

Armed robbery

using a syringe

ss 392 and 393 *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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
agg	aggravated
burg	burglary
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
att	attempted
EFP	eligible for parole
TES	total effective sentence
ct	count

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
8.	<p><i>Fredericks v The State of Western Australia</i></p> <p>[2011] WASCA 270</p> <p>Delivered 23/12/2011</p>	<p>18 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Offending breached CBO.</p> <p>Extensive prior criminal record – stealing; receiving; damage.</p> <p>Entrenched alcohol and substance abuse problem – poor performance with previous substance abuse programs.</p>	<p>1 x Agg armed robbery.</p> <p>Also re-sentenced for breached CBO offences:</p> <p>1 x Burg.</p> <p>1 x Stealing.</p> <p>1 x Obstruct police officer.</p> <p>2 x Trespass.</p> <p>1 x Breach bail.</p> <p>Appellant and three co-offenders entered service station wearing sunglasses and hooded jumpers in an attempt to conceal their identities. One co-offender was armed with a bottle, another co-offender was armed with a syringe filled with red liquid and the appellant was armed with pair of scissors. The victim (service station attendant) was threatened by the appellant and the two armed co-offenders while one co-offender stood look-out at the door. Victim gave them money from the till. Appellant and co-offenders then went behind the counter and took cigarettes and cigarette filters before stealing personal items belonging to the victim from the office.</p> <p>Under the influence of amphetamines at the time of offending.</p>	<p>3 yrs imp.</p> <p>1 yr imp.</p> <p>1 yr imp.</p> <p>3 mths imp.</p> <p>3 mths imp.</p> <p>3 mths imp.</p> <p>TES 4 yrs imp.</p> <p>Genuine remorse – apologised to victim; willing to engage in offender-victim mediation.</p>	<p>Allowed.</p> <p>TES reduced to 3 yrs imp.</p> <p>Individual sentences not altered – sentences on breach offences ordered concurrent.</p> <p>At [18]-[19] Ordinary disposition for armed robbery is immed imp. Rare that suspended term appropriate and will generally only be open when offender young and first time offender.</p>

			Victim extremely traumatised – had to reduce study load as result offending.		
7.	<i>McNab v State of Western Australia</i> [2010] WASCA 66 Delivered 14/04/2010	28 yrs at time offending. Convicted after PG. No relevant prior criminal record. Re-trenched from job in mining industry in December 2008. Developed gambling addiction in February 2009 – after offence, sought help for gambling addiction & excluded himself from Burswood Casino. No independent evidence addiction (only self report from appellant). Abuse of amphetamines and alcohol in period leading up to offending.	1 x Armed Robbery. Appellant entered suburban branch of credit union wearing baseball cap, very dark sunglasses and a long shirt in an attempt to disguise himself. The appellant was armed with a syringe and demanded money from the teller (stole \$3250. \$2214 recovered at time arrest and \$200 paid in restitution at time sentencing).	2 yrs imp. TES 2 yrs imp. Commitment to rehab significant in sentencing but did not outweigh need general deterrence.	Dismissed. Term at low end of sentencing range and suspension not appropriate.
6.	<i>Oaks v State of Western Australia</i> [2009] WASCA 43 Delivered 27/02/2009	23 yrs at time sentencing. Convicted after fast-track PG. Bad prior criminal record – consistent and violent offending (including previous term suspended imprisonment for armed robbery in 2004). History breaches and failure to comply ISOs and parole. Suffered psychotic episodes as result	1 x Agg armed robbery. Appellant entered petrol station – attended by 25 yr old student, a part time worker, working alone at the time of offending. Appellant selected items and placed them on the counter, pretending to make a purchase. Appellant then threatened victim with a syringe. Victim thought syringe was a knife and handed appellant \$320 from till. Appellant left and told	3yrs imp. TES 3 yrs imp. EFP. Tendency minimise conduct and distort truth; no victim empathy.	Dismissed. At [27] range in <i>Miles v The Queen</i> upheld. At [12] ‘...that the offence was at the lower end of the scale, but the sentencing judge made the observation that this did not mean that it was not a particularly

		amphetamine addiction. Health issues – one kidney.	victim not to call police for 30 min.		<i>serious offence. ...it is a prevalent offence and one which causes fear to people and has ramifications for particular types of employment.</i> NB: the original sentence, upheld by the Court of Appeal, was imposed whilst the transitional provisions were in force.
<i>Transitional Provisions Repealed (14/01/2009)</i>					
5.	<i>Abbott v State of Western Australia</i> [2007] WASCA 105 Delivered 24/05/2007	24 yrs at time offending. Convicted after fast-track PG. No relevant prior criminal record. History drug abuse since teenager – history physical, sexual and emotional abuse as child. Good employment history; 7 yr old daughter.	1 x Armed robbery. Towards lower end of scale of seriousness – mainly owing to lack aggression. Appellant and partner addicted to morphine. Undergoing detox and appellant could not tolerate effects withdrawal. Went to pharmacy and explained situation but was told that could not supply drugs without prescription. Appellant told by staff medical centre nearby but that it would not open for several hours.	3 yrs 5 mths imp. TES 3 yrs 5 mths imp. EFP. Initially placed on PSO but cancelled as felt untenable that appellant able live drug free life in foreseeable future.	Allowed. TES reduced to 2 yrs imp. EFP.

			<p>Appellant left pharmacy and filled a syringe with her blood – appellant aware had Hepatitis C. Appellant re-entered pharmacy with syringe and apologised to staff as she demanded morphine. Given morphine and left premises.</p> <p>Following day, appellant went to police station of own accord after being told by her mother the police were looking for her – admitted offence in interview.</p>	<p>Victim put to court that appellant needed help and offence did not have huge impact on her.</p> <p>Extremely remorseful.</p>	
4.	<p><i>Readhead v State of Western Australia</i></p> <p>[2005] WASCA 191</p> <p>Delivered 5/10/2005</p>	<p>35 yrs at sentencing.</p> <p>Convicted after early PG.</p> <p>Prior criminal record – including armed robbery, stealing motor vehicle, breaches ISOs & parole.</p> <p>On parole at time offending (5 days since release when first offence committed).</p> <p>Parents separated when appellant young and mother died; lack of support; Poor interpersonal skills, no enduring r/ships and marked social disconnectedness.</p> <p>Schizophrenic.</p>	<p>5 x Armed robbery. 1 x Attempted armed robbery.</p> <p>Series of separate armed robberies involving a knife or syringe. Each time appellant entered premises armed and wearing a disguise. Robberies committed against supermarket, petrol stations and a pharmacy.</p>	<p>TES 9 yrs imp cum with owed parole days (almost 3yrs).</p> <p>Not EFP.</p> <p>High risk re-offending; lack of empathy for victims and no true remorse.</p>	<p>Allowed.</p> <p>TES reduced to 7 yrs.</p>

Transitional Provisions Enacted (31/08/2003)

<p>3. <i>Little v The Queen</i> [2001] WASCA 87 Delivered 23/03/2001</p>	<p>22 yrs at sentencing. Convicted after fast-track PG. Extensive prior criminal record – beginning at 12 yrs and extending to approx 257 prior convictions. On parole at time offences.</p>	<p>1 x Armed robbery in company. 1 x Agg burg. 3 x Steal motor vehicle. Offences committed over 4 day period. Armed robbery was a ‘bag-snatch’ from 51 yr old woman walking down a suburban street – victim threatened with syringe and escaped in car driven by accomplice.</p>	<p>7 yrs imp. 2 yrs imp. 1 yr, 1 yr and 3 yrs imp. TES 10yrs. Not EFP.</p>	<p>Allowed. Not given appropriate discount for PG. TES reduced to 9yrs. NB: sentence for armed robbery not disturbed.</p>
<p><i>Smith v State of Western Australia</i> [2001] WASCA 93 Delivered 23/03/2001</p>	<p>31 yrs at time sentencing. Convicted after fast-track PG. Offending occurred while appellant on 2 ISOs (18 mths & 9 mths in length for sale heroin related offences). Addiction to heroin at time offending. Adopted and came to Australia in 1972. Adoptive father alcohol and marriage broke down. Unsettled childhood from then; limited education; periods of employment.</p>	<p>1 x Armed robbery with violence. 1 x Robbery with threats of violence. Appellant, partially disguised with beanie and scarf and wearing rubber gloves, entered haberdashery store with blood filled syringe. Demanded money from till and told victim he had AIDS. Received \$40 (contents of till). Appellant entered pharmacy, locked door behind him and told pharmacist it was a ‘hold-up’. Appellant wearing wig, baseball cap and surgical gloves – only eyes were visible. Demanded drugs from safe and money from till – pharmacist complied.</p>	<p>5 yrs imp. 3 yrs imp. (sentences for ISO served concurrently with sentences above). TES 5 yrs imp. EFP.</p>	<p>Dismissed.</p>

2.	<p><i>Pratt v The Queen</i></p> <p>[2000] WASCA 110</p> <p>Delivered 5/5/2000</p>	<p>31 yrs at time sentencing.</p> <p>Convicted after early PG. Co-operated with Police.</p> <p>Offending motivated by amphetamine addiction and threat by partner to engage in prostitution if amphetamines not acquired.</p>	<p>Count 1: Armed robbery. Count 2: Armed robbery.</p> <p><u>Count 1:</u> Entered supermarket with syringe blood filled from own arm. Went to the counter with a can of coca-cola, grabbed the shop attendant by the right wrist, pricked him with the syringe and demanded money. Appellant opened cash register and took out bundle of notes and left store, running down the street. A woman followed the appellant in her car and confronted appellant. Appellant pushed her and punched her in the face. Appellant ran off and escaped before police arrived.</p> <p><u>Count 2:</u> Approx one month later, appellant returned with blood filled syringe to same store. Appellant jumped counter, threatened store owner with syringe and ran off with the day's takings (later spent on amphetamine).</p>	<p>Ct 1: 9 yrs imp. Ct 2: 7yrs imp.</p> <p>TES 9 yrs imp.</p> <p>EFP.</p> <p>Genuine remorse.</p>	<p>Dismissed.</p> <p>Towards top end sentencing range but not so high as to manifest error.</p>
1.	<p><i>Miles v the Queen</i></p> <p>(1997) 17 WAR 518</p>	<p>24 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record (juvenile and adult) – no violent offences.</p> <p>Offences motivated by drug habit –</p>	<p>2 x Armed robbery with violence in company.</p> <p>Appellant and juvenile co-offender robbed delicatessen armed with a blood filled syringe. Appellant and co-offender entered premises with T-shirts wrapped around their faces to prevent</p>	<p>3 yrs imp each count.</p> <p>TES 6yrs imp.</p>	<p>Dismissed.</p> <p>Sentence described as lenient at p 521 & 523. Use of a syringe as a weapon should normally attract an additional one year imp above the term that would</p>

		<p>commenced drug use at 13 yrs (amphetamines, ecstasy, LSD, cocaine & heroin)</p> <p>Single; unemployed and on unemployment benefits.</p>	<p>identification. Received approx \$130. About 5 ½ hrs later, robbed taxi driver, threatening him with 'dirty prick'. Received \$100.</p>		<p>have normally been imposed.</p> <p><i>'...the present tariff for armed robbery seems to be in the range of six to nine years imprisonment for a single offence, depending upon the circumstances.'</i> at p 522.</p>
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