

Stealing
including Steal Motor Vehicle
ss 371A and 378(7) *Criminal Code*

From 1 January 2021

Glossary:

agg	aggravated
att	attempted
CBO	community based order
conc	concurrent
cum	cumulative
ct	count
EFP	eligible for parole
imp	imprisonment
MV	motor vehicle
PG	plea guilty
TES	total effective sentence

Office of the Director of Public Prosecutions

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
15.	<p><i>Jones v The State of Western Australia</i></p> <p>[2024] WASCA 115</p> <p>Delivered 26/09/2024</p>	<p>31 yrs at time offending. 34 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history; violent offending; bail at time offending.</p> <p>Disadvantaged childhood; taken from mother's care at 6 yrs; sexually abused as child.</p> <p>Left school during yr 10; qualified in sheet metal fabrication; continuous work history.</p> <p>Diagnosed ADHD.</p> <p>Four children aged between 3 and 14 yrs; three different mothers; 9 yr old suffers from a significant neurological condition; oldest son in care of Department of Communities.</p> <p>Cannabis use since 11 yrs; cocaine use since 25 yrs; daily cocaine use form 29 yrs.</p>	<p>Ct 1: Agg burg. Ct 2: Agg armed robbery. Ct 3: Criminal damage. Ct 4: Steal motor vehicle.</p> <p><u>Ct 1</u></p> <p>The victim, JB was awoken by the sounds of two motorcycles in the driveway of the premises in which he lived. JB got up, turned on the living room light and opened the front door. JB saw the appellant pacing towards him wielding a baseball bat. JB retreated into the premises. The appellant and the two co-offenders followed JB; the appellant then struck JB to the head with the baseball bat.</p> <p><u>Ct 2</u></p> <p>JB eventually moved to the couch; there, the appellant struck him multiple times with the baseball bat. The appellant then demanded JB's car keys, and threatened to kill him if he did not comply. Once in possession of JB's keys, the appellant and the two co-offenders then left the building.</p> <p><u>Ct 4</u></p> <p>The appellant and the co-offenders then drove off in JB's vehicle.</p> <p><u>Ct 3</u></p> <p>During the incident, numerous glass windows of the residence were smashed, as well as the rear window of another occupant's vehicle.</p>	<p>Ct 1: 7 yrs 7 mths imp. Ct 2: 1 yr 2 mths imp (cum). Ct 3: 1 yr imp (conc). Ct 4: 2 yrs imp (conc).</p> <p>Cum upon 5 yr sentence already being served (<i>Jones v The State of Western Australia</i> [2023] WASCA 30).</p> <p>TES: 13 yrs 9 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found that the offending was a home invasion motivated by revenge.</p> <p>The sentencing judge found the appellant and the co-offenders attended the premises with the common intention of assaulting and threatening someone, if necessary. JB was not the intended target of the actions of the appellant and co-offenders.</p> <p>The sentencing judge found that the appellant instigated the offending, and that he escalated the violence. Accordingly, the appellant's culpability was 'extremely high'.</p> <p>The offending had a significant impact on the victim; embarrassment of injuries; lingering fearfulness; fears for safety upon the appellant's release.</p>	<p>Appeal allowed (leave refused grounds 1, 2, and 3).</p> <p>Sentence appeal concerned findings of fact from the sentencing judge, length of sentence imposed on ct 1, first limb of totality principle, and cumulation of sentence.</p> <p>Resentenced:</p> <p>Ct 1: 6 yrs 6 mths imp. Ct 2: 3 yr 3 mths imp (conc). Ct 3: 1 yr imp (conc). Ct 4: 2 yrs imp (conc).</p> <p>Cum upon 5 yr sentence already being served (<i>Jones v The State of Western Australia</i> [2023] WASCA 30).</p> <p>TES: 11 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [154] 'the appellant's actions at the Orange Avenue premises on the night in question plainly support the impugned finding...his actions demonstrated an intention to exact some form of revenge.'</p> <p>At [163] 'in the present case, the objective facts of the appellant's offending on ct 1 were egregious. The appellant went to the Orange Avenue premises late at night. He was armed and in company...The appellant entered the extension by kicking the security door and one of the other men assaulted JB with weapons. The assault continued for some time. The appellant told [JB's mother] that he would kill JB if he did not give him the keys to his vehicle. The appellant instigated the offending and escalated the violence.'</p> <p>At [164] 'there was limited mitigation. The appellant had a disadvantaged childhood...Nevertheless, the appellant obtained a number of trade qualifications and has worked continuously since leaving school.'</p> <p>At [165] '...the appellant was not youthful for sentencing purposes. He did not have the mitigation that a plea of guilty would have brought...The appellant was on bail for other violent offending when he committed the offending in question....'</p> <p>At [180] 'we accept that, in the present case, the sentence of 7 yrs 7 mths imp imposed on the appellant for ct 1 is towards the upper end of the range of sentences open to the trial judge on a proper exercise of her discretion.'</p> <p>At [181] 'however, in our opinion...the length of the sentence was not</p>

					<p>unreasonable or plainly unjust.’</p> <p>At [189] ‘the appellant’s complaint in the context of ground 3 is, in essence, that the individual sentences for cts 1 and 2 should have been ordered to be served concurrently.’</p> <p>At [190] ‘there is no substance in the appellant’s complaint. It was not artificial to separate the acts of violence committed by the appellant against JB into separate counts in the context of a single continuing assault.’</p> <p>At [193] ‘in the present case, although cts 1, 2, 3, and 4 were committed in close temporal proximity, it was necessary to order that part of the appropriate sentence for ct 2 to be served cumulatively upon the appropriate individual sentence for ct 1 in order to ensure the total effective sentence imposed on the appellant was commensurate with the seriousness of his overall offending.’</p> <p>At [207] ‘...we are persuaded that the overall total effect sentence of 13 yrs 9 mths imprisonment did exceed the overall total effective sentence that was required to satisfy all relevant sentencing factors, having regard to the overall seriousness of the offending and all relevant sentencing principles.’</p>
13.	<p><i>Vidovic v The State of Western Australia</i></p> <p>[2024] WASCA 63</p> <p>Delivered 11/06/2023</p>	<p>51 yrs at time offending. 55 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No relevant criminal history.</p> <p>Born in Bosnia; fled and settled in Australia as an adult; wife and three children.</p> <p>Previously employed as a labourer and concreter; unemployed at sentencing due to a shoulder injury.</p> <p>Suffers significant trauma from service in the Bosnian way; no formal diagnosis of PTSD.</p>	<p>Cts 1–6: Stealing</p> <p>The appellant stole a significant amount of formwork equipment from Mr O. Mr O operated a formwork business with his brother. The business hired out a formwork system that comprised various props, beams and frames used in the construction of buildings.</p> <p>Mr O stored the formwork at the appellant’s property, which was fenced and secured by padlocks. The agreement to store the formwork was an oral contract. After the relationship between Mr O and the appellant deteriorated, the appellant took a perceived outstanding debt into his own hands and sold 64 tonnes of the formwork as scrap metal.</p> <p>Due to the uncertainty about the quantity of the items alleged to have been stolen, the trial judge directed the jury to return a special verdict regarding the quantities of items stolen on cts 1–4. The jury returned a special verdict of</p>	<p>Ct 1: 2 yrs 6 mths imp (HS). Ct 2: 15 mths imp (conc). Ct 3: 12 mths imp (cum). Ct 4: 12 mths imp (conc). Ct 5: 4 mths imp (conc). Ct 6: 6 mths imp (conc).</p> <p>The sentencing judge found that the appellant honestly believed he was owed \$80,000 by Mr O and his brother, and that he took matters into his own hands by selling the formwork for scrap.</p> <p>The sentencing judge found that the offending was deliberate and persistent, which involved a great deal of effort.</p> <p>The offending had placed a large financial burden on the victim; the burden has led to the breakdown of his relationship; fears for his future.</p> <p>The sentencing judge found that the appellant lacked any remorse; evidenced by his denial to the police and the victim.</p> <p>The sentencing judge characterised the</p>	<p>Appeal dismissed (leave refused, leave granted for ground of appeal concerning the nature of the compensation order).</p> <p>Appeal concerned first limb of totality principle and the adequacy of the compensation order.</p> <p>At [104] ‘...there is no challenge, nor could there reasonably be one, to the finding that the appellant’s offending was in the “middle range of seriousness”.’</p> <p>At [105] ‘the theft of the formwork equipment was calculated and continued over a period of time. The appellant stole a large amount of formwork worth, on any view, significantly more than the debt of \$80,000 ... As a consequence of the thefts, [the victim’s] source of income has been lost.’</p> <p>At [106] ‘when the [victims] confronted the appellant about the theft, he falsely denied involvement in it. He also lied to police...He took steps which thwarted any attempts that the [victims] could have made to recover the framework equipment.’</p> <p>At [111] ‘as to the allegation that the total effective sentence infringed the first limb of the totality principle, given the amount of property stolen and the fact that the thefts were systemic and repetitive, some accumulation of the sentences was required in order to properly reflect the appellant’s overall criminality.’</p>

			‘an unknown quantity’ for cts 1–4.	offending as in the middle range of seriousness. The sentencing judge found it was appropriate to make the order for compensation because it allowed Mr O to register the judgment and take whatever action he wished to recover the money.	At [134] ‘in our opinion, having regard to the policy considerations underpinning the making of a reparation order under pt 16 of the <i>Sentencing Act</i> , the sentencing judge was correct to exercise his discretion to make such an order in favour of the victim.’ At [135] ‘despite the appellant’s impecuniosity, the making of a reparation order was appropriate.’
13.	<i>Bradley v The State of Western Australia</i> [2024] WASCA 94 Delivered 22/05/2024	25 yrs at time offending. 29 yrs at time sentencing. Convicted after late PG (15% discount). Extensive criminal history; stealing; agg burg; crim damage; impersonating a police officer; agg AOBH; being armed to cause fear; multiple breach of VROs and protective bail conditions. Born in WA; supportive family. Left school in yr 11; commenced apprenticeship but did not finish. Worked in FIFO. Methyl use; under influence at time offending; taken steps towards rehabilitation. Has one young daughter; wishes to reconnect with her.	Ct 1: AOBH. Ct 2: Stealing. Ct 3: Stealing. The appellant and a co-offender were dropped off at a house near the victim, Mr W. The two walked to the victim’s house and turned off the power to the house. <u>Ct 1</u> When the victim stepped outside to investigate, the offenders began shouting at Mr W and demanding to know where he kept his motorbikes. The victim ran inside and was pursued by the offenders. Once inside, a struggle ensued, and the victim was struck with the baseball bat to the upper back, hip, and forearm. <u>Cts 2 & 3</u> The appellant drove a vehicle bearing no licence plates to a carpark, stole another vehicle’s licence plates and drove off. The appellant then drove to a service station, had the car filled up with fuel, and drove off.	Ct 1: 2 yrs 6 mths imp (cum). Ct 2: 2 mths imp (cum). Ct 3: 1 mth imp (conc). TES: 2 yrs 8 mths imp. EFP. The sentencing judge found that the offending the subject of ct 1 was premeditated. The assault only ended when the victim managed to defend himself and escape; the offenders did not desist of their own volition. The sentencing judge found the appellant and co-offender equally liable under s 8 for ct 1. The sentencing judge found there were few mitigating factors.	Appeal dismissed (leave refused). Appeal concerned length of sentence. At [50] ‘although the bodily injuries suffered by the victim were not as serious as those suffered by victims in other cases, the offence on ct 1 was nevertheless a serious example of its type when all the relevant facts surrounding its commission are considered. The offence was premeditated. It involved the appellant and [the co-offender] being in company and acting in concert.’ At [51] ‘the appellant and [the co-offender] did not voluntarily desist in the attack, even after the victim attempted to escape. Rather, the two men pursued him into the house and continued the attack.’ At [52] ‘it is important to acknowledge that the State did not continue with the charge of aggravated home burglary, and the appellant was not to be punished for that offence. Nonetheless, a serious aspect of the offending on ct 1 was that it occurred inside the victim’s home, a place in which he was entitled to feel, and be, safe.’ At [53] ‘it is well accepted that there is no tariff for the offence of AOBH ... Recently ... this court observed that there were discernible signs that sentences for the offence of AOBH were “firming up”.’ At [55] ‘the most significant mitigating factor were the appellant’s pleas of guilty, for which his Honour gave a significant discount ...’ At [56] ‘when all the relevant circumstances are taken into account, it cannot reasonably be said that the sentence of 2 yrs 6 mths’ immediate imprisonment ... was unreasonable or plainly unjust.’
12.	<i>SYO v The State of Western Australia</i> [2024] WASCA 31 Delivered 28/03/2024	38 yrs at time sentencing. Convicted after PG (25% for cts 1–3, 10% for ct 4). Minor criminal history; unlawful damage; breach of restraining order; agg burg; minor drug related offences; breach of violence restraining order.	Ct 1: Agg burg. Ct 2: With intent to harm, did an act which life health or safety of a person was likely to be endangered. Ct 3: Threat with intent to compel. Ct 4: Agg indecent assault. Ct 5: Stealing. <u>Ct 1</u> The appellant forced his way into the	Ct 1: 3 yrs 6 mths imp (conc). Ct 2: 3 yrs 6 mths imp (cum). Ct 3: 10 mths imp (conc). Ct 4: 5 yrs 6 mths imp (HS). Ct 5: No penalty. TES: 9 yrs imp. EFP. The sentencing judge found the appellant had	Appeal dismissed (leave refused on grounds 2 and 3). Appeal concerned <i>Bugmy</i> principles, insufficient weight given to delay, and totality of sentence. At [66]–[72] discussion of <i>Bugmy</i> principles. At [70] ‘it may be appropriate to distinguish between two different classes of case. The first is where profound childhood deprivation has in some way impaired the capacity of an offender to behave lawfully... The second class of case is where the offender retains full

		<p>Raised by his mother; minimal involvement with his father; mother was physically abusive at times; often left home alone for days as a child; lived with grandmother from 13 yrs; unstable home; frequently saw violence perpetrated by uncles and aunts.</p> <p>Left high school at start of yr 9; completed TAFE course at 15 yrs.</p> <p>Worked in mining and construction since 14 yrs; FIFO work until voluntary separation in 2012.</p> <p>Several relationships of significance; one young daughter; most relationships marred by violence and drug use.</p> <p>No major history of illness or injury; testing indicated presence of antisocial personality traits.</p> <p>Used alcohol to excess from teenage yrs; cannabis use from 13 yrs; developed a methyl habit from late 20s; drug use escalated after losing his job.</p> <p>Positive personal references.</p>	<p>home of DB, a former partner. Once inside, the appellant walked into a bedroom which DB and PC were sleeping.</p> <p><u>Ct 2</u></p> <p>The appellant hit PC several times with a metal bar. The strikes were to PC's head, body, face, arms and legs. The appellant then ordered PC out of the bed and told him to move into the corner of the bedroom.</p> <p><u>Ct 3</u></p> <p>The appellant then demanded DB take off her pants. The appellant said he wanted to inspect DB's vagina to find out whether she had engaged in sexual intercourse with PC. When DB refused, the appellant slapped her and raised the bar above his head as if to hit her with it.</p> <p><u>Ct 4</u></p> <p>Fearing for her life, DB complied with the appellant's demands. The appellant used one of his hands to touch DB's vagina, moving her labia majora for a short time before removing his hand. The appellant again accused DB of having sex with PC and raised the bar in a threatening manner. The appellant again touched her labia majora with his hand.</p> <p><u>Ct 5</u></p> <p>The appellant demanded DB's phone so that he could check her text messages. Before he left, the appellant took her phone with him.</p>	<p>accepted responsibility for his offending, had shown some insight into its impact on his victims, and had taken positive steps to rehabilitation.</p> <p>Offending had severe impact on DB; anxiety, panic attacks, depression and PTSD; sleeplessness; felt angry, helpless, degraded and fearful from appellant's conduct.</p> <p>The sentencing judge found the offending was principally related to the appellant's illicit drug use.</p> <p>The sentencing judge found that the appellant had suffered from some dysfunction and disadvantages during childhood; however such experienced were not to be characterised as profound childhood deprivation.</p>	<p>capacity to make choices about unlawful behaviour, although the poor choices which the offender makes may be influenced by childhood experience.'</p> <p>At [105] 'having reviewed the material before the sentencing judge, we agree with his Honour's conclusion that the material did not establish, on the balance of probabilities, that any relevant capacity of the appellant was impaired by profound childhood deprivation which reduced his moral culpability for the offending or diminished the significance of personal and general deterrence as sentencing considerations.'</p> <p>At [106] 'the procedural history of this matter shows the appellant experienced some delay before he was finally sentenced.'</p> <p>At [125] 'there is nothing to suggest that his Honour...did anything other than sentence the appellant according to the rules of reason and justice...and within those limits which an honest person competent to discharge the duties of his office ought to confine himself. When that is appreciated, all that is left of the appellant's submission is a contention that the sentencing judge should have given more weight to the mitigatory effect of delay. It follows that the appellant's submissions cannot be accepted.'</p> <p>At [139] 'the offences committed by the appellant were extremely serious. The appellant entered his former partner's home without her consent, and in the very early hours of the morning, when she was asleep...The offence charged in ct 2 was particularly serious. In what was a completely unprovoked attack by a physically powerful man, the appellant used a metal bar to repeatedly strike the much younger PC, who was initially asleep and defenceless.'</p> <p>At [143] 'in relation to ct 1, it was necessary for the sentencing judge to give effect to the need for general deterrence in relation to offences of home burglaries, particularly those that involve the use of violence...It is also equally necessary to ensure that the sentences imposed for cts 2,3 and 4 reflect the importance of general deterrence in sentencing for offences involving violence, and in relation to cts 1,3 and 4, the use of violence by men on women with whom they are, or have been, in a domestic relationships.'</p> <p>At [151] [in considering the relevant factors] 'we are of the view that it is not reasonably arguable that the total effective sentence was unreasonable or plainly unjust.'</p>
11.	<i>The State of</i>	24 yrs at time offending (IND)	IND 815	IND 815	Appeal allowed.

<p>Western Australia v Tawhitapou [2024] WASCA 25</p> <p>Delivered 15/03/2024</p>	<p>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>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 co-offender and attempted to push him out the front door. BG and the co-</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 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 sentences for the offences in question; (e) the importance of denunciation and personal and general deterrence; and (f) all other</p>
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			<p>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>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>Goddard v The State of Western Australia</i></p> <p>[2023] WASCA 164</p> <p>Delivered 28/11/2023</p>	<p>33 yrs at time offending. 34 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Significant criminal history; all offences dealt with in Magistrates Court; multiple convictions of driving without a licence; multiple convictions for steal MV and other dishonesty offences.</p> <p>Born in Perth; positive</p>	<p>Ct 1: Steal MV. Ct 2: Agg burg. Ct 3: Stealing. Ct 4: Agg burg. Ct 5: Stealing. Ct 6: Att agg burg.</p> <p><u>Ct 1</u></p> <p>The appellant and co-offender attended the victim's residence. They then entered his parked vehicle, and drove off in it.</p>	<p>Ct 1: 6 mths imp (cum). Ct 2: 18 mths imp (cum). Ct 3: 12 mths imp (conc). Ct 4: 3 yrs imp (cum; HS). Ct 5: 12 mths imp (conc). Ct 6: 12 mths (cum).</p> <p>TES: 6 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge did not make a finding of remorse, but accepted the appellant had expressed a level of victim empathy.</p>	<p>Appeal dismissed (leave refused).</p> <p>Appeal concerned the first limb of the totality principle.</p> <p>At [25] 'while it is true that the appellant did not damage the houses or actually confront the victims, these circumstances are not mitigating. The appellant's actions gave rise to the risk of confrontation, which is inherent in the conduct he engaged in. Offences such as those committed by the appellant engender in victims senses of fear, insecurity and vulnerability, which are heightened when the offences are committed at night while they are asleep.'</p> <p>At [26] 'it is well recognised that sentences for home burglary need to be firmed up.'</p>

		<p>upbringing; parents and sister are supportive; had two significant relationships with a daughter who was 8 yrs at time of sentencing.</p> <p>Completed yr 10; found school difficult due to ADHD and dyslexia; unemployed at time of offending; had previously worked for 8 yrs as a ceiling fixer.</p> <p>Long standing addiction to methylamphetamine; drug use since age of 15; completed counselling to address substance misuse; expressed desire to engage in further intervention.</p>	<p><u>Cts 2 and 3</u></p> <p>The appellant (alone) attended a house and gained access through an unlocked laundry door. Once inside, the appellant stole a briefcase, laptop, and wallet.</p> <p><u>Cts 4 and 5</u></p> <p>The appellant and co-offender entered a home through an unlocked door. The offenders stole various items to the value of \$3,600.</p> <p><u>Ct 6</u></p> <p>The appellant (alone) attended another residence with the intention of stealing property. The appellant woke the victim whilst trying to force open a pair of large French doors, resulting in the victim turning on the outside lights. The appellant fled on foot.</p>	<p>No specific findings of the appellant's prospects of rehabilitation.</p> <p>Sentencing judge had express regard to totality principle, reducing cts 1, 2, and 6 for reasons of totality.</p>	<p>At [29] 'while all of the offences were committed within hours...and could easily be considered a "spree", the appellant's counsel accepted some accumulation was necessary in order to properly reflect the appellant's overall criminality. In our opinion, having regard to all relevant sentencing factors, a total effective sentence of 6 years' imprisonment was a proper reflection of the appellant's overall criminality.'</p>
<p>9.</p>	<p><i>Ritchie v The State of Western Australia</i></p> <p>[2023] WASCA 120</p> <p>Delivered 11/08/2023</p>	<p>28 yrs at time offending.</p> <p>Convicted after very late PG (10% discount).</p> <p>Prior criminal history; all offences punished by fines.</p> <p>Born New Zealand, moved to Australia aged 18 yrs.</p> <p>Supportive relationship; step-father to partner's two sons.</p> <p>Regularly employed since arriving in WA; worked for drilling services company at time offending; employed as a concreter while on bail.</p> <p>Good physical and mental health; illicit drug use, but not a factor in his offending.</p>	<p>Ct 1: Agg burglary. Ct 2: Stealing. Ct 3: Steal MV.</p> <p>About 85 kg of gold ore was stored in a locked shipping container at a mine site. A locked safe, which at the time, and unknown to Ritchie and his co-offenders, was empty, was also inside the container.</p> <p>Ritchie and his co-offenders drove to the mine site in a vehicle with a hydraulic loading crane.</p> <p>At the mine site their actions were captured on CCTV footage. They had covered their faces with balaclavas.</p> <p>Using an angle grinder Ritchie and the co-offenders cut open the padlocks on the shipping container. Then, using the hydraulic loading crane, they loaded the gold ore into the rear of their vehicle.</p> <p>They also attempted to cut open the safe</p>	<p>Ct 1: 4 yrs imp (cum). Ct 2: 2 yrs imp (cum). Ct 3: 12 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending was planned and premeditated; the appellant was in company, which ensured the gold was located and removed quickly and efficiently; the offending was protracted, persistent and committed at night; the appellant had att to conceal his identify; a co-offender carried a firearm as he walked around the site and a substantial quantity of property, with a total value of \$327,000, was stolen and a significant amount of the property was not recovered or destroyed by fire.</p> <p>No demonstrated 'real remorse'; opportunity to provide information as to the whereabouts of the unaccounted for gold and the firearm carried by his co-offender.</p>	<p>Appeal allowed.</p> <p>Appeal concerned error in sentencing (cum of cts 1 and 2 contravened s 11 <i>Sentencing Act</i>) and totality principle.</p> <p>Sentence for ct 3 not challenged.</p> <p>Sentencing error conceded.</p> <p>Resentenced (10% discount):</p> <p>Ct 1: 5 yrs imp (cum). Ct 2: No penalty. Ct 3: 12 mths imp (cum).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>At [64] 'in the present case, the grounding offence for the agg burglary offence charged in ct 1 was stealing gold ore, a safe, welding equipment, chains and car keys ... The property the subject of the stealing offence charged in ct 2 was no different from the property the subject of the grounding offence for the agg burglary offence charged in ct 1.'</p>

			<p>using an oxyacetylene set and equipment from a nearby workshop. When this was unsuccessful they used a front end loader at the site to remove the safe from the container and load it onto a LandCruiser at the site.</p> <p>Ritchie and the co-offenders put the oxyacetylene set and equipment into the same vehicle as the safe. They then left the site in their vehicle and the LandCruiser.</p> <p>During the burglary one of the co-offenders walked around the site carrying a rifle with a cut down stock.</p> <p>Along with the gold ore, valued at \$275,500, they stole the LandCruiser valued at \$52,000, the safe valued at \$3,000, the oxyacetylene set and equipment at about \$1,300 and some chains, straps and the vehicle's car keys at \$250.00.</p> <p>The stolen Landcruiser and safe were later found in remote bushland destroyed by fire.</p> <p>Only about 20 oz of gold from the gold ore was recovered.</p> <p>When arrested Ritchie denied any involvement in the offending.</p>		<p>At [65] 'in the circumstances, the evidence necessary to establish the commission of ct 1 also established, without more, all of the elements of, and consequently the commission of, ct 2. No distinct additional evidence was required to establish the commission of ct 2.'</p> <p>At [66] 'consequently, the common law principle against double punishment and s 11(1) of the <i>Sentencing Act</i> precluded the primary judge from imposing additional punishment or sentencing the appellant for ct 2. Her Honour infringed the common law principle and s 11(1) by sentencing the appellant for ct 2 and ordering that the sentence for ct 2 be served cum upon the sentence for ct 1.'</p> <p>At [77] 'we have taken into account the serious features of the appellant's offending ... The combined effect of those features means that the offending on ct 1 was an especially serious example of agg burglary of commercial premises.'</p> <p>At [82] '... the overall seriousness of the appellant's offending on ct 1 and ct 3, having regard to all relevant sentencing factors, would not be adequately marked if the individual sentences were not wholly accumulated.'</p>
8.	<p><i>Thornley v The State of Western Australia</i></p> <p>[2023] WASCA 107</p> <p>Delivered 13/07/2023</p>	<p>32-33 yrs at time offending. 34 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Short criminal history; prior drug offending, including poss of a trafficable quantity of methyl wiss.</p> <p>Parents still together; family supportive.</p> <p>Regular employment history; small business operator.</p>	<p>Ct 1: Agg burg. Ct 2: Stealing. Ct 4: Receiving.</p> <p>The complainant and his wife owned a high-value dwelling. They lived overseas so employed caretakers to pack the furniture and the contents of the property prior to the home's renovation. Some antique furniture was placed in one of the main rooms of the home.</p> <p>From time to time the caretakers would check the premises, which were secured, including by locked gates.</p>	<p>Ct 1: 18 mths imp (cum). Ct 2: No penalty. Ct 4: 10 mths 16 days imp (cum).</p> <p>TES 2 yrs 4 mths 16 days imp.</p> <p>Cum with sentence of 4 yrs 6 mths imp already serving.</p> <p>TES 6 yrs 10 mths 16 days imp.</p> <p>EFP.</p> <p>Co-offender Beynon sentenced to a TES 3 yrs imp.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned parity and totality principle.</p> <p>At [48] We are satisfied that the disparity between the appellant's sentence and that imposed on Mr Beynon did not infringe the parity principle or the principle of equal justice. The disparity was objectively a sufficient, even generous, reflection of their different circumstances. ...</p> <p>At [56] ... The appellant, while on bail and in company with Mr Beynon, took advantage of the fact that the complainant's home was unoccupied and committed a premediated and well-organised burglary on the house, which resulted in the theft of a substantial amount of valuable property. ... Offences of the kind committed by the appellant and Mr Beynon are prevalent. This court has stated many times that</p>

		<p>Long-time user of methyl; using approx 1 g of methyl a day; spending \$3,000 a wk on the drug; significant daily use of methyl coincided with significant escalation in seriousness of his offending.</p>	<p>In the early hrs of the morning Thornley and his co-offender Beynon entered the home without the consent of the owners. They removed from the property numerous items, including furniture, household effects and wine.</p> <p>A short time later Thornley and Beynon were seen by police driving in separate vehicles. The vehicles were stopped and searched and a number of items were observed in each vehicle. Both were allowed to continue on their way.</p> <p>About one mth later, Beynon att to sell a chest on Gumtree. The chest had been stolen from the property and was of significant value.</p> <p>Thornley was captured a number of times on CCTV at his home address unloading property from his vehicle. The property was stolen from the complainant's house.</p> <p>The burglary at the complainant's home was not discovered for some wks. Fingerprints, identified as belonging to Thornley and Beynon, were found inside the house.</p> <p>A search of Thornley's home located a number of items, including several large items of furniture, that had been stolen from the complainant's house.</p> <p>The following day a search of Beynon's home recovered further items belonging to the complainant, including crockery and linen.</p>	<p>The sentencing judge found the offending 'a serious premediated and sophisticated course of conduct'.</p> <p>Steps undertaken to address drug addiction while in custody.</p>	<p>sentences for this kind of offending must be firmed up. ... The TES imposed upon the appellant ... for the offences ... was, on any view, modest.</p> <p>At [58] The appellant has fallen a long way short of demonstrating that the overall TES ultimately imposed upon him infringed the first limb of the totality principle. ...</p>
7.	<p>Houlahan v The State of Western Australia</p> <p>[2022] WASCA 85</p> <p>Delivered 19/07/2022</p>	<p>21 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after very late PG (cts 1 & 2) (10% discount). Convicted after trial (cts 7-9).</p> <p>Very lengthy unenviable criminal history; frequently in detention or</p>	<p>Ct 1: Steal MV. Ct 2: Fraud. Ct 7: Agg burg. Ct 8: Steal MV. Ct 9: Reckless driving.</p> <p>All offences committed over a period of 15 days.</p>	<p>Ct 1: 12 mths imp (cum). Ct 2: 6 mths imp (conc). Ct 7: 2 yrs 6 mths imp (cum). Ct 8: 15 mths imp (conc). Ct 9: 18 mths imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of individual sentences cts 1, 2 & 9 and totality principle.</p> <p>At [35] As to the sentence imposed on ct 2, having regard to all of the relevant circumstances, including the appellant's PG, ... and the modest amount [he] defrauded, the sentence of ... imp was not manifestly excessive, bearing in mind that [he] used the petrol he</p>

		<p>imprisoned since aged 14 yrs.</p> <p>Dysfunctional upbringing; parents separated aged 7 yrs; raised by mother; tumultuous relationship with father; exposed to alcohol and illicit drugs young age; antisocial behaviours and associations.</p> <p>Mother and sister supportive.</p> <p>Educated to yr 9.</p> <p>Introduced to methyl aged 13 yrs.</p>	<p>During a burglary, the victim's motor vehicle was stolen. It was not alleged Houlahan had taken part in the burglary. However, he drove the vehicle and put fuel in the vehicle, paying using the victim's debit card. The vehicle was later found damaged. A forensic examination located Houlahan's DNA on the steering wheel. The cost to repair the vehicle was \$2,310.</p> <p>In the early hrs of the morning the victim and his family were asleep in their home. Houlahan broke into the house through a window. He used a pair of socks as gloves. Inside the home he stole items of property, including the keys to a motor vehicle. He then drove the vehicle from the premises.</p> <p>That same morning Houlahan sped past an unmarked police car, who activated the car's lights to pull him over. He did not stop. When police activated both lights and sirens, he accelerated away from the pursuing police car. He drove in excess of 45 km p/hr over the speed limit in order to evade the police. At certain points he reached speeds of between 155 km p/h and 160 km p/hr. He also drove through a number of major intersections at high speed and on the incorrect side of the road. Police deployed a stinger device, which Houlahan deliberately evaded.</p> <p>At one point Houlahan stopped to let a passenger out of the vehicle.</p> <p>Eventually the vehicle came to rest against a tree. Houlahan ran from the vehicle and hid. He was eventually located by police.</p>	<p>MDL disq for life.</p> <p>The sentencing judge found the appellant's offending 'very serious'; he drove on suburban streets, often at extreme speeds, posing a very real danger to others and showing a total disregard for other road users; the agg home burglary was particularly serious, it occurred at night when people were in the house.</p> <p>The sentencing judge found the appellant had a continuing and entrenched disobedience of the law in very serious ways; nothing to indicate on the path to rehabilitation.</p> <p>Financial loss and great inconvenience caused to victims.</p>	<p>obtained by fraud to enable him to continue driving the stolen vehicle.</p> <p>At [36] As to the sentence imposed on ct 9, the submissions of the appellant substantially understate the seriousness of the offence. While the offence lasted between six and 10 min, it involved a very determined and sustained att to evade arrest. He was driving a stolen car and at one point had a passenger in the vehicle. In doing so [he] drove with extreme speed on a major highway and suburban streets in a manner which put the lives and safety of other road users in jeopardy. The driving involved a selfish disregard for the safety of others. ...</p> <p>At [44] In the present case, her Honour was correct to accumulate some of the sentences to properly reflect the appellant's overall criminality which encompassed five distinct offences in two separate incidents committed over a 15-day period. ... The TES was an appropriate reflection of the appellant's overall criminality, ...</p>
6.	<p><i>The State of Western Australia v O'Driscoll</i></p> <p>[2022] WASCA 65</p> <p>Delivered</p>	<p>36 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Long criminal history.</p> <p>Older brother and identical twin</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</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>Allowed.</p> <p>Appeal concerned length of sentence ct 1 and totality principle.</p> <p>Resentenced:</p> <p>Ct 1: 5 yrs imp (conc).</p>

	<p>09/06/2022</p>	<p>brother; 12 yrs of age when father disappeared; suffered significantly at the loss of his father' victim of sexual abuse.</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>firearm, possibly a sawn-off shotgun.</p> <p>O'Driscoll was aggressive and demanded Mr W hand over his car 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>TES 6 yrs imp.</p> <p>EFP.</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>Ct 2: 18 mths imp (conc).</p> <p>Cum with sentence already serving.</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>
<p>5.</p>	<p>Jabbie v The State of Western Australia</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><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</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></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>Disadvantaged and difficult upbringing; born Liberia; only 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>the victim around the head, causing him to fall to the ground. He further assaulted the victim. Jabbie stole the victim's mobile phone, headphones and wallet.</p> <p><u>Ct 5</u> Two days later, the victim, an Uber driver, agreed to drive Jabbie and three other males. Jabbie 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. Jabbie went up to the victim, searched his pockets and took his wallet and a sum of money. Jabbie 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 Jabbie 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. Jabbie became aggressive and punched the victim. He instructed the victim to stop the car. When he did so Jabbie continued kicking and punching him. The victim lost balance and was rendered unconscious.</p> <p>Jabbie 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 Jabbie 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. Jabbie tried to hide before fleeing.</p> <p><u>Ct 9</u> After fleeing the home the subject of ct 8 Jabbie jumped a fence into the</p>	<p>Ct 1: 1 yr's imp (cum). TES 8 yrs 6 mths imp. 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>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 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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			<p>backyard of the neighbouring home. He stole two cans of soft drink from a fridge in a side room. He fled when the occupants returned home.</p> <p><u>Cts 10 and 11</u> 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.</p> <p><u>Cts 12 and 13</u> 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.</p> <p>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.</p> <p><u>Cts 14 and 15</u> 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</p>		
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			<p>large amount remains outstanding.</p> <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>		
4.	<p><i>Fleay v The State of Western Australia</i></p> <p>[2021] WASCA 214</p> <p>Delivered 16/12/2021</p>	<p>38-41 yrs at time offending. 52 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Educated; Bachelor of Business degree.</p> <p>Married; loving and supportive father to two children; family suffered economically and emotionally as a result of the offending; supportive unwavering devotion of his family.</p> <p>Well regarded in the community; served as a councillor and actively involved with his children's school.</p> <p>Good physical and mental health.</p>	<p>11 x Stealing. 1 x Stealing as a director (ct 20).</p> <p>Fleay worked as a senior accountant and then director at an accounting firm. He was the accountant for Mr and Mrs Jabado and was involved in almost all aspects of their business and personal finances.</p> <p>Over a period of just under three yrs Fleay stole a total of \$4,662,825.79 from the Jabados' and their family company.</p> <p>Fleay used the stolen money to purchase or assist in the purchase of expensive homes; meet various tax liabilities and for his general personal expenditure.</p> <p>In the hope that his offending would not be discovered Fleay began repaying the money he had stolen. However, Mr Jabado eventually became suspicious.</p> <p>Fleay repaid all monies. In total he repaid \$6,857,862 to the Jabados', plus interest.</p>	<p>Ct 1: 4 yrs imp (cum). Cts 2-3 & 5: 18 mths imp (conc). Ct 7: 4 yrs imp (partly conc – commences 2 yrs after beginning ct 1). Ct 10: 14 mths imp (conc). Ct 11: 22 mths imp (conc). Cts 14; 22 & 24: 12 mths imp (conc). Ct 19: 2 yrs 3 mths imp (conc). Ct 20: 20 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending serious; given the total value of the money stolen; the period of time over which it was stolen and the gross breach of trust involved.</p> <p>The sentencing judge found a degree of sophistication in the offending, it involved the filing of inaccurate tax returns and misleading, if not inaccurate, entries on a cheque butt; he successfully avoided detection to the extent that he was able to offend for a period of nearly three yrs.</p> <p>Not remorseful.</p> <p>Low risk of reoffending.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [46] The offences committed by the appellant are self-evidently serious and involved a very high degree of criminality. There were three aggravating circumstances of particular importance. First, the thefts involved a very large sum of money, ... Second, the funds were stolen over a long period of time, ... Third, the victims reposed their total trust in the appellant, which he betrayed. Not only was the appellant their accountant, but he was also their friend. A consequence of the victims' total trust in the appellant was that they did not examine in detail their own financial records. This made them vulnerable to the appellant's predations; a situation he exploited.</p> <p>At [66] ... The seriousness of the appellant's offending and the need for general deterrence required the imposition of a substantial TES. ... we have not been persuaded that the TES ... infringed the first limb of the totality principle. ... It has not been demonstrated that a substantial wrong has occurred. ...</p>
3.	<p><i>Brooks v The State of Western Australia</i></p>	<p>39 yrs at time sentencing.</p> <p><u>Indictment -Supreme</u></p>	<p><u>Indictment -Supreme</u> Ct 1: Agg armed robbery. Ct 2: Armed so as to cause terror.</p>	<p><u>Indictment - Supreme</u> Ct 1: 4 yrs 4 mths imp (cum). Ct 2: 9 mths imp (cum).</p>	<p>Dismissed (leave refused) – on papers.</p> <p><u>Indictment - Supreme</u></p>

<p>[2021] WASCA 156</p> <p>Delivered 03/09/2021</p>	<p>Convicted after trial.</p> <p><u>Magistrates Court</u> Convicted after PG (20% discount).</p> <p><u>Indictment - District</u> Convicted after late PG (15% discount).</p> <p>Lengthy criminal history; including interstate offending.</p> <p>Traumatic childhood; experienced death of older sister when he was aged 6 yrs; mother a yr later.</p> <p>Lived with physically violent grandmother; subsequently lived with his father who was physically and emotionally abusive.</p> <p>Left school aged 13 yrs; commenced using drugs.</p> <p>Left home aged 15 yrs; reconciled with his family aged 28 yrs.</p> <p>Inconsistent early employment history; trade work late twenties; self-employed roof plumber early thirties.</p> <p>2 yr relationship at time offending; young son together; partner history of substance abuse and offending behaviour, reported to have made significant positive changes in her lifestyle; partner and her parents supportive.</p> <p>Severe symptoms of anxiety, depression and stress; diagnosed with PTSD.</p> <p>Entrenched drug use.</p>	<p><u>Magistrate Court</u> Offending comprised 19 offences on various dates, including breaches of bail, unlicensed possession of a firearm, no authority to drive, trespass, burglary and stealing.</p> <p>Magistrate Court appeal commenced in Supreme Court referred to Court of Appeal.</p> <p><u>Indictment – District</u> Cts 1 & 3: Criminal damage. Cts 2 & 4: Stealing. Cts 5-6: Poss stolen or unlawfully obtained property. Ct 7: Escaping lawful custody. Cts 8 & 12: Robbery. Ct 9: Aiding a person to escape lawful custody. Ct 10: Assault public officer. Ct 11: Assault with intent to rob. Ct 13: Burg. Ct 14: Agg burg. Ct 15: Steal MV.</p> <p><u>Indictment – Supreme Court</u> Brooks and a co-offender decided to rob a newsagency. With their faces covered and each carrying a knife they rushed into the newsagency.</p> <p>The co-offender shouted at the woman working behind the counter to give him money. When the co-offender went behind the counter the woman picked up a cricket bat, so he pushed the woman with force, causing her to fall on the floor. He put the knife near her neck and repeated his demand for money.</p> <p>The woman’s daughter heard her mother’s screams and began to telephone the police. Brooks screamed at her to put the phone away and pointed his knife at her, telling her that he would stab her.</p>	<p>TES 5 yrs 1 mth imp (cum on sentence imposed by Supreme Court). EFP.</p> <p><u>Magistrate Court</u> TES 1 yr 3 mths imp. EFP.</p> <p><u>Indictment - District</u> Ct 1: 6 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 15 mths imp (conc). Ct 4: 15 mths imp (conc). Ct 5: 6 mths imp (conc). Ct 6: 12 mths imp (conc). Ct 7: 12 mths imp (conc) (no EFP). Ct 8: 14 mths imp (cum on Supreme Court and Magistrates Court sentences). Ct 9: 6 mths imp (conc). Ct 10: 3 mths imp (conc). Ct 11: 3 mths imp (cum). Ct 12: 21 mths imp (cum). Ct 13: 15 mths imp (conc). Ct 14: 2 yrs imp (conc). Ct 15: 9 mths imp (conc).</p> <p>Sentenced in the Supreme Court, District Court and the Magistrates Court for a total of 36 offences. The most serious offences, were committed in a period of about three wks. The result of the three sentencing exercises:</p> <p>TES 9 yrs 6 mths imp. EFP.</p> <p><u>Indictment - Supreme</u> The trial judge found the armed robbery objectively very serious; the offence was planned; both offenders were armed and disguised; they chose a vulnerable target and threatened two vulnerable women, both shouting and screaming.</p> <p>The trial judge took into account time spent by the appellant on remand for the murder charge and time already spent in protective custody, and would in the future serve, for the current offending.</p> <p>Letter of apology tendered; otherwise no</p>	<p>Appeal concerned length of sentence and totality principle.</p> <p><u>Magistrate Court</u> Appeal concerned totality principles and error (allowing summary charges to not be dealt with by superior court).</p> <p><u>Indictment - District</u> Appeal concern error in cum sentences; totality principle (crushing effect of accumulated sentences from different jurisdictions) and error (plea discount).</p> <p>At [54] The Supreme Court judge was called upon to sentence the appellant only for two offences: ... It was well open to her Honour to order a degree of accumulation between [the] two offences, bearing in mind that they involved distinct criminality and had different victims.</p> <p>At [56] What occurred in the District Court, mths after the Supreme Court judge imposed sentence, does not (and cannot) provide any basis to allege an infringement of either limb of the totality principle by the Supreme Court judge’s sentence. ...</p> <p>At [83] ... we are satisfied that there is no reason to suppose that, had the summary offences, and the indictable offences all been dealt with together, the overall disposition would have been any more favourable from the appellant’s perspective. ... the sentencing judge in the District Court was acutely aware of, and carefully weighed, the sentences that had already been imposed ... in determining what sentences should be imposed for the offences dealt with in the District Court.</p> <p>At [87]-[88] In our view, the appellant’s offending conduct that was the subject of his sentence in the Magistrates Court was of a nature and extent that demanded a sentence that was cum on the sentence in the Supreme Court to a not insubstantial extent. ... Not is it reasonably arguable that the sentences imposed by the Chief Magistrate produced a result that was, in the relevant sense, crushing, so as to infringe the second limb of the totality principle. ...</p> <p>At [117]-[119] The appellant was sentenced in the District Court for 15 offences. Several of them involved appalling offending that would have terrified or endangered members of the public. Further, [he] used violence to escape from legal custody. ... the appellant’s offending the subject of cts 7 – 12 of itself would ordinarily have justified and required a TES substantially higher than the TES ... imposed ... in the District Court. As the judge observed, cts 11 and 12 were each very serious offences in which the appellant used violence towards entirely innocent members of the public in an att to steal their cars, the second att of which was successful. ... Other elements of the appellant’s offending were also serious. ... the two home burglaries, ... were both serious offences warranting substantial terms of imp.</p>
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			<p>The co-offender grabbed the till drawer and took about \$450 in cash before running. Brooks pushed the daughter off balance and followed.</p> <p>When Brooks was chased by two men, he stopped and threatened one of them with his knife.</p> <p>Brooks hid some items of clothing in an att to avoid being caught. He was arrested some wks later. He denied any involvement in the offence.</p> <p><u>Indictment – District Court</u> Brooks drove a stolen truck up to the double gates of a business. After trying to break the padlock to the gates with bolt cutters, he att to smash through them with the truck. The gates and the linked chain fence were extensively damaged (ct 1).</p> <p>Brooks drove a stolen truck to the entry of a business. After cutting the lock to a gate he drove to a parked caravan valued at \$45,000 and hitched the caravan to the back of his vehicle. As he drove away the chain snapped, so he left, leaving the caravan behind (ct 2).</p> <p>At a car wash Brooks, driving the same stolen truck, reversed at speed into two industrial vacuum units causing \$29,358.20 in damage. He and his male passenger then att unsuccessfully to take one of the units. They left and returned a short time later with a chisel and hammer, which they used to separate one of the units from its base. They then carried it to the truck and left (cts 3 and 4).</p> <p>During a burglary, a dinghy, boat trailer, boat engine and a fuel jerry can were stolen.</p> <p>Brooks arranged to store a boat at a rural property. The owner agreed and a short time later he attended the property</p>	<p>demonstrated genuine remorse; not at a low risk of reoffending; reasonable prospects of rehabilitation; steps taken to become a better father while on remand.</p> <p><u>Indictment – District</u> The sentencing judge found the appellant’s offending the subject of cts 1-4 serious and premediated acts of dishonesty; it would have been a terrifying experience for the victims of cts 11 and 12, were ordinary members of the community going about their daily business; the offending necessitated a sentence that sufficiently denounced the appellant’s conduct and provided appropriate personal and general deterrence.</p>	<p>At [126] ... the [District Court] judge did not err in failing to award a 25% discount for the appellant’s PG. Indeed, it was not open to the judge to have done so.</p>
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			<p>with a boat, a boat motor and fuel jerry can.</p> <p>Some wks later a stealing offence occurred. The stolen items included a bobcat and trailer. The bobcat was fitted with a GPS tracking device. The same day Brooks attended the same rural property with the stolen bobcat to store it at the property. The bobcat was tracked to its location and police were alerted. A search of the property located the stolen bobcat (cts 5 and 6).</p> <p>Brooks was apprehended in connection with an armed robbery (the Supreme Court offence). He was conveyed to a police station and detained. His partner was also held in the same detention area. The two shouted at each other and became increasingly agitated. When an officer opened his cell door he grabbed the officer and during a struggle took the officer's swipe card. After freeing his partner he ran away (cts 7-10).</p> <p>After fleeing custody Brooks ran in front of a vehicle, opened the driver's door, grabbed hold of the driver and tried to forcibly remove her from the car. Fearing for herself and her passenger she accelerated away (ct 11).</p> <p>Brooks then got in the passenger seat of a stationary vehicle. He shouted at the driver to go and, fearing for his safety, he complied. He ignored the driver's request to get out and became more agitated. At a red light he told the driver to get out, which he did. Brooks threatened the driver if he called the police. The vehicle was later found extensively damaged (ct 12).</p> <p>Brooks gained entry to a home by smashing a sliding door. He cut the phone line and searched a bedroom. He left the premises by forcing open a rear window. No items were stolen (ct 13).</p>		
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			On the same day Brooks broke into a different residence. The occupants were home at the time. Manipulating a locked door he entered the premises and stole an iPhone, a laptop and the keys to a vehicle. Using the car keys he stole the occupants vehicle. He was later seen by police driving the vehicle and failed to stop when requested to do so, leading to a police pursuit (cts 14-15).		
2.	<p><i>Beynon v The State of Western Australia</i></p> <p>[2021] WASCA 153</p> <p>Delivered 31/08/2021</p>	<p>32 yrs at time offending. 33 yrs at time sentencing.</p> <p><u>Ind 1237</u> Convicted after early PG (25% discount ct 1).</p> <p><u>Ind 2149</u> Convicted after PG (20% discount).</p> <p>Criminal history; dishonesty offences; numerous outstanding charges in New Zealand.</p> <p>Raised in New Zealand; mother multiple male partners with whom he did not get along.</p> <p>Left school aged 15-16 yrs.</p> <p>Worked a number of roles; joined New Zealand army; 3 yrs active service, including East Timor.</p> <p>Mother and younger brother killed motor vehicle accident.</p> <p>Struggled following sudden loss of mother and brother; experienced anxiety, nightmares and flashbacks on return from East Time.</p> <p>Commenced using ecstasy and methyl aged 21 yrs; regular user of methyl; some periods of abstinence; increased use of alcohol when not using methyl.</p>	<p><u>Ind 1237</u> Ct 1: Agg burg. Ct 2: Stealing.</p> <p><u>Ind 2149</u> Ct 1: Stealing. Ct 2: Agg burg.</p> <p><u>Ind 2149</u> Shortly after midnight Beynon went to the victim's home. From a vehicle parked in the driveway he stole a number of items, including the remote control to the home's garage roller door.</p> <p>Using the stolen remote control Beynon gained access to the garage. Once inside he placed a trolley underneath the roller door to prevent it closing. He then stole a mountain bike valued at about \$1,000. He left with all the stolen items.</p> <p>In the meantime, the victim, awoken by her dog barking, noticed the security light on. She also saw her vehicle was open. From inside the house she tried unsuccessfully to close the garage roller door. Afraid, she called her husband, who was overseas, and while on the telephone with him she investigated and discovered someone had broken into the garage and stolen the bike.</p> <p><u>Ind 1237</u> About a week and a half later Beynon and a co-offender were driving a stolen motor vehicle searching for open garages from which to steal property. In the early hrs of the morning, they stopped at the victim's home. Beynon</p>	<p><u>Ind 1237</u> Ct 1: 12 mths imp (cum ct 2 Ind 2149). Ct 2: No punishment.</p> <p><u>Ind 2149</u> Ct 1: 3 mths imp (conc). Ct 2: 16 mths imp (conc).</p> <p>TES 2 yrs 4 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the two agg home burg offences 'particularly serious'.</p> <p>The sentencing judge accepted that in relation to the agg burg offences, no violence was used; there was no evidence the appellant was armed with any weapon and there was minimal damage to the properties.</p> <p>The sentencing judge found that some accumulation of the sentences was appropriate; the appellant engaged in two separate and distinct episodes of offending on different days and involving different victims.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned totality principle.</p> <p>At [40] While the commission of each offence did not involve the agg features sometimes seen in offending of this kind, such as the use of weapons, direct confrontations with the occupiers of the house, or the theft of more valuable property, the offences were not without serious features. Each offence was committed at night when the occupant was at home and asleep. The appellant then proceeded to steal valuable property. In respect of the offence [the subject of Ind 2149], the mode of entry and the manner in which the appellant prevented the garage door from closing had a degree of ingenuity. It also instilled fear into the occupant of the house. The offence [the subject of Ind 1237] was premediated and involved the use of a co-offender as a look-out and getaway driver.</p> <p>At [44] The appellant committed two serious agg home burglaries in the space of 10 days. Accumulation of the sentences was appropriate to properly reflect the total criminality of the offending. ... The allegation that the TES infringed the first limb of the totality principle is without merit and must fail.</p>

			<p>entered the property through the garage door, while the co-offender waited in the vehicle as a lookout and getaway driver.</p> <p>Inside the victim's premises Beynon stole a number of items, including a purse, bank card, cash, sunglasses and some jewellery.</p>		
1.	<p><i>The State of Western Australia v Quartermaine</i></p> <p>[2021] WASCA 145</p> <p>Delivered 16/08/2021</p>	<p>22 yrs at time offending.</p> <p>Convicted after PG (25% discount).</p> <p>Extensive criminal history; previous terms of imp.</p> <p>Difficult up-bringing; raised family environment marred by domestic violence; drug and alcohol abuse.</p> <p>Difficult education; changed schools on a number of occasions; left aged 13 yrs.</p> <p>Relationship at time offending; two children aged 5 yrs and a new born.</p> <p>Substance abuse issues; commenced drinking alcohol aged 14 yrs.</p>	<p>Ct 1: Agg burg. Ct 2: Steal MV. Ct 3: Agg burg. Ct 4: AOBH. Ct 5: Agg burg. Ct 6: Stealing.</p> <p>Quartermaine was drinking excessively at his mother's home. Upset at being ejected from the premises and wanting a vehicle to get home he went to a house occupied by a couple who, along with their 2 yr old son, were asleep inside. He entered the house through an open window and stole the keys to a BMW motor vehicle. From a vehicle he stole a bag containing items valued at about \$400. He then then stole the BMW, later abandoning it after crashing it.</p> <p>Quartermaine was later identified by his fingerprints and DNA. He admitted the offences when interviewed (cts 1 & 2).</p> <p>Several hrs later Quartermaine went to another home. The victims, a couple and their 20 yr old daughter, were asleep in the home at the time.</p> <p>Quartermaine entered the home by kicking open the front door. This woke the victims. The male victim got out of bed and was confronted by Quartermaine, who demanded his keys and threatened to kill him. The victim repeatedly told him to leave. During a scuffle ensued he punched the victim in the face about three times. The victim suffered soreness and a mark on his</p>	<p>Ct 1: 2 yrs imp (conc). Ct 2: 6 mths imp (cum). Ct 3: 2 yrs 6 mths imp (conc). Ct 4: 6 mths imp (cum). Ct 5: 2 yrs imp (cum). Ct 6: No penalty.</p> <p>TES 3 yrs imp.</p> <p>EFP.</p> <p>A 'repeat offender' as a result of offending subject of ct 5.</p> <p>The sentencing judge found the offending very serious.</p> <p>Remorseful; high risk of reoffending; alcohol and drug abuse needs to be addressed.</p>	<p>Allowed.</p> <p>Appeal concerned length of individual sentences cts 1, 3 and 5 and totality principle.</p> <p>Resentenced (25% discount):</p> <p>Ct 1: 12 mths imp (cum). Ct 2: 15 mths imp (conc). Ct 3: 4 yrs imp (cum). Ct 4: 10 mths imp (conc). Ct 5: 3 yrs 6 mths imp (conc). Ct 6: No penalty.</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>At [78] In our opinion, the sentence for each of cts 3 and 5 was not commensurate with the seriousness of the offence. The offending on ct 5 was not the least serious type of agg home burglary and, consequently, a sentence in excess of the statutory min penalty should have been imposed. ... We are satisfied ... that the length of each sentence was unreasonable or plainly unjust.</p> <p>At [80] The sentence for each of cts 3 and 5 was substantially less than the sentence that was open to her Honour on a proper exercise of her discretion. Each sentence was manifestly inadequate.</p> <p>At [83] In our opinion, the TES imposed on the respondent did not bear a proper relationship to the overall criminality involved in all of his offences, viewed together ... The TES imposed ... was unreasonable or plainly unjust. It was not merely 'lenient' or 'at the lower end of the available range'</p>

		<p>cheek. Quartermaine then ran from the house.</p> <p>Quartermaine was captured on CCTV and identified by one of the victims. He made no admissions when interviewed (cts 3 & 4).</p> <p>Several wks later Quartermaine went to another home in the early hrs of the morning. The victim was asleep inside. After kicking open the front door to gain entry he stole a set of car keys. Awoken by the noise the victim got out of bed and confronted him walking through the house. Quartermaine fled the premises.</p> <p>Quartermaine was identified through a DNA match from blood recovered at the premises. When interviewed he made no admissions (cts 5 & 6).</p>		
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