

GBH with intent

s 294 Criminal Code

Prior to 1 January 2014

Transitional Sentencing Provisions: This table is divided into thirds based on the three relevant periods of Sentencing Provisions:

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary

cum	cumulative
conc	concurrent
GBH	grievous bodily harm
TES	total effective sentence
susp	suspended
imp	imprisonment
EFP	eligible for parole
dep lib	deprivation of liberty
agg burg	aggravated burglary
AOBH	assault occasioning bodily harm
sex pen	sexual penetration
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
21.	<p><i>The State of Western Australia v Naumoski</i></p> <p>[2013] WASCA 215</p> <p>Delivered 18/09/2013</p>	<p>24 yrs at time offending.</p> <p>Convicted after early PG – substituted charge after attempted murder discontinued.</p> <p>Minor criminal record; including a charge of AOBH (spent).</p> <p>Raised in a respected, close knit family; Completed Year 12; Good employment history.</p> <p>Intoxicated at time of offence.</p>	<p>GBH with intent.</p> <p>The respondent and victim were married and had a daughter less than 4 mths old. Days prior to the offence the relationship between the respondent and victim ended and the respondent moved out of the family home. He returned to the unit on two occasions before the date of the offence. The day before he was served a 24 hour move on notice.</p> <p>On the date of the offence the victim returned home with her daughter. The respondent then entered the unit using his own key. He went directly to confront the victim in the kitchen. The respondent struck the victim to the top of her head causing her to fall to the floor. He placed his hands around the victim's neck with a firm grip. The victim moved her head from side to side in an attempt to break the grip. She managed to get to her feet. The respondent then opened the cutlery drawer and removed a large kitchen knife while holding the victim's left arm and stabbed the victim in the left rear shoulder. She again fell to the floor. The respondent stabbed the victim multiple times to the body, arms, neck, face and scalp. She also received knife wounds to a thumb and some fingers.</p> <p>The victim got up and ran to the front door screaming for help. The respondent chased</p>	<p>5 yrs imp.</p> <p>EFP.</p> <p>Remorseful.</p> <p>Sentencing judge found the respondent hated the victim because she had taken control of her own life, had brought in the police and resisted his initial assault; he deliberately maimed his 'beautiful wife so as to render her no longer beautiful'.</p> <p>Sentencing judge found that he was 'already an antisocial troublemaker with a violent propensity when intoxicated'.</p> <p>Upper end of the category below the worst category.</p>	<p>Allowed.</p> <p>Re-sentenced to 7 yrs imp.</p> <p>At [21] Although the offence occurred in the context of a dysfunctional relationship breaking down, the respondent acted out of hate related to his wife's attempt to take control of her life.</p> <p>At [22] Not only did the injuries threaten the victim's life, their impact on her has been severe and permanent...</p> <p>At [41] In its review of the cases, the State confined its attention to situations involving domestic violence. That is consistent with the sentencing judge's finding, in effect, that the commission of the offence in a domestic context, is an aggravating factor. I am not persuaded that the sentencing subtleties are appropriately conveyed by characterising the domestic relationship (whether past, existing or</p>

			<p>after her and continued to stab her in the back as she ran from the unit. The victim almost died at the scene due to blood loss and a ruptured spleen. The victim has been disfigured for life.</p>		<p>anticipated) setting as itself aggravating the offending.</p> <p>At [43] Having regard to the facts in <i>McCormack</i>, the message is unmistakeable. On some occasions, domestic violence is connected with conduct in, or concerning, the relationship that understandably generates high emotion, volatility and associated loss of control. However, prevalence being an issue, that is not to be taken as mitigatory ... Deterrence is called for in relation to all offences involving serious violence, domestic and otherwise.</p> <p>At [46] ... What significantly aggravated the offending is that not only did the respondent intend to do the victim grievous bodily harm, he also intentionally disfigured the victim's face and other parts of her body.</p>
20.	<p><i>Wells v The State of Western Australia</i></p> <p>[2013] WASCA 124</p>	<p>38 yrs at sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history in WA, NSW and Qld; including</p>	<p>GBH with intent.</p> <p>The victim worked as a trade's assistant on the jetty at the Wyndham Port for EFCO Industries on a fly-in fly-out basis.</p>	<p>6 yrs 6 mths imp.</p> <p>EFP.</p> <p>Declined on two occasions to</p>	<p>Dismissed – leave refused on papers.</p> <p>At [42] The appellant's history and antecedents underscore the need for</p>

	<p>Delivered 17/05/2013</p>	<p>convictions for violence including domestic violence.</p> <p>Combined court histories indicated he had offended consistently and in a similar manner over 20 years.</p> <p>Diagnosed with and medicated for schizophrenia since 2001. Ceased taking antipsychotic medication in 2008.</p> <p>At time of offending was taking testosterone. Reported symptoms including hearing voices, paranoia and depression.</p> <p>Extradited from Qld.</p>	<p>The victim was struck numerous times to the head and body with an unidentified object by the appellant, as he entered a sea container on the worksite.</p> <p>As a result of the life threatening injuries inflicted by the appellant, the victim was flown to RPH. He was placed in an induced coma and had part of his skull removed. He remained in ICU for three weeks. He suffered a fractured skull, a broken right arm and a shattered left wrist. He is now paralysed down his left side.</p>	<p>participate in VROL.</p> <p>Psychiatrist report stated had significant risk factors in relation to future violence and that appellant's risk of reoffending was at the higher end of the spectrum.</p> <p>Sentencing judge accepted the appellant had mental health issues.</p> <p>The sentencing judge described the offences as involving a vicious, unprovoked attack with a weapon from behind involving extremely severe force to a vulnerable area of the body.</p>	<p>personal deterrence.</p>
19.	<p><i>Zhang v The State of Western Australia</i></p> <p>[2013] WASCA 121</p> <p>Delivered 17/05/2013</p>	<p>41yrs at time offending. 43 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Defence was non-insane automatism.</p> <p>No prior criminal history.</p>	<p>GBH with intent.</p> <p>The victim was the appellant's boss at Learmonth Solar Observatory.</p> <p>In the months that followed the appellant's employment, the relationship between the appellant and the victim became strained over a number of issues which led to arguments. Neither of them got on with the other. The</p>	<p>10 ½ yrs imp.</p> <p>EFP.</p> <p>Backdated 10/11/2010.</p> <p>Showed no remorse and little concern for the welfare of the victim.</p>	<p>Appeal allowed.</p> <p>Sentence set aside and re-sentenced to 8 ½ yrs imp.</p> <p>Orders for parole eligibility and backdating stood.</p> <p>At [41] Although his Honour regarded the case as 'very</p>

	<p>Divorced; two children.</p> <p>Born and raised in difficult circumstances, including the Cultural Revolution in China. Involved in the events of Tiananmen Square and as a result is likely he suffers from PTSD.</p> <p>Highly educated.</p> <p>At the time of the offence the appellant was suffering from a clinically significant psychiatric impairment.</p> <p>At the time the appellant committed the offence there were a number of stressors in his life.</p> <p>After offence he was diagnosed with paranoid schizophrenia with a secondary diagnosis of depression.</p>	<p>appellant's negative feelings towards the victim built up over time and he became emotionally stressed. The appellant complained that he was being bullied by the victim. The appellant felt that this complaint was not properly investigated.</p> <p>The situation was escalated by the victim recommending in a report that the appellant's employment be terminated.</p> <p>On the afternoon of 24 November 2009, the victim left work and rode his bicycle towards Exmouth. The appellant; aware that the victim was cycling; left the observatory by car and drove along the road towards Exmouth.</p> <p>The judge found that prior to leaving the observatory, the appellant had formed the plan to run down the victim and do him serious harm. The judge further found that the appellant was frustrated and upset about the prospect of losing his job and felt that he had been very unfairly treated. It was concluded that the appellant wanted to find a way to get rid of the victim, believing that he would then secure his position at the place of employment. The judge found that the appellant's feelings towards the victim were of such intensity as to cause a foundation of some form of revenge against him.</p> <p>Just south of the Kailis Fish Processing Works, the appellant deliberately drove his vehicle at, and collided with, the victim, who was riding</p>	<p>In the VROI the appellant referred to Psalm 109 and said that the victim deserved to be punished.</p> <p>Sentencing judge described the offence as a 'very serious example' of its type.</p> <p>Sentencing judge found that the appellant's decision to injure the victim was not spontaneous but was a callous act done in anger to a vulnerable victim with the possibility of reaping a benefit in his employment.</p> <p>Sentencing judge considered the appellant's favourable antecedents carried little weight in light of the seriousness of the offence.</p> <p>Prospects for the appellant's</p>	<p>high up on the scale of this sort of offending', he fell short of concluding that the offence fell in the worst category of cases. It was not suggested by the respondent in this appeal that the case came within the worst category.</p> <p>At [61] My analysis of the cases reveals that in serious cases of offences contrary to s294(1) not in the worst category of cases, the range of sentences customarily imposed after trial has not exceeded 8 years' imprisonment. It is obvious that the sentence imposed in this case is markedly above that range.</p> <p>At [67] ... The appellant was, at the time of the offence, experiencing an overwhelming loss of control over his otherwise disciplined life that had some effect upon his judgment and his ability to think and plan rationally. He was suffering from a mental impairment which was, to some extent, causative of his offending.</p>
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			<p>his bicycle. As the judge put it ‘the motor car was used as a weapon’. At the time of the collision, the cruise control in the vehicle driven by the appellant was set at 110 kph. It was not disputed that while driving his vehicle, but before the collision, the appellant experienced visual and auditory hallucinations.</p> <p>The victim suffered serious life threatening physical injuries. The victim was very fortunate not to have been killed.</p> <p>The victim sustained spinal fractures, multiple rib fractures, an occipital fracture, nerve injuries, a closed head injury, fracture of the nasal bones and nasal septum and comminuted fractures of the left knee with tears.</p> <p>The victim was admitted to ICU and hospitalised for a lengthy time. He spent four months both in hospital and rehabilitation.</p> <p>Although the appellant stopped after colliding with the victim, he did nothing to assist him and showed little or no remorse at the scene.</p>	rehabilitation was positive.	<p>These factors cannot be overlooked.</p> <p>At [69] I unreservedly accept that the appellant’s offending was extremely serious and had severe and very long-lasting, if not, permanent, consequences to the victim.</p>
18.	<p><i>Abfahr v The State of Western Australia</i></p> <p>[2013] WASCA 87</p> <p>Delivered 05/04/2013</p>	<p>50 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No prior criminal record of relevance.</p>	<p>Ct 1: GBH with intent. Ct 2: Driver fail to stop after incident. Ct 3: Driver fail to report incident.</p> <p>The appellant and the victim were born in Syria, but since 1995 lived in Australia.</p> <p>At time of offending the appellant and victim had been in a relationship for 16 yrs. The last 10 yrs had been marred by repeated incidents</p>	<p>Ct 1: 5 yrs imp. Ct 2: 18 mths imp conc. Ct 3: 12 mths imp conc.</p> <p>TES 5 yrs imp. EFP.</p> <p>Motor vehicle confiscated.</p>	<p>Dismissed – on papers.</p> <p>At [71] It is well established that, in general, hardship to an offender’s child is not a circumstance to be taken into account in the sentencing process.</p> <p>At [76] The seriousness of</p>

			<p>of domestic violence. The victim ended the relationship in 2009.</p> <p>The victim suffered from mental illness, including severe depression, for some time. In June 2010 the Family Court granted the victim custody of the children. Limited provision was made by the court for contact between the appellant and the children.</p> <p>On the evening of 4 October 2010, the appellant was served with an interim VRO. He was upset by this event. During the evening he consumed a substantial quantity of alcohol. He had little sleep that night. The following morning, the appellant received a phone call from his children who informed him that the victim was not home. They asked him for food.</p> <p>After receiving that call, the appellant drove his vehicle towards Fremantle. During the journey, he saw the victim waiting for a bus. The victim noticed the appellant and saw him carry out a U-turn and drive back in her direction. He appeared to her to be angry.</p> <p>Shortly afterwards, the victim travelled on the bus. Upon alighting, she walked on the footpath. After walking about 80m, the appellant saw the victim. He then mounted the footpath and struck the victim with the middle of the bonnet of his vehicle. After being hit by the bonnet, the victim was thrown into the air and landed on the pavement. The appellant</p>	<p>MDL susp 4 yrs cum.</p> <p>Did not admit until the eve of the trial that he was the driver of the vehicle that collided with the victim.</p> <p>At trial he maintained the victim jumped on the road in front of his vehicle to cause trouble for him.</p> <p>Lack of empathy and remorse for victim's injuries.</p>	<p>the offence precluded suspension.</p> <p>At [81] The appellant committed a serious offence. He is morally responsible for his own inability, by virtue of his incarceration, to look after the children. This case cannot be characterised as extreme or exceptional. It would be incompatible with the gravity of the appellant's offending and the circumstances of the case.</p>
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			<p>continued to drive without stopping.</p> <p>The victim received treatment for a broken right femur, a broken left ankle, a broken nasal bone and soft tissue injuries.</p>		
17.	<p><i>Petrelis v The State of Western Australia</i></p> <p>[2012] WASCA 235</p> <p>Delivered 16/11/2012</p>	<p>37 yrs at time offending. 39 yrs at time sentencing.</p> <p>Convicted after trial – offered to PG to GBH s 297 <i>Criminal Code</i>.</p> <p>No prior criminal record.</p> <p>Offending breached bail.</p> <p>Drug problem – consuming large amounts of methyl on daily basis at time offending.</p> <p>Good employment history.</p>	<p>1 x GBH with intent.</p> <p>Tried on charge of attempted murder but found guilty of GBH in the alternative.</p> <p>Appellant and victim were married but estranged at the time of offending. The victim had a VRO against the appellant at the time of offending. Despite the VRO, there was some contact between the victim and appellant prior to the offending.</p> <p>The appellant blamed the breakdown of their marriage on the victim and felt the victim was being unreasonable towards him in the aftermath of their separation.</p> <p>Appellant attended victim's home at approx 11pm hoping the victim would allow him to stay the night. On arriving at the house, the appellant woke the victim by tapping on her bedroom window and told her he was unwell, asking to stay the night. Victim felt sorry for the appellant and let him in despite not wanting to do so. The victim's indifference to the appellant upset him. The appellant used the bathroom and the victim went outside to smoke a cigarette. When the victim went back inside, the appellant had armed himself with a large kitchen knife and had decided to attack the victim with it.</p>	<p>7 yrs 9 mths imp.</p> <p>TES 7 yrs 9 mths imp.</p> <p>EFP.</p> <p>Good prospects of rehabilitation; some remorse but not genuine; yet to accept responsibility for his actions.</p>	Dismissed – leave refused on papers.

			<p>The appellant then attacked the victim, initially striking her with his hands but eventually inflicting numerous stab wounds. Victim ran to the bedroom to escape but the appellant followed her and continued to attack her. One of the appellant and victim's children came into the bedroom at this point and the victim grabbed the appellant's crotch and bit his finger. Victim was then able to flee the house. Appellant ran out of the house, jumped and fence and fled the scene. Appellant surrendered himself to police the following day. Appellant disposed of clothing he wore during the attack.</p> <p>Victim suffered a perforated bowel or intestine, stab wounds to her hands, laceration on her forearm, stab wounds to her arms and lung and a lacerated chin. There were at least 11 stab wound to the front of the victim's body and bruising to her face and body. The victim spent 3 ½ weeks in hospital; and had to wear an arm brace for 3 months.</p>		
16.	<p><i>Rolfe v The State of Western Australia</i></p> <p>[2012] WASCA 169</p> <p>Delivered 27/08/2012</p>	<p>43 yrs at time sentencing.</p> <p>Convicted after fast-track PG.</p> <p>Significant prior criminal record – including inter-state convictions and violent offending.</p> <p>Witnessed domestic abuse perpetrated by his father on his mother and left home at 17 yrs old to escape the abuse.</p>	<p>1 x GBH with intent. 1 x Unlawful wounding with intent. 1 x Agg burg.</p> <p>s 32 matters: 7 offences which occurred in 1997 but had not been dealt with as appellant absconded – including 2 x AOBH.</p> <p>Appellant and two co-offenders attended victim's home armed with machetes and a block-splitter or axe with the intent of</p>	<p>5 yrs imp. 2 yrs imp. 3 yrs imp.</p> <p>Various terms of imp to run concurrent with indictable offences except for 4 mths imp for one of the AOBH offences ordered to be served cumulative.</p>	<p>Dismissed – leave refused on papers.</p> <p>Sentence for GBH specifically challenged as manifestly excessive and found to be an appropriate sentence in all the circumstances.</p> <p>TES also appropriate and no error in accumulation of</p>

		<p>History regular employment.</p> <p>Supportive family.</p> <p>Five children from 2 relationships.</p>	<p>collecting an alleged debt. Appellant and co-offenders forced their way into the home after knocking on the front door. The appellant immediately struck victim 1 with the machete in the side of the neck. Victim 1 turned to run away and the appellant struck him in the back. The other occupants of the home tried to flee but they were attacked by the co-offenders. The appellant also struck one of them several times with the machete to the head and arms – one of the lacerations inflicted by the appellant resulted in nerve and tendon damage to victim 2's hands. After the assaults, the appellant and his co-offenders ransacked the house in search of money.</p>	<p>TES 8 yrs 4 mths imp.</p> <p>EFP.</p> <p>No insight into offending; moderate risk re-offending.</p> <p>Sentence for agg burg expressly reduced by 12 mths to take into account the totality principle.</p>	<p>sentences.</p> <p>At [31] <i>"It will sometimes be the case that cumulative sentences are justified to properly reflect an offender's overall criminality."</i></p>
15.	<p><i>Bolton v The State of Western Australia</i></p> <p>[2012] WASCA 2</p> <p>Delivered 6/01/2012</p>	<p>56 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal record – one minor offence only.</p> <p>Educated to year 9.</p> <p>Positive figure in immediate and extended family; worked with wife as live-in carers for children of drug-using parents.</p> <p>Health issues – type 2 diabetes; blood pressure problems; arthritis. No evidence health would make prison sentence more onerous so</p>	<p>Ct 1: GBH with intent Ct 3: Unlawful wounding with intent Ct 5: Unlawfully doing an act endangering life</p> <p>Very serious instance of offending.</p> <p>Offending occurred in context of ongoing feud between two Aboriginal family groups.</p> <p>Victims were attending wake of family member at a property close to the appellant's home. Police attended to ensure that trouble did not erupt and secured undertakings from senior members of both families that neither family would approach the other – appellant was aware of this undertaking. Despite the undertaking, a brawl between the two family groups erupted involving at least 50</p>	<p>5 yrs imp. 4 yrs 6 mths imp. 1 yr 3 mths imp.</p> <p>TES 6 yrs 3 mths imp.</p> <p>No real remorse or acceptance of responsibility.</p>	<p>Dismissed.</p> <p>At [41] Context of long-running feud did not mitigate the appellant's culpability to any significant extent.</p> <p>At [42] TES well within the range of a sound exercise of the sentencing discretion.</p>

		of limited mitigatory value.	<p>people during which rocks and bottles were thrown.</p> <p>Appellant was watching the brawl from the front of his property when he obtained or was given a double-barrel shotgun from inside his house. Appellant inserted two cartridges into the gun, stood behind his ute and took aim at a member of the opposing family. This person was armed with a rake but did not pose an immediate threat to anyone at that stage.</p> <p>Victim 1 saw appellant take aim and ran to knock the intended target out of the way, sustaining shotgun injuries to her abdomen causing a perforated bowel and requiring surgery (ct 1). The appellant then took aim and shot at victim 2 who was sitting on a fence at the front of a property. Victim 2 was not involved in the brawl and was approx 90m away from the appellant. Victim 2 sustained injuries requiring surgery (ct 2).</p> <p>A family member of victim 1, who had not been involved in the brawl, started to drive victim 3 to the hospital. The driving was slow and careful so as to avoid injuring anyone in the brawl and avoid the debris on the road and did not pose a threat to anyone. Appellant aimed and shot at the car, striking the front left hand-side of the vehicle.</p>		
14.	<p><i>Eriha v The State of Western Australia</i></p> <p>[2011] WASCA 167</p>	<p>22 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Prior criminal record – burglary;</p>	<p>Ct 1: AOBH. Ct 2: Kidnapping. Ct 3: AOBH. Ct 4: GBH with intent. Ct 5: AOBH with intent.</p>	<p>Ct 1: 1 yr imp. Ct 2: 5 yrs imp. Ct 3: 2 yrs imp. Ct 4: 9 yrs imp. Ct 5: 3 yrs imp.</p>	<p>Dismissed.</p> <p>At [59]-[62] As offending fell within worst category, irrespective of previous sentences imposed, court</p>

	<p>Delivered 2/08/2011</p>	<p>att burglary; AOBH; carry controlled weapon in manner likely to cause fear; had not previously served term imp.</p> <p>Difficult childhood; domestic violence; ran away from home at same time left school (part way through yr 11).</p> <p>Entrenched propensity for violence.</p>	<p>Offending within worst category of offences of this type.</p> <p>Victim 17 yrs at time offending and slightly built. Appellant and victim known to each other and appellant harboured considerable to animosity towards victim prior to offending.</p> <p>Victim at service station waiting for a friend. Appellant and two co-offenders pulled into service station, all three got out of the ute and ran towards the victim. Appellant punched victim in side of face and victim fell to ground. Appellant then kicked victim numerous times in the head and chest – victim suffered lacerations and abrasions (ct 1).</p> <p>Two co-offenders then forced victim into the ute and drove him to a group of units (ct 2 – kidnapping extended for a period of several hours). Victim dragged out of ute and carried into a unit by both co-offenders, where he was forced to the concrete floor. While victim on floor, appellant and both co-offenders repeatedly kicked and punched him. Assault continued for 5-10 minutes and at end of assault victim in very bad physical condition – bleeding, difficulty standing and walking (ct 3). Victim then taken back to ute, forced into it and driven to an isolated bush location. Co-offender 1 tied victim's feet together and took of victim's shirt. Appellant and co-offender 1 then urinated on victim.</p> <p>Ute had crane fixed to rear tray and co-offender 1 attached victim's legs to crane and raised it so that victim was suspended upside</p>	<p>TES 11 yrs imp.</p> <p>EFP.</p> <p>High risk re-offending.</p>	<p>entitled to impose sentence at or near the statutory maximum. Offending in this case involved criminality of highest order and demanded long custodial sentence on grounds denunciation, public protection and general and specific deterrence – appellant's conduct cruel, deliberate, methodical and sustained.</p>
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			<p>down. Appellant and both co-offenders repeatedly kicked and forcefully kicked victim to head, chest and stomach as he was suspended upside down. Victim lowered to ground and a word was carved in his chest by one co-offender as a 'memento'. Victim thought that he was going to be killed at this point.</p> <p>Appellant then repeatedly struck victim with claw hammer on each hand – causing intense pain and serious permanent injury (ct 4). Appellant then struck victim repeatedly in legs with metal tyre iron and struck victim's feet with hammer. Victim had by now been stripped to his boxer shorts and socks and could barely hobble.</p> <p>Appellant and both co-offenders got back in ute and drove away - deliberately leaving victim seriously injured with no assistance in remote location (ct 5). By time appellant and co-offenders left it was dusk – victim spent night in bush and at dawn next day managed to crawl 4-5m to dirt road. At approx 8.30am victim seen by a man on his way motor biking with his son. Man has carried victim to his car and driven him to hospital (admitted suffering mild hypothermia, dehydration and serious injuries from the attack including split kneecap, multiple breaks in his shin bone, multiple fractures to his hands and extensive bruising and lacerations all over his body) – victim then transferred by air to Perth hospital. Required extensive treatment from orthopaedic and plastic surgeons and remained in hospital for 3 weeks.</p>		
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			At time sentencing victim had limited use of hands, could not walk without leg pain, has suffered anxiety attacks, serious depression and has attempted suicide.		
13.	<p><i>Black v The State of Western Australia</i> [No. 2]</p> <p>[2010] WASCA 145</p> <p>Delivered 12/03/2010</p>	<p>21 yrs at time offending. 22 yrs at time sentencing.</p> <p>Convicted after fast track PG.</p> <p>No prior criminal record.</p> <p>Lived at home with parents; apprenticeship at risk as a result of imp.</p> <p>Diagnosed ADHD 10 yrs old; prescribed dexamphetamine; medical evidence that at time offending medication would have worn off and appellant distracted, impulsive and hyperactive as result ADHD.</p>	<p>1 x GBH with intent. 1 x Unlawful wounding.</p> <p>Co-offender had verbal altercation with two victims as drove past their Australia day party. Co-offender told appellant and two others that he had been assaulted and a female passenger in his car punched in the face. Information false but appellant believed it. All agreed to go to the house with intent assault guests. On arrival, co-offender had verbal argument with victim 1 and was told to leave the premises. Appellant armed himself with a knife that was in the car and approached group. Victim 2 come across the lawn and appellant pulled out knife and swung it at victim 2 – causing 12cm cut to the left side of his chest (penetrated chest cavity, cut artery and damaged 3 ribs). Victim 2 also sustained knife injuries to left middle finger (tendon severed and plastic surgery required). Victim 1 also injured in incident by knife (stab wound 3cm wide and 4cm deep to his left side requiring stitches).</p> <p>Appellant and co-offenders fled scene, drove to a park and swapped shirts so in an attempt to conceal identities before splitting up.</p>	<p>2 yrs 6 mths imp. 6 mths imp.</p> <p>TES 3 yrs imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>At [31] Need for general deterrence given prevalence this type offending.</p>
<i>Transitional provisions repealed (14/01/2009)</i>					

12.	<p><i>Dair v The State of Western Australia</i> [2008] WASCA 72</p> <p>Delivered 27/03/2008</p>	<p>35 yrs at sentencing.</p> <p>Convicted after trial.</p> <p>Substantial criminal record as both child and adult; More than 30 convictions in Children's Court between 1987 and 1989 and more than 100 convictions in adult courts.</p> <p>Been imp. for armed robbery, burglary, poss implements for breaking and stealing, drug offences, stealing motor vehicles, assault to prevent arrest and assaulting public officer.</p> <p>Served 3 yrs 4 mths in custody for other offences immediately prior to backdating of sentence.</p>	<p>1 x GBH with intent.</p> <p>The victim was an off duty police officer.</p> <p>On the afternoon of 3 April 2003, Mr Yap walked to his vehicle, which was parked in the City Library Carpark in Northbridge. When he got there, he found the driver's door open and a man sitting in the driver's seat. The man grabbed a bag from the passenger side of the car. He jumped out of the car and ran to an exit stairwell. Mr Yap ran after him, when threatened, gave up his pursuit.</p> <p>The victim was in the carpark at the time. After speaking briefly to Mr Yap, he chased the appellant. He called upon the appellant to stop, and identified himself as a police officer. The appellant continued to run. The victim chased him into the plaza of the Perth Cultural Centre. The appellant turned and faced the victim. He had a knife. He took some steps towards the victim and then stabbed him in the neck. The appellant escaped.</p> <p>The victim was seriously wounded. His superior thyroid artery had been partially severed. Were it not for emergency surgery, he might have lost his life. He made a full recovery.</p>	<p>8 yrs imp.</p> <p>Backdated.</p> <p>No parole.</p> <p>Sentencing Judge noted that the appellant had a long standing drug problem, had spent a great deal of his life in custody and didn't seem to be able to adjust to life outside without the use of drugs.</p>	<p>If conviction had been upheld court would have allowed sentence appeal and re-sentenced to 6 yrs imp; backdated; no parole.</p> <p>Appeal would have been allowed on basis of totality principle to take into account the 3 yrs 4 mths served in custody for other offences.</p> <p>At [98] This offence was serious. The fact that it involved the stabbing of a police officer who was attempting to apprehend the appellant made it even more serious. The courts have an obligation to endeavour to protect police officers, when acting in the proper performance of their duty, by doing what they reasonably can to deter those who might otherwise assault them. Consequently although a sentence of 8 years imprisonment (12 years prior to the mandatory reduction)...is very severe, I would not have interfered with it had it stood on its own.</p>
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					At [241] The sentencing judge failed to give sufficient weight to the totality principle.... The imposition of an 8 year sentence, effective from 26 August 2006, did have the effect of imposing a crushing sentence upon the appellant.
11.	<i>Kennedy v The State of Western Australia</i> [2008] WASCA 185 Delivered 4/09/2008	<p>23 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Extensive prior criminal record – juvenile and adult; drug offences; burglary; theft; resisting arrest; weapons; criminal damage; breach VRO; breach CBO; breach suspended sentence; breach bail.</p> <p>Dysfunctional upbringing; physically abused as child; ward of State.</p> <p>Longstanding drug addiction; anger management problems</p>	<p>1 x GBH with intent.</p> <p>Victim appellant's estranged father in law. Appellant recently separated from partner and went to victim's house seeking information as to the location of his newborn son. After receiving no answer to his questions, appellant ran at victim who struck him with tee ball bat. Appellant fell to ground and person who accompanied him to house began to throw bricks at victim. Appellant armed himself with metallic object and struck victim in head fracturing his skull and causing brain damage.</p>	<p>4 yrs imp.</p> <p>TES 5 yrs 177 days. (also sentenced two other offences on separate indictment).</p>	<p>Allowed.</p> <p>Sentence re-structured but individual terms not altered.</p>
10.	<i>Seroka v The State of Western Australia</i> [2006] WASCA 284	<p>33 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal record – drugs; wilful damage.</p>	<p>Ct 1: GBH with intent. Ct 3: Dep lib. Ct 4: AOBH.</p> <p>Barbaric and savage premeditated attack.</p> <p>Victim, co-offender and appellant were</p>	<p>Ct 1: 4 yrs imp. Ct 3: 3 yrs 4 mths imp. Ct 4: 2 yrs imp.</p> <p>TES 7 yrs 4 mths imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>At [1] & [53] leniency of TES noted.</p> <p>NB: individual sentences not challenged only TES.</p>

	Delivered 22/12/2006	Dysfunctional family background. De facto relationship; 3 children (one with current partner); good employment history.	involved in manufacture methyl. Victim's rural property was raided by police and lab equipment seized. Victim charged and released on bail. Appellant and co-offender confronted victim after his release on bail wanting compensation for the seized equipment. The victim was driven to a remote bush area and hit without warning on the head. Victim fell to the ground and was kicked repeatedly by appellant and co-offender. Co-offender armed with pick handle and appellant armed with piece of wood – attacked victim. Victim managed to escape after a period of time and was flown to Perth for surgery. Victim suffered numerous broken bones, bruised kidneys, blood in his urine, extensive bruising and soft tissue injuries. Victim discharged from hospital after 5 days in plaster casts and a leg splint and made arrangements to travel to Bunbury. Appellant and co-offender learned of travel plans and intercepted the car the victim was travelling in. They placed a shirt over the victim's head and drove him to a vacant house where he was again beaten and threatened. Victim was assaulted with knuckleduster, had his feet burned with a metal poker, had cigarettes stubbed out on his skin, was spat on and restrained by being duct taped to a mattress. During this time the victim was forced to sign vehicle transfer papers. Victim escaped and sought help from neighbouring house.	No remorse.	At [20]-[22] rejects 'maximum individual sentence limitation' whereby TES cannot be higher than the highest individual maximum penalty for the offences charged – sentence must reflect seriousness of total offending. At [56]-[61] totality principle is not breached where TES higher than normal level of sentences for the most serious offence.
9.	<i>Stephens v The</i>	24 yrs at time offending.	1 x GBH with intent.	6 yrs imp.	Dismissed – at high end of

	<p><i>State of Western Australia</i></p> <p>[2005] WASCA 98</p> <p>Delivered 2/06/2005</p>	<p>Convicted after trial (indicated fast track PG to s 297 but was indicted on s 294 and PNG).</p> <p>Minor prior criminal record.</p>	<p>Confrontation at pub between appellant's friends and victim's friends. Victim's friends left pub so as to avoid further confrontation. Appellant and two friends got into his four wheel drive and pursued the victim who was running away. Victim ran onto grass verge and appellant chased him up the verge, taunting him by drive right up behind him and stopping just short of hitting him. Victim ran to car park and slipped on gravel, falling under appellant's vehicle and becoming stuck underneath. Appellant knew this and deliberately drove vehicle forward approx 30 metres. Victim suffered permanent physical and emotional injuries.</p> <p>Appellant left scene without offering or providing any help to injured victim.</p> <p>After incident, appellant changed tyres on vehicle, darkened vehicle windows and obtained false alibi (offering to pay for it). In initial police interview, appellant lied to police.</p>	<p>TES 6 yrs imp.</p> <p>EFP.</p> <p>No meaningful insight into seriousness conduct.</p>	<p>range but not manifestly excessive in circumstances.</p> <p>Some summary comparable cases at [19] – [21].</p>
8.	<p><i>The State of Western Australia v Strawbridge</i></p> <p>[2005] WASCA 2010</p> <p>Delivered 26/10/2005</p>	<p>25 yrs at time offending.</p> <p>Extensive prior criminal record – first convictions at 11 yrs old; assault public officer; AOBH; armed robbery; unlawful wounding.</p> <p>Dysfunctional and brutal upbringing.</p> <p>Stable de facto relationship;</p>	<p>1 x GBH with intent.</p> <p>Sustained, savage and brutal attack.</p> <p>Respondent went to victim's house – intoxicated. Argument developed, respondent abused victim and victim head-butted respondent. A fight then ensued. Respondent pinned victim down and bit off part of victim's nose (whole left nostril, including cartilage, missing).</p> <p>Reconstructive surgery required – used skin</p>	<p>16 mths imp.</p> <p>TES 16 mths imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>TES increased to 2 yrs 8 mths imp (pre transitional sentence 5 yrs considered appropriate; reduced to 4 yrs as State appeal).</p> <p>EFP.</p> <p>NB double jeopardy applied to State appeals.</p>

		employed.	from forehead and scalp. At time sentencing, 6 operations carried out and more were required.		
7.	McMaster v The Queen [2004] WASCA 52 Delivered 2/04/2004	Convicted after trial (acquitted 2 x attempted murder s 283 <i>Criminal Code.</i>). 2 x GBH with intent. Verbal altercation and some pushing and shoving between appellant's group of friends and victim's group of friends. Appellant pulled out a loaded 22-calibre semi-automatic hand gun, pulled back slide and deliberately fired at 2 victims at least 5 times. Approx 2-3 m away from victims when fired. Appellant put gun back in pants and left. Victim 1 shot in abdomen, victim 2 shot just below chest. Third victim hit by shrapnel (not charged or sentenced on that basis – went to seriousness offending). Expert evidence that gun inaccurate – why only two shots hit. Appellant attacked and set on fire while in prison – 60% burns to body and daily medical treatment required. Sought to adduce evidence to this effect to support claim that prison sentence harder on him than average prisoner and should be reduced. Evidence held inadmissible – fresh evidence that relates to events since sentencing may only be received in sentence appeal when error in sentencing Judge's discretion. No error identifiable in present case. Evidence as to panic disorder and PTSD allowed at court's discretion – issues before judge at sentencing and evidence put those facts in new light.	2 x GBH with intent. Verbal altercation and some pushing and shoving between appellant's group of friends and victim's group of friends. Appellant pulled out a loaded 22-calibre semi-automatic hand gun, pulled back slide and deliberately fired at 2 victims at least 5 times. Approx 2-3 m away from victims when fired. Appellant put gun back in pants and left. Victim 1 shot in abdomen, victim 2 shot just below chest. Third victim hit by shrapnel (not charged or sentenced on that basis – went to seriousness offending). Expert evidence that gun inaccurate – why only two shots hit. Appellant attacked and set on fire while in prison – 60% burns to body and daily medical treatment required. Sought to adduce evidence to this effect to support claim that prison sentence harder on him than average prisoner and should be reduced. Evidence held inadmissible – fresh evidence that relates to events since sentencing may only be received in sentence appeal when error in sentencing Judge's discretion. No error identifiable in present case. Evidence as to panic disorder and PTSD allowed at court's discretion – issues before judge at sentencing and evidence put those facts in new light.	7 yrs imp each count. TES 9 yrs imp. EFP.	Dismissed. At [7] sentence was a moderate one which made generous allowance for mitigating factors. Discussion of principles that guide admission of evidence in sentence appeals.

Transitional provisions enacted (31/08/2003)

<p>6.</p>	<p><i>Smith v R</i></p> <p>[2003] WASCA 57</p> <p>Delivered 25/03/2003</p>	<p>Youth mitigating factor.</p> <p>Convicted after trial (first trial jury could not reach verdict).</p> <p>No prior criminal record.</p>	<p>1 x GBH with intent. 1 x Steal motor vehicle.</p> <p>Victim contacted escort agency to arrange services male prostitute. Agency sent appellant. Victim pre-paid and too tired when appellant arrived so arrangements for another day subsequently made. Appellant asked if he could bring his girlfriend as she liked to watch. Victim said adamant girlfriend could not come. Appellant and girlfriend took taxi to victim's house – girlfriend hopping out approx 300m from destination.</p> <p>Unclear sequence events after appellant arrived at victim's house. At some point struggle ensued and appellant stabbed victim in neck (10cm wound that could have been fatal) and leg. Knife was one appellant brought to house. Appellant then left – taking house and car keys, locking outer security door and stealing car. Car abandoned and later discovered by police. Victim found by parents – substantial blood loss and close to death.</p>	<p>6 yrs imp. 1 mth imp.</p> <p>TES 6 yrs imp. Equivalent to 4 yrs imp after implementation of transitional provisions.</p> <p>No remorse.</p>	<p>Allowed.</p> <p>TES increased to 8 yrs imp (1 yr reduction to account for double jeopardy).</p> <p>NB double jeopardy applied to State appeals.</p>
<p>5.</p>	<p><i>R v White</i></p> <p>[2002] WASCA 112</p> <p>Delivered 9/05/2002</p>	<p>Convicted after fast-track PG.</p> <p>Limited intellectual ability but no cognitive impairment; no psychiatric disorder; socially dysfunctional.</p> <p>Heavy drug and alcohol use since</p>	<p>1 x GBH with intent. 1 x Attempted murder. 1 x Sex assault. 1 x Sex assault.</p> <p>Victim 5 yr old child. Appellant staying at same bush camp as victim – took her approx 1km from camp smashed a rock against her</p>	<p>8 yrs imp. 13 yrs imp. 9 yrs imp. 9 yrs imp.</p> <p>TES 13 yrs imp. Equivalent to 4 yrs 4 mths imp after</p>	<p>Allowed – indiv sentences not disturbed only structure.</p> <p>TES increased to 17 yrs imp.</p> <p>At [41] offences distinct even though committed roughly same time and with same</p>

		14 yrs; history of head injury could impact on impulse control.	skull, tried to strangle her with a rope and sexually penetrated her twice (anal and vaginal). Appellant later took injured victim to hospital.	implementation of transitional provisions. EFP.	victim – not appropriate to order concurrency on all counts, degree accumulation required. NB: double jeopardy applied to State appeals.
4.	<i>Ugle v The Queen</i> [2001] WASCA 268 Delivered 31/08/2001	25 yrs at sentencing. Convicted after fast-track PG. Extensive prior criminal record – including prior violent offences. Offending mostly linked to alcohol. At time GBH under influence alcohol, valium and amphetamines.	1 x GBH with intent. 1 x AOBH. Appellant and victim in de facto relationship for 2 yrs and had 1 yr old child together but were separated at time of offending. GBH: appellant phoned victim ask for help obtaining bail and to try and re-start relationship. Victim refused. Appellant threatened to kill victim over phone. Later that day, appellant went to victim's house and entered through an open door. Appellant home with her child and 13 yr old sister. Victim told appellant to leave and tried to push front door shut on him. Appellant forced door open, dragged victim into kitchen, took out knife (20cm blade) and stabbed victim several times in chest (one stab wound), back (two stab wounds), stomach (one stab wound) and neck (2 stab wounds). Victim pretended to be dead to stop attack. Victim then heard gurgling sound and has looked up and seen appellant cut own throat (lucky to survive attempted suicide). Victim ran from house and sought help from motorist. Victim suffered serious injuries and was	9 yrs imp. 3 yrs imp. TES 12 yrs imp. Equivalent to 8 yrs imp after implementation of transitional provisions. EFP. Significant risk re-offending, particularly if drug use continued. Accepted responsibility and expressed remorse.	Allowed. GBH reduced to 6 yrs imp. AOBH reduced 1 yr 4 mths imp. TES reduced to 7 yrs 4 mths imp. EFP.

			<p>discharged from hospital requiring a wheelchair.</p> <p>Victim moved to refuge after release from hospital for own safety but appellant's family found out where she was and she had to move again.</p> <p>Victim's child severely traumatised by incident.</p> <p>AOBH: separate incident in which appellant assaulted same victim in front of their child with wooden stake in car park. Attack only stopped by arrival of victim's father.</p>		
3.	<p><i>McCormack v The Queen</i></p> <p>[2000] WASCA 139</p> <p>Delivered 25/05/2000</p>	<p>Youth not mitigating factor.</p> <p>Convicted after trial (not guilty on alternate charge attempted murder).</p> <p>No prior criminal record.</p> <p>Born in UK; moved to Australia with parents at 19 yrs; good employment history until work related back injury; receipt disability pension since 1989.</p>	<p>1 x GBH with intent.</p> <p>Victim and appellant married 26 yrs and had 3 children together.</p> <p>Marriage began to deteriorate as result of online 'friendship' victim established with another man – appellant jealous.</p> <p>On night incident, victim agreed not to use internet in future. Victim requested opportunity say goodbye to internet friends in private – appellant agreed. Appellant asked what victim had said to man in question and victim refused to tell him. Appellant rang man and in course conversation that ensued told him not to speak to his wife again. Victim and appellant then watched movie with eldest son before both going to bed. When in bed, appellant asked to discuss internet issues again – victim replied they could talk again in the morning. Appellant did not go to sleep –</p>	<p>8 yrs imp.</p> <p>TES 8 yrs imp. Equivalent to 5 yrs 4 mths imp after implementation of transitional provisions.</p> <p>EFP.</p>	Dismissed.

			<p>stayed awake thinking matter over. Approx 3 hours later (5am), victim awoke and had cigarette and hot chocolate with appellant. Appellant asked again to discuss internet issues – victim said to wait for counselling session they had arranged for next week. Appellant went into kitchen, took serrated steak knife out of a drawer and returned to bedroom, locking door to granny flat behind him. Victim in bed, appellant pulled covers back and stabbed her in upper back. Victim managed to run to door and appellant stabbed her in neck. Son disturbed by noise and tried to get into granny flat but couldn't open door. Door flew open and victim ran out. Appellant grabbed car keys and told son going to kill himself – crashed car into power pole shortly after.</p> <p>Victim sustained 9 stab wounds in total – 7 superficial and 2 potentially fatal.</p>		
2.	<p><i>Minhaj v The Queen</i></p> <p>[2000] WASCA 52 Delivered 2/02/2000</p>	Convicted after trial.	<p>1 x GBH with intent.</p> <p>Victim and appellant married 7 yrs and had 4 young children.</p> <p>Appellant and victim while victim in bed breast feeding 7 mth old daughter – appellant struck victim and caused nose to bleed. 3 yr son old woke up and victim, still breast feeding baby, took son to toilet. While in toilet, appellant said he was going to get rid of her and went to kitchen. Appellant came back and, while victim in toilet with 2 children, threw turpentine on her, lit a match and threw it at her. Victim's left side caught alight, as well as</p>	<p>12 yrs imp.</p> <p>TES 12 yrs imp. Equivalent to 8 yrs imp after implementation of transitional provisions.</p> <p>EFP.</p>	Dismissed.

			<p>the toilet floor. Victim got out of toilet and put baby down while yelling at appellant to get son out of toilet. Appellant asked wife not to tell police and poured turpentine down sink so that there would be no evidence. Victim rang sister-in-law and told her what happened, then got in cold shower.</p> <p>Sister-in-law and husband (appellant's brother) arrived.</p> <p>Appellant burnt hands trying to put fire out.</p> <p>Appellant denied setting wife on fire – said she was in kitchen and somehow set her own veil alight.</p>		
1.	<p><i>Vilai v R</i></p> <p>[1999] WASCA 275</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after trial – court accepted did not reflect lack of remorse.</p> <p>No relevant prior criminal history.</p>	<p>1 x GBH with intent. 1 x Dep lib. 1 x Agg sex assault.</p> <p>Victim former partner of appellant.</p> <p>Victim tried several times to end relationship but appellant became obsessive and difficult. Appellant drove to victim's house, saw victim driving out of driveway and followed her. Appellant forced victim to stop car and persuaded her to return home to talk about things.</p> <p>Victim reluctant allow appellant to enter house and they initially talked on verandah. Victim eventually allowed appellant in – two other people home at time. Those two people left, leaving victim and appellant alone in house. Victim noticed something in appellant's back pocket and asked him about it. Appellant pulled it out and it was knife. Appellant then</p>	<p>8 yrs imp. 4 yrs imp. 6 yrs imp.</p> <p>TES 14 yrs imp. Equivalent to 9 yrs 4 mths imp after implementation of transitional provisions.</p> <p>EFP.</p> <p>Remorse.</p>	<p>Allowed.</p> <p>TES reduced 10 yrs imp.</p> <p>EFP.</p> <p>NB: individual sentences not altered.</p>

			<p>held knife to victim's stomach and told her he would stab her if she screamed. Appellant walked victim to her bedroom and told her to take off clothes – victim complied. Appellant then undressed and had sexual intercourse with victim. Victim and appellant partly clothed themselves and went and sat at back of house – appellant put knife on floor close to where he was sitting on the doorstep. Victim grabbed knife, ran to front of house and threw it outside. Appellant followed victim, grabbed her, put hand over her mouth, picked up knife and stabbed her in the chest, back, legs and arms. Neighbours heard screams and came out to investigate – appellant ran off. Police and ambulance attended.</p>		
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