

Possess cocaine with intent to sell or supply

s 6(1)(a) and 6(1)(c) *Misuse of Drugs Act*

From 1 January 2021

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

- Post-transitional provisions period
- Transitional provisions period
- Pre-transitional provisions period

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

att	attempt
agg	aggravating
conc	concurrent
cum	cumulative
ct	count
EFP	eligible for parole
imp	imprisonment
MDMA	3,4-Methylenedioxy-n, Alpha Dimethylphenylethylamine (Ecstasy)
methyl	methylamphetamine
PG	plead guilty
poss	possession
susp	suspended
TES	total effective sentence
VRO	violence restraining order
wiss	with intent to sell or supply

Weight of cocaine: above 65 grams

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
2.	<p><i>The State of Western Australia v YCL</i></p> <p>[2024] WASCA 124</p> <p>Delivered 07/10/2024</p>	<p>34 yrs at time offending. 35 yrs at time sentencing.</p> <p>Convicted after PG (22% discount, 10% discount for past cooperation).</p> <p>Limited criminal history.</p> <p>Grew up in a loving family.</p> <p>Left school in yr 11; bullied at school; commenced apprenticeship but did not complete it.</p> <p>Worked in a number of occupations; fruit picking; warehouse work; business became strained from COVID-19 leading to offending.</p> <p>In a long-term relationship; two children; family moved interstate after arrest.</p> <p>Cannabis user from 19 yrs old.</p>	<p>Ct 1: Poss methyl wiss 139 g at 78% purity. Ct 2: Poss cocaine wiss 558 g at 16–19% purity.</p> <p>The respondent was found in possession of the drugs inside his house. The prohibited drugs were located in a pencil case inside a black backpack belonging to the respondent.</p> <p>The drugs had been sent to the respondent via the mail, and his role was to temporarily keep the drugs and deliver them when instructed. The respondent was paid a small sum of cash in return for each delivery.</p> <p>The respondent cooperated with police and received recognition for that cooperation.</p>	<p>Ct 1: 18 mths imp (conc). Ct 2: 3 yrs 6 mths imp.</p> <p>TES: 3 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the respondent was ‘at the absolute bottom’ of the drug distribution chain. The sentencing judge characterised the appellant’s role as the ‘package holder’ and a ‘passer-on-er’.</p> <p>The sentencing judge found the appellant had a low level of culpability. However, the offender was sentenced on the basis that the offending was not isolated and that he had been involved in the venture for a period of time.</p> <p>The sentencing judge found that personal deterrence was not a significant factor; the sentencing judge had ‘every confidence’ that the respondent would never find himself before the court again.</p>	<p>Appeal allowed.</p> <p>Appeal concerned length of individual sentences and first limb of totality principle.</p> <p>Resentenced:</p> <p>Ct 1: 4 yrs 3 mths imp (conc). Ct 2: 5 yrs 3 mths imp.</p> <p>EFP after 5 yrs 3 mths.</p> <p>At [66] ‘the cases referred to by the appellant show that, even allowing for a 22% discount for the plea of guilty, the 10% discount for past cooperation and all other mitigating circumstances, the sentence of 18 mths imp imposed upon the respondent for ct 1 is very much an outlier.’</p> <p>At [68] ‘... this court has generally treated cocaine and other prohibited drugs such as methylamphetamine and heroin as being of similar seriousness.’</p> <p>At [75] ‘an analysis of the cases cited by the appellant in respect of ct 2 reveals that the individual sentence imposed on the respondent was very lenient, even when the respondent’s plea of guilty, cooperation and other mitigating factors are taken into account. However, an important difference is that the cocaine the subject of ct 2 was of a significantly lower purity than the prohibited drugs the subject of the offences in the appellant’s comparable cases.’</p> <p>At [77] ‘the sentencing judge plainly regarded the respondent’s criminal culpability as being at a very low level and made a series of very generous findings to that effect. For example, her Honour found that the respondent was “naïve”, a person of good character, and did not require personal deterrence.’</p> <p>At [79] ‘in addressing culpability, what matters is not the label that is placed on the offender ... as labels are apt to mislead ... Instead, what matters is what the respondent actually did.’</p> <p>At [81] ‘the respondent was lower in the drug distribution enterprise than [others]. However, this does not mean that the respondent’s role was unimportant or significant...His motive was commercial. Doubtless, the respondent saw what he was doing as providing easy money, but it could not have been lost on him that his conduct involved serious criminality and that he was assisting persons who were involved in the business of distributing substantial quantities of</p>

					prohibited drugs into the community.’ At [84] ‘in our opinion ... the individual sentence imposed by her Honour on ct 1 was erroneously low. Importantly, it did not properly reflect the respondent’s criminality and provided insufficient general deterrence.’
1.	<p>Watson v The State of Western Australia [No 2]</p> <p>[2024] WASCA 66</p> <p>Delivered 14/06/2024</p>	<p>27 yrs at time offending. 30 yrs at time sentencing.</p> <p>Convicted after PG (20% discount for IND 1136 and 25% discount for IND 925).</p> <p>Minor criminal history; traffic offences in both NZ and Australia.</p> <p>Born in NZ; happy childhood.</p> <p>Left school in yr 13 and undertook some study before finding gainful employment.</p> <p>Moved to Australia; became isolated and unmotivated; stopped working; receiving Centrelink payments at time of offending.</p> <p>In a relationship; partner remained supportive; no children.</p> <p>Bi-weekly cannabis use; social drinker.</p>	<p><u>IND 1136</u></p> <p>Ct 1: Supplied methyl 3.99 kg at 69–72%.</p> <p>Ct 2: Poss money that was the proceeds of an offence (\$5,987,220).</p> <p><u>IND 925</u></p> <p>Ct 2: Conspiracy to poss methyl wiss 30 kg.</p> <p>Ct 3: Conspiracy to poss cocaine wiss 10 kg.</p> <p>Ct 4: Conspiracy to poss heroin wiss 10 kg.</p> <p><u>IND 1136</u></p> <p>The appellant was observed by police parking his vehicle near a bush reserve. The appellant got out of the car and entered the reserve carrying a black backpack. A short time later he returned to the car, no longer carrying the backpack.</p> <p>On the same day, another man, Mr C was observed entering the reserve. A short time later, Mr C was observed carrying the black backpack left by the appellant. Police executed a SW of Mr C’s vehicle and found a package containing 3.999 kg.</p> <p>On another occasion, the appellant and two co-offenders Mr W and Mr O were packaging cash at the appellant’s home. The cash was packed into six boxes containing a total of \$5,987,220. The boxes were left in the appellant’s residence, and later transported by Mr O to another residence. During a SW of the appellant’s residence, police located a CiphR phone, cash counting equipment</p>	<p><u>IND 1136</u></p> <p>Ct 1: 10 yrs imp. Ct 2: 3 yrs imp (cum).</p> <p>13 yrs imp.</p> <p><u>IND 925</u></p> <p>Ct 2: 8 yrs imp (conc). Ct 3: 7 yrs imp (conc). Ct 4: 7 yrs imp (conc).</p> <p>8 yrs (cum on IND 1136).</p> <p>TES: 21 yrs imp.</p> <p>EFP.</p> <p><u>IND 1136</u></p> <p>The appellant was sentenced on the basis that he was more than a warehouseman and more than a courier.</p> <p>The sentencing judge found the appellant’s involvement in the criminal enterprise was continuous, and not isolated.</p> <p>The sentencing judge found that the appellant was an enthusiastic supporter, but not a decision maker. However, the people higher in the hierarchy did repose a large degree of trust in him.</p> <p>The appellant has participated in the commission of the offence was commercial reward; the paltry compensation he received did not excuse his offending.</p> <p><u>IND 925</u></p> <p>The sentencing judge found that cts 2–4 alleged separate offences, but they were the</p>	<p>Allowed.</p> <p>Appeal concerned the first limb of the totality principle.</p> <p>Resentenced:</p> <p><u>IND 925</u></p> <p>Ct 2: 4 yrs imp (conc). Ct 3: 4 yrs imp (conc). Ct 4: 4 yrs imp (conc).</p> <p>4 yrs imp (cum on IND 1136).</p> <p>TES: 17 yrs imp.</p> <p>At [93] ‘the totality principle ... [i]n practical terms will require the sentencing judge to consider the whole of the offending conduct and give consideration to whether the total effective sentence is a fair and just punishment for that conduct.’</p> <p>At [94] ‘in this case two other issues also impacted on sentencing. First, the possession of the cash, whilst the subject of a separate charge, was also relevant as part of the conduct relating to the conspiracy ... It is apparent from the facts relied on in the two sentencing proceedings that all of the charges arose from a series of closely connected events. It was important in that context to ensure that the appellant was not doubly punished for any part of the conduct.’</p> <p>At [95] ‘second, the exact nature of the conspiracy was significant in assessing the seriousness of the appellant’s conduct ... The conspiracy the appellant was convicted of was not necessarily coextensive with the activities and objectives of the broader criminal enterprise.’</p> <p>At [100] ‘although the description of a courier was disavowed by defence counsel, the appellant’s role was closer to that of a courier than someone at a more senior position in the criminal enterprise. He also had a role in the movement of the cash that was used to purchase the drugs, but only in a role that was likened to that of a clerk who counted and stored the money.</p> <p>At [101] ‘the sentencing judge’s descriptions of the agreement to which the appellant was a party were an inaccurate reflection of the admitted facts ... The effect of this was that the appellant was dealt</p>

			<p>and boxes matching the \$5,987,220.</p> <p><u>IND 925</u></p> <p>The three conspiracy cts relate to a single agreement between Mr O, Mr W and the appellant to import 50 kg of drugs into WA. The Ciph phone seized from the appellant revealed an agreement to possess 30 kg of methyl, 10 kg of cocaine, and 10 kg of heroin.</p>	<p>same criminal conduct.</p> <p>The criminality of the appellant found to be co-extensive with the scope of the broader criminal enterprise. The sentencing judge found that there was no meaningful distinction between the role of the appellant and that of Mr O.</p> <p>The sentencing judge found that the offending was motivated by personal gain.</p> <p>As with IND 1136, the appellant was found to have been an enthusiastic participant in the agreement.</p> <p>The sentencing judge found that appellant was sincerely remorseful for his conduct. It was also accepted that the appellant had undertaken study and passed bridging courses whilst in custody.</p>	<p>with on a basis that attributed to him much greater criminality than he had in in fact admitted.’</p> <p>At [102] ‘in our view, the total sentence of 21 yrs’ imprisonment was unreasonable or plainly unjust having regard to the appellant’s limited role in both sets of offending and his early pleas of guilty. Where large amounts of drugs are involved there are likely to be many people in the enterprise, and those people are likely to vary significantly in their level of criminality. In such cases the role of the offender is often a more significant consideration than the amount of drugs.’</p>
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Weight of cocaine: 3–65 grams

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
2.	<p><i>IIO v The State of Western Australia</i></p> <p>[2022] WASCA 38</p> <p>Delivered 01/04/2022</p>	<p>20s at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>Modest criminal history.</p> <p>Came to Australia as a child.</p> <p>Supportive family and friends.</p> <p>Educated to yr 10; completed apprenticeship; employed; made redundant early 2020.</p> <p>History of drug use.</p>	<p><u>Indictment A</u></p> <p>Cts 1-4: Sold/supplied MDMA 129.79 g at 79% & 85% purity.</p> <p>Ct 5: Poss cocaine wiss 2.7 g at 35% purity.</p> <p><u>Indictment B</u></p> <p>Ct 1: Poss unlawfully obtained property (\$1,640 cash).</p> <p>Cts 2-3: Poss MDMA wiss 12.41 g at 64% and 76% purity and 69% purity.</p> <p><u>Indictment A</u></p> <p>On four separate occasions, IIO sold MDMA to an UCO for \$350; \$1,700; \$3,500 and \$2,650 respectively (cts 1-4).</p> <p>A SW was executed at IIO’s home. He was found in poss of a quantity of cocaine (ct 5). He had previously</p>	<p><u>Indictment A</u></p> <p>Ct 1: 6 mths imp (conc).</p> <p>Ct 2: 2 yrs imp (cum).</p> <p>Ct 3: 3 yrs 3 mths imp (cum).</p> <p>Ct 4: 3 yrs imp (conc).</p> <p>Ct 5: 6 mths imp (conc).</p> <p><u>Indictment B</u></p> <p>Ct 1: 6 mths imp (conc).</p> <p>Ct 2: 6 mths imp (conc).</p> <p>Ct 3: 1 yrs imp (conc).</p> <p>TES 5 yrs 3 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant a mid-level street dealer; the offences were not isolated incidents, but part of an ongoing drug dealing enterprise for commercial gain to fund his cocaine addiction and to pay off drug</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [23] The appellant’s offending was a serious example of its type. He was engaged in a commercial operation in selling ounces of MDMA, of a high purity, over six wks.</p> <p>At [24] In order to properly reflect the appellant’s overall criminality, some accumulation of the individual sentences that were imposed was required. To have imposed conc sentences for each of cts 1 – 5 on Ind A and cts 1 – 3 on Ind B would have resulted in the imposition of a TES which would not have properly reflected the appellant’s overall criminality.</p> <p>At [25] ... a TES of 5 yrs 3 mths imp was within the discretionary range properly open to the sentencing judge, even if it may be regarded as being towards the upper end of that range.</p>

			<p>offered the UCO a free sample of cocaine.</p> <p><u>Indictment B</u> About a mth prior to the offence the subject of ct 5 on Ind A, a vehicle driven by IIO was stopped by police. In the vehicle and on his person police located \$1,640 in cash (ct 1) and two clip-seal bags containing a total of 3.52 g of MDMA powder (cts 2). IIO told police that \$300 - \$400 of the cash belonged to him and the rest was from friends to whom he intended to provide drugs.</p> <p>At an address where IIO had just delivered drugs police located a clip-seal bag containing 31 capsules, containing a total of 7.9 g of MDMA. A further five capsules containing 0.99 g of MDMA were also found (ct 3).</p>	<p>debts.</p> <p>The sentencing judge found immediate imp the only appropriate sentencing option.</p> <p>Demonstrated remorse and insight into his offending; progress made towards rehabilitation; positive character references; low risk of reoffending.</p>	
1.	<p><i>Celani v The State of Western Australia</i></p> <p>[2021] WASCA 215</p> <p>Delivered 16/12/2021</p>	<p>25 yrs at time offending. 29 yrs at time sentencing.</p> <p>Convicted after PG (15% discount).</p> <p>Prior criminal history; largely consistent with his drug addiction.</p> <p>Parents separated when aged 12 yrs; witnessed domestic violence.</p> <p>Supportive family.</p> <p>Educated to yr 10; completed apprenticeship; later trained and worked in plastic fabrication.</p> <p>Cannabis use from aged 12 yrs; methyl from aged 16 yrs; regular user of methyl; heavy user at time of offending.</p>	<p>Cts 1; 11; 17 & 18: Offer to sell cannabis 3.6212 kg. Cts 2-6; 8-10; 12-16; 19-31 & 33-35: Offer to sell methyl 93.145 g. Ct 7: Offer to sell cocaine 28 g. Ct 32: Offer to sell heroin 1.75 g.</p> <p>Celani was travelling in a motor vehicle when it was stopped by police. His mobile telephone was seized and an examination of the text messages stored on the phone revealed he had made offers to sell prohibited drugs to 32 contacts listed in his phone. Each ct related to one named contact, a small number of contacts the subject of more than one ct as he offered to sell them more than one kind of prohibited drug. In total he made a 120 separate offers to his various customers.</p> <p>Many of the cts were committed over a period of time.</p>	<p>Cts 1-3; 8 & 10: 12 mths imp (conc). Ct 4 & 18: 20 mths imp (conc). Cts 5-6 & 21: 14 mths imp (conc). Ct 7: 36 mths imp (head). Ct 9; 11; 13-14; 17; 22; 24-25 & 28-31: 6 mths imp (conc). Cts 12; 34 & 35: 9 mths imp (conc). Ct 15: 18 mths imp (conc). Ct 16; 19 & 23: 24 mths imp (conc). Cts 20 & 26: 10 mths imp (cum). Ct 27: 15 mths imp (conc). Ct 32: 6 mths imp (cum). Ct 33: 10 mths imp (conc).</p> <p>TES 5 yrs 2 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending serious and aggravated by its repeated and persistent nature and that he committed the offences in order to fund his drug habit.</p> <p>Remorseful; positive steps taken towards rehabilitation; 2 yrs clear of drug use; no further offending.</p>	<p>Dismissed - leave refused.</p> <p>Appeal concerned plea discount and totality principle (individual sentences not challenged).</p> <p>At [44] ... Having regard to the fact that the text messages which founded the charges were on the appellant's mobile telephone and their content involved clear offers to sell prohibited drugs, his Honour's characterisation of the case as being 'very strong' was well open. ... the sentencing judge was entitled to take into account the strength of the case against the appellant in assessing the appropriate discount under s 9AA of the <i>Sentencing Act</i>. In these circumstances, and having regard to when the pleas were entered, we are satisfied that a 15% discount was not unreasonable or plainly unjust. It was not manifestly inadequate.</p> <p>At [55] ... the appellant was involved, during the commission of the offences, in a commercial enterprise in which he sold prohibited drugs. The offers that he made were in respect of four different prohibited drugs, ... He was engaged in this business for the purpose of funding his own methyl habit. It was not suggested that the appellant did not have the capacity or intention to fulfil the offers.</p> <p>At [56] It is clear the appellant had a large coterie of customers, and it was not suggested that he did not have access to the prohibited drugs he offered to sell. While it was not said that all of the offers resulted in actual sales, it was not claimed the offers were unfulfilled.</p>

					At [60] ... it is not reasonably arguable that the TES ... infringed the first limb of the totality principle. ...
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Office of the Director of Public Prosecutions