

Assaults with Intent

s 317A Criminal Code

From 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
dep lib	deprivation of liberty
att	attempted
EFP	eligible for parole
CBO	community based order
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
2.	<p><i>Vander Waide v The State of Western Australia</i></p> <p>[2019] WASCA 148</p> <p>Delivered 26/09/2019</p>	<p>35 yrs at time offending. 36 yrs at time sentencing.</p> <p>Convicted after trial (cts 1-5). Convicted late PG (ct 6) (10% discount).</p> <p>Long criminal history; appalling traffic record.</p> <p>Parents separated; raised by his mother.</p> <p>Supportive mother.</p> <p>Victimised and experienced trauma during childhood.</p> <p>History of substance abuse from an early age; including alcohol, cannabis, prescription medications and methyl.</p>	<p>Ct 1: Steal motor vehicle. Ct 2: Wilful and unlawful damage. Ct 3: Unlawfully did an act likely to endanger life, health or safety. Ct 4: Fail to render assistance to victim of incident occasioning BH. Ct 5: Fail to report a road traffic accident. Ct 6: Assault public officer with intent to resist arrest.</p> <p>Vander Waide hired a four-wheel drive vehicle. He had no intention of ever returning it. He treated the vehicle as his own, replacing the registration plates and pulling out the back seat so as to use it as a mobile home.</p> <p>Some weeks later Vander Waide, in the company of a female and her 16-yr-old daughter, drove the vehicle to a hotel. At the hotel he became angry with his female companions. In an agitated and aggressive state he returned to the vehicle and drove off, accelerating very quickly down the road.</p> <p>The victim, Mr Baker, was one of a group of motorcycle enthusiasts who had been at the hotel. He and Vander Waide did not know each other.</p> <p>Soon after leaving the hotel Vander Waide encountered Mr Baker and his group. He approached them at speed from the rear. One</p>	<p>Ct 1: 9 mths imp (cum). Ct 2: 15 mths imp (cum). Ct 3: 7 yrs imp (cum). Ct 4: 18 mths imp (conc). MDL disqu 3 yrs (conc). Ct 5: 12 mths imp (conc). MDL disqu 2 yrs (conc). Ct 6: 3 mths imp (cum).</p> <p>TES 9 yrs 3 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant ‘a dangerous man’; he drove the vehicle ‘angrily and violently’ at a speed of slightly more than 70 km p/h into the victim, who was extremely vulnerable riding a motorcycle; his actions were premeditated and deliberate and he used his vehicle ‘as a weapon’.</p> <p>The sentencing judge found the appellant was not suffering from a mental impairment which caused his offending and the alleged sexual assaults in custody, ‘cannot impact</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (ct 3); totality principle and miscarriage of justice (failure to take into account sexual assault in custody and additional evidence supporting mental impairment)</p> <p>At [57] ... while the additional evidence shows that, contrary to his Honour’s findings, the appellant was, in fact, suffering from a mental illness, that mental illness is not materially mitigatory and does not materially change the seriousness of the appellant’s offending or his high risk of further reoffending. ... The additional evidence, had it been before the sentencing judge, should not have led to a different sentence. ...</p> <p>At [74] The appellant’s offending in respect of ct 3 was undeniably very serious, ... The appellant</p>

			<p>member, Mr Joss, stopped on the side of the road to let him pass. He deliberately drove at Mr Joss's motorcycle, striking it and causing \$2,319.20 worth of damage. Mr Joss was forced to jump out of the way to avoid being hit.</p> <p>Vander Waide then accelerated, driving faster than the posted speed limit, to catch up with Mr Baker. Travelling at over 70 km p/h, and without braking, he drove into the back of Mr Baker's motorcycle. Mr Baker suffered multiple serious injuries, including fractures to his neck, which could have led to paralysis.</p> <p>Vander Waide drove away from the scene. He did not stop to render assistance or report the incident to police.</p> <p>Several days later police officers saw Vander Waide riding a bicycle. They confronted him. An officer, who was wearing a vest which clearly identified her as a police officer, yelled at him to stop and pull over. He rode off. He was intercepted and, in a further attempt to escape arrest, struck the officer in the arm with a motorcycle helmet. She sustained minor injuries.</p>	<p>to any extent' upon the sentence he was obliged to impose.</p> <p>No demonstrated remorse; high risk of reoffending; poorly motivated towards drug abstinence.</p>	<p>deliberately drove his substantial four-wheel drive vehicle at about 70 km per hr, so that he effectively rammed the vehicle into the motorcycle being ridden by Mr Baker. Given that Mr Baker was riding a motorcycle, he was vulnerable to personal injury in such a collision, as the appellant must have appreciated. The appellant's actions were premeditated and were completely unjustified. The appellant acted out of anger and used his vehicle as a weapon.</p> <p>At [75] The risk to the victim's life, health and safety was obvious. Mr Baker was lucky to survive. The consequences of the appellant's offending ... are a serious aggravating factor.</p> <p>At [82] ... The other offences committed by the appellant were, in themselves, serious. The theft of the Toyota Prado (ct 1) was planned ... The</p>
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					<p>appellant sought to disguise his actions by changing the registration plates. ...</p> <p>At [83] ... the seriousness of cts 2, 4, 5 and 6 must not be overlooked. The appellant deliberately damaged Mr Joss's motorcycle. In doing so, he endangered Mr Joss's safety. After colliding with Mr Baker's motorcycle, [he] callously drove off</p> <p>At [84] Given the overall seriousness of the offending, that it occurred over several days and that different victims were affected, some cumulacy of the individual sentences imposed ... was required.</p>
1.	<p><i>Ashley v The State of Western Australia</i></p> <p>[2017] WASCA 131</p> <p>Delivered 11/07/2017</p>	<p>26 yrs at time offending.</p> <p>Convicted after early PG (20% discount).</p> <p>No relevant prior criminal history.</p> <p>Parents separated aged 9.</p> <p>Completing a university degree at time of offending.</p>	<p>Ct 1: Agg burg.</p> <p>Ct 2: Being armed to cause fear.</p> <p>Cts 3-7: Detained another with intent to compel the doing of an act.</p> <p>Ct 8: Agg assault.</p> <p>Ashley was in a relationship with a woman. Some months after the relationship ended he spoke with a former colleague, now a police constable, about the police response to hostage situations. On the same day he attended various retail outlets and purchased</p>	<p>Ct 1: 3 yrs imp.</p> <p>Ct 2: 12 mths imp (conc).</p> <p>Cts 3-7: 3 yrs imp each ct (conc).</p> <p>Ct 8: 12 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge accepted it was not the</p>	<p>Allowed.</p> <p>Appeal concerned totality.</p> <p>Re-sentenced on ct 3 to 18 mths imp (cum upon ct 1).</p> <p>All other sentences and orders unchanged.</p> <p>TES 4 yrs 6 mths imp.</p>

		<p>Employed.</p> <p>Health issues at time of sentencing resulting from injuries received; will require significant degree of assistance and life long care.</p> <p>Suffering depression time of offending.</p>	<p>numerous items for the purpose of his plan.</p> <p>Two weeks later Ashley went to the home of his ex-girlfriend and spoke with one of the occupants. The house was for sale and he purported to be a potential buyer and asked to see inside the house, but this was refused.</p> <p>Later that evening Ashley returned to the house armed with weapons, including a replica gun and a baton. When his ex-girlfriend answered the door he pointed the pistol at her and forced his way in, striking her to the shoulder and knocking her to the ground.</p> <p>He ordered his ex-girlfriend and the four other occupants of the home into a room and to lie on the floor. When his ex-girlfriend continued to defy his instructions he threatened her, before striking her twice to the elbow with the baton, causing pain and temporary loss of feeling in her hand (ct 8).</p> <p>Ashley bound his victims' hands and feet with flexi cuffs and covered two of the victims' mouths with tape he had brought with him. He turned off their mobile phones.</p> <p>Ashley called 000 and demanded to speak with a police negotiator, threatening to shoot someone if his demands were not met.</p> <p>For three hours Ashley detained the victims', eventually exiting the house with the replica</p>	<p>appellant's intention to cause physical harm to the hostages; rather, his intention that day was to end his life by 'cop suicide'.</p> <p>The sentencing judge found the offending extremely serious; premeditated and accompanied by a considerable degree of planning.</p> <p>The sentencing judge found the appellant's behaviour threatening and the victims vulnerable and extremely intimidated by his actions. The victims were entitled to feel safe in their own home at night.</p> <p>Remorseful; engaged in steps towards rehabilitation; physical disabilities make him a low risk of reoffending.</p>	<p>EFP.</p> <p>At [50] ... even allowing for the fact that the appellant's purpose was to bring about his own death, if his injuries were put to one side, the TES of 6 yrs; imp imposed on the appellant would have been well within the available sentencing range and an appropriate reflection of the criminality of his offences as a whole ...</p> <p>At [56] ... in the circumstances of this case, we think the injuries suffered by the appellant were a mitigating factor attracting very significant weight.... The appellant's injuries significantly moderated the importance of punishment, retribution, and personal deterrence.</p> <p>At [59] ... the total sentence imposed exceeded the bounds of sentences available upon a proper exercise of the sentencing discretion in the circumstances of this case.</p>
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			pistol. When he ignored police commands to drop his gun he was shot twice, resulting in serious permanent injury, including paraplegia.		
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<i>Transitional Provisions Repealed (14/01/2009)</i>					

<i>Transitional Provisions Enacted (31/08/2003)</i>					

Office of the Director of Public Prosecutions