

Possess MDMA (ecstasy) 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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:

conc	concurrent
cum	cumulative
ct	count
EFP	eligible for parole
immed	immediate
imp	imprisonment
MDMA	3,4-Methylenedioxy-n, Alpha Dimethylphenylethylamine (Ecstasy)
methyl	methylamphetamine
PG	plea guilty
poss	possess
SIO	suspended imprisonment order
susp	suspended
TES	total effective sentence
TOI	trial of issues
UCO	undercover police operative
wiss	with intent to sell or supply

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
3.	Turner v The State of Western Australia [2021] WASCA 132 Delivered 28/07/2021	27 yrs at time offending. 28 yrs at time sentencing. Convicted after very late PG (5% discount) – TOI to resolve dispute as to appellant’s intent to sell or supply. Criminal history; no prior drug offences. Parents separated when aged 18 yrs. Completed yr 10 high school. Became father aged 17 yrs; separated from son’s mother shortly after his birth. Consistent work history; gardener and handyman. Regular user of illicit drugs; taking and sharing drugs with friends a normal way of life.	Ct 1: Poss MDMA wiss 8.57g at 85% purity. Ct 2: Poss cannabis wiss 362.45 g. Ct 3: Poss methyl wiss 4.96g at 80% purity. Turner was stopped by police driving a vehicle. His 10-yr-old son was a passenger in the vehicle. A search of the vehicle located four vacuum sealed bags containing 41.88g; 280g; 26.4g and 14.07g of cannabis. In a further vacuum sealed bag 8.57g of MDMA was located. In a clip seal bag 4.96g of methyl was found.	Ct 1: 18 mths imp (cum). Ct 2: 2 yrs 8 mths imp (conc). Ct 3: 3 yrs 6 mths imp (cum). TES 5 yrs imp. EFP. The sentencing judge found at the TOI that the appellant was a mid-level user/dealer; while some of the drugs were for his personal use, he intended to sell or supply the majority of the drugs. The sentencing judge found immediate imp was the only appropriate sentence. Not remorseful; some credit given for limited cooperation.	Allowed (length of sentence ct 2). Appeal concerned length of individual sentences and totality principle. Resentenced (5% discount): Ct 1: 12 mths imp (cum). Ct 2: 10 mths imp (conc). Ct 3: 2 yrs 10 mths imp (cum). TES 3 yrs 10 mths imp. EFP. At [23]-[24] ... The element of commerciality involved in the offending was limited. ... However, the offending was not fleeting, unplanned or out of character. The appellant engaged in a course of distributing three different types of prohibited drug. While he dealt with drug users known to him, he did so regularly and to some extent for commercial gain. It was an aggravating feature of the offending that the appellant’s 10-yr-old son was present in the vehicle [he] used to transport the prohibited drugs. At [27] ... the sentence ... imposed ... for the cannabis offence is so far in excess of that which is properly capable of being regarded as commensurate with the seriousness of the cannabis offence so as to drive us to the conclusion that the sentence is manifestly excessive, notwithstanding that it is to be served conc with other sentences.
2.	KJL v The State of Western Australia [2021] WASCA 65 Delivered 22/04/2021	30 yrs at time offending. 32 yrs at time sentencing. Convicted after PG (25% discount). No prior criminal history. Born in New Zealand; close to parents and sister; all very supportive. Completed high school. Regularly employed until aged 26 yrs; considered he would make more money selling drugs than he would in an ‘ordinary’ job; drug dealing his principal source of income.	Ct 1: Att poss methyl wiss 113 g at 78% purity. Ct 2: Att poss methyl wiss 27.5 g at 79% purity. Ct 3: Poss amphetamine wiss 60.84 g at 4% purity. Ct 4: Poss psilocin wiss 10.4 g at 0.2% purity. Ct 5: Att poss MDMA wiss 991 g at 79% purity. <u>Ct 1</u> A package, sent from the US and addressed to a parcel locker in West Perth, was examined at a Melbourne facility. It was found to contain methyl concealed in shoes. The drug was substituted with an inert substance. KJL was captured on CCTV collecting the package from the parcel locker. The	Ct 1: 2 yrs imp (cum). Ct 2: 2 yrs imp (conc). Ct 3: 3 yrs imp (conc). Ct 4: 12 mths imp (conc). Ct 5: 8 yrs 6 mths imp (cum). TES 10 yrs 6 mths imp. EFP. The sentencing judge found the appellant was at the mid to high-level (but not at the highest level) of the drug hierarchy. The sentencing judge found the offending involved a significant variety of drugs in significant quantities; the drugs the subject of cts 1, 2 and 5 very high purity; the appellant had att to possess MDMA which was to be distributed into the wider community; the offending involved a significant element of	Dismissed. Appeal concerned length of sentence ct 5 and totality principle. At [50] The objective criminality involved in ct 5 was very serious. At [53] Ct 5 was committed in the context that, for a period of yrs, the appellant had eschewed legitimate paid work for what he considered an easier and more lucrative business as a drug dealer. From this business, he derived a comfortable standard of living. As such, the appellant’s culpability was substantially greater than that of a mere courier or warehouse of prohibited drugs. The appellant’s business placed him at a level far higher than a street-level drug dealer. The offending is precisely the kind of commercial drug dealing that must attract a sentence which deters others from behaving in the same way. At [54] ... The offending engaged in by the appellant involved a high level of sophistication. The commission of ct 5 required the appellant to source from overseas a large quantity of high purity MDMA. To do so, he used the anonymity of the dark web ... [and] he leased the secure parcel locker ... in a false name.

		<p>Engaged in both paid and volunteer employment at time sentencing.</p> <p>No children.</p> <p>User and dealer in illicit drugs many yrs, particularly methyl.</p> <p>Diagnosed with ADHD.</p>	<p>same package was later located at his home. The approx value of the methyl, if sold in ounce lots at the time it was seized, was between \$18,000 and \$24,000.</p> <p><u>Ct 2</u> Some wks later another package, sent from the US and addressed to the same parcel locker, was examined. It contained a quantity of methyl, which was substituted with an inert substance before being delivered. KJL was seen retrieving the package and was arrested. The methyl, if sold as an ounce, was at the time valued at between \$4,500 and \$6,000. On his mobile phone police found messages related to the sourcing of drugs through the mail.</p> <p><u>Ct 3</u> A search of KJL's home located a package containing four separate packages of a brown paste. Analysis showed the paste was amphetamine.</p> <p><u>Ct 4</u> Also located in KJL's home were 15 capsules containing a powder. Subsequent analysis found they contained psilocin, a synthetic hallucinogenic analogous to that found in magic mushrooms.</p> <p>Also located during the search of his home were scales, empty clipseal bags, small amounts of methyl, cocaine, MDMA and cannabis, along with used drug paraphernalia, knuckledusters and an expandable baton. Items consistent with the packaging of drugs for sale, including a heat vacuum-sealing machine; vacuum-seal bags and cloth and latex gloves were also found.</p> <p>A laptop computer seized contained a Tor browser, used to access the dark web, along with evidence of cryptocurrency transactions.</p>	<p>planning and sophistication utilising the dark web to purchase illicit drugs online at a cheap price to increase profit; the offending occurred in the context that he had been commercially dealing in illicit drugs over a significant period of time as part of a regular business and that drug dealing was funding his 'very comfortable' lifestyle; the offences were committed not only to enable him to stockpile illicit drugs for his own use, but also for profit.</p> <p>Low risk of reoffending; genuinely remorseful; steps taken to rehabilitate himself; undertaken counselling and abstinent from illicit drug use since his arrest.</p>	<p>At [65] ... the overall criminality revealed in the five offences committed by the appellant involved a high degree of culpability. While ct 5 was undoubtedly the most serious of the offences, cts 1, 2 3 and 4 were also serious.</p> <p>At [66] ... the appellant established and conducted a lucrative commercial business as a drug dealer. He dealt in significant quantities of various illicit drugs. Rather than obtaining an income legitimately, [he] made the conscious and deliberate choice to make his living as a drug dealer. The offending was sophisticated and involved the importation into Australia from the US, via the postal system, of his stock-in-trade. In these circumstances, the offending could hardly be described as isolated or a short-term aberration. ...</p> <p>At [68] 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 to 4 would have resulted in the imposition of a TES which would not have properly reflected the appellant's overall criminality.</p>
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1.	<p>Ramachandran v The State of Western Australia</p> <p>[2021] WASCA 54</p> <p>Delivered 31/03/2021</p>	<p>30 yrs at time offending. 31 yrs at time sentencing.</p> <p>Convicted after early PG (22% discount).</p> <p>No prior criminal history.</p> <p>Born and raised in Sri Lanka; upbringing marred by armed conflict resulting from Tamil Tiger movement.</p> <p>Came to Australia to financially assist his family; lived and treated poorly by an uncle in NSW.</p> <p>Commenced but did not complete TAFE studies.</p> <p>History of employment as a factory worker.</p> <p>Ran away from his uncle aged 18 yrs; taken in by the co-accused who uncle engaged to track him down; felt a sense of obligation and friendship to the co-accused.</p> <p>Financial responsibilities to his</p>	<p>Ct 1: Poss methyl wiss 32.572 kg at 57%-81% purity. Ct 2: Poss MDMA wiss 4.954 kg at 65% and 75% purity.</p> <p>A search warrant was executed at a home rented by Ramachandran. Inside the house 20 large clipseal bags containing a crystalline substance were found, stacked against a wall and obvious to anyone walking into the room.</p> <p>A further quantity of the crystalline substance was found in clipseal bags in a suitcase.</p> <p>A second suitcase contained plastic containers, boxed and loose clipseal bags, a food-saver machine, rolls of vacuum-seal bags, digital scales, masks, a sieve and a salad spinner.</p> <p>In a backpack a number of cryovac bags were located, some of which had been torn and contained a crystalline residue, consistent with having been opened and the drugs repackaged.</p> <p>A receipt for items purchased by</p>	<p>Ct 1: 19 yrs 10 mths imp (conc). Ct 2: 8 yrs imp (conc).</p> <p>TES 19 yrs 10 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the enormous quantity of drugs showed the appellant was involved in a criminal enterprise of the highest order; the impact on the community and the harm these drugs would have caused would have been immense; he was also in a position of trust and was running a safe house for the drugs; he and his co-accused were responsible for not just storing the drugs but repackaging them for further distribution to others.</p> <p>The sentencing judge found the appellant's criminal culpability very high regardless of the position he held within the network, he was still a vital part of the operation, protecting those holding other positions in the network, both higher up and on the same level.</p>	<p>Allowed.</p> <p>Appeal concerned error in finding (characterisation of appellant's involvement in the offending); length of individual sentence ct 1 and totality principle.</p> <p>Resentenced:</p> <p>Ct 1: 16 yrs imp (conc). Ct 2: 8 yrs imp (conc).</p> <p>EFP.</p> <p>At [34]-[35] ... the appellant had a significant role in the enterprise as a whole, which involved storing and repackaging a large quantity of drugs which were to be passed on to others. ... the appellant and his co-offender were jointly responsible for the storage and repackaging of the drugs which they were to pass on to others.</p> <p>At [61] The appellant in this case participated in a commercial operation involving a very large quantity of methyl, which represents the largest quantity of methyl in a State sentence considered by this court other than the 315 kg involved in <i>Ng</i>. The quantity of drugs involved increases the potential harm which would have resulted from their distribution into the community, and so is a very significant agg factor. The appellant's involvement in the offending was not fleeting, and he performed the important task of leasing the property used to warehouse the drugs. He was given access to the property in a manner which demonstrated the high degree of trust placed in him by the organisers of the operation. He participated in the operation for</p>

		<p>family; increasing on the death of his father in 2015.</p> <p>Arranged marriage 2019; wife in Sri Lanka; hoped to bring her to Australia.</p> <p>No history of illicit drug use; no family or friends in WA.</p>	<p>Ramachandran was also found. His DNA was also located inside gloves located in the house.</p> <p>Ramachandran falsely told the homeowner he intended to reside at the property with his wife. He in fact lived at another property with his co-accused.</p> <p>Two days after the search warrant was executed Ramachandran attended the property and discovered the drugs were missing. He returned to the house later the same day with the co-accused. Both men searched the house before leaving and returning in the evening. They were later arrested.</p> <p>Ramachandran admitted taking and removing bags from the house at the request of the co-accused, however he denied knowing the bags contained drugs.</p>		<p>commercial gain, although the amount of that gain is unknown.</p> <p>At [62] However, the appellant's involvement in the operation was apparently at a relatively low level in the criminal syndicate which imported the drugs for the purpose of selling them. There is no evidence to suggest that he was involved in the planning, organisation or funding of the operation. Nor was there any evidence that the appellant exercised any authority over others involved in the syndicate, was conducting his own business or was to share in the profits to be generated from the sale of the drugs.</p> <p>At [65] ... While the quantity of methyl involved was very large, there was no evidence that the appellant's involvement in the operation was other than as a paid worker. ... Without [the plea discount] the sentence would have exceeded 25 yrs imp. The individual sentence stands well above the sentence imposed or upheld in any previous decisions of this court, other than the 20 yr individual sentence imposed after trial on Quaid in <i>Zanon</i>... In our view, bearing in mind the PG, that disconformity is too large to be explained by the increased seriousness with which the offence is regarded in light of the increased maximum. ...</p>
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Transitional Provisions Enacted (31/08/2003)