>Convicted after late PG (25% discount).</p> <p>Significant prior criminal history.</p>	<p>Ct 1: Agg burg. Ct 2: Agg armed robbery.</p> <p>McDonagh and four co-offenders travelled to the home unit of the victims, Mr H and Ms G. McDonagh was carrying a large spanner, hidden up</p>	<p>Ct 1: 3 yrs imp (conc). Ct 2: 3 yrs imp (conc).</p> <p>TES 3 yrs imp. CSIO 18 mths.</p> <p>Genuinely remorseful; insight into his offending; acceptance of responsibility;</p>	<p>Allowed.</p> <p>Appeal concerned plea discount; error in finding (cooperation provided) and length and type of sentence.</p> <p>Resentenced to (10% discount):</p>

<p>Delivered 22/08/2022</p>	<p>503 days spent in custody prior to sentencing.</p> <p>Dysfunctional deprived upbringing; violent father; parents separated when an infant; lived with mother; limited contact with his father; felt neglected, rejected and abandoned by his father.</p> <p>Mother's new partner verbally, emotionally, physically and sexually abusive; this relationship ended when aged about 5 yrs.</p> <p>Another of mother's relationships lasted about seven yrs; this man was charged, convicted and imp for sex abuse of his eldest half-sister.</p> <p>Alternated living between his parents until aged about 19 yrs.</p> <p>Three significant relationships; young autistic son.</p> <p>Current partner and mother remain very supportive.</p> <p>Bullied at school; antisocial peer group; expelled yr 9.</p> <p>Completed yr 10 at TAFE; number of employment courses.</p> <p>Employed various labouring roles; number of periods of unemployment.</p> <p>Diagnosed with ADHD; medicated since aged 13 yrs; diagnosed and medicated for depression, anxiety and PTSD.</p> <p>History of illicit drug use; under influence of alcohol, cannabis and methyl at time offending.</p>	<p>his sleeve.</p> <p>At the unit Ms G, partially opened the front door. As she did so, one of the co-offenders pulled her out of the doorway by her hair. She was wearing only a towel. She ran and hid between some cars.</p> <p>McDonagh and the co-offenders then entered the unit. Mr H was inside and retreated to a bedroom where he tried unsuccessfully to escape through a window. He then shut the door and barricaded it. Outside McDonagh yelled out to Mr H words to the effect that he was going to kill him as he owned them money.</p> <p>McDonagh then kicked the door multiple times and struck it with the spanner, damaging it and causing a large hole. He then struck Mr H on the arm with the spanner through the hole he had created.</p> <p>McDonagh and one of the co-offenders then forced the door open and ran into the bedroom. McDonagh and two co-offenders surrounded Mr H and demanded property and money from him. McDonagh also struck Mr H several times with the spanner to the head and body. A co-offender then grabbed Mr H's wallet containing \$470 in cash, a gold necklace and a mobile telephone.</p> <p>After taking these items McDonagh and the co-offenders left the unit together.</p> <p>Ms G suffered soreness to her back and neck. Mr H suffered bruising, a significant muscle tear in his arm and a cut requiring sutures.</p>	<p>cooperative with law enforcement.</p> <p>Abstained from alcohol and illicit substances; complied with all conditions and directions of home detention bail.</p> <p>Offending profound psychological impact on victim Mr H.</p>	<p>Ct 1: 6 mths imp (cum). Ct 2: 5 yrs imp (cum).</p> <p>TES 5 yrs 6 mths imp. EFP.</p> <p>At [57] The respondent's offending on ct 1 and ct 2 was egregious. The offending involved some planning and premeditation. The respondent acted in company. The circumstances of the commission of the offence would have been frightening to the victims. The respondent seriously assaulted [Mr H] with the spanner. The victims' home was damaged. Property was stolen. ... The respondent's PGs were mitigating, but were indicated and entered at a late stage of the proceedings. ... the respondent is at a high risk of future violent offending unless he continues to address the problems referred to [in the psychological report]. ...</p> <p>At [64] In the present case, after evaluating the sentence ... for ct 1 ... we are satisfied that it was not reasonably open to the sentencing judge to fail to be satisfied that it was inappropriate to suspend or conditionally suspend (wholly or partly) the sentence of imp. ...</p> <p>At [70] In the present case, after evaluating the sentence ... imposed by her Honour for ct 2 ... we are of the opinion that the sentence was manifestly inadequate as to type.</p> <p>At [84] We have further reduced each sentence that we would otherwise have imposed for each offence to recognise the respondent's compliance with the conditionally sus sentences imposed by the sentencing judge ...</p> <p>At [87] ... we have reduced the sentence we would otherwise have imposed for ct 1 from 3 yrs immediate imp ... for the purpose of totality and to avoid punishing the respondent twice ... In particular, the respondent has been punished for his violence and his AOBH in the resentencing for ct 2, but not in the resentencing for ct 1.</p>
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<p>6.</p>	<p><i>Herz v The State of Western Australia</i></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>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>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 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>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>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>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 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>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 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>		
5.	<p><i>The State of Western Australia v O'Driscoll</i></p> <p>[2022] WASCA 65</p> <p>Delivered 09/06/2022</p>	<p>36 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Long criminal history.</p> <p>Older brother and identical twin brother; 12 yrs of age when father disappeared; suffered significantly at the loss of his father' victim of sexual abuse.</p>	<p>Ct 1: Agg armed robbery. Ct 2: Steal MV.</p> <p>The victim, Mr W, left a friend's house to drive home. As he walked up the driveway to his vehicle he was confronted by O'Driscoll, holding a firearm, possibly a sawn-off shotgun.</p> <p>O'Driscoll was aggressive and demanded Mr W hand over his car</p>	<p>Ct 1: 2 yrs 6 mths imp (conc). Ct 2: 12 mths imp (conc).</p> <p>TES 2 yrs 6 mths imp.</p> <p>Cum with sentence already serving (3 yrs 6 mths imp).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence ct 1 and totality principle.</p> <p>Resentenced:</p> <p>Ct 1: 5 yrs imp (conc). Ct 2: 18 mths imp (conc).</p> <p>Cum with sentence already serving.</p>

		<p>Left school yr 11; engaged in destructive behaviours.</p> <p>Struggled to hold down a job.</p> <p>Three significant personal relationships; daughter aged 17 yrs; current partner of eight yrs supportive.</p> <p>History of substance abuse; commenced using alcohol and cannabis aged 14 yrs; methyl at aged 17 yrs; methyl use persisted over time.</p>	<p>keys, threatening to shoot him if he did not do so.</p> <p>In shock Mr W did not immediately comply. O'Driscoll grabbed him and tried to drag him towards the road, all the while keeping the gun pointed in his face.</p> <p>O'Driscoll struck Mr W to the side of his ear with the firearm. As Mr W was bent over with his jacket over his head O'Driscoll struck him with an object (probably the firearm) on the back of his head.</p> <p>Still holding the firearm, O'Driscoll took a tomahawk from Mr W's vehicle and brandished it, again demanding Mr W's car keys and threatening to shoot him.</p> <p>Mr W put his keys on the bonnet of his vehicle. Using the keys O'Driscoll started the vehicle and drove from the area. The vehicle was located the following day, crashed into a tree.</p> <p>Mr W suffered a laceration to the back of his head which required staples. He also suffered bruising and abrasions.</p>	<p>The sentencing judge found the offending involved a degree of premeditation having regard to the fact he was already holding the firearm at the time he first engaged Mr W; he also armed himself with a tomahawk; the offending conduct was persistent and lasted 7 or 8 minutes; he used actual violence against Mr W, injuring him; he left the scene without, in any way, assisting Mr W; Mr W was vulnerable and suffered serious psychological harm.</p> <p>Ongoing psychological trauma suffered by the victim; lost his job as a result of the offending.</p> <p>Appellant not remorseful and no acceptance of responsibility for his offending.</p>	<p>TES 8 yrs 6 mths imp. EFP.</p> <p>At [48] ... Having regard to all of the circumstances of the case, the sentence of 5 yrs' imp her Honour would have imposed but for the totality principle was, at least, lenient. But to reduce that sentence by 50% for totality was too great a discount for this purpose and has resulted in the imposition of a manifestly inadequate sentence for the offence. ...</p> <p>At [52] ... the agg armed robbery offence was a particularly serious example of its type. The sentence imposed by her Honour was, ... manifestly inadequate. When this offence is considered, along with all of the respondent's other offending, the TES ... does not bear a proper relationship to the overall criminality involved in all of the offences, ...</p>
4.	<p><i>Jabbie v The State of Western Australia</i></p> <p>[2022] WASCA 10</p> <p>Delivered 09/02/2022</p>	<p>22-23 yrs at time offending. 24 yrs at time sentencing.</p> <p><u>IND 2405</u> Convicted after late PG – cts 4, 7-9 and 11-16 (18% discount). Convicted after very late PG – cts 5 and 10 (15% discount).</p> <p><u>IND 1443</u> Convicted after early PG (25% discount).</p> <p>Extensive criminal history; including offences of violence and dishonesty.</p> <p>Disadvantaged and difficult upbringing; born Liberia; only</p>	<p><u>IND 2405</u> Cts 4; 7 & 12: Agg robbery. Cts 5 & 11: Agg armed robbery. Cts 8 & 10: Agg burglary. Cts 9; 14-15: Stealing. Ct 13: Steal MV. Ct 16: Att agg burglary.</p> <p><u>IND 1443</u> Ct 1: Wilful damage by fire.</p> <p><u>IND 2405</u> <u>Ct 4</u> Jabbie approached the victim walking down the street. Without warning he hit the victim around the head, causing him to fall to the ground. He further assaulted the victim. Jabbie stole the</p>	<p><u>IND 2405</u> Ct 4: 2 yrs 3 mths imp (conc). Ct 5: 4 yrs imp (head). Ct 7: 3 yrs 6 mths imp (cum). Ct 8: 2 yrs 2 mths imp (conc). Ct 9: 1 yr 8 mths imp (conc). Ct 10: 2 yrs imp (conc). Ct 11: 3 yrs 4 mths imp (conc). Ct 12: 3 yrs imp (conc). Ct 13: 1 yr 6 mths imp (conc). Ct 14: 2 yrs 6 mths imp (conc). Ct 15: No further punishment. Ct 16: 1 yr's imp (conc).</p> <p><u>IND 1443</u> Ct 1: 1 yr's imp (cum).</p> <p>TES 8 yrs 6 mths imp.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned lengths of individual sentences cts 5 and 7; totality principle and error in sentencing commencement date.</p> <p>At [73]-[74] Ct 5 involved a violent attack on a rideshare driver, using a weapon, while the appellant was in company. The appellant sprayed the victim in the face while the victim was driving, thereby endangering the victim and members of the public. The victim was providing a service to the public. He was vulnerable to an unexpected attack while he was driving. The offending has had profound and enduring effects on the victim, who has suffered PTSD and suicidal depression. ... the sentence of 4 yrs imp on ct 5 is comfortably within the range of sentences available on a proper exercise of the sentencing discretion. ...</p> <p>At [75]-[76] Ct 7 involved a violent attack on a 65-yr-old taxi driver. The appellant punched and kicked the victim, rendering him</p>

		<p>child; parents separated when young; largely raised by grandparents.</p> <p>Came to Australia to live with his father; arriving via refugee camp; troubled relationship with stepmother; offended against his stepsister; removed from the family home by Department of Communities until aged 17 yrs.</p> <p>Poorly educated; limited employment opportunities; some salesperson and gardening work.</p> <p>Two young sons from former relationship; relationship marred by violence; no contact with his children for over two yrs.</p> <p>Diagnosed with depression aged 19 yrs.</p> <p>Commenced alcohol and cannabis use aged 13 yrs; methyl aged 17 yrs.</p>	<p>victim's mobile phone, headphones and wallet.</p> <p><u>Ct 5</u> Two days later, the victim, an Uber driver, agreed to drive Jabbe and three other males. Jabbe was in the front seat when he sprayed the victim in the face with an unknown substance as he was driving. The victim, in pain, stopped his vehicle, got out and ran away, before falling. Jabbe went up to the victim, searched his pockets and took his wallet and a sum of money. Jabbe then tried to leave in the victim's vehicle, but he could not start it. The victim required treatment for his injuries.</p> <p><u>Ct 7</u> About nine days later the victim, aged 65 yrs, collected Jabbe and a female in his taxi. When he was unable to pay the fare at the end of the journey the victim told him he would return them to where he had picked them up. Jabbe became aggressive and punched the victim. He instructed the victim to stop the car. When he did so Jabbe continued kicking and punching him. The victim lost balance and was rendered unconscious.</p> <p>Jabbe then removed \$2,700 in cash from the victim's pocket. The victim was hospitalised due to his injuries.</p> <p><u>Ct 8</u> Several days later Jabbe and a co-offender entered a house and stole a number of items valued at \$1,170. While inside the house the victim and her daughter returned. Jabbe tried to hide before fleeing.</p> <p><u>Ct 9</u> After fleeing the home the subject of ct 8 Jabbe jumped a fence into the backyard of the neighbouring home. He stole two cans of soft drink from a</p>	<p>EFP.</p> <p>The sentencing judge found the appellant's overall offending 'very serious; given the number of victims, some of whom were elderly, and the ongoing consequences for the victims.</p> <p>The sentencing judge found the offending the subject of IND 1332 was serious because of the risk of harm to others at the prison. The risk of serious injury or death caused by fire was considerably increased within the confines of the prison due to the significantly delayed ability to escape the area's security mechanisms.</p> <p>Appellant remorseful; some insight into his offending; high risk of reoffending.</p>	<p>unconscious. Again, the victim was providing a service to the public. The appellant stole a large sum of money ... from the victim. The appellant's offending has had significant medical, psychological and financial consequences on the victim, ... the sentence of 3 yrs 6 mths on ct 7 is well within the range of sentences available on a proper exercise of the sentencing discretion. ...</p> <p>At [80] The appellant's offending caused serious harm to a number of different victims. He violently attacked the victims of cts 4, 5, 7, 11 and 12, many of whom continue to suffer significant adverse effects from the attack. ...</p> <p>At [81] Given the substantial number of serious offences the subject of [IND 2405], accumulation, to some substantial degree, was necessary to reflect the seriousness of the offending. ... Accumulation of the sentence on the offence the subject of [IND 1443] was necessary and appropriate, given that the offence was serious and was committed while the appellant was a sentenced prisoner.</p> <p>At [82] In our view, the TES ... was well within the proper exercise of the sentencing judge's discretion.</p>
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fridge in a side room. He fled when the occupants returned home.

Cts 10 and 11

That same day Jabbie entered the garage of the victim, aged 77 yrs, with the intention of stealing his car. The victim went to investigate the noise and was confronted by Jabbie, who sprayed him with a fire extinguisher. Jabbie then tried to enter the house to find the car keys, however the victim pushed him back and closed the door. Jabbie then fled.

Cts 12 and 13

The next day Jabbie approached the victim's vehicle. The victim, aged 64 yrs, had just finished work and gotten into his car. Jabbie elbowed the driver's window, smashing it completely. The victim sustained a large cut to his arm. Jabbie took the keys to the vehicle. The victim got out of the car and an altercation ensued. After the fighting stopped Jabbie took the car keys and demanded property from the victim. The victim said he did not have anything and asked for his keys back. Jabbie refused and left on foot, taking the car keys with him.

The victim walked to his place of work. Jabbie then went inside and confronted him again. This time demanding his watch. After a brief altercation he stole the victim's watch. The victim's employer intervened and asked Jabbie to return the victim's belongings, but he refused and left in the victim's vehicle.

Cts 14 and 15

Later that same day Jabbie smashed a window of the victim's residential unit. He stole jewellery, including family heirlooms of sentimental value, with a value estimated at about \$30,000. Some of the jewellery was recovered, but a large amount remains outstanding.

			<p><u>Ct 16</u> The following day Jabbie attempted to gain access to the victim's house by kicking in the door. The victim heard the noise and saw Jabbie on a CCTV camera and called the police. Jabbie left and did not gain access to the house.</p> <p><u>IND 1443</u> While incarcerated Jabbie put a sheet over a device he had set up through an electrical socket in his cell. The sheet ignited and the fire spread to the mattress before being extinguished. The fire caused around \$2,000 of damage.</p>		
3.	<p><i>The State of Western Australia v Doodson</i></p> <p>[2021] WASCA 148</p> <p>Delivered 19/08/2021</p>	<p>44 yrs at time offending and sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Extensive criminal history.</p> <p>Difficult childhood marked by deprivation; parents separated at aged 5 yrs; middle child of three children; violent alcoholic father; exposed to violence, alcohol abuse and dishonesty at an early age; supportive family.</p> <p>Left school aged 16 yrs.</p> <p>Joined OMG; rose to senior member; engaged in significant crime as a gang member; claims to have retired from the gang.</p> <p>Four children from three relationships; ex-wife mother of his youngest child.</p>	<p>1 x Agg robbery.</p> <p>In the early hrs, the victim was awoken by Doodson knocking on his door. He had met Doodson through his housemate, Mr Gustafson, and he knew Doodson was a member of an OMG.</p> <p>Doodson was in a state of great distress and attended the house seeking comfort and assistance from Mr Gustafson. The victim allowed him to enter his home.</p> <p>A short time later the victim saw Doodson smoking a cigarette inside the house and asked him to smoke outside. In response Doodson struck the victim to the face with his elbow. Stunned, the victim stumbled backwards. Doodson then punched him in the face with a closed fist.</p> <p>Doodson shouted at the victim that he was going to take his motorcycle and demanded the keys to his Harley Davidson.</p> <p>The victim att to distance himself from Doodson, who continued to point at him in an aggressive manner while repeatedly demanding the motorcycle keys.</p>	<p>12 mths imp (cum).</p> <p>EFP.</p> <p>Cum with sentence of 6 yrs 9 mths imp already serving.</p> <p>TES 7 yrs 9 mths imp.</p> <p>Released to parole the day prior to the commission of the agg robbery offence.</p> <p>The sentencing judge found the offending 'particularly serious'; the victim suffered serious bodily harm and terror in his own home; the respondent took advantage of the violence he had unjustifiably used against the victim to demand his motorcycle and transfer papers; he enlisted Mr Gustafson to assist in driving the motorcycle away and the offences were committed while he was on parole.</p> <p>Remorseful; high risk of aggressive behaviour if emotionally distressed and intoxicated; prepared to accept treatment; some prospects of rehabilitation.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence and totality principle.</p> <p>Resentenced (25% discount):</p> <p>2 yrs 9 mths imp.</p> <p>Cum with sentence of 6 yrs 9 mths imp.</p> <p>TES 9 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [53] ... the respondent committed a serious agg robbery offence in the early hrs of the day following his release on parole. This was the second occasion on which the respondent had been released on parole. ... [He] remained a violent and dangerous offender, for whom considerations of a personal deterrence and community protection loomed large in the exercise of the sentencing discretion. ...</p> <p>At [55] The agg robbery offence was a serious example of a serious offence. Actual violence was used in a manner which terrified the victim in what should have been the sanctity of his own home The victim suffered bodily harm of a serious nature as a consequence of the violence inflicted upon him by the respondent. The property stolen was valuable. While not planned, the offending was persistent both in the demands made on the morning of the offence and subsequent demands for signed vehicle transfer papers. The offence was agg by the fact that it was committed just after [his] release on parole.</p> <p>At [56] Having regard to all of the circumstances of the three offences and the respondent's personal circumstances, in our view the TES ... fails to bear a proper relationship to the overall criminality involved in</p>

			<p>The victim, fearing for his safety, gave the keys and ownership documents for his motorcycle to Doodson, who then ordered the victim to sign over the motorcycle to him. He was unable to do so as he did not have any transfer papers at his house. Doodson left in his vehicle, asking Mr Gustafson to follow behind him on the motorcycle.</p> <p>The next day, Doodson continued to communicate with the victim through Mr Gustafson, demanding he complete the transfer papers. Fearing for his safety, the victim completed the seller portion of the transfer papers and had them delivered to Doodson.</p> <p>The victim's motorcycle was customised and was valued at approx. \$30,000.</p> <p>The victim attended hospital. He was treated for fractures to the bones in his face and diagnosed with nerve damage to his cheek, nose and upper mouth.</p>		<p>all of the offences, viewed in their entirety. The decision to impose a sentence of only 12 mths' immediate imp for the agg robbery offence, ... was unreasonable or plainly unjust. ...</p>
2.	<p>Morley v The State of Western Australia</p> <p>[2021] WASCA 134</p> <p>Delivered 30/07/2021</p>	<p>27 yrs at time offending. 28 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Limited criminal history; no prior sentences of imp; no offending between 2014-2019.</p> <p>Disadvantaged and dysfunctional upbringing; parents separated before he was born; exposed to domestic violence and parents' substance abuse.</p> <p>Long term relationship; two young sons; partner pregnant with twins; separated at time of offending; reunited prior to sentencing.</p> <p>Good employment history;</p>	<p>Ct 1: Agg assault with intent to steal. Ct 2: Armed robbery.</p> <p>The victim was volunteering as a carpark attendant. She was wearing a bum bag in which she put cash received for parking.</p> <p>Morley formed a plan to rob the victim.</p> <p>Morley approached the victim and as he did so he pointed a knife with a 15cm long blade at her and demanded money. Taking hold of the strap of the victim's bum bag he persisted in trying to take it from her, all the while holding the knife. The victim frantically tried to take the bag off.</p> <p>Other volunteers approached so Morley let go of the bum bag and fled.</p> <p>One wk later Morley entered a fast-food</p>	<p>Ct 1: 2 yrs 8 mths imp (cum). Ct 2: 3 yrs 4 mths imp (cum).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending involved a degree of planning and premeditation; he was armed with a knife on both occasions; both victims were vulnerable, and he concealed his face with a scarf committing the first offence, reinforcing the distress for the victim.</p> <p>Remorseful; victim empathy; accepted responsibility for his offending; insight into factors contributing to his drug use; positive steps taken towards rehabilitation; unlikely to reoffend if able to maintain abstinence from drug use.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [36] ... [The maximum penalties for the offences] are one yardstick of the seriousness of the appellant's offending.</p> <p>At [37] ... ct 1 had a number of serious aspects. It was premeditated. His use of a knife while wearing a scarf to conceal his face, would ... have made the incident a very distressing experience for the victim. There was a degree of persistence in the appellant's offending as, when the victim did not hand over the money in response to his demand, he took hold of the strap of the victim's bum bag, trying to take it from her. Such a confrontation had the potential for serious unforeseen injury to the victim. His offending came to an end only because of the intervention of others.</p> <p>At [38] Both victims ... were vulnerable people who were in the course of providing services to members of the public. ...</p> <p>At [39] The two offences were quite distinct, occurring a week apart and having no relationship. In the circumstances, accumulation of the sentences, at least to a substantial degree, was appropriate.</p>

		<p>working up until offending.</p> <p>Diagnosed and medicated for depression and anxiety.</p> <p>History of drug use; ceased using during his relationship; under the influence of drugs and alcohol at time offending.</p>	<p>store. The victim, a young female employee, was the only person in the store. Holding a boxcutter knife he walked around the counter and demanded the victim open the cash register. Out of fear the victim did what she was told. When the register was open Morley took \$323 in cash.</p> <p>Morley was arrested the next day.</p>		<p>At [41] The criminality of the appellant's offence the subject of ct 2 could well have justified an individual sentence for that offence which was longer than the sentence imposed by his Honour. ...</p> <p>At [42] ... the TES can fairly be said to be high. It was open to have imposed a lower TES. However, taking into account the matter outlined in [36] – [41] above, and giving full weight to the mitigating factors, we are not persuaded that error in the exercise of the sentencing discretion can be inferred. ...</p>
<p>1.</p>	<p><i>The State of Western Australia v ADS</i></p> <p>[2021] WASCA 99</p> <p>Delivered 02/06/2021</p>	<p>23 yrs at time offending and sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history; on parole for previous offending at time offending.</p> <p>Born Europe; very young when came to Australia; normal childhood; loving family.</p> <p>Learning difficulties; left school after yr 9; struggles with reading and writing.</p> <p>Employment history adversely affected by drug use and time in prison; worked as a painter.</p> <p>One long term relationship; little contact with 6 yr old son.</p> <p>Illicit drug use from aged 15 yrs; commenced using methyl aged 16-17 yrs; affected by methyl at time of offending.</p>	<p>1 x Unlawful detention with intent to gain a benefit by threat or demand. Ct 2: Agg burg (commercial property). Ct 3: Agg robbery. Ct 4: Wilful destruction of evidence.</p> <p>The victim, Mr L, was aged 81 yrs and he walked with the aid of a walking stick. He owned a business dealing in firearms and military collectables.</p> <p>After closing the store for the day Mr L departed in his motor vehicle. ADS and his co-offender followed in a hired van, which ADS had earlier in the day fitted with stolen registration plates.</p> <p>At an intersection ADS and the co-offender deliberately drove the van into the rear of Mr L's vehicle. They directed Mr L to drive a short distance and park. After doing so Mr L got out of his vehicle and approached the offenders' van with the intention of exchanging details. ADS and the co-offender dragged and forced Mr L into the van.</p> <p>Mr L was punched in the face and threatened repeatedly that he would be killed if he did not provide them access to his store and the vaults of his business. He was handcuffed, his feet were tied together with cable ties and a cloth was placed over his head and secured with duct tape. He was also</p>	<p>Ct 1: 3 yrs imp (cum). Ct 2: 3 yrs imp (conc). Ct 3: 3 yrs 4 mths imp (cum). Ct 4: 8 mths imp (cum).</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending involved planning and preparation and involved some persistence; the respondent was actively involved in the preparation to commit the offences, including carrying out surveillance of the store and the victim, he purchased items needed for the offending and obtaining the van and the stolen number plates; he was 'actively and willingly involved in all aspects of this offending' and was equally culpable; he participated for financial reward.</p> <p>The sentencing judge found the victim was vulnerable because of his advanced age and physical condition; they detained and restrained him; threatened him with actual violence and to kill him and inflicted bodily harm on him.</p> <p>Very traumatic affect on victim; continues to suffer emotional and psychological consequences, including trauma, recurring nightmares; difficulties sleeping and painful recurring problems with his back and shoulders.</p>	<p>Allowed.</p> <p>Appeal concerned length of individual sentences cts 1, 2 and 3 and totality principle.</p> <p>Resentenced (25% discount):</p> <p>Ct 1: 5 yrs imp (cum). Ct 2: 2 yrs 6 mths imp (conc). Ct 3: 4 yrs imp (cum). Ct 4: 9 mths imp (conc).</p> <p>TES 9 yrs imp.</p> <p>EFP.</p> <p>At [80] The facts and circumstances of each of cts 1, 2 and 3 were extremely serious.</p> <p>At [81] As to ct 1, the offenders monitored [Mr L's] movements for some time prior to the offending. They planned to ambush [him] when he was alone and most vulnerable. The staging of the traffic accident to lure [him] from his vehicle to the offenders' van was a pernicious feature of the offending. [Mr L] was subjected to a very frightening ordeal. He was physically assaulted and threatened, including by threats to kill. [He] feared for his life. He was unlawfully detained for a significant period, namely about two hrs. [Mr L] has suffered emotional and psychological consequences from the offending ... The kidnapping was undertaken to facilitate the commission of the planned agg burg and the planned agg robbery. Bearing in mind all of those features of the offending in relation to ct 1, there is no doubt that ct 1 was a very serious example of the offence ...</p> <p>At [82] As to ct 2, the manner in which the offenders gained entry to the store highlighted the seriousness of their offending against commercial premises.</p>

			<p>struck on the leg with an object and punched on various parts of his body and once on his head. They took his mobile phone and his bag containing personal items.</p> <p>ADS then drove the van to Mr L's store, where, acting under threats, he supplied the offenders with the alarm code to the security system and the access code to the vault.</p> <p>Mr L was locked inside the van as ADS and the co-offender entered the store and removed large quantities of firearms and ammunition. They then returned to the van and struck Mr L with an object, demanding the codes and keys to the safe. He provided those details to avoid being assaulted again.</p> <p>Mr L was then taken into the store and the handcuffs and blindfold removed. He was threatened with further violence if he did not provide the safe codes.</p> <p>When the safe was unlocked ADS and the co-offender removed a large quantity of handguns, which they loaded onto trolleys and wheeled out of the store.</p> <p>Mr L was able to lock the door to the store and activate the duress alarm. ADS and his co-offender then left. Police arrived a short time later.</p> <p>A total of 141 firearms, valued at \$215,000, were stolen, along with 10,700 rounds of assorted ammunition valued at \$6,000.</p> <p>Mr L was taken to hospital by ambulance. He suffered bruising/swelling to his leg, wrists, ankles and above his eye and a cut to one of his fingers.</p> <p>Later the same day ADS and the co-</p>	<p>Expressions of remorse and victim empathy; medium risk of future offending.</p>	<p>At [83] As to ct 3, the offending involved the offenders stealing a large quantity of firearms and ammunition, having a substantial commercial value, for the purpose of selling the firearms and ammunition on the black market. ... If the firearms and the ammunition had been sold and distributed to criminals, there was a real risk that they may have been used for dangerous and life threatening activities.</p> <p>At [84] ... The fact that all of the offences were committed while the respondent was on parole for previous offending was an egregious feature of his conduct.</p> <p>At [86] In our opinion, the sentence for each of cts 1 and 3 were not commensurate with the seriousness of the offence. ... the length of the sentence for each of cts 1 and 3 was unreasonable or plainly unjust.</p> <p>At [90] In our opinion, the TES for cts 1, 2, 3 and 4 did not bear a proper relationship to the overall criminality involved in all of the respondent's offences, viewed together, and having regard to all relevant facts and circumstances and all relevant sentencing factors. ...</p>
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