

Possess methylamphetamine/amphetamine with intent to sell or supply

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

att	attempt
agg	aggravating
conc	concurrent
cum	cumulative
ct	count
EFP	eligible for parole
imp	imprisonment
MDL	motor drivers licence
MDMA	3,4-Methylenedioxy-n, Alpha Dimethylphenylethylamine (Ecstasy)
methyl	methylamphetamine
OMG	outlaw motorcycle gang
PCJ	pervert the course of justice
PG	plead guilty
poss	possession
SIO	suspended imprisonment order
susp	suspended
SW	search warrant
TES	total effective sentence
UCO	undercover officer
VRO	violence restraining order
wiss	with intent to sell or supply

Weight of methyl/amphetamine: above 65 grams

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
22.	<p><i>GRL v The State of Western Australia</i></p> <p>[2024] WASCA 146</p> <p>Delivered 25/11/2024</p>	<p>40 yrs at time offending. 42 yrs at time sentencing.</p> <p>Convicted after PG (20% discount; 15% for past and future cooperation),</p> <p>Modest criminal history; summary convictions for poss drugs; poss drug paraphernalia and utensils.</p> <p>Supportive childhood.</p> <p>Completed yr 12; bullied at school.</p> <p>Completed a Certificate IV in sound engineering; worked in the music industry.</p> <p>Commenced using cannabis, MDMA and amphetamines from mid-teens; managed ADHD symptoms through substance use.</p> <p>One child who lives with her mother; regular contact with his child.</p> <p>Diagnosed ADHD post arrest; chronic depression; anxiety and Complex PTSD.</p>	<p>Ct 1: Poss methyl wiss 1.978 kg at 74–82% purity. Ct 2: Poss unlawfully obtained property \$61,000. Ct 3: Poss methyl wiss 22.89 at g 74–82% purity.</p> <p><u>Cts 1 & 2</u></p> <p>Australia Post identified a suspicious package which had been sent from NSW to a fictitious recipient in WA. Police seized the parcel and found that it contained 1.978 kg of methyl. The methyl was replaced with an inert substance and delivered to the destination address.</p> <p>The appellant attended the property, collected the package and took it inside a residential unit. A SW conducted at the residential unit resulted in the appellant’s arrest. The appellant had opened the package and placed its contents into a large kitchen bowl. Police also located a black cooler bag containing \$60,000 in cash at the premises, and \$1,000 cash in the appellant’s wallet.</p> <p><u>Ct 3</u></p> <p>Another SW at the appellant’s residential address resulted in 22.89 g of methyl being seized.</p>	<p>Ct 1: 6 yrs imp (cum). Ct 2: 6 mths imp (cum). Ct 3: 2 yrs 5 mths imp (cum).</p> <p>TES: 8 yrs 11 mths.</p> <p>EFP.</p> <p>The sentencing judge found the offending was extremely serious. The offender was motivated by financial gain.</p> <p>The sentencing judge found the appellant was responsible for the collection and storage of a large quantity of illicit drugs. It was found the appellant was ‘somewhat of a trusted individual within the drug network.’</p> <p>The sentencing judge found that the appellant’s involvement in the drug network also extended to repackaging the drugs for onward sale and supply.</p> <p>The sentencing judge found the appellant was genuinely remorseful for his offending. The appellant had taken steps towards rehabilitations, including undergoing psychological counselling.</p> <p>The sentencing judge took into account the appellant’s cooperation with law enforcement authorities.</p>	<p>Appeal allowed.</p> <p>Appeal concerned the sentencing judge’s error in failing to account for past and promised cooperation as separate mitigating factors.</p> <p>Resentenced:</p> <p>Ct 1: 6 yrs 10 mths imp (cum). Ct 2: 10 mths imp (conc). Ct 3: 1 yr 2 mths imp (cum).</p> <p>TES: 8 yrs imp.</p> <p>EFP.</p> <p>At [43] ‘the requirement in s 8(5) [of the <i>Sentencing Act 1995</i>] that the court must state the fact and the extent of the reduction for promised future cooperation in open court is important to the sentencing process ...’</p> <p>At [44] ‘... when a court reduces the sentence it would otherwise have imposed on an offender for an offence because the offender has undertaken to assist law enforcement authorities, the court is obliged to state that fact, and the extent of the reduction, in open court.</p> <p>At [45] ‘... while [the sentencing judge] stated in open court that he gave a discount for the appellant’s promised future cooperation, he did not state the extent of the reduction for this factor.’</p> <p>At [59] ‘there can be no doubt that the appellant’s offending was very serious. We agree with the sentencing judge’s finding that the appellant was part of a well-planned and well-orchestrated importation of illicit drugs into WA from NSW ... Although the appellant was not at the upper echelon of the enterprise, he played an important and trusted role in it. The offending was not isolated.’</p> <p>At [61] ‘there were substantial mitigating factors, the most important of which were the appellant’s pleas of guilty and his cooperation. In addition, the appellant appears genuinely remorseful...’</p> <p>At [62] ‘the appellant has a modest criminal history.’</p> <p>At [65] ‘we agree with the submission of the appellant ... that the totality of the appellant’s cooperation should be characterised as past cooperation. The provision of the statement in respect of the co-offender significantly assisted the State to bring to justice a significant</p>

					drug dealer ...'
21.	<p>Wood v The State of Western Australia</p> <p>[2024] WASCA 143</p> <p>Delivered 14/11/2024</p> <p>Co-offender:</p> <p>Peagram v The State of Western Australia</p> <p>[2024] WASCA 144</p> <p>Delivered 14/11/2024</p>	<p><u>Wood</u></p> <p>26 yrs at time offending. 29 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Born in Vic; three siblings; parents separated at 6 yrs old and remained in mother's care; mother re-partnered; one of his stepfathers was violent towards him; father's partner was also abusive.</p> <p>Left high school in yr 11; bullying and difficulty with reading.</p> <p>Worked at a cheese factory then a fitness centre; later returned to the cheese factory.</p> <p>No dependants; long term partner since time of bail.</p> <p>Diagnosed ADHD; symptoms associated with complex PTSD.</p> <p>Long history of substance use; alcohol from 12 yrs; cannabis from 16 yrs; methyl from 17 yrs.</p> <p><u>Peagram</u></p> <p>33 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Criminal history; mostly traffic related; one offence of trafficking in ecstasy</p> <p>Youngest of three brothers; parents were alcoholics and gamblers; father was violent; mother abandoned family at 17</p>	<p>1 x Poss methyl wiss 9.974 kg at 78–80% purity.</p> <p>Both offenders were charged on the same indictment.</p> <p>Wood and Peagram drove a car from Victoria to Sydney. They were unknown to each other prior to the journey.</p> <p>On arrival in Sydney, a bag containing 9.974 kg of methyl was placed into the car. They were each provided with an encrypted mobile telephone. Wood drove the pair to a town in regional NSW and dropped Peagram off there. Wood continued the journey to WA. Peagram then independently travelled by plane.</p> <p>The pair rendezvoused in WA and drove to a nature reserve. As Wood remained in the car, Peagram took a bag containing the drugs and left it in the reserve. A third party took the drugs and replaced it with a box containing \$888,650 in cash.</p> <p>Wood and Peagram returned to the reserve and collected the box of cash. Police arrested the pair shortly after.</p> <p>Wood maintained he did not know the weight, purity or type of the drugs involved in the enterprise; but, he knew that it was drugs. He did not know that there would be money to collect.</p> <p>Peagram maintained he knew he was involved in a criminal activity, but initially thought he was transporting a large quantity of foreign currency. The day before the exchange was when he became aware it was a substantial quantity of drugs.</p> <p>Both offenders were motivated by</p>	<p>11 yrs 6 mths imp (both offenders). EFP.</p> <p><u>Wood</u></p> <p>Sentenced as a courier who was not aware of the weight, purity or type of drug.</p> <p>The sentencing judge found that Wood had known drugs were involved from the moment he agreed to participate in the enterprise.</p> <p>The sentencing judge found that at the time of the offence, Wood was struggling financially and was motivated to participate by the promise of financial gain.</p> <p>The sentencing judge found that Wood did not have beneficial ownership of the drugs, but nonetheless played an integral role in the enterprise.</p> <p>The sentencing judge found that the offending was not part of an ongoing course of conduct.</p> <p>The sentencing judge found that the Wood was remorseful and expressed a deep regret about his offending. Further, he had shown a commitment to rehabilitation and that he was a moderate or low risk of reoffending.</p> <p><u>Peagram</u></p> <p>Sentenced as a courier.</p> <p>The sentencing judge found that Peagram knew he was involved in criminal activity, and he later knew it was drug related.</p> <p>The sentencing judge accepted that by the time Peagram knew the offending involved drugs, he was in another State and was confronted with a difficult decision because he was already implicated; however, he still took no action to extricate himself.</p> <p>The sentencing judge found that the offending</p>	<p><u>Wood</u></p> <p>Appeal dismissed (leave refused).</p> <p>Appeal concerned length of sentence.</p> <p>At [54] 'the circumstances of the offence in this case were also serious ... The appellant sold or supplied 9.974 kg of methylamphetamine ... The appellant was motivated by financial gain ... the appellant's involvement in this offence was not a fleeting or brief one.'</p> <p>At [55] 'whilst the appellant's role can be fairly described as that of a courier, it was clearly a critical role in the drug enterprise. Further, the appellant was trusted to transport the drugs across the country on his own.'</p> <p>At [56] 'the appellant's circumstances were favourable in that he had no relevant prior criminal record and had made efforts towards rehabilitation.'</p> <p>At [77] 'having regard to the maximum penalty, the circumstances of the offence, the personal circumstances of the appellant, the mitigating factors, and the comparable cases, the sentence of 11 yrs 6 mths was not unreasonable or plainly unjust.'</p> <p><u>Peagram</u></p> <p>Appeal dismissed (leave refused).</p> <p>Appeal concerned parity of sentence with Wood.</p> <p>At [57] 'to establish a ground of appeal that relies on a breach of the parity principle, it is not sufficient to show that there is some difference between co-offenders. The difference must be such that the imposition of the same sentence is productive of an injustice.'</p> <p>At [58] 'the appellant principally relies upon the difference in culpability arising from his state of knowledge as compared to that of the co-offender. The sentencing judge accepted that the appellant did not become aware that illicit drugs were involved until the night before the supply transaction occurred. However, that does not mean that the appellant was an innocent participant in this enterprise prior [to becoming aware].</p> <p>At [59] 'to the contrary ... the appellant travelled by car with Wood from Victoria to Sydney on the understanding that he would be participating in a significant criminal enterprise, for which he would be paid \$20,000, \$10,000 of which was paid in advance. Wood was</p>

		<p>yrs.</p> <p>Expelled from school in yr 10; frequently truant.</p> <p>Worked in fast food outlets until commenced painting apprenticeship; worked in construction and as a personal trainer.</p> <p>Cannabis and alcohol use from 13 yrs; amphetamines from 17 yrs; addicted to cocaine during COVID-19.</p> <p>History of short-term relationships.</p>	<p>financial gain. Peagram was offered \$20,000 for the offending, Wood was offered between \$10,000 and \$15,000.</p>	<p>was not part of an ongoing course of conduct.</p> <p>The sentencing judge found that Peagram had used his time on remand wisely and was remorseful for his offending.</p>	<p>promised \$10,000 to \$15,000, none of which was paid ... Viewed as a whole, the appellant's culpability was not significantly less than that of Wood.</p> <p>At [60] 'as to personal circumstances, there was no significant difference between the appellant and Wood.'</p>
<p>20.</p>	<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</p>

					<p>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 prohibited drugs into the community.’</p> <p>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.’</p>
19.	<p><i>Diamantopoulos v The State of Western Australia</i></p> <p>[2024] WASCA 82</p> <p>Delivered 12/07/2024</p>	<p>30 yrs at time offending. 32 years at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Extensive criminal history; on parole for drug offending; two prior poss pwiss methyl.</p> <p>Second of three children; supportive family.</p> <p>Left school mid yr 12; sporadic employment since.</p> <p>Cannabis user from 13 yrs; used methyl from 17 yrs; extensive drug use; drug dependent.</p> <p>Stimulant use disorder; borderline personality disorder; major depression; anxiety; and PTSD.</p>	<p>Ct 1: Dealing with money proceeds of an offence \$4,498,790. Ct 2: Poss methyl wiss 42.92 kg at 77–82%.</p> <p><u>Co-offender – Edwards</u></p> <p>Ct 1: Poss methyl wiss (119 kg). Ct 2: Poss methyl wiss (43 kg). Ct 3: Dealing with money proceeds of an offence \$4,503,630.</p> <p>Prior to the offending, the appellant had been informed his previous drug debt of \$20,000 had been increased to \$60,000. The appellant was informed that if he accepted a courier job his debt would be wiped. The appellant accepted the job.</p> <p>One afternoon, Edwards parked a white truck in a truck bay along a highway. Shortly after, Mr R parked next to the truck. Edwards then unloaded multiple boxes from his truck to Mr R. Mr R then left with the boxes. A police SW at Mr R’s address located 11 boxes with 119 kg of methyl.</p>	<p>Ct 1: 8 yrs imp (conc). Ct 2: 14 yrs 6 mths imp.</p> <p>TES: 14 yrs 6 mths. EFP.</p> <p>Co-offender – <i>The State of Western Australia v Edwards</i> [2022] WASCA 141:</p> <p>Ct 1: 17 yrs imp. Ct 2: 15 yrs imp (conc). Ct 3: 8 yrs imp (conc).</p> <p>The sentencing judge found that the appellant’s offending was very serious. The enterprise was ‘sophisticated, well planned and well resourced’ with a ‘clear commercial motivation’.</p> <p>The sentencing judge was satisfied that the appellant was genuinely remorseful and that there were good prospects of rehabilitation.</p> <p>The sentencing judge found that in many respects, the appellant and Edwards were at the same level of the drug distribution’s hierarchy, although performing different tasks.</p>	<p>Appeal dismissed (leave refused).</p> <p>Appeal concerned parity and length of sentence imposed on ct 2.</p> <p>At [51] ‘... the authorities make it clear that there is no hard and fast rule in terms of what might be a relevant comparator as to sentence in the case of co-offenders. The parity principle may apply to each and every component of the co-offenders’ respective sentences. Generally speaking, in evaluating parity, all the facts and circumstances must be considered ...’</p> <p>At [56] ‘in his sentencing remarks, the sentencing judge expressly referred to Mr Edwards’ additional offending (the 119 kg of methyl supplied to Mr R) and the term of imprisonment for that offending ...’</p> <p>At [60] ‘ground 1 fails. In our view the ground was based on an overly technical view of the sentencing remarks. When the sentencing remarks are read in full and in context, as they should be, ground 1 had no reasonable prospect of succeeding.’</p> <p>At [63] ‘we accept that there was a relevant difference between the appellant’s motivation for his offending and Mr Edwards’ motivation for Mr Edwards’ offending. Mr Edwards was solely motivated by commercial gain ... By contrast the appellant was clearing a \$60,000 drug debt.’</p> <p>At [64] ‘it is apparent, however, that Mr Edwards was also under pressure, albeit pressure of a different kind.’</p>

			<p>On the same day, the appellant drove a van into the same truck bay alongside Edwards. The appellant exited the van and placed a number of large suitcases in Edwards' truck. Edwards then retrieved multiple boxes from the truck and handed them to the appellant. The police attempted to arrest the appellant at the truck bay. After a short chase, the appellant was taken into custody and 42.92 kg of methyl was found in the appellant's van. The methyl was between 77%–82% purity.</p> <p>A search of Edwards' truck revealed the suitcases contained \$4,498,790 in cash.</p>	<p>The sentencing judge identified two facts that suggested Edwards' role was more significant: he transported the methyl into WA from the Eastern States, and his motivation was purely commercial gain.</p> <p>The sentencing judge identified three countervailing factor that suggested the appellant's offending was more serious: Edwards pleaded guilty at an earlier stage; the appellant had a significant criminal history; and he was on parole at the time of offending.</p>	<p>At [65] 'the unfortunate reality is that many offenders commit offences because they are under pressure of some kind. The extent to which this minimises the criminal culpability of the offender for the offending, if at all, depends on the facts and circumstances that bring about the pressure.'</p> <p>At [66] 'in the present case no actual threats were directed to the appellant's family. The appellant was simply told to settle the debt or face the consequences.'</p> <p>At [67] 'the primary consideration in assessing the seriousness of the appellant's offending is to consider what the appellant did. That is unaffected by the appellant's motivation. In terms of what motivated the appellant to offend there was, on his own account, a personal advantage that accrued by reason of the offending — the appellant cleared a substantial drug debt ... Accordingly, so far as the appellant was under a degree of pressure to participate in the offending, it was the appellant's prior actions and involvement with illicit drugs that made the appellant susceptible to that pressure.'</p> <p>At [69] '... it remains the case that the appellant was actuated, at least in part, by commercial gain. The appellant was clearing a substantial drug debt. The appellant therefore acted for reward.'</p> <p>At [81] 'once very lengthy sentences are reached there is a diminishing marginal effect so far as personal and general deterrence are concerned in further increases in the severity of the sentence imposed on an offender. Accordingly, it is not to be expected that sentences concerning very large quantities of prohibited drugs should have a linear relationship with the weight of the prohibited drugs involved in the offending.'</p> <p>At [83] 'the limited disparity in the total effective sentences is explained by the proper application of sentencing law and principles.'</p>
18.	<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</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>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>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>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>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 Ciphrr phone, cash counting equipment 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 Ciphrr 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>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 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>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 with on a basis that attributed to him much greater criminality than he had 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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<p>17.</p>	<p><i>Owen v The State of Western Australia</i></p> <p>[2024] WASCA 28</p> <p>Delivered 27/03/2024</p>	<p>35 yrs at time offending. 38 yrs at time sentencing.</p> <p>Convicted after trial (ct 1) Convicted after PG (cts 2–13).</p> <p>Criminal history in WA and Qld; unlawful poss of motor vehicle; traffic offences; importing prohibited imports; AOBH.</p> <p>Born in Brisbane; loving and supportive family; good relationship with family.</p> <p>Completed yr 12; completed mechanic apprenticeship; qualified as a mechanical fitter and Microsoft System engineer.</p> <p>Gainful employment since leaving school; workshop manager at time of conviction; described as a dedicated and hard-working employee.</p> <p>Began use of hormones after doctor prescribed testosterone; continued use of testosterone for personal use; supplied steroids to others for discount on his own; maintains having never used illicit substances that weren't anabolic steroids.</p> <p>Married and living with his wife.</p> <p>Experienced some anxiety and depression.</p>	<p>Ct 1: Att to poss methyl wiss 133 g at 56%.</p> <p>Cts 2–13: Att to poss various quantities of human growth hormone and anabolic steroids.</p> <p><u>Ct 1</u></p> <p>The appellant was heavily involved in bodybuilding. In addition to using various performance enhancing drugs, he also sold growth hormones and steroids to other bodybuilders.</p> <p>The appellant was the part owner of an investment property. The property was leased to tenants. Australia Post attended the property to deliver two packages. Expecting a parcel, the tenants accepted delivery. After opening the parcels. The tenants discovered a vacuum sealed bag containing a crystalline substance. The tenant returned it to the deliver officer and told him it contained drugs. Police attended the post office and seized the parcel. The parcel contained 133 g of methyl with a purity of 56%.</p> <p><u>Cts 2–12</u></p> <p>The relevant parcel had a tracking number, which was been tracked by two separate Australia Post Consumer Numbers (APCN). One of the APCN's was registered in the name of an ex-girlfriend of the appellant. That APCN was linked to a SIM card found in the possession of the appellant. The Australia Post database identified two further parcels addressed to the appellant's ex-girlfriend. Those two parcels were seized and contained numerous steroids. The appellant later travelled to the parcel locker and attempted to collect one of the packages seized by police.</p> <p><u>Cts 13</u></p>	<p>Ct 1: 6 yrs imp. Cts 2–13: 12 mths imp (cum).</p> <p>The sentencing judge found that the explanation of the appellant that he was tracking the parcel on behalf of someone else without any knowledge that it contained an illicit substance lacked credibility.</p> <p>The sentencing judge found the appellant had taken actions to distance himself from the illegality of the offending.</p> <p>The sentencing judge found the appellant's role was that of a middleman or drug courier in a mid to high level drug operation.</p> <p>The sentencing judge found that the appellant did not act for altruistic reasons and that it was implausible that he would have undertaken such risk for no reward. The sentencing judge was satisfied that there was commerciality in the appellant's offending.</p>	<p>Appeal dismissed (leave refused).</p> <p>Appeal concerned length of sentence imposed on ct 1.</p> <p>At [43] 'the major sentencing considerations for offences of dealing in or trafficking dangerous drugs of addiction are general and personal deterrence.'</p> <p>At [46] 'as to the seriousness of the offence, the appellant's attempt to obtain the methylamphetamine was not a momentary aberration. His actions also involved some degree of sophistication. The appellant set up an APCN in a false name so that he could track the movement of parcels containing prohibited drugs. He used that APCN to track the parcel containing methylamphetamine.'</p> <p>At [47] 'it should be noted that to say that knowledge of the precise nature and quantity of drugs was not proved beyond reasonable doubt does not equate with a positive finding that the appellant did not know these things.'</p> <p>At [48] 'we have regard to the cases referred to by the appellant. When the circumstances of those case are considered, it is apparent that the sentences imposed in them do not support the claim that the appellant's sentence was manifestly excessive.'</p> <p>At [54] '... there is no proper basis for arguing that the sentence imposed in this case was manifestly excessive.'</p>
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			The following day, the appellant attended another locker and collected a different parcel addressed to his ex-girlfriend. That parcel contained human growth hormone. During his police interview, the appellant made full admissions about the human growth hormone and anabolic steroids.		
16.	<i>Astone v The State of Western Australia</i> [2024] WASCA 18 Delivered 16/02/2024	59 yrs at time sentencing. Convicted after PG (17.5% discount). No criminal history; minor road traffic record. Youngest of three sisters; parents migrated to Australia from Sicily; parents were strict; raised on a farm in a reclusive environment; father was physically and emotionally abusive. Completed yr 10 at high school; bullied and ostracised at school. Completed a clerical course at TAFE; worked for extended period in bookkeeping and clerical positions; former employers spoke highly of her work ethic and confirmed she was drug free. Forced into an arranged marriage; husband was abusive and a drug-user; appellant was afraid to leave the marriage; two children from the marriage (the oldest was the co-offender); marriage ended after 20 yrs. Later commenced a relationship with Mr E; Mr E was a heroin addict and drug dealer; was abusive to towards the appellant; on and off relationship; died one yr before sentencing.	Ct 1: Poss unlawfully obtained property \$13,950. Ct 2: Offer to supply methyl 27.96 g. Ct 4: Offer to supply methyl 28 g. Ct 5: Poss methyl wiss 111 g at 81% purity. Ct 6: Poss heroin wiss 60.79 g 74–77% purity. Ct 7: Poss unlawfully obtained property \$3,000. <u>Ct 1</u> Police executed a SW at the appellant’s home whilst the co-offender was present. Police seized and charged the co-offender with poss methyl together with poss a firearm, parts and ammunition. Police located \$13,950 in cash. An intercepted phone call revealed the appellant was aware of the cash in her home. <u>Ct 2</u> A listening device in the appellant’s property recorded a conversation between the appellant and co-offender during which the appellant offered to supply the co-offender with 28 g of methyl. <u>Ct 4</u> The listening device captured the appellant offering to supply an individual with 28 g of methyl. <u>Ct 5</u> Surveillance devices later recorded the	Ct 1: 9 mths imp (conc). Ct 2: 3 yrs 3 mths imp (cum). Ct 4: 4 yrs 3 mths imp (HS). Ct 5: 4 yrs imp (conc). Ct 6: 3 yrs 3 mths imp (conc). Ct 7: 6 mths imp (conc). TES: 5 yrs 3 mths. EFP. <u>Co-offender</u> Ct 1: 15 mths imp (cum). Ct 2: 4 yrs imp (HS). The sentencing judge found the appellant had remorse. But the appellant’s poor mental health did not reduce her culpability. The sentencing judge expressly referred to imposing comparable sentences to the co-offender and Mr T. The sentencing judge found that the drug dealing business belonged to the co-offender; however, the appellant’s role allowed the business to operate more efficiently. The sentencing judge found that the circumstances of the appellant’s offending were at least equal to the co-offender. The sentencing judge found the appellant had knowledge of the legal consequences and harm caused by drug dealing activities. Nonetheless, the appellant became involved and helped facilitate the co-offender’s drug dealing activities. The sentencing judge found that the	Appeal dismissed (leave refused for length of sentence). Appeal concerned first limb of totality principle and parity with co-offender’s sentence. At [57] ‘the appellant played a sustained and integral role in her son’s drug dealing business ... the business required the appellant’s organisation to function. The appellant herself offered to supply 28 g of methyl to a client and 27.96 g of methyl to her son. She was closely involved in the transport of 111 g of methyl...The transport involved a degree of planning in which a third person was recruited in an effort to conceal the appellant and her son’s role in the offending. Separately, she held just over 60 g of heroin for Mr E in her home, which she knew was to be used ... in a commercial operation. A significant degree of accumulation ... was required for the total sentence to reflect the overall criminality.’ At [58] ‘we do not accept ... that there is a material distinction to be drawn between a person pursuing a drug dealing enterprise for their own financial benefit and doing so for the financial benefit of a close family member. Nor does the appellant’s motivation to protect [the co-offender] from threats ... fundamentally alter the appellant’s culpability.’ At [58] ‘the appellant did not attempt to extricate [the co-offender] from the trade by finding lawful means of assisting him...Rather, she chose to facilitate the continuation of her son’s unlawful drug dealing business.’ At [79] ‘overall, there was little to distinguish the roles the appellant and [the co-offender] played in the drug dealing business.’ At [80] ‘it is also true the appellant’s antecedents provided significantly greater mitigation than those of [the co-offender] ... Based on the mitigating factors that were available to the appellant, it would be expected that she would receive a lower sentence ...’ At [81] ‘however, the overall criminality of the offending for which the appellant and [the co-offender] received their respective total effective sentences was not the same. The appellant was convicted of more offences ... the difference between the appellant’s and [co-

		<p>Poor mental health; anxiety; depression and possibly PTSD.</p> <p>Became involved in drug dealing to assist her son (the co-offender) with his debts.</p> <p><u>Co-Offender</u></p> <p>29 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Ct:1 poss methyl wiss (13.8 g at 63% purity). Ct 2: supply methyl (111 g).</p> <p>Criminal history; imp for serious drug offences; drug and weapon offences.</p> <p>Left school at 17 yrs; receiving Centrelink benefits; drug use; in good physical health.</p> <p>Depressive symptoms.</p>	<p>co-offender and Mr T (another co-offender) discussing a plan to collect drugs. Mr T went to the appellant's home, and the appellant and co-offender told Mr T the plan for the day. The appellant gave Mr T \$40 for fuel and the three offenders drove in a two-car convey to a truck stop. Mr T waited at a café and the appellant and co-offender later returned to his location. The co-offender placed a package of methyl under the bonnet of Mr T's car and the two vehicles drove away. Police stopped and searched the vehicles, discovering a package containing 111 g of methyl at 81% purity.</p> <p><u>Ct 6 & 7</u></p> <p>After searching the offender's vehicles, a SW was conducted at the appellant's home. Police found 60.79 g of heroin with a purity between 74% and 77%. Police also located \$3,000 in cash. The appellant was holding and hiding the heroin and money for her then-partner Mr E — who was a heroin user and dealer. The appellant was not personally selling or supplying heroin for commercial purposes.</p>	<p>appellant's involvement was — to some extent — related to a long history of being exposed to domestic violence and being fearful of her then partner.</p>	<p>offender's] total effective sentences reflects the greater level of criminality involved in the larger number of offences of which the appellant was convicted.'</p> <p>At [84] 'considered in isolation, the lack of disparity between the individual sentences for the offences relating to the same 111 g of methyl would not be justifiable given the appellant's significantly better antecedents and other mitigating factors.'</p> <p>At [85] 'however, it is relevant that the sentenced imposed for ct 5 on the appellant's indictment is to be served concurrently with other sentences and so does not add to the length of her total effective sentence.'</p> <p>At [87] 'it was therefore reasonably open for the sentencing judge to take the view that the parity principle was appropriately accommodated by the difference in the total effective sentences imposed.'</p>
15.	<p><i>Wijnen v The State of Western Australia</i></p> <p>[2024] WASCA 1</p> <p>Delivered 04/01/2024</p>	<p>34 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No criminal history.</p> <p>Stable and loving home; average school student; left school at 16 yrs to commence apprenticeship.</p> <p>Changed employment due to injuries sustained in a car accident; later became a crane driver and truck driver; diagnosed with testicular cancer and was in remission at sentencing.</p> <p>Depression; medicated since 2018; showed some signs of</p>	<p>Ct 1: Att to possess methyl wiss 291 g at 81–82% purity.</p> <p>Australian Border Force intercepted a package sent to a residential premises. The package contained vacuum-sealed bags containing methyl.</p> <p>The package was reconstructed and substituted with an inert substance. A listening device was installed in the package. The package was then delivered.</p> <p>At the residence, the female co-accused answered the door and received the package. She attempted to call the appellant. When he did not answer, she sent a text message to the appellant</p>	<p>Ct 1: 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found that the appellant played an important part in the offence. The offending was not merely a fleeting involvement.</p> <p>The sentencing judge characterised the appellant as an important cog in the offence, which would have involved the distribution of the drugs to somebody else.</p> <p>The sentencing judge found that the appellant was, apart from his drug issues and offending, a person capable of making a positive commitment to society.</p>	<p>Appeal dismissed (leave refused).</p> <p>Appeal concerned length of sentence.</p> <p>At [30] 'the major sentencing considerations for offences of dealing in or trafficking dangerous drugs of addiction are general and personal deterrence. The weight of the drugs in question is not generally the chief factor to be taken into account in fixing a sentence, but it is a matter of importance.'</p> <p>At [32] '... the appellant attempted to possess a significant quantity of methyl of high purity. That quantity was more than ten times the trafficable quantity prescribed ...'</p> <p>At [33] 'although no finding of commerciality was made...the appellant's role was nonetheless significant...His role was a trusted one that would plainly have facilitated the further distribution of the drugs into the community.'</p>

		<p>ADHD or autism.</p> <p>Escalating methyl use; daily use by time of offending; acknowledged that he had previously sold or supplied drugs; ceased use of methyl in custody.</p> <p>Well regarded by family and friends; supported by long-term partner.</p>	<p>asking whether he was expecting a package. The appellant responded he would come to the house in an hour.</p> <p>On arrival, the appellant asked the co-accused for some gloves. Police executed a search warrant and found the appellant near the package. He was wearing a pair of latex gloves and holding a Stanley knife. The appellant was searched and a clip-seal bag containing 24g of methyl was located in his sock. In his wallet a small piece of paper had the same name and address details on the package.</p> <p>During his interview, the appellant claimed he was a coin collector, and he was wearing gloves because he did not want to risk infecting his fragile grandparents with COVID-19.</p>	<p>The sentencing judge accepted that the appellant had facilitated the course of justice by narrowing issues at trial.</p> <p>The sentencing judge was unwilling to accept the appellant was remorseful for his actions.</p>	<p>At [46] ‘in the present case, whilst the appellant’s role was not described as being commercial, he was nonetheless an important cog in the criminal enterprise ... Whilst the appellant had a number of favourable personal circumstances, such factors are of less weight in respect of offending of this nature and are subsumed to the importance of general and personal deterrence.’</p>
14.	<p><i>Gray v The State of Western Australia</i></p> <p>[2023] WASCA 188</p> <p>Delivered 22/12/2023</p>	<p>48 yrs at time sentencing.</p> <p>Convicted at trial.</p> <p>Limited criminal history.</p> <p>Born in NSW; parents separated after birth; lived with mother during early years; mother re-married; had two half-siblings; maintained good relationships with stepfather and half-siblings; alleged mother had mental health issues and she subjected him to physical and emotional abuse; lived with his father from 13 yrs; stable upbringing.</p> <p>Attended several schools; left school in yr 10; started apprenticeship in cabinetmaking.</p> <p>Worked in logistics and transport.</p> <p>Previously married; not in a relationship at time of offending; no children; no family connections to WA; no social</p>	<p>Ct 1: Att to supply methyl 56kg at 80.91% purity.</p> <p>The appellant was one of three men convicted of playing an important part in an unsuccessful attempt to transport 56kg of methyl from NSW into WA. Appellant was jointly charged with Newton. Maksimovic was charged with att poss of methyl.</p> <p>Newton established a transport and logistics company (‘7 Roads’). Newton later arranged for the appellant to become involved in the business. The appellant lived in Melbourne and arranged for 7 Roads to use warehouse premises in Vic.</p> <p>Maksimovic was the head of a sophisticated drug syndicate operating in WA. Newton and the appellant decided to use 7 Roads to transport methyl to WA for financial reward.</p> <p>Newton and the appellant arranged for a shipping container to be transported from Melbourne to Perth. The appellant</p>	<p>Ct 1: 20 yrs.</p> <p>EFP.</p> <p>Sentencing judge found the appellant and Newton played an integral role in bringing a large amount of methyl into WA.</p> <p>Sentencing judge described the appellant and Newton as ‘essential conduits between the eastern states and the syndicate’.</p> <p>The sentencing judge found the offending was a carefully planned and considered course of conduct demonstrated by: the use of 7 Roads; the use of encrypted mobile phones; the dry-run to test their planning; and the offence was committed for financial reward.</p> <p>The sentencing judge found the moral blameworthiness of the appellant was high.</p> <p>The sentencing judge found Maksimovic was the head of the syndicate; operated a large-scale and sophisticated drug-dealing business; was responsible for sourcing the methyl; and operated the syndicate for financial reward.</p>	<p>Appeal dismissed (leave refused).</p> <p>Appeal concerned parity of sentences with co-offender.</p> <p>At [56] ‘... it is necessary to note that the offences committed by the appellant and by Mr Maksimovic were not identical offences. The appellant was convicted of attempting to supply methylamphetamine to another, whereas Mr Maksimovic was convicted of attempting to possess methylamphetamine with intent to sell it to another. However, both offences related to the same quantity of methylamphetamine.’</p> <p>At [57] ‘the appellant and Mr Maksimovic committed their individual offences in the course of acting on different sides of the same transaction.’</p> <p>At [62] ‘there is no dispute that Mr Maksimovic’s culpability was greater than that of the appellant. As the head of a syndicate that operated a large-scale, sophisticated, and commercially motivated drug dealing business in WA, Mr Maksimovic was responsible for sourcing 59 kg of high quality methylamphetamine.’</p> <p>At [63] ‘on the other hand, the appellant engaged in a determined course of conduct using his knowledge of the transport and logistics industries in an ultimately unsuccessful effort to transport a very large quantity of valuable methylamphetamine ... the sentencing judge did find that the appellant played a “hands on” role in the attempt to supply the methylamphetamine’.</p>

		visits for more than two-yrs. History of depression.	received 56kg of methyl at the warehouse, repackaged the methyl into 59 vacuum-sealed bags and stored them within the container bound for Perth. Police substituted the methyl with an inert substance. Newton and the appellant travelled to Perth to facilitate the hand over to Maksimovic. The appellant unloaded the container's contents into a van, and left the vehicle in a Bunnings carpark according to the instructions of Maksimovic. Another member of the syndicate unloaded the van, and left \$142,500 as payment for Newton and the appellant's role in the operation.	The sentencing judge found Maksimovic's moral blameworthiness as very high. The sentencing judge found that all three offenders had experienced some hardship as a result of the COVID-19 pandemic.	At [66] 'what the appellant did was perform a crucial role in ensuring the safe transfer of a very large amount of methylamphetamine across State borders, thereby facilitating a significant unlawful transaction... what should not be overlooked is that the ultimate purpose of what the appellant did was to facilitate the objectives of Mr Maksimovic and his syndicate, namely to distribute it into the Western Australian community for profit. In that regard, a proper assessment of the appellant's criminality cannot be divorced from Mr Maksimovic's criminal activities and motivations.'
13.	<i>Le v The State of Western Australia</i> [2022] WASCA 163 Delivered 08/12/2022	41 yrs time sentencing. Convicted after PG (15% discount). Extensive criminal history. Born WA; parents refugees; two older siblings; father suffered trauma as a result of experiences in Vietnam; domestic violence; parents worked long hrs; often left to fend for himself. Sexually abused as a child. Education disrupted by frequent moves; experienced bullying; difficulties making friends; began misbehaving high school; often truanted; repeated yr 11. Commenced, but did not complete, TAFE course. Employed family business when still at school; continued to work in the business for many yrs. One child from former relationship.	Cts 1-4: Sold methyl 3.4 g - 14.27 g at 69%-77% purity. Ct 5: Sold methyl 83.7 g at 63% purity (trafficable quantity) Ct 6: Offer to sell methyl 56 g (trafficable quantity). Ct 7: Poss methyl wiss 31.91 g (trafficable quantity). Ct 8: Poss unlawfully obtained property (\$7,580 cash). Ct 9: Poss methyl wiss 7.13 g. Le sold a quantity of methyl to an UCO in exchange for \$900. Analysis found the drug weighed 3.4 g and at 77% purity (ct 1). Two days later Le sold the UCO 3.44 g of methyl at 76% purity for \$900 (ct 2). About a fortnight later Le offered the UCO 56 g of methyl. At an arranged meeting Le said he could only supply 28 g of the drug. Lee supplied the UCO with a parcel of drugs for which he was paid \$5,500. Analysis found the methyl weighed 13.5 g and at 74% purity (ct 3). The following day Le met the UCO and supplied the UCO with a further 14.27 g of methyl at a purity of 69%. There was	Cts 1 & 2: 15 mths imp (conc). Cts 3 & 4: 2 yrs imp (conc). Ct 5: 4 yrs 6 mths imp. Ct 6: 3 yrs imp (cum). Ct 7: 2 yrs 6 mths imp (conc). Ct 8: 9 mths imp (conc). Ct 9: 20 mths imp (conc). TES 7 yrs 6 mths imp. The sentencing judge found the appellant committed the offences for financial gain; his conduct was repeated and persistent and the offences were committed within a short time after being released from prison. Remorseful; desire to overcome drug dependency; past attempts at rehabilitation unsuccessful.	Dismissed (leave refused). Appeal concerned totality principle. At [87] The total offending in this case was clearly very serious. On six separate occasions the appellant either sold or offered to sell methyl including trafficable amounts on two occasions. ... When his car was searched ..., the police located another trafficable amount of methyl as well as over \$7,000 reasonably suspected to have been unlawfully obtained. ... A further quantity of methyl was found when the appellant's house was searched. ... At [88] The appellant had numerous previous convictions for possessing drugs with intent to sell or supply. He had only been released from a lengthy prison sentence for similar drug offending five months prior to the current offending. ... At [94] It has not been established that the TES ... breached the first limb of the totality principle. In particular, it has not been established that the TES failed to bear a proper relationship to the overall criminality involved in all of the offences, viewed in their entirety, having regard to all relevant facts and circumstances (including those referable to the appellant personally), all relevant sentencing factors, and sentences imposed in comparable cases.

		<p>Long history of illicit drug use; commenced using alcohol and marijuana aged 13 yrs; methyl and ecstasy aged 19 yrs; daily user of heroin.</p>	<p>no payment, as this quantity was the balance for the 28 g promised the day before (ct 4).</p> <p>A few days later Le arranged to meet the UCO again. On this occasion Le arrived with another man. It was arranged the other man would provide the UCO with methyl on behalf of Le. The man then supplied the UCO with a quantity of methyl for which he paid \$16,500 cash (ct 5).</p> <p>Some days later Le offered to sell the UCO 56 g of methyl for \$11,000. This offer was made via messages sent using WhatsApp (ct 6).</p> <p>The next day, Le was apprehended. A search of his vehicle located a clipseal bag containing 75.5 g of methyl. A further search of the vehicle also revealed a pouch, containing about 1.75 g of methyl secreted behind a panel. Also found was a set of digital scales and numerous unused clipseal bags. A clipseal bag containing 1.75 g of methyl and more unused clipseal bags was also located in the roof lining. Two mobile phones were also found. The phones contained messages indicating his involvement in the sale of prohibited drugs (ct 7).</p> <p>Le was searched and cash totalling \$1,650 was found in one of his pockets. A further \$480 was found in his wallet and in the car a further \$5,450 was found (ct 8).</p> <p>The home at which Le was residing was also searched. A clipseal bag containing 7.13 g of methyl was found (ct 9).</p>		
12.	<p><i>Den Ridder v The State of Western Australia</i></p> <p>[2022] WASCA 113</p>	<p>36 yrs at time offending. 39 yrs at time sentencing.</p> <p>Convicted after PG (18% discount). Convicted after very late PG (cts 3, 6 & 9) (8% discount).</p>	<p>Ct 1: Sold methyl 28 g (trafficable quantity). Ct 2: Conspired to sell methyl 1.75 g. Cts 3; 5; 6; 7; 8 & 11: Supplied methyl. Ct 4: Sold cannabis 28 g. Cts 9 & 10: Offered to sell/supply methyl (trafficable quantity).</p>	<p>Ct 1: 4 yrs imp (conc). Ct 2: 9 mths imp (conc). Ct 3: 4 yrs imp (conc). Ct 4: 3 mths imp (conc). Ct 5: 18 mths imp (cum). Ct 6: 3 yrs imp (conc). Ct 7: 2 yrs imp (conc).</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of sentence ct 10 and totality principle.</p> <p>At [45] In the present case, the appellant offered to sell or supply 42 g [ct 10] of methyl, against the background that he was a dealer in methyl who had access to substantial quantities of the drug and that</p>

<p>Delivered 26/08/2022</p>	<p>Formidable criminal history; prior terms of imp.</p> <p>Three siblings; fairly stable upbringing; at times subjected to violence and threats of violence.</p> <p>Stealing and fighting from aged 14 yrs; involved local gangs aged 15 yrs; left home due to his behaviour.</p> <p>Family supportive.</p> <p>Two significant relationships; two sons; both children removed from mother's care due to neglect and his incarceration; daughter and stepdaughter to current relationship.</p> <p>Commenced using methyl aged 14 yrs; methyl addiction problematic aged 19 yrs; commenced selling drugs to fund his addiction.</p>	<p>Ct 13: Poss unlawfully obtain property (\$6,260.70 cash).</p> <p>The offending took place over a period of about five wks.</p> <p>All offences were committed while Den Ridder was on bail for firearm offences.</p> <p>Den Ridder agreed to supply an associate with methyl. He met the associate and supplied him with 28 g of the drug for \$5,000 (ct 1).</p> <p>On another occasion Den Ridder arranged for a Mr Davidson to supply a female associate with 1.75 g of methyl in exchange for \$600 (ct 2). On the same day he supplied an associate with 27.2 g of methyl with a purity of 81% (ct 3). Again on the same day, he offered to supply a female associate with a half-ounce of cannabis for \$150. When she asked whether she could instead obtain an ounce of cannabis he agreed and supplied her with the drug (ct 4).</p> <p>On another occasion Den Ridder agreed and supplied an associate with 3.5 g of methyl (ct 5).</p> <p>The following day Den Ridder spoke with a male associate, who later attended his home and purchased 13.4 g of methyl at 79% pure (ct 6).</p> <p>On further occasions Den Ridder received a series of calls from two associates and agreed to provide them with quantities of methyl. He supplied one associate with 7.12 g of the drug (ct 7) and the other 14 g (ct 8).</p> <p>On another occasion Den Ridder spoke via mobile telephone to an associate. Den Ridder asked if he wanted 'a big one', being an ounce of methyl. The associated replied, 'Yes, the usual' (ct 9). On the same day, following a series</p>	<p>Ct 8: 2 yrs imp (cum).. Ct 9: 4 yrs 6 mths imp. Ct 10: 5 yrs imp (cum). Ct 11: 2 yrs 3 mths imp (conc). Ct 13: 10 mths imp (conc).</p> <p>Not genuinely remorseful; no insight into his offending.</p>	<p>he dealt in the drug for profit. There is no reason to doubt that he had the capacity to source the drug and that he intended to fulfil the offer. The seriousness of the offence is aggravated by the fact that he was on bail at the time of the offence.</p> <p>At [48] ... having regard to all of the relevant facts and circumstances and the sentencing principles to be applied, it is not reasonably arguable that the sentence on count 10 ... was unreasonable or plainly unjust and was therefore manifestly excessive.</p> <p>At [51] ... The quantities of methyl involved in the commission of cts 1, 3, 6, 8, 10 and 11 were reasonably significant and showed that the appellant had ready access to such quantities, and that his offers to sell or supply methyl were serious and able to be fulfilled. It cannot be overlooked that [he] was subject to the higher max penalty of life imp in respect of cts 1, 9 and 10.</p> <p>At [53] ... the TES imposed upon the appellant bore a proper relationship to the overall criminality involved in all of the offences the appellant committed, viewed in their entirety and having regard to all relevant facts and circumstances, ...</p>
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			<p>of telephone calls he agreed to supply an associate with 42 g of methyl (ct 10).</p> <p>On another occasion Den Ridder received another series of calls from an associate in which he agreed to supply the associate with 14 g of methyl. The associate attended his home and obtained 13.7 g of the drug (ct 11).</p> <p>A SW was executed at Den Ridder's home and \$6,260.70 in cash was located and seized (ct 13).</p>		
11.	<p><i>Giangiulio v The State of Western Australia</i></p> <p>[2022] WASCA 77</p> <p>Delivered 01/07/2022</p>	<p>50 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Long criminal history; serious drug offending; prior sentences of imp.</p> <p>Single; two sons; grandchild; close relationship with his family.</p> <p>Left school yr 10; completed trade apprenticeship.</p> <p>Many yrs employed building industry; work-place injury 2003; delivery driver at time sentencing; very good work ethic.</p> <p>Suffers anxiety, stress, depression, high blood pressure; some deafness; dyslexic.</p> <p>Long history of illicit drug use; cannabis and methyl; not used since his arrest.</p>	<p>Ct 1: Poss methyl wiss 2 kg at 74%-76% purity.</p> <p>Ct 2: Poss cannabis wiss 3.48 kg.</p> <p>The co-offender Liadow arranged to supply an UCO with methyl. When the UCO attended Liadow's home to collect a large quantity of the drug Giangiulio entered the room. He was carrying a bag, which he placed near the entrance, before leaving.</p> <p>Liadow informed the UCO that Giangiulio was his courier. Liadow handed the shopping bag containing 2 kg of methyl to the UCO on credit for \$306,000.</p> <p>Later that same day a SW was executed at Liadow's residence.</p> <p>On the same day a SW was also executed at Giangiulio's home. Four cardboard boxes, containing 3.48 kg of cannabis in large clipseal or vacuum sealed bags were found.</p> <p>During his interview Giangiulio maintained his right to silence.</p>	<p>Ct 1: 9 yrs imp (cum).</p> <p>Ct 2: 2 yrs imp (cum).</p> <p>TES 11 yrs imp.</p> <p>EFP.</p> <p>Co-offender Liadow sentenced to 11 yrs imp. EFP (ct 1).</p> <p>Appellant sentenced on basis he was Liadow's courier.</p> <p>The sentencing judge found that while the appellant acted as courier this did not detract from his involvement in a significant way in a criminal enterprise; although not 'the profit taker' he was paid several thousand dollars and he knew of the existence of the methyl and was prepared to deliver it.</p> <p>The sentencing judge found the appellant was in poss of a significant quantity of cannabis wiss; although he was unable to find the appellant intended to sell the cannabis for a commercial return the cannabis was packaged for the purposes of supply and he was prepared to be involved in the sale or supply of the cannabis.</p> <p>Remorseful; steps taken towards rehabilitation.</p>	<p>Dismissed (leave refused – totality principle).</p> <p>Appeal concerned parity and totality principles.</p> <p>At [81] ... we consider that the absence of materially greater disparity in favour of the appellant between Mr Liadow's sentence for ct 1 and the appellant's sentence for ct 1 did not infringe the parity principle or the principle of equal justice. ...</p> <p>At [82] ... The appellant's offending on ct 2 was very serious. That offending was separate and discrete from his offending on ct 1. The appellant's offending on ct 2 involved the poss of a very substantial quantity of cannabis with the intention of selling or supplying the drug so that it was disseminated into the community. The appellant's offending on ct 2 required additional punishment. ...</p> <p>At [103] We are satisfied, ... that her Honour, in arriving at the TES ..., made a qualitative and discretionary judgment to wholly accumulate the individual sentences for cts 1 and 2. ...</p>
10.	<p><i>IIO v The State of Western Australia</i></p> <p>[2022] WASCA 38</p>	<p>20s at time offending.</p> <p>Convicted after early PG (25% discount).</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 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>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [23] The appellant's offending was a serious example of its type.</p>

	<p>Delivered 01/04/2022</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 B</u> Ct 1: Poss unlawfully obtained property (\$1,640 cash). Cts 2-3: Poss MDMA wiss 12.41 g at 64% and 76% purity and 69% purity.</p> <p><u>Indictment A</u> 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 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>Ct 5: 6 mths imp (conc).</p> <p><u>Indictment B</u> Ct 1: 6 mths imp (conc). Ct 2: 6 mths imp (conc). 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 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>	<p>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>9.</p>	<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>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</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).</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</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>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>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>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> <p>At [60] ... it is not reasonably arguable that the TES ... infringed the first limb of the totality principle. ...</p>
8.	<p><i>ATH v The State of Western Australia</i></p> <p>[2021] WASCA 149</p> <p>Delivered 24/08/2021</p>	<p>36 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Minor criminal history.</p> <p>Raised stable household until aged 11 yrs; parents separated; mother's new relationship marred by domestic abuse; sexually abused by mother's new partner; relationship with mother broke down; subsequently lived with her father and then her aunt.</p> <p>Three children; separated from their father 5 yrs prior to sentencing; one child diagnosed ADHD, another with autism; another suffered abuse.</p> <p>Father supportive; cares for her children whilst in custody.</p> <p>New relationship marred by domestic abuse; hospitalised on one occasion; partner arrested and threatened to kill her.</p> <p>Employed number of roles; receiving unemployment benefits at time offending.</p>	<p>1 x Poss methyl 977 g at 75-77% purity.</p> <p>ATH drove her co-offender, M, from a rural location to a Perth suburb for M to take delivery of a quantity of methyl. The length of the return journey was about 1,000 km.</p> <p>M hid the package in the roof cavity of ATH's vehicle.</p> <p>The same day they made the return journey. ATH initially drove and then M took over the driving. M was driving when he was stopped by police. ATH's vehicle was confiscated because M did not have a valid MDL.</p> <p>The vehicle was searched and the drugs were located in the roof cavity.</p>	<p>7 yrs imp.</p> <p>EFP.</p> <p><u>Co-offender M</u> PG (20% discount) 6 yrs imp.</p> <p>The trial judge found the appellant's role was similar to that of a courier; she agreed to drive M to Perth in the knowledge M was intending to take poss of a significant quantity of methyl; she gave M permission to hide the methyl in the roof cavity of her vehicle; she intended to supply the drugs to M upon their return by permitting M to retrieve the drugs from her vehicle and it was a reasonable inference that she stood to gain a benefit by driving M to and from the rural location in one day.</p> <p>The trial judge found the facts and circumstances of the appellant's offending were less serious than those of M; she acted, in essence, under M's instructions and the extent to which she was to benefit from the offending was much less than that of M; however M, unlike the appellant, had the benefit of three important mitigating factors; an early PG; cooperation and assistance; remorse.</p>	<p>Dismissed - leave refused.</p> <p>Appeal concerned parity principle.</p> <p>At [31] The facts and circumstances of the offending by the appellant and M reveal that M had a higher level of culpability than the appellant. However, the appellant's role was still important. The fact that [she] did not know that she was transporting as much as a kg of methyl (in circumstances where she knew the quantity was significant) carries, at best, very limited weight in assessing her culpability. ...</p> <p>At [36] We are satisfied, after evaluating and weighing all relevant sentencing factors, in the context of the facts and circumstances of the offending by the appellant and M, and after taking into account the similarities and differences between their offending and their personal circumstances and antecedents, that the sentence imposed on the appellant ... did not infringe the parity principle or the principle of equal justice.</p>

		<p>Suffered stress after death of her sister in MV accident.</p> <p>Medicated for depression and anxiety; att suicide about two mths after offending; sought and participated in counselling.</p> <p>Commenced using methyl 2018; drug use quickly escalated; drug rehabilitation undertaken.</p>		<p>No demonstrated remorse; genuine attempts made at rehabilitation and to abstain from illicit drugs.</p>	
<p>7.</p>	<p>Jacomb v The State of Western Australia</p> <p>[2021] WASCA 81</p> <p>Delivered 11/05/2021</p>	<p>36 yrs at time sentencing.</p> <p><u>Ind 1437</u> Convicted after very late PG (10% discount).</p> <p><u>Ind 2201</u> Convicted after PG (20% discount).</p> <p>Prior criminal history.</p> <p>Born New Zealand; moved to Australia in 2002.</p> <p>Completed yr 10 high school.</p> <p>Consistent work history until 2015; not engaged in any legitimate employment on loss of one of his legs resulting from being shot.</p> <p>Long-term relationship; four children aged 1-14 yrs; important role in the rearing of his deceased sister's children.</p> <p>Drug abuser; drug use escalated following the shooting incident; commenced dealing drugs at a high level.</p>	<p><u>Ind 1437</u> Cts 1-4; 7-17 & 19: Offer to sell methyl. Cts 5 & 6: Poss firearm. Ct 18: Conspiracy to sell methyl 280 g. Ct 20: Poss methyl 2.25 g.</p> <p><u>Ind 2201</u> 1 x Poss of methyl wiss 8.55 g at 49%-81% purity).</p> <p><u>Ind 1437 (2016 offences)</u> Over a period of about three mths Jacomb made a number of offers to sell or supply prohibited drugs. The total amount of methyl he offered to sell or supply was 126.125 g and, including the conspiracy and possession charges, 416.175 g of methyl.</p> <p>On one occasion Jacomb agreed to provide a half-ball (1.75 g) of methyl (ct 1). That same day he agreed to supply another associate with another half-ball of methyl (ct 2). The next day he offered an associate a ball (3.5 g) of methyl. A week later he agreed to provide an associate with a quarter-ball (0.875 g) of methyl for \$400 (ct 4).</p> <p>Two days later a series of messages indicated Jacomb was intending to provide a person with firearms. As a result his vehicle was stopped and searched. An altered rifle (ct 5) and a homemade submachine gun (ct 6) were located in his vehicle. He was arrested and released to bail.</p>	<p><u>Ind 1437</u> Cts 1-2; 4; 8; 10; 12-14 & 19: 6mths imp (conc). Cts 3; 7; 11; 16 & 20: 9 mths imp (conc). Ct 5: 1 yr imp (cum). Cts 6; 9 & 17: 2 yrs imp (conc). Ct 15: 2 yrs 6 mths imp. (cum). Ct 18: 4 yrs imp (head).</p> <p><u>Ind 2201</u> 1 yr imp (cum with sentence on Ind 1437).</p> <p>TES 8 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending was not isolated; it involved the ongoing supply of methyl; he was a significant dealer at a high level with the ability to source large quantities; the dealing was of a commercial nature; he had the ability and willingness to provide firearms to others, enhancing the risk to people in the community and he had also modified the firearms.</p> <p>The appellant committed offences while on bail on two occasions and the 2019 offending while on bail awaiting trial for the 2016 offences; the sentencing judge expressly decided against backdating the sentence to give credit for 273 days in custody, the period from when the appellant returned to custody until the day before his conviction.</p> <p>Expressions of responsibility and remorse not accepted by sentencing judge; courses</p>	<p>Allowed.</p> <p>Appeal concerned error in law (failure to give credit for time spent in custody) and totality principle.</p> <p>Resentenced:</p> <p><u>Ind 1437 (10% discount)</u> Cts 1; 2 & 4: 6 mths imp (conc). Cts 3 & 7: 9 mths imp (conc). Ct 5: 1 yrs imp (cum). Ct 6: 2 yrs imp (conc). Cts 8; 10; 12-14 & 19: 7 mths imp (conc). Ct 9: 2 yrs 6 mths imp (cum). Cts 11; 16 & 20: 10 mths imp (conc). Ct 15: 3 yrs imp (conc). Ct 17: 2 yrs 6 mths imp (conc). Ct 18: 4 yrs imp (head).</p> <p><u>Ind 2201 (20% discount)</u> 6 mths imp.</p> <p>TES 8 yrs imp.</p> <p>EFP.</p> <p>At [89] In our respectful opinion, the sentencing judge's reasons for declining to give credit for the 273 days in custody reveal an error of principle, ...</p> <p>At [101] The appellant's offending had a number of serious features.</p> <p>At [102] The appellant's offending the subject of the 2016 offences revealed that he was conducting an ongoing drug dealing business, including dealing in drugs in substantial quantities, over a period of about nine wks. He was engaged in that enterprise for commercial reasons. To the extent that he was dealing in drugs for the purpose of paying his own drug debts, that purpose is nevertheless a commercial</p>

		<p>After his release on bail Jacomb continued to deal in methyl. Over the following weeks he agreed to supply 3.5 g for \$750; a half-ball (1.75 g) and 28 g of the drug (cts 7-9).</p> <p>After appearing in the Magistrates Court in relation to the firearm offences Jacomb's bail was extended. Again, he continued to deal in methyl while on bail.</p> <p>On receiving a call from an associate asking for a half-ball (1.75 g) of methyl Jacomb informed the associate he could supply 1g of the drug (ct 10) and the further 0.75 g at a later date.</p> <p>On other occasions Jacomb agreed to supply a ball of methyl (3.5 g) for \$1,000; 1.75 g for \$550; 1.75 g; 1 g; 42 g; 3.5 g and 28 g respectively of methyl (cts 11-17).</p> <p>On another occasion Jacomb received a call from an associate indicating he had \$40,000-\$60,000 to spend and was seeking 10 ounces (280 g) of methyl. He then conspired to source the methyl (ct 18).</p> <p>On another occasions Jacomb agreed to supply an associate with a half-ball (1.75 g) of methyl (ct 19).</p> <p>A SW was executed at Jacomb's home. A clipseal bag containing 2.25 g of methyl was located near where he was sitting (ct 20).</p> <p><u>Ind 2201 (2019 offence)</u> This offence was committed while Jacomb was on bail awaiting trial for the 2016 offences.</p> <p>A SW was executed at Jacomb's home. Four clipseal bags; two digital scales and some unused clipseal bags were located. The clipseal bags contained 0.26 g; 3.49 g (49% purity); 2.77 g</p>	<p>undertaken while in custody; past opportunities to achieve rehabilitation unsatisfactory.</p> <p>Prospect of deportation once sentence of imp served.</p>	<p>one. ...</p> <p>At [103] Further, cts 5 and 6, the firearms offences, were themselves serious and, as the judge rightly observed, called for a degree of accumulation. The appellant was unlawfully in poss of two weapons that he had modified to enhance their use, and he was intending to pass them onto another person.</p> <p>At [104]-[105] ... cts 7 – 20 were aggravated by the fact that they were committed while the appellant was on bail. ... The ... offending the subject of the 2019 offence was also aggravated by his committing the offence while on bail for the 2016 offences. ...</p>
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			(81% purity) and 2.03 g (78% purity) of methyl. Jacomb's mobile phone also contained messages relating to the sale and supply of prohibited drugs and a 'tick list' of sales. When interviewed Jacomb denied dealing in drugs.		
6.	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. Engaged in both paid and volunteer employment at time sentencing. No children. User and dealer in illicit drugs many yrs, particularly methyl. Diagnosed with ADHD.	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 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. <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.	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 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. Low risk of reoffending; genuinely remorseful; steps taken to rehabilitate himself; undertaken counselling and abstinent from illicit drug use since his arrest.	Dismissed – leave refused (totality principle). 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. 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. 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. ... 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

			<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><u>Ct 5</u> Several days after KJL's arrest another package from the US, addressed to a parcel locker in Cloverdale was examined at a Sydney facility. It contained MDMA powder, concealed inside boxing equipment. The parcel locker address was identical to packaging discovered at his home. The value of the MDMA was approx \$50,000 if sold by the kg, and approx \$141,000 if sold in ounce lots.</p> <p>Text messages at the time of his arrest revealed KJL was actively inquiring about the purchase of 84 g of cocaine and that a kg of MDMA (the subject of ct 5) was on its way.</p>		properly reflected the appellant's overall criminality.
5.	Ramachandran v	30 yrs at time offending.	Ct 1: Poss methyl wiss 32.572 kg at	Ct 1: 19 yrs 10 mths imp (conc).	Allowed.

<p><i>The State of Western Australia</i></p> <p>[2021] WASCA 54</p> <p>Delivered 31/03/2021</p>	<p>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 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>57%-81% purity.</p> <p>Ct 2: Poss MDMA wiss 4.954 kg at 65% and 75% purity.</p> <p>A SW was executed at a home rented by Ramachandran. Inside the house 20 large cipseal 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 cipseal bags in a suitcase.</p> <p>A second suitcase contained plastic containers, boxed and loose cipseal 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 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 SW 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</p>	<p>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>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).</p> <p>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 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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			drugs.		
4.	<p>Chuang v The State of Western Australia</p> <p>[2021] WASCA 49</p> <p>Delivered 19/03/2021</p> <p>Co-offender of:</p> <p>Law v The Queen</p> <p>[2019] WASCA 81</p>	<p>43 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; prior sentence of imp for selling methyl.</p> <p>Born Taiwan; lived in Australia over 20 yrs.</p> <p>Hairdresser by trade.</p> <p>Three children.</p>	<p>1 x Offer to sell methyl 3 kg.</p> <p>Chuang and the co-accused, Mr Law, and a person in Hong Kong, were engaged in a drug distribution enterprise.</p> <p>On the direction of the person in Hong Kong, Chuang and Mr Law offered to sell 3 kg of methyl to a Mr Lofts for \$155,000.</p> <p>Chuang and Mr Law did not intend to provide Mr Lofts with the actual drug, rather they intended to ‘rip off’ Mr Lofts by providing him with rock sugar, processed in such a way that it looked like methyl, in exchange for the \$155,000 cash.</p> <p>Chuang’s role in the offence was to create and package the fake methyl, to deliver it to Mr Law and to collect the \$155,000 paid by Mr Lofts.</p> <p>The purported sale of the methyl was arranged to take place in the vicinity of a shopping centre. Chuang packaged the rock sugar into a bag and drove to the shopping centre carpark where he met and gave Mr Law the bag. Mr Law carried the bag to Mr Lofts, who was parked nearby. In exchange for the methyl, Mr Lofts handed over \$154,950 in cash.</p> <p>Mr Lofts and Mr Law were apprehended a short time later.</p> <p>Later that evening Chuang was arrested. During a search of his home a heat-sealing machine and unopened bags of rock sugar were found.</p>	<p>9 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant and Mr Law were criminal partners in the enterprise.</p> <p>The sentencing judge found the appellant had the capacity to deliver actual methyl; the offending was premeditated and calculated; he was motivated by financial gain.</p> <p>Remorseful.</p>	<p>Dismissed – leave refused.</p> <p>Appeal concerned error of fact (appellant’s capacity to fulfil the drug order); disparity with sentence of co-offender (Mr Law) and length of sentence.</p> <p>At [156] ... the appellant was part of a syndicate, comprising of Mr Law and [the person] in Hong Kong, which was importing methyl into WA. Viewed in this light, it was open to his Honour to find that the appellant had the capacity to fulfil the order.</p> <p>At [162] There were two factors which required Mr Law to receive, as he did, a more lenient sentence than the appellant ... When one has regard to these factors, the disparity in the sentences imposed for the common offence is accounted for, and thus there has been no infringement of the parity principle. ...</p> <p>At [172] ... while the criminality may be less than in a case where there is a genuine plan to supply drugs, drug ‘rip-offs’ are objectively serious. Part of the reason lies in the circumstances that, unlike most cases of fraud or false pretences, the victim of a drug ‘rip-off’ is unlikely to report the matter to police. As a result, subject to any act of violent retribution which commonly follows such an event, the offender is likely to escape scot-free. There is a significant community interest in not allowing the drug trade to be used for fraudulent activities of this kind and also in deterring the kind of violent response which such conduct can very readily provoke. Others who may be tempted to engage in similar conduct must be dissuaded from engaging in such criminal activity.</p> <p>At [175] ... In our opinion, the sentence was an appropriate exercise of the sentencing discretion. It was not unreasonable or plainly unjust. ...</p>
3.	<p>Nickson v The State of Western</p>	<p>58 yrs at time sentencing.</p>	<p><u>Ind 2154</u></p> <p>Ct 1: Poss methyl wiss 69.5 g.</p>	<p><u>Ind 2154</u></p> <p>Ct 1: 3 yrs 6 mths imp (cum).</p>	<p>Dismissed – leave refused.</p>

<p><i>Australia</i></p> <p>[2021] WASCA 40</p> <p>Delivered 05/03/2021</p>	<p>Convicted after PG (Ind 2154 10% discount and Ind 990 20% discount).</p> <p>Extensive prior criminal history; previous convictions for drug related offences.</p> <p>Born New Zealand; unremarkable childhood; came to Australia aged 30 yrs; close with his mother and sister; father deceased.</p> <p>Educated to yr 10; completed trade apprenticeship; employed consistently until 2007.</p> <p>Marriage of 17 yrs ended 2006.</p>	<p><u>Ind 990</u> Ct 1: Poss methyl wiss 505.59 g at 4% and 77%-80%. Ct 2: Poss dexamphetamine wiss 2.95 g. Ct 3: Poss cannabis wiss 105.5 g. Cts 4-6: Poss unlawfully obtained property. (\$8,745 cash; jewellery and \$700 cash).</p> <p><u>Ind 2154</u> A SW was executed at Nickson's home. A package, containing five clip seal bags, was located in a freezer. Each clipseal bag contained quantities of methyl, weighting a total of 69.5 g.</p> <p>In Nickson's bedroom three sets of digital scales, a small quantity of methyl, numerous clipseal bags, various weapons, a mobile telephone and \$6,000 cash was found.</p> <p>A further \$2,000 cash was also found in a shed, along with a quantity of the cutting agent MSM.</p> <p>Nickson was charged and released on bail.</p> <p><u>Ind 990</u> Some mths later Nickson was inside a unit when it was searched by police. The property was fortified with chains and pieces of property. Police were forced to dismantle the barricade to gain entry.</p> <p>Inside the unit three separate quantities of methyl were found in three separate locations. In a cupboard in clipseal bags a total of 194.9 g of methyl with a purity of between 77% and 80% was found. In another part of the cupboard clipseal bags containing a total of 12.69 g of methyl with a purity of 4% was found. In the shower area police also located a clipseal bag containing 298 g of methyl with a purity of 77% (ct 1).</p>	<p><u>Ind 990</u> Ct 1: 7 yrs 6 mths imp (cum). Ct 2: 18 mths imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 12 mths imp (conc). Ct 5: 12 mths imp (conc). Ct 6: 12 mths imp (conc).</p> <p>TES 11 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found it was an agg factor that the offences the subject of Ind 990 were committed while the appellant was on bail for the offence charged in Ind 2154 and that all the offences were committed in the context of the appellant conducting an ongoing drug dealing business for commercial gain.</p> <p>The sentencing judge found the appellant had been selling illicit drugs since 2007 to fund his personal illicit drug use; he was within the mid to high level user/dealer range.</p> <p>Some demonstrated remorse; steps taken to rehabilitate himself and drug programmes undertaken while in custody.</p>	<p>Appeal concerned totality principle.</p> <p>At [52] It was a significant agg factor that the appellant's offending in relation to [Ind 990] occurred while he was on bail for the offence charged in [Ind 2154]. Also, it was a significant agg factor in relation to the offences involving methyl that the appellant was dealing commercially in that drug. Further, the seriousness of the appellant's drug dealing offences was underscored by his poss of a variety of weapons. ...</p> <p>At [53] ... we are satisfied that it was necessary, in order properly to mark the seriousness of the appellant's overall offending, for the individual sentences for the ct on [Ind 2154] and for ct 1 on [Ind 990] to be served cumulatively. The offences charged in those cts involved separate and distinct offending.</p> <p>At [55] The TES bears a proper relationship to the overall criminality involved in all of the offences, viewed in their entirety, and having regard to all relevant circumstances, ...</p>
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			<p>Another clipseal bag found in the unit contained 13 tablets, being 2.95 g of dexamphetamine (ct 2).</p> <p>Also located were two clipseal bags containing cannabis, with a total weight of 105.5 g (ct 3).</p> <p>In various locations within the unit a total of \$8,745 in cash was found (ct 4) and inside a safe were various items of jewellery with an estimated value of \$10,000 (ct 5).</p> <p>Data from a mobile telephone located in the unit revealed Nickson had been offered jewellery in exchange for the discharge of outstanding debts. Digital scales, numerous clipseal bags, stun guns and an electrical shotgun were also located in the unit.</p> <p>A SW was then executed at another premises. A caravan, over which Nickson had control, was searched and found to contain \$700 cash, scales and a stun gun (ct 6).</p>		
2.	<p><i>Trainor v The State of Western Australia</i></p> <p>[2021] WASCA 36</p> <p>Delivered 26/02/2021</p>	<p>53 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>No relevant prior criminal history.</p> <p>Born in UK; came to Australia aged 7 yrs.</p> <p>Married; wife significant health problems.</p> <p>Consistent employment history; previously working well-paid position; new work significantly lower remuneration; good work ethos; history of volunteer work.</p> <p>Experiencing financial pressures at time offending.</p>	<p>Ct 1: Poss methyl wiss 3892.96 g at 74%-81% purity.</p> <p>Ct 2: Poss unlawfully obtained property (\$16,655 cash).</p> <p>Police observed Trainor enter a home and a short time later leave the premises carrying a small bag.</p> <p>Later that day a SW was executed at Trainor's home. During the search a bag matching the description of the bag he was seen carrying from the house was located in his bedroom. The bag contained three packages of methyl weighing 999 g, 998 g and 1 kg with a purity between 80% - 81%.</p> <p>Also in Trainor's bedroom was a bag containing a further package of methyl, weighing 836 g of 81% purity, and two clipseal bags. The clipseal bags contained 58.4 g of 74% purity and 0.48</p>	<p>Ct 1: 14 yrs imp (conc).</p> <p>Ct 2: 16 mths imp (conc).</p> <p>TES 14 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending 'very serious'; the quantity and purity of the drugs involved were indicative of the seriousness of the offence and the large sum of money in the appellant's possession indicated those with whom he was working placed a high level of trust in him.</p> <p>The sentencing judge found the appellant had possession of the drugs for the purpose of passing them on further down the chain of distribution; the seriousness of the offending was significantly aggravated by the fact he was involved in the offending for commercial gain.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence ct 1.</p> <p>At [52] While the appellant's offending is by no means in the most serious category of offences of this kind, his offence was undoubtedly very serious. The appellant's offence involved a very substantial quantity of methyl of a very high level of purity. Those with whom he was working placed a high level of trust in him. He played an important role in the drug operation of which his offence was a part. As this court observed in <i>Musulin</i>, those who securely store large quantities of drugs for others play a role in the distribution networks not substantially less important than those who actually distribute the drugs to dealers or those who sell them to the ultimate users.</p> <p>At [53] ... We are not persuaded that the sentence of 14 yrs imp imposed by the sentencing judge in respect of ct 1 was unreasonable or plainly unjust. ...</p>

			<p>g of methyl.</p> <p>Methyl crystal residue and methyl shards weighing 0.22 g and 0.23 g, along with 0.3 g of methyl, were also found in a box.</p> <p>In a cryovac bag 0.3 g of methyl and 2.09 g of dimethyl sulfone (MSM) were located.</p> <p>Trainor directed police to a safe containing \$15,000 in cash. He was also found to have \$1,655 cash in his wallet.</p> <p>Trainor admitted the drugs belonged to him and that he was going to pass them on to another person.</p>	<p>Cooperative; showed police the locations of the drugs; made admissions as to his possession of the drugs.</p>	
1.	<p>Blasco v The State of Western Australia</p> <p>[2021] WASCA 26</p> <p>Delivered 12/02/2021</p>	<p>39 yrs at time sentencing.</p> <p>Convicted after PG (22% discount).</p> <p>Extensive criminal history; prior drug convictions.</p> <p>Chaotic and dysfunctional upbringing.</p> <p>Expelled yr 9; never returned to school.</p> <p>Worked short period; otherwise no substantial employment history.</p> <p>Three adult children; supportive current partner and mother of his fourth child born while in custody.</p> <p>Commenced using drugs aged 15 yrs; methyl use from age 17 yrs; relapsed into drug use at time offending; accumulated a drug debt to an OMG; commenced selling drugs in order to repay the debt.</p>	<p>Ct 1: Sold/supplied methoxphenidine.</p> <p>Cts 2-4: Offer to sell methyl 1 g; 14 g & 14 g.</p> <p>Ct 5: Offer to sell cannabis 0.1–0.4 g.</p> <p>Ct 6: Offer to sell methyl 28 g.</p> <p>Ct 7: Poss methyl wiss 45.18 g at 72%-81% purity.</p> <p>Ct 8: Poss methoxphenidine wiss 72.9 g.</p> <p>Blasco’s mobile telephone was lawfully monitored. The offending occurred over the course of a number of months.</p> <p>Blasco telephoned a woman and offered to supply her with an unknown quantity methoxphenidine in tablet form. He agreed to meet the woman to complete the transaction (ct 1).</p> <p>During a text message conversation Blasco offered an unknown male 1 g of methyl for \$400. They arranged to meet to complete the transaction (ct 2).</p> <p>During a text message conversation with a woman, Blasco offered to sell her 14g of methyl. They arranged to meet and completed the transaction (ct 3).</p>	<p>Ct 1: 12 mths imp (conc).</p> <p>Ct 2: 12 mths imp (conc).</p> <p>Ct 3: 3 yrs imp (cum).</p> <p>Ct 4: 3 yrs imp (conc).</p> <p>Ct 5: 2 mths imp (conc).</p> <p>Ct 6: 4 yrs imp (conc).</p> <p>Ct 7: 5 yrs imp (cum).</p> <p>Ct 8: 3 yrs imp (conc).</p> <p>TES 8 yrs imp.</p> <p>EFP.</p> <p>Drug trafficker declaration made.</p> <p>The sentencing judge found the appellant was involved in a very significant and substantial ongoing drug distribution for commercial gain, in the context of an OMG; the offending was in the low to mid-level of criminality.</p> <p>Appellant sought and participated in counselling while in custody; high risk of reoffending.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle. Individual sentences not challenged.</p> <p>At [58] The appellant committed a series of serious drug offences over the course of a number of months. The offences were not isolated events but reflected the reality that the appellant was a participant in a substantial business of distributing prohibited drugs. While he dealt in those drugs for the purpose of paying his own drug debts, that purpose was nevertheless a commercial one.</p> <p>At [60] ... Given the ongoing nature of the appellant’s conduct, some accumulation was necessary in order to properly reflect the overall seriousness of the offending and the totality of the criminality involved. ...</p> <p>At [65] ... the TES imposed on the appellant fell within the emerging range of sentences customarily imposed for this type of offending, since the passing of the <i>2017 Amendment Act</i>. It was not unreasonable or plainly unjust.</p>

			<p>Through text messages Blasco offered to supply a man with a 'family pack'. A reference to four balls of methyl, each being 3.5 g. The man collected the drugs from Blasco's home (ct 4).</p> <p>Blasco received a text message from a woman requesting cannabis. He offered her a cone and then made arrangements for the woman to collect the drug (ct 5).</p> <p>During a telephone call from the same man the subject of ct 4 Blasco agreed to supply him with a 28 g of methyl for \$5,600 (ct 6).</p> <p>Blasco and an associate travelled to Perth to collect drugs. After meeting a male in Perth, his car was stopped by police. A search of his vehicle located a total of 45.18 g of methyl divided into clip seal bags (ct 7).</p> <p>The vehicle was seized and a further search revealed 258 tablet containing methoxphenidine, weighing 72.9 g (ct 8).</p>		
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Weight of methyl/amphetamine: 3 – 65 grams

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
12.	<p><i>Walker v The State of Western Australia</i></p> <p>[2024] WASCA 153</p> <p>Delivered 10/12/2024</p>	<p>30 yrs at time offending. 31 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Minor criminal history.</p> <p>Youngest of four siblings; loving and supportive family; family remain supportive.</p> <p>Completed yr 12 at school; attended boarding school on a sporting scholarship.</p> <p>Qualified boilermaker; previously employed by a large mining</p>	<p>18 x Offer to sell methyl (totalling 14.4 g). 1 x Offer to sell cocaine 1 g. 1 x Poss methyl wiss 27.2 g at 70% purity.</p> <p>Police lawfully intercepted the appellant's mobile phone, resulting in an awareness he was travelling with prohibited drugs.</p> <p>Police intercepted the appellant's vehicle and located a package containing methyl in his partner's pants. The package contained 27.2 g of methyl.</p> <p>After the appellant's arrest, police</p>	<p>Poss methyl: 3 yrs 4 mths imp. Offer to sell cocaine: 3 mths (conc). Offer to sell methyl: 9 mths (cum).</p> <p>TES: 4 yrs 1 mths imp.</p> <p>EFP.</p> <p>Sentenced as a lower mid-level dealer.</p> <p>The sentencing judge found that the appellant had an established network of people to whom he would sell and supply drugs. He was selling quantities between a point and 3.5 g.</p> <p>The sentencing judge found that the appellant's mental health issues provided</p>	<p>Appeal dismissed (leave refused on all grounds).</p> <p>Appeal concerned length of sentence for poss methyl; first limb of totality principle; and a contention that if the subsequent psychiatrist's report was before the sentencing judge, a lower sentence would have been imposed.</p> <p>At [49] 'the major sentencing considerations for offences of dealing or trafficking in dangerous drugs of addiction are general and personal deterrence. The weight of the drugs in question is not, generally, the chief factor to be taken into account in fixing a sentence, but it is a matter importance. Other matters to be taken into account include the nature and level of the offender's participation in drug dealing or trafficking within a particular organisation, or generally, and whether the offending was committed for commercial gain. The degree of purity is often regarded as significant. Matters personal to an offender will almost always be subsidiary considerations, but they are not completely irrelevant.'</p>

		<p>company; resigned shortly before sentencing.</p> <p>Diagnosed depression; bipolar disorder; taking medication at time sentencing.</p> <p>Substance use from 29 yrs; used prohibited substances as a crutch to manage his decline in mental health.</p> <p>A further report produced after sentence opined that there was a likelihood that the appellant's stress and anxiety were consistent with PTSD; the appellant suffered from ADHD; the PTSD and ADHD caused the appellant's drug use; and the appellant had five major suicide attempts.</p>	<p>analysed the communications that had been intercepted on the appellant's mobile phone. They identified the transactions the subject of cts 1 to 19.</p>	<p>relevant context for the offending. It was not submitted at the sentencing hearing that there was a causal link between the appellant's mental health and the offending.</p> <p>Appellant was attending sessions with a psychiatrist and a mental health coordinator with a view to develop more appropriate coping mechanisms. The appellant had abstained from taking drugs during leading up to sentencing.</p>	<p>At [50] 'the facts and circumstances of the appellant's offending [for the poss methyl wiss offence] were very serious. The quantity of methylamphetamine was significant. It was only marginally less than a trafficable quantity... The offence was committed in the context of the appellant carrying on a successful drug dealing business. The profit he derived did not merely finance his own drug use. His activities produced a substantial commercial gain.'</p> <p>At [51] 'there were, of course, a number of mitigating factors. The appellant pleaded guilty at the first reasonable opportunity... He had a very good employment history ... The appellant had significant mental health issues which he had taken steps to address...he abstained from taking prohibited drugs. This was a positive sign for rehabilitation.'</p> <p>At [52] 'the appellant's reliance upon <i>Tran</i> is misplaced.'</p> <p>At [55] 'in our opinion, the sentencing range formulated by Miller AJA in <i>Bosworth</i> and adopted in <i>Tran</i>, namely that, in cases involving quantities of methylamphetamine of between 3 g and 65 g, sentences (converted in accordance with post-transitional provisions) have ranged between 2 and 5 years' imprisonment, is not a reliable guide to current sentencing patterns.'</p> <p>At [56] 'sentencing decisions of this court in reasonably comparable cases since <i>Tran</i> demonstrate that the sentence imposed on the appellant for count 20 was not manifestly excessive.'</p> <p>At [61] 'in our opinion, the sentence of 3 years 4 months' immediate imprisonment imposed on the appellant was commensurate with the seriousness of the offence.'</p> <p>At [67] 'in our opinion, it was necessary to order that some of the appropriate individual sentences for counts 1 to 19 be served cumulatively upon the appropriate individual sentence for count 20 in order to ensure that the total effective sentence imposed on the appellant was commensurate with the seriousness of his overall offending.'</p> <p>At [68] 'in our opinion, the total effective sentence of 4 years 1 month's immediate imprisonment did not infringe the first limb of the totality principle. A custodial term of that length was required in order properly to mark the serious character of the appellant's offending as a whole, and to give effect to all relevant sentencing considerations.'</p> <p>At [80] 'although there was some information in [the later psychiatrist's report] that was not before the sentencing judge, the additional material provided ... was not significantly different from the material before her Honour. Nothing in [the] report established a causative link between the appellant's mental health issues and his</p>
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					offending.’
11.	<p><i>Sharp v The State of Western Australia</i></p> <p>[2023] WASCA 142</p> <p>Delivered 04/10/2023</p>	<p>32 yrs at time sentencing. 30–31 at time offending.</p> <p>Convicted after PG (20% discount).</p> <p>Extensive criminal history; drug, violence, traffic, and property offences.</p> <p>Born in WA; only child; parents separated; did not get along with his step-father.</p> <p>Left school after completing yr 9; frequently truant and involved in fights.</p> <p>Worked in various trade roles; owned his own business before it deteriorated; unemployed since 2018.</p> <p>Used cannabis and alcohol from 16 yrs; significant family history of addiction; methyl use since 2018; limited motivation to address substance use.</p> <p>One significant relationship; two children; relationship deteriorated due to drug use.</p>	<p>Ct 1: Att supp methyl 27.85 g at 80% purity. Ct 2: Att supp cannabis 23.41 g. Ct 3: Fail to obey data access order.</p> <p>The appellant threw two tennis balls into the Yongah Hill Detention Centre.</p> <p>Each of the tennis balls had been wrapped in tape and had lighters attached to them.</p> <p>The first tennis ball contained 13.82 g of methyl and 12.07 g of cannabis. The second tennis ball contained 14.03 g of methyl and 11.34 of cannabis.</p> <p>The appellant’s DNA was located inside the plastic clip seal bags in which the drugs were packaged. A SW at the appellant’s house resulted in another tennis ball being found. Police also located a mobile phone which the appellant refused to provide the access code to. The appellant was served a data access order. The appellant failed to provide police with the information necessary to access the mobile phone.</p>	<p>Ct 1: 4 yrs imp. Ct 2: 18 mths imp (conc). Ct 3: 6 mths imp (cum).</p> <p>TES: 4 yrs 6 mths imp.</p> <p>The sentencing judge described the offending as very serious. The appellant attempted to introduce illicit drugs into a detention centre.</p> <p>The sentencing judge found that the appellant’s criminal history meant that specific deterrence was an important sentencing factor.</p> <p>The sentencing judge accepted that the appellant’s addiction made him more vulnerable to being taken advantage of; however, the appellant offended for personal gain — the supply of drugs.</p>	<p>Appeal dismissed (leave refused).</p> <p>Appeal concerned first limb of totality principle.</p> <p>At [35] ‘that this was an attempt to introduce drugs into a detention centre was a significant aggravating factor... There is an obvious risk that illicit drugs will ... create the risk of violence and further offending within a confined environment.’</p> <p>At [36] ‘the appellant’s role was not limited to merely throwing the drugs over the detention centre fence. The presence of his DNA on the packaging inside the tennis balls indicated that he was involved in the packaging exercise.’</p> <p>At [37] ‘the failure to comply with the data access order was itself a serious offence. The sentencing judge was correct to view this as separate offending deserving of additional punishment. This court has noted in the past that unless those whole fail to comply with data access orders receive some additional punishment there will be no effective incentive to comply.’</p> <p>At [40] ‘... it is not reasonably arguable that the overall total effective sentence of 4 years and 6 months’ immediate imprisonment is plainly unreasonable or unjust.’</p>
10.	<p><i>Searle v The State of Western Australia</i></p> <p>[2023] WASCA 129</p> <p>Delivered 30/08/2023</p>	<p>31 yrs at time sentencing.</p> <p><u>IND 136</u> Convicted after late PG (5% discount).</p> <p><u>IND 1013</u> Convicted after PG (25% discount).</p> <p>Unstable family life; raised by mother, frequently physically and emotionally abusive; often left with his grandmother; exposed to drug abuse and violence; absent father; abandoned by his mother entirely aged 15 yrs; no contact</p>	<p><u>IND 136</u> Cts 1; 3-6; 8; 14-31 & 33: Offer to sell/supply methyl 0.1 g – 7 g.. Cts 2; 7; 9-13: Offer to sell/supply cannabis. Ct 32: Offer to sell/supply methyl 28 g (trafficable quantity).</p> <p><u>IND 1013</u> Ct 1: Poss methyl wiss 43.44 g at 80-81% purity (trafficable quantity). Ct 2: Obstruct police officer. Cts 3-5: Use identification material with intention to commit fraud.</p> <p><u>IND 136</u> Searle committed the offences over a</p>	<p><u>IND 136</u> Cts 1; 3; 9; 14 & 33: 6 mths imp (conc). Cts 2 & 7: 1 mth’s imp (conc). Cts 4-5; 15-17 & 30: 12 mths imp (conc). Cts 6; 8; 18 & 20: 15 mths imp (conc). Cts 10-12: 4 mths imp (conc). Ct 13: 10 mths imp (conc). Cts 19; 21; 23-24; 26-27 & 31: 18 mths imp (conc). Ct 22: 20 mths imp (conc). Ct 25: 2 yrs imp (conc). Cts 28 & 29: 8 mths imp (conc). Ct 32: 3 yrs imp (cum).</p> <p><u>IND 1013</u> Ct 1: 5 yrs imp (cum). Ct 2: 12 mths imp (conc).</p>	<p>Appeal dismissed (leave granted).</p> <p>Appeal concerned length of sentence and totality principle.</p> <p>At [48] ‘... the appellant’s 2019 offending had a number of serious features. ... The fact that [he] was dealing in two different drugs adds an additional element to his criminality. Further, one of the appellant’s offers concerned 28 g of methyl.’</p> <p>At [49] ‘had the appellant been sentenced for the offences on the first ind standing alone, a sentence appreciably in excess of 3 yrs’ imp would have been appropriate, particularly given the persistence and duration of the offending the subject of the first ind.’</p> <p>At [50] ‘there is no challenge to the sentence of 5 yrs imp for ct 1 on the second ind. That sentence reflects the serious features of the offence, ... Further, it should not be overlooked that the second ind</p>

		<p>with her since.</p> <p>Frequently moved schools; no close friendships; completed yr 10; obtained certificates in various trades.</p> <p>Good work history and good employment prospects.</p> <p>Stable family and partner; current partner non-drug user; close relationship with his sister and stepfather; supportive family.</p> <p>Commenced cannabis use aged 15 yrs; introduced to methyl aged 19 yrs; drug-free for extended periods.</p>	<p>period of about five months in the course of a small-scale drug-dealing business.</p> <p>Searle was stopped driving a motor vehicle and following a search, two mobile telephones were seized. Later analysis of the phones revealed communications via text message and Facebook Messenger in which he offered to sell or supply prohibited drugs to various people.</p> <p>On seven occasions Searle offered to sell or supply cannabis in quantities ranging from 7g – 140g.</p> <p>On 25 occasions Searle offered to sell or supply methyl in quantities ranging from 0.1g – 7g.</p> <p>On one occasion Searle offered to sell or supply a trafficable quantity of methyl.</p> <p><u>IND 1013</u> Whilst driving a motor vehicle police stopped Searle for a random breath and drug test. He tested positive for drugs. Searle ran from the police and despite a chase he was unable to be located and apprehended.</p> <p>Inside Searle’s vehicle a bag containing a total of 43.44 g of methyl was located, along with \$5,540 in cash.</p> <p>About two weeks later Searle was located and arrested at an address. During a search of the property a wallet containing three counterfeit MDLs, each featuring his image and false identification details. He had used the fake MDLs to obtain accommodation under false identities, which enabled him to avoid police detection during the period up to his arrest.</p>	<p>Cts 3-5: 9 mths imp (conc).</p> <p>Ct 32 (IND 136) cum on sentence imposed ct 1 (IND 1013).</p> <p>TES 8 yrs imp.</p> <p>EFP.</p> <p><u>IND 136</u> The sentencing judge found the appellant’s offending was for a commercial purpose, offering and selling methyl and cannabis in part to help fund his own drug use; sentenced on basis he was towards the middle of the drug-distribution network, above the street-level user/dealer.</p> <p>The sentencing judge accepted that the transactions the subject of cts 32 and 25 did not proceed; sentenced on the basis the balance of transactions generally did proceed and the appellant was able to readily source methyl and cannabis.</p> <p><u>IND 1013</u> The sentencing judge found the offending serious; it occurred while he was on bail for the offending the subject of IND 136; ct 1 involved a significantly greater quantity of methyl than the earlier offending and confirmed the appellant’s ability to access significant quantities of methyl; the appellant played a significant role in the distribution of large quantities of methyl into the community and he did so for commercial purposes.</p> <p>Remorseful; insight into his offending behaviour; accepting of responsibility and contributing factors to his offending.</p>	<p>included cts 2 – 5, which involved additional criminality of a different character from the drug-dealing the subject of the appellant’s other offending. While the sentences for cts 2 – 5 were made conc, those offences involved distinct additional criminality that forms part of the appellant’s overall criminality.’</p> <p>At [51] ‘... the 8-yr sentence reflects, as it should, the overall criminality manifested in all of the appellant’s offending.’</p> <p>At [52] ‘nothing in the consideration of other comparable cases supports a conclusion that the TES in the present case was so high as to reveal error.’</p> <p>At [59] ‘... giving full weight to the appellant’s PG, and to all the mitigating factors in his favour, his TES of 8 yrs imp does not reveal error.’</p>
9.	<i>The State of</i>	Age at time of offending and	Ct 1: Poss methyl wiss 26.01 g at 35-	Ct 1: 3 yrs imp (conc).	Allowed.

<p>Western Australia v Stocker</p> <p>[2022] WASCA 178</p> <p>Delivered 17/11/2022</p>	<p>sentencing not available.</p> <p>Convicted after early PG (cts 1 & 2 - 20% discount). Convicted after very early PG (cts 3 & 4 - 25% discount).</p> <p>No prior criminal history.</p> <p>Raised close-knit, loving and supportive family environment; parents and siblings remain supportive.</p> <p>Completed yr 12; trade apprenticeship.</p> <p>Commenced working father's business aged 25 yr; operational manager by aged 29 yrs; did well financially; able to build own home; made redundant 2020.</p> <p>Turbulent and dysfunctional relationship; until partner's tragic death 2019.</p> <p>Commenced another relationship; partner a methyl user.</p> <p>Introduced to cannabis aged 14 yrs; methyl use from aged 25 yrs; methyl use increased following partner's death; \$1,000 a day habit time offending; prior attempt made to address methyl addiction.</p>	<p>72% purity. Ct 2: Poss unlawfully obtained property (\$107,270 cash). Ct 3: Poss methyl wiss 28.13 g at 81% purity (trafficable quantity). Ct 4: Poss unlawfully obtained property (\$10,595 cash).</p> <p>Stocker was engaged in the business of dealing in methyl.</p> <p>A SW was executed at Stocker's home. At the time he was not at home, although a co-accused was present.</p> <p>On the kitchen bench in a glove, police found two clipseal bags and a plastic wrapper containing quantities of methyl. In addition, two clipseal bags were found on the bench.</p> <p>Stockers DNA profile was found on the surfaces of the glove, the plastic wrapper and a clipseal bag (ct 1).</p> <p>Bags containing \$107,270 in cash were also found in a bedroom. Stockers DNA profile was found on a satchel in which the bulk of the cash (\$74,960) was found (ct 2).</p> <p>Items consistent with being engaged in the business of drug dealing, including multiple electronic scales, tick lists, clipseal bags and disposable gloves, were also found.</p> <p>Stocker was arrested and released on bail.</p> <p>Stocker was on bail when police again attended his home. He arrived when police were still present and found in poss of 25.8 g of methyl in a bumbag he was carrying. Also discovered in the bumbag were three clipseal bags containing 0.99 g, 0.18 g and 1.16 g of methyl (ct 3).</p> <p>A search of his bedroom located</p>	<p>Ct 2: 2 yrs imp (conc). Ct 3: 3 yrs 6 mths imp (conc). Ct 4: 1 yrs imp (conc).</p> <p>Individual sentences for cts 1 and 2 cum upon conc individual sentences for cts 3 and 4.</p> <p>TES partly susp; upon serving 20 mths imp balance (3 yrs 4 mths imp) susp period of 2 yrs.</p> <p>The sentencing judge found the offending 'very serious'; the offending was not isolated; over a period of at least six mths and, in all likelihood, much longer the respondent was conducting a drug-dealing business in which he was the principal and the amount of money he possessed suggested the business was 'very lucrative.</p> <p>Genuinely remorseful; participated in training course and drug intervention program in custody; low risk of reoffending if drug problem addressed.</p>	<p>Appeal concerned error in sentencing (partial conc and partial susp imp infringed s 88(4) <i>Sentencing Act 1995</i>); type of individual sentences ct 1 and 3 and totality principle.</p> <p>Resentenced (20% discounts cts 1 & 2 and 25% discounts cts 3 & 4):</p> <p>Ct 1: 3 yrs imp (cum). Ct 2: 2 yrs imp (conc). Ct 3: 3 yrs 6 mths imp (cum). Ct 4: 12 mths imp (conc).</p> <p>TES 6 yrs 6 mths imp. EFP.</p> <p>At [188] ... There is no dispute that the respondent's overall offending was very serious. It involved dealing in methyl over a relatively extended period of time, in part, at least, for profit. ... the presence of in excess of \$100,000 in cash, ... indicates that the respondent's drug dealing derived a substantial commercial gain. Cts 3 and 4 were committed some five mths after cts 1 and 2 and ... when ... on bail for cts 1 and 2.</p> <p>At [193] ... Having evaluated the respondent's overall criminality ... and having regard to the respondent's personal circumstances, which are favourable, and the other mitigating factors ... and all relevant sentencing considerations and principles, it was not open to the primary judge to order partial concurrency of the sentences. While some concurrency was required ... having regard to the totality principle, the orders for partial concurrency as between ct 1 ... and ct 3 ... resulted in an overall term of imp which was not commensurate with the overall seriousness of the offences committed by the respondent ...</p>
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			\$10,000 in cash and a further \$595 in cash in the bumbag (ct 4). Two mobile CIPHR phones were also found in the house.		
8.	FZA v The State of Western Australia [2022] WASCA 124 Delivered 23/09/2022	38 yrs at time offending. 39 yrs at time sentencing. Convicted after early PG (25% discount). Prior criminal history. Raised WA; close to parents and family. Completed yr 10. Good work history; employed retail sector and pharmacy technical; victim of two armed robberies while working in a pharmacy; engaged in sex work to alleviate financial difficulties. Twice married. Suffers back and neck pain since motor vehicle accident. Commenced methyl using to cope with physical and emotional pain of sex work.	Ct 1: Poss methyl wiss 28.9 g at 62% purity (trafficable quantity). Ct 2: Poss methyl wiss 13.46 g at 64%-71% purity. Ct 3: Poss methyl wiss 2.87 g. Ct 4: Poss unlawfully obtain property (\$11,750 cash). A SW was executed at the house occupied by FZA and the co-offender A. FZA and A were in the bedroom. A CCTV home security system was operating through a television in the room. During the search a package wrapped in paper towels and electrical tape containing methyl was located (ct 1). In a storage box eight clipseal bags containing methyl were also found. The weights of the methyl in the bags varied between 1.62 g and 1.72 g (ct 2). In a draw 17 clipseal bags of methyl, containing between 0.08 g and 0.5 g of the drug, were also found. A total of \$11,750 cash was located. At various places in the bedroom items commonly associated with the sale of prohibited drugs, including unusual clipseal bags, several sets of electronic scales, glass smoking implements and handwritten 'tick lists', were also found.	Ct 1: 4 yrs imp (cum). Ct 2: 14 mths imp (conc). Ct 3: 9 mths imp (conc). Ct 4: 6 mths imp (cum). TES 4 yrs 6 mths imp. EFP. <u>Co-offender A</u> Also charged with poss of the methyl subject of ct 1 - the 'common offence'. Sentenced to 4 yrs 4 mths imp with a TES of 5 yrs 2 mths imp. EFP. The sentencing judge found the appellant's involvement in the commercial distribution of methyl as mid-level. Remorseful; insight into her drug addiction; offending closely tied to drug dependency; completed drug and alcohol course while in custody; motivated to continue rehabilitation; reasonable risk of re-offending if addiction not addressed.	Allowed – parity principle. Appeal concerned error (discount for past cooperation) and parity principle. Resentenced (25% discount): Ct 1: 3 yrs 6 mths imp (cum). Ct 2: 15 mths imp (conc). Ct 3: 6 mths imp (cum). Ct 4: 4 mths imp (conc). TES 4 yrs imp. EFP. At [47] ... As the appellant's cooperation was limited to past cooperation and did not include an undertaking to give future assistance, her Honour was not obliged to comply with s 8(5) of the <i>Sentencing Act</i> . At [73] It is clear that the common offence was the most serious of the offences committed by the appellant and A and, ... we consider that the appellant and A were equally involved in the commission of the common offence. At [82] When all relevant facts and circumstances are evaluated, ... a disparity of 8 mths imp in the TES is, in our view, markedly insufficient to reflect the differences between the appellant and A which favoured the appellant. ... At [87] The offences committed by the appellant were undoubtedly serious. ... The appellant was part of a reasonably sophisticated commercial drug distribution operation. ...
7.	Wade v The State of Western Australia [2022] WASCA 68 Delivered	31 yrs. at time sentencing. Convicted after PG (20% discount ct 1 & 25% discount ct 2). Significant prior criminal history; prior drug offending.	Ct 1: Poss methyl wiss 9.71 g. Ct 2: Poss unlawfully obtained property (\$112,750 cash). A SW was executed at Wade's home. During the search \$2,000 cash and 2.99 g of methyl was located in the lounge	Ct 1: 2 yrs 3 mths imp (cum). Ct 2: 15 mths imp (cum). TES 3 yrs 6 mths imp. EFP.	Dismissed – on papers - leave refused. Appeal concerned length of sentence ct 1 and totality principle. At [16]-[17] There is no merit in the appellant's contention that the sentence of ... imp in respect of ct 1 was manifestly excessive. The individual sentence represents only 9% of the available max term of

	21/06/2022	<p>Dysfunctional childhood; very young when father committed suicide; mother subsequently lived unsettled nomadic lifestyle; lived between mother's care and foster care from aged 6 mths.</p> <p>Living my himself aged 13 yrs.</p> <p>Left school yr 8.</p> <p>Completed trade apprenticeship and certificate in business management.</p> <p>Good employment history.</p> <p>Stable 3 yrs relationship.</p> <p>Sporadic methyl use from young age; at times using 1.7 g per day.</p>	<p>room.</p> <p>A further 0.43 g of methyl was found in another room.</p> <p>Also located, buried under pavers in the backyard inside a large container, was 6.29 g of methyl and \$110,750 in cash stored in cryovac packages.</p> <p>An encrypted cypher mobile phone was also found, along with smoking implements, a cryovac machine and associated packaging.</p> <p>Wade admitted the items, other than the mobile phone, were his. He was going to use some of the 9.71 g of methyl, share some with other people and sell some. He was 'warehousing' the money found in the backyard, which was destined for other people.</p>	<p>The sentencing judge found that a term of imp was the only appropriate disposition; not sentenced on the basis that the money was the proceeds of his own sale of methyl.</p>	<p>imp. ... Further, the sentence imposed on the appellant is broadly consistent with customary sentencing standards for drug offences of the present kind. ...</p> <p>At [19] ... While the offences were detected at the same time, the poss of the methyl concerned a separate criminal activity to the poss of the cash. The appellant was in poss of the methyl for the purpose of using and distributing the drug. He was sentenced on the basis that the money buried in his backyard was not his and was not the product of his drug dealing. Rather, the appellant was storing money reasonably suspected of being the result of drug distribution by other persons. The amount being stored was over \$110,000. Given the qualitatively different nature and order of the criminality involved in the two offences, at least some accumulation of the sentences was appropriate.</p>
6.	<p><i>ENW v The State of Western Australia</i></p> <p>[2021] WASCA 213</p> <p>Delivered 15/12/2021</p>	<p>35 yrs at time offending. 38 yrs at time sentencing.</p> <p>Prior criminal history; numerous drug offences; no previous sentences of imp.</p> <p>Convicted after PG (10% discount) (25% discount for assistance provided).</p> <p>Childhood adversely affected by trauma.</p> <p>Exposed to a number of tragic events as an adult.</p> <p>Completed high school; some TAFE studies.</p> <p>Employed in hospitality until birth of first child in her early 20s; son now aged 17 yrs.</p> <p>Second child to current partner born 2021; care of her baby while</p>	<p>1 x Poss methyl wiss 22.44 g at 74% purity.</p> <p>Police executed a SW at ENW and her partner's home.</p> <p>When police arrived ENW's partner told her there was a bag of methyl in the bedroom, but he was uncertain as to its exact location. ENW att to find the bag to assist him to hide it more securely.</p> <p>During the search police located the bag, containing 20.8 g of methyl. A second clipseal bag containing 0.64 g of methyl was also found.</p> <p>Two digital scales and clipseal bags with a white residue were also found.</p> <p>Forensic analysis of the clipseal bag containing the 20.8 g returned a DNA match to ENW's partner. ENW's DNA was not found on the bag.</p> <p>ENW falsely informed police the drugs</p>	<p>12 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant was 'momentarily' in joint possession with her partner of the big bag of methyl; she aware her partner was engaged in dealing drugs and, while she was not involved in aiding him in his drug dealings, she permitted him to use her mobile telephone from time to time in connection with his drug dealing business and she benefited from his drug dealing by receiving from time to time small quantities of methyl for her own use.</p> <p>The sentencing judge found it was not appropriate to suspend the term of imp.</p> <p>Remorseful; accepting of responsibility for her offending; engaged in and positive response to counselling.</p>	<p>Allowed.</p> <p>Appeal concerned type of sentence.</p> <p>Resentenced:</p> <p>15 mths imp, conditionally susp 12 mths.</p> <p>At [68] ... a term of imp to be served immediately was not the only appropriate sentencing option in relation to the appellant and the offence she committed; and ... the appellant's case is, as a matter of fact, exceptional.</p> <p>At [69]-[72] ... the appellant's joint possession with her partner of the big bag of methyl was fleeting. She did not at any time have physical possession of the drugs. Her unfulfilled intention, for less than one minute, was to take control of the drugs and hide them from the police. ... before the police arrived at the appellant's home to execute the SW, the appellant was unaware of the existence of the big bag of methyl. ... the appellant's offending was very unusual having regard to what she did and what she did not do in relation to the big bag of methyl, including the very short period of her offending conduct and the very short period that she was aware of the existence of the drugs. ... Further, it appears that [she] was not aware of the full extent of her partner's drug dealing. ...</p>

		<p>in custody; imp significant impact on her children and elderly parents.</p> <p>History of drug use; not used methyl since becoming pregnant September 2020.</p>	were hers.		
5.	<p><i>Croxford v The State of Western Australia</i></p> <p>[2021] WASCA 159</p> <p>Delivered 06/09/2021</p>	<p>43 yrs at time offending. 44 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Criminal history; prior drug offending.</p> <p>History of childhood trauma and abuse; under psychiatric care and treatment at various times from aged 12 yrs; multiple periods of hospitalisation.</p> <p>Resides alone, shares care of her teenage son; able to live independently with considerable assistance from her parents; parents remain supportive; provided with some assistance by NDIS.</p> <p>Some time in the workforce; recent yrs in receipt of a disability pension.</p> <p>Diagnosed with ADHD and Borderline Personality Disorder; 1998 acquired brain injury resulting from overdose; number of medical conditions including depression and asthma; experiences debilitating pain and stiffness as a result of rheumatoid arthritis.</p> <p>Lengthy history of illicit drug use commencing at early age; including heroin and methyl.</p>	<p>1 x Poss methyl wiss 4.04 g.</p> <p>Croxford was a passenger in a motor vehicle stopped by police. The vehicle and its occupants, including Croxford, were searched.</p> <p>A water bottle with a hidden compartment, scales and a large quantity of clipseal bags were found in the vehicle. These items belonged to the driver.</p> <p>Also located was \$25,800 in cash in the possession of another occupant of the vehicle.</p> <p>Croxford and the other occupants of the vehicle were conveyed to a police station. There, Croxford gave police three clipseal bags she had concealed down the front of her pants. The bags contained 4.04 g of methyl.</p> <p>Croxford told police she used methyl as a medication for her arthritis and was stocking up on the drug because it was very hard to get.</p> <p>Later examination of Croxford's mobile tablet showed messages that revealed, in the period leading up to the offence, she was engaged in low-level drug dealing.</p>	<p>9 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending so serious that only a term of imp was warranted; the offending could not be viewed as an uncharacteristic aberration.</p> <p>The sentencing judge accepted imp would be more difficult for the appellant due to her physical and mental impairments.</p> <p>Some remorse and acceptance of responsibility for the offending; undertaken rehabilitation.</p>	<p>Allowed.</p> <p>Appeal concerned error of fact (sentenced on erroneous basis low-level dealer for profit).</p> <p>Resentenced (25% discount):</p> <p>8 mths imp. EFP.</p> <p>At [50] ... While by no means as serious as many other cases of its type, the appellant's offending conduct was serious. It is clear from the Facebook messages which were downloaded from the appellant's mobile tablet that she was involved in the sale or supply of small quantities of methyl to others over a period of time. In other words, the offending was not an isolated occurrence. ...</p> <p>At [51] ... Her low-level drug dealing was not motivated by the desire to make a profit. Of the 4.04 g she possessed, 3.1 g was being temporarily held by her ... The balance would have been partly used by the appellant and partly sold at cost price to friends. ... Her mental disabilities reduced her moral culpability. ... The appellant's mental and physical disabilities, including brain damage, have consequences which make imp more difficult to her.</p>
4.	<p><i>Turner v The State of Western Australia</i></p>	<p>27 yrs at time offending. 28 yrs at time sentencing.</p>	<p>Ct 1: Poss MDMA wiss 8.57g at 85% purity. Ct 2: Poss cannabis wiss 362.45 g.</p>	<p>Ct 1: 18 mths imp (cum). Ct 2: 2 yrs 8 mths imp (conc). Ct 3: 3 yrs 6 mths imp (cum).</p>	<p>Allowed (length of sentence ct 2).</p> <p>Appeal concerned length of individual sentences and totality principle.</p>

	<p>[2021] WASCA 132</p> <p>Delivered 28/07/2021</p>	<p>Convicted after very late PG (5% discount) – TOI to resolve dispute as to appellant’s intent to sell or supply.</p> <p>Criminal history; no prior drug offences.</p> <p>Parents separated when aged 18 yrs.</p> <p>Completed yr 10 high school.</p> <p>Became father aged 17 yrs; separated from son’s mother shortly after his birth.</p> <p>Consistent work history; gardener and handyman.</p> <p>Regular user of illicit drugs; taking and sharing drugs with friends a normal way of life.</p>	<p>Ct 3: Poss methyl wiss 4.96g at 80% purity.</p> <p>Turner was stopped by police driving a vehicle. His 10-yr-old son was a passenger in the vehicle.</p> <p>A search of the vehicle located four vacuum sealed bags containing 41.88g; 280g; 26.4g and 14.07g of cannabis.</p> <p>In a further vacuum sealed bag 8.57g of MDMA was located.</p> <p>In a clip seal bag 4.96g of methyl was found.</p>	<p>TES 5 yrs imp.</p> <p>EFP.</p> <p>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.</p> <p>The sentencing judge found immediate imp was the only appropriate sentence.</p> <p>Not remorseful; some credit given for limited cooperation.</p>	<p>Resentenced (5% discount):</p> <p>Ct 1: 12 mths imp (cum). Ct 2: 10 mths imp (conc). Ct 3: 2 yrs 10 mths imp (cum).</p> <p>TES 3 yrs 10 mths imp.</p> <p>EFP.</p> <p>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.</p> <p>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.</p>
<p>3.</p>	<p><i>Pearman v The State of Western Australia</i></p> <p>[2021] WASCA 106</p> <p>Delivered 22/06/2021</p>	<p>34 yrs at time sentencing.</p> <p>Late PG (10% discount).</p> <p>Modest criminal history.</p> <p>Born UK; emigrated to Australia with parents aged 17 yrs.</p> <p>Challenging childhood; domestic violence; poor maternal attachment; bullying and physical and emotional and sexual victimisation; emotionally vulnerable.</p> <p>Estranged from family.</p> <p>Completed equivalent of yr 10 high school.</p> <p>Employed various low-level positions; ability to work affected by drug use.</p>	<p>Ct 1: Poss methyl wiss 13.38 g. Ct 2: Poss unlawfully obtained property (\$2,280 cash).</p> <p>In the early hrs of the morning police stopped and searched a motor vehicle, of which Pearman was the only occupant.</p> <p>Methyl was located in two clip-seal bags in Pearman’s purse. Also located was \$2,280 in cash.</p> <p>In the vehicle police also found empty clip-seal bags, electronic scales, measuring straws, a ‘tick list’ and a mobile phone with messages evidencing the sale of illicit drugs.</p> <p>Pearman had been selling drugs for a number of months in order to fund her own drug habit.</p>	<p>Ct 1: 2 yrs 4 mths imp (conc). Ct 2: 6 mths imp (conc).</p> <p>TES 2 yrs 4 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending was not isolated, but rather was part of an ongoing course of selling methyl for profit.</p> <p>Accepting of responsibility; remorseful; wished to mend her ways.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned length of sentence.</p> <p>At [12] Given the general sentencing principles as to the appropriate type of sentences for serious drug offence ... the conclusion that a term of immediate imp was the only appropriate sentence was inevitable in the present case. Nor can it reasonably be argued that the length of the sentence imposed in this case was not broadly consistent with customary sentencing standards for offending of this kind.</p> <p>At [19] ... The sentence imposed ... is a moderate sentence, ... In all of the circumstances of this case, it is not reasonably arguable that a sentence of less than 2 yrs 4 mths’ immediate imp would be commensurate with the seriousness of the drug offence of which the appellant was convicted.</p>

		Two sons; aged 13yrs and 10 yrs; no or limited contact with her children. Illicit drug use. Chronic mental health challenges.			
2.	<i>O'Malley v The State of Western Australia</i> [2021] WASCA 8 Delivered 14/01/2021	35 yrs time offending. 36 yrs at time sentencing. Convicted after PG (20% discount). Lengthy criminal history; prior convictions for drug offending. Completed yr 10 high school; Certificate 3 in Warehousing and Distribution. Employed as a mechanic and spray-painter; more recently his own automotive and bodywork business. Child from prior relationship; current partner young daughter and expecting a baby early 2021. History of illicit drug use; cannabis use early teens; methyl in his twenties; using methyl daily in his thirties. Suffers coeliac disease; treated with diet; otherwise in good physical health.	1 x Poss methyl wiss 26.49 g at 78% purity. O'Malley drove from Geraldton to Perth and purchased a quantity of methyl for \$4,800. The methyl was jointly purchased by him and two others. On the return journey O'Malley was stopped by police. A search located 2.6 g of methyl contained within two small bags in his pants and 23.8 g of the drug in the boot of his car. A search of O'Malley's home located smoking implements, digital scales, unused clipseal bags and one clipseal bag with methyl in it. O'Malley claimed the methyl discovered was for his personal use.	3 yrs 6 mths imp. EFP. The sentencing judge found the appellant's offending was 'really to sustain his drug habit'; by the appellant's own admission he intended to distribute two lots of methyl (approx 8.3 g) to each of his co-purchasers; he was to make a profit measured more in terms of the actual drug itself than in dollar notes by getting a one-third share of the drug at a heavily discounted price. Steps taken towards rehabilitation; alcohol and drug counselling; self-reporting to a psychologist.	Dismissed – on papers. Appeal concerned length of sentence. At [31] ... The offence involved planning and organisation. It cannot be overlooked that the appellant intended to supply to each of his co-purchasers approx 8.3 g of methyl. There remained a real risk that the drugs supplied to the co-purchasers would be further supplied into the community. Even if the methyl was to be used by the co-purchasers themselves, the drug's deleterious effect posed a significant risk to the health of the co-purchasers and potentially a risk to the public, given the negative effect methyl has on the behaviour of many who consume it. At [32] Moreover, it cannot be said that the appellant did not obtain some commercial benefit for what he did. The appellant ... profited in the sense that he got his one-third portion of the methyl at a heavily discounted price, even allowing for the expense of travelling to and from Perth.
1.	<i>Cochrane v The State of Western Australia</i> [2021] WASCA 5 Delivered 08/01/2021	40 yrs at time sentencing. Convicted after early PG (25% discount). Long criminal history; prior conviction for poss methyl wiss. Difficult childhood; subjected to physical and emotional abuse; transient lifestyle; parents entrenched in alcohol and illicit substance use and violence.	1 x Poss methyl wiss 47.13 g at 71%-79% purity. Cochrane flew from Perth to Geraldton. He was arrested in the airport terminal. When searched he reached down the front of his jeans and produced a bag, which he tried to put into his mouth. A later examination of the bag revealed it contained methyl, cannabis and dexamphetamine.	5 yrs 6 mths imp. EFP. Drug trafficker declaration made. The sentencing judge characterise the appellant as a courier who was to receive a relatively small portion of the drugs for personal use and who facilitated the distribution of drugs into a community already severely affected by methyl use.	Dismissed. Appeal concerned length of sentence and error of law (max penalty life imp - ind did not include the words 'and the offence involved a trafficable quantity of methyl'). At [7] ... in our view, the appellant was charged and convicted of committing the crime [in circumstances which involved a trafficable quantity of methyl] ... and so was liable to a max penalty of life imp. At [152]-[153] ... having regard to the increase in the penalty and the limited assistance from comparable cases, in our view it cannot be inferred that the learned sentencing judge was in error in the present

		<p>Supportive family and partner.</p> <p>Educated to yr 11.</p> <p>Good work history; labouring employment various industries.</p> <p>Number of significant relationships; 19 yr-old daughter first marriage; baby with current partner.</p> <p>Long history of substance abuse; cannabis aged 11 yrs; alcohol 13 yrs; ecstasy and LSD from aged 14 yrs; regular user of methyl past 20 yrs.</p>	<p>The methyl was separated into four clip seal bags.</p>	<p>Remorseful; willingness to change; efforts taken towards rehabilitation in custody.</p>	<p>case. ...The appellant committed a serious drug offence. ... the major sentencing considerations for offences of this type are general and personal deterrence. Any involvement in the illegal trade in methyl, ... is offending which calls for terms of imp that will achieve that necessary deterrence.</p>
<i>Transitional Provisions Repealed (14/01/2009)</i>					

Office of the Director of Public Prosecutions