

# Criminal damage by fire

s 444 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
PG	plead guilty
agg	aggravated
burg	burglary
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
ct	count

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
26.	<p><i>Edmonds v The State of Western Australia</i></p> <p>[2013] WASCA 255</p> <p>Delivered 06/11/2013</p>	<p>21-22 yrs at time offending.</p> <p>Convicted after early PG.</p> <p>Criminal record including agg burg.</p> <p>Troubled upbringing; employed until an accident which temporarily incapacitated him leading to the use of drugs &amp; sale of drugs to support that use.</p> <p>Significant substance abuse problem.</p>	<p><u>Indictment</u> Arson x 1.</p> <p><u>Section 32 offences</u> Stealing (MV).</p> <p>Unauthorised driving by learner driver. Possess stolen property. Unauthorised driving by learner driver. Breach of bail. Poss methyl. Poss amphet. Poss MDMA.</p> <p><u>Indictment</u> The appellant drove a stolen Audi A4 sedan to East Perth. He did that with the intention of destroying the car as it had been involved in an earlier police pursuit which had resulted in a fatal traffic accident. The sentencing judge found that the appellant was a passenger in the car when it was involved in the accident. The appellant placed tissue paper inside the vehicle and set it alight. At one stage he attempted to spray perfume to use as an accelerant. The fire eventually took hold and the vehicle was completely destroyed. The appellant left East Perth and walked to Maylands, stopping along the way to change into spare clothing he had brought in case anyone witnessed him setting fire to the vehicle.</p> <p><u>Section 32 offences</u> The appellant drove a Holden Berlina. The car was</p>	<p><u>Indictment</u> 4 yrs imp.</p> <p><u>Section 32 offences</u> 10 mths imp; 12 mths disq (cum). \$100 fine; 3 mths disq. 6 mths imp. \$100 fine; 3 mths disq. 3 mths imp (cum). 6 mths imp (cum). 6 mths imp. 6 mths imp.</p> <p>TES 5 yrs 7 mths imp.</p> <p>EFP.</p> <p>Shown remorse; empathy and insight into offending.</p>	<p>Allowed.</p> <p>State conceded TES breached first limb of totality principle.</p> <p>All sentences imposed be served conc.</p> <p>Re-sentenced to TES of 4 yrs imp (all sentences conc with arson sentence).</p> <p>EFP.</p> <p>At [33] Having regard to the comparatively high sentence imposed for the arson offence, the fact that the majority of the s 32 offences were at the low end of the scale of seriousness (the drug offences would ordinarily have attracted a non-custodial penalty in the Magistrates Court) and the mitigating factors, including the appellant's youth and early pleas of guilty, the proper course was to order that the</p>

			<p>later reported stolen from Como. The appellant went to an unknown address and acquired the car from an unknown associate for \$300, knowing it was stolen. He intended to use the parts to upgrade his own car. While driving the stolen care, he lost control of it and crashed into a light pole. He fled from the scene and was found by police nearby.</p> <p>On two occasions, the appellant drove a motor vehicle and was the holder of a valid WA learner's permit. He did not have L-plates displayed, was not in company of, or being following by, an instructor and failed to carry his learner's permit in the car.</p> <p>Police conducted a search of the appellant and found a mobile phone, car keys, sunglasses and an ipod which had been stolen from the same address as the Holden Berlina.</p> <p>The appellant appeared at the Magistrates Court and was remanded on bail to appear. The appellant failed to appear and a warrant was issued. He was arrested days later.</p> <p>On 3 separate occasions the appellant was in possession of prohibited drugs.</p>		sentences for all offences be served concurrently.
25.	<p><b><i>Wroth v The State of Western Australia</i></b></p> <p><b>[2013] WASCA 155</b></p> <p>Delivered 28/06/2013</p>	<p>27 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Substantial criminal history including aggravated burglary, arson, assault and stealing.</p>	<p>Ct 1: Agg burg.</p> <p>Ct 2: Att. armed robbery.</p> <p>Ct 3: Att. armed robbery.</p> <p>Ct 4: Armed robbery.</p> <p>Ct 5: Steal motor vehicle.</p> <p>Ct 6: Armed robbery.</p> <p>Ct 7: Arson.</p> <p>The appellant went on a rampage during which he</p>	<p>Ct 1: 12 mths imp cum.</p> <p>Ct 2: 3 yrs imp cum.</p> <p>Ct 3: 3 yrs imp conc.</p> <p>Ct 4: 3 yrs imp conc.</p> <p>Ct 5: 9 mths imp conc.</p> <p>Ct 6: 3 yrs imp cum.</p> <p>Ct 7: 9 mths imp conc.</p> <p>TES 7 yrs imp.</p>	<p>Sole ground of appeal breach of totality principle. Dismissed – on papers.</p> <p>At [22] ... The fact that the appellant was armed with a firearm was a serious aggravating feature.</p>

		<p>Unhappy childhood; parent's separated when he was 3 yrs; left home at 12 yrs. t</p> <p>Married &amp; two step-children; supportive wife.</p> <p>History of drug abuse.</p> <p>Offences committed on a three month binge on amphetamines and cannabis.</p>	<p>terrorised people in their homes and at a service station. The appellant was armed with a firearm and behaved in an aggressive and threatening manner, including pointing the firearm at a service station employee and at people in their homes. He later set a vehicle he stolen on fire.</p>	<p>EFP.</p> <p>Full admissions.</p> <p>PSR placed the appellant's history of substance abuse at the extreme end of the scale.</p>	<p>At [23] ... The appellant's illicit drug use, while explaining his offending, cannot excuse it.</p>
24.	<p><i>CJH v The State of Western Australia</i></p> <p>[2013] WASCA 139</p> <p>Delivered 05/06/2013</p> <p>Co-offender of <i>MLT v The State of Western Australia</i> [2013] WASCA 140</p>	<p>16 yrs 6 mths at time of offending. 17 yrs 3 mths when sentenced.</p> <p>Convicted after PG.</p> <p>No prior criminal record.</p> <p>Left secondary school early in Year 11 and commenced an apprenticeship as a diesel mechanic.</p> <p>Blamed his behaviour on his experimentation with cannabis and his association with anti-social friends and acquaintances.</p> <p>Strong family support.</p>	<p><b>1 x s445 Criminal Code fail to use reasonable care and to take reasonable precautions to contain a fire under his control so that it did not destroy property.</b></p> <p>Between 9:30pm and 11:30pm on Saturday, 7 July 2012, the appellant, MLT and a female juvenile were on the grounds of the Mount Lawley Primary School. They walked into an undercover quadrangle located in the centre of the school building. Each of the appellant and MLT had a cigarette lighter. They used the lighters to ignite two or three plastic chairs. One of the chairs was under a timber walkway on the southern side of the quadrangle. The appellant, MLT and the female juvenile left the school premises while melted plastic from this chair was still burning. After they departed, the walkway and adjacent classrooms caught alight. The fire spread rapidly through most of the school building. Numerous fire crews attended. After a number of hours the fire was brought under control. The</p>	<p>8 mths detention.</p> <p>Eligible for release under a supervised release order upon serving 50% of term.</p> <p>After initially denying any role, the appellant acknowledged his criminal behaviour to police. He co-operated and made a number of significant admissions.</p> <p>Participated in victim mediation. Made an apology to victims.</p> <p>Triggers for offending appeared to be substance</p>	<p>Dismissed.</p> <p>At [48] Since the creation of the offence against s445A, read with s444A, of the Code, sentencing patterns have not emerged for either adults or juveniles. No doubt, sentencing patterns will be established gradually as a result of the experience of the courts in sentencing offenders who have offended with varying degrees of seriousness and culpability.</p> <p>At [49] It has been observed on numerous occasions, in relation to the</p>

			<p>affected parts of the school building had to be demolished. The cost of repairing and reinstating the school building was between \$16 million and \$20 million.</p>	<p>abuse (alcohol and cannabis), a lack of consequential thinking and an association with a negative peer group.</p> <p>Sentencing judge found each were jointly involved in the arson of the plastic chairs. They were therefore jointly responsible for the conflagration and its consequences.</p> <p>It was accepted that the appellant and MLT did not set fire to the plastic chairs with the intention of damaging or destroying the school building.</p>	<p>offence of arson under s444(1)(a) of the Code, that there is no sentencing tariff for arson because of the great variation that is possible in the circumstances of the offending and the offenders.... In my opinion, that observation is equally applicable to the offence against s445A read with s444A.</p> <p>At [50] ... Arson is a more serious offence than the offence in question in this appeal.</p>
23.	<p><i>MLT v The State of Western Australia</i></p> <p>[2013] WASCA 140</p> <p>Delivered 05/06/2013</p> <p>Co-offender of <i>CJH v The State of Western</i></p>	<p>15 yrs 9 mths at time of offending. 16 yrs 6 mths when sentenced.</p> <p>Convicted after PG.</p> <p>No prior criminal record.</p> <p>His parents separated when he was about 11. Their separation had a profound emotional impact on him.</p>	<p><b>1 x s445 Criminal Code fail to use reasonable care and to take reasonable precautions to contain a fire under his control so that it did not destroy property.</b></p> <p>Between 9:30pm and 11:30pm on Saturday, 7 July 2012, the appellant, CJH and a female juvenile were on the grounds of the Mount Lawley Primary School. They walked to an undercover quadrangle located in the centre of the school building. Each of the appellant and CJH had a cigarette lighter. They used the lighters to ignite two or three plastic chairs. One of the chairs was under a timber</p>	<p>8 mths detention.</p> <p>Eligible for release under a supervised release order upon serving 50% of term.</p> <p>After initially denying any role, the appellant acknowledged his criminal behaviour to police. He co-operated and made a number of</p>	<p>Dismissed.</p> <p>At [37] In the present case, the appellant's offending was very serious.... As the sentencing judge noted, a school and its buildings are invariably an important hub and resource for the local community (ts4). A school is not merely land, bricks and mortar. In the present case, the teachers,</p>

	<p><i>Australia</i> [2013] WASCA 139</p>	<p>Ceased secondary education during Year 11 and was in full time employment.</p> <p>Participated in counselling related to emotional issues associated with his parents separation before and after the commission of the offence; Very supportive parents.</p>	<p>walkway on the southern side of the quadrangle. The appellant, CJH and the female juvenile left the school premises while melted plastic from this chair was still burning. After they departed, the walkway and adjacent classrooms caught alight. The fire spread rapidly through most of the school building. Numerous fire fighting crews attended. After a number of hours the fire was brought under control. The affected parts of the school building had to be demolished. The cost of repairing and reinstating the school building was between \$16 million and \$20 million.</p>	<p>significant admissions.</p> <p>Participated in victim mediation. Made an apology to victims.</p> <p>Triggers for offending appeared to be substance abuse (alcohol and cannabis), a lack of consequential thinking and an association with a negative peer group.</p> <p>Sentencing judge found each were jointly involved in the arson of the plastic chairs. They were therefore jointly responsible for the conflagration and its consequences.</p> <p>It was accepted that the appellant and CJH did not set fire to the plastic chairs with the intention of damaging or destroying the school building.</p>	<p>young students and parents, and the local community generally, experienced a powerful sense of loss at the destruction of their school (including its historical records and other contents).</p> <p>At [44] ... sentencing patterns have not yet emerged, for either adults or juveniles, in relation to the offence against s445, read with s 444A.</p>
22.	<p><i>Sloane v The State of Western Australia</i></p> <p>[2013] WASCA</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>No relevant prior criminal</p>	<p>Ct 1: Arson</p> <p>Ct 2: Arson</p> <p>Ct 3: Arson</p> <p>Ct 4: Arson</p> <p>Ct 5: Arson</p>	<p>Ct 1: 5 yrs imp.</p> <p>Ct 2: 4 yrs imp.</p> <p>Ct 3: 3 yrs imp.</p> <p>Ct 4: 4 yrs imp.</p> <p>Ct 5: 3 yrs imp.</p>	<p>Allowed by majority (Pullin JA dissenting).</p> <p>Majority held factual errors enlivened courts</p>

	<p><b>53</b></p> <p>Delivered 26/02/2013</p>	<p>history.</p> <p>Clinical and personality disorders, but not such as to constitute significant mental illness or to provide the appellant with significant mitigation in the sentencing process.</p> <p>Sought medical and psychological help after being arrested and charged.</p> <p>Good employment history.</p> <p>Committed the offences when intoxicated by alcohol.</p>	<p>Ct 6: Arson Ct 7: Arson Ct 8: Arson Ct 9: Arson Ct 10: Arson Ct 11: Arson Ct 12: Steal MV Ct 13: Stealing Ct 14: Arson Ct 15: Arson Ct 16: Arson Ct 17: Arson Ct 18: Arson Ct 19: Arson Ct 20: Arson Ct 21: Arson</p> <p>On 18 days over a period of 10 months the appellant deliberately lit fires and wantonly destroyed property throughout the Kalgoorlie area. The property included houses which were occupied at the time, grassed areas, motor vehicles, machinery, caravan, industrial bin and a business.</p> <p>He targeted the property of multiple individuals including his employer and previous employer. On one occasion there was some motive of revenge but usually there was no reason at all.</p> <p>On several occasions the appellant consciously targeted the same victims.</p>	<p>Ct 6: 9 mths imp. Ct 7: 3 yrs imp. Ct 8: 6 mths imp. Ct 9: 9 mths imp. Ct 10: 6 mths imp. Ct 11: 6 mths imp. Ct 12: 18 mths imp. Ct 13: 6 mths imp. Ct 14: 18 mths imp. Ct 15: 9 mths imp. Ct 16: 6 mths imp. Ct 17: 6 mths imp. Ct 18: 6 mths imp. Ct 19: 6 mths imp. Ct 20: 6 mths imp. Ct 21: 6 mths imp.</p> <p>Cts 1, 2 and 15 served cum on one another and all other served conc.</p> <p>TES 9 yrs 9 mths imp.</p> <p>Prior good character.</p> <p>Remorse &amp; co-operation with police.</p> <p>Sentencing judge described offending conduct as 'without precedent in Western Australia'.</p>	<p>discretion to resentence.</p> <p>Re-sentenced taking into account relevant sentencing objectives.</p> <p>Ct 1: 4 yrs imp. Cts 1, 3 and 6 cum. and balance served conc.</p> <p>TES 7 yrs and 9 mths imp.</p> <p>Pullin JA (in dissent) [27] Any sentences imposed for arson offences on similar facts but in relation to offences committed before 19 December 2009, will not necessarily be comparable.</p>
<p><b>19.</b></p>	<p><i>Morcom v The State of Western</i></p>	<p>52 yrs at time sentencing.</p>	<p>1 x Arson</p>	<p>2 yrs imp.</p>	<p>Dismissed.</p>

	<p><i>Australia</i></p> <p><b>[2013] WASCA 31</b></p> <p>Delivered 07/02/2013</p>	<p>Convicted after early PG.</p> <p>No relevant prior criminal record.</p> <p>Major depression and significant anxiety disorder. Some level of post traumatic stress disorder and likely presence of a dependant personality disorder.</p> <p>Supportive family.</p> <p>Excellent employment history.</p>	<p>Appellant and victim lived in Geraldton and worked for same company. The two men fell out over a work-related industrial matter. There was an altercation between them which led to the appellant being dismissed from his employment. As a result, the appellant harboured considerable antipathy towards the victim.</p> <p>Shortly before the commission of the offence, the appellant's wife and the victim's wife rekindled their friendship. The appellant became aware of this and in a state of anger and having consumed some alcohol, the appellant obtained a container of petrol and drove to the victim's house. Unknown to the appellant, a video security system had been installed at the house and captured his movements.</p> <p>The appellant arrived at the house and walked to where a utility was parked close to the house. Using petrol as an accelerant, the appellant set fire to the vehicle. The fire spread to a rear bedroom causing considerable damage to it. The utility was completely destroyed. The combined value of the vehicle and the damage to the bedroom was about \$15,000. At the time the appellant set the fire the victim, his wife and son were home. After the appellant set fire to the vehicle he quickly left. As he departed, he wiped the gate, no doubt to remove any fingerprints. He made no effort to alert the occupiers of the premises to the fire nor did he attempt to fight or suppress it.</p> <p>The appellant was interviewed and denied committing the offence and offered a false alibi.</p>	<p>EFP.</p> <p>Prior good character; offence was out of character; and unlikely to re-offend and psychological condition.</p>	<p>The State also had a cross-appeal which was dismissed.</p> <p>At [49] These ranges did not establish a sentencing matrix, rather, they provided general guidance.</p> <p>At [50] Patterns of sentences for arson since the increase in the maximum penalty are yet to emerge.</p> <p>At [54] Although matters personal to the appellant carry less weight in cases of arson, they are not to be ignored.</p> <p>At [65] The sentence imposed on the appellant was lenient; however because of the mitigating factors it was properly open to his Honour to impose a lenient sentence, even in light of the increased maximum penalty for arson.</p>
18.	<i>Turnbull v The</i>	27 yrs at time sentencing.	1 x Agg armed robbery.	5 yrs imp.	Dismissed – leave refused



	<p><i>State of Western Australia</i></p> <p><b>[2013] WASCA 5</b></p> <p>Delivered 9/01/2013</p>	<p>Convicted after early PG.</p> <p>Prior criminal record – constant offending as adult linked to drug use.</p> <p>Diagnosed anti-social and borderline personality disorder.</p> <p>Amphetamine and cannabis dependency.</p>	<p>2 x Stealing. 1 x Agg burg. 1 x Agg armed robbery. 1 x Stealing. 1 x Stealing. <b>1 x Arson.</b></p> <p>Appellant and two co-offenders drove to a post office. They removed the number plates from the car, disguised their faces and clothing and armed themselves with a tomahawk (appellant) and fishing knife (co-offender 1). They entered the post office. The appellant acted as security and a look-out while co-offender 1 demanded and received money from the manager and then the manager's wife. Appellant and co-offender 1 then returned to the car where co-offender 2 was waiting.</p> <p>The first two counts of stealing related to the theft of two caravans from a caravan yard.</p> <p>Appellant and co-offender (co-offender 1 from above) armed themselves with claw hammers and covered their faces before entering a residence by kicking in the door. The victim was asleep inside and was woken by the co-offender threatening him with the hammer and demanding cash and property. Victim's wallet, cash ATM card and PIN, car keys and car were stolen. ATM card was later used to withdraw \$200 – used by appellant and co-offender to purchase drugs – and the vehicle was destroyed by fire.</p>	<p>1 yr imp each ct. 4 yrs imp. 5 yrs imp. 18 mths imp. 3 mths imp. <b>2 yrs imp.</b></p> <p>TES 8 yrs imp. EFP.</p> <p>Genuine remorse; high risk future violent offending without intervention.</p>	<p>on papers.</p>
17.	<i>JKL v The State of Western</i>	21 yrs at time offending.	<p>Ct 1: Agg burg. Ct 2: Steal motor vehicle.</p>	<p>Ct 1: 2 yrs 6 mths imp. Ct 2: 1 yr 6 mths imp.</p>	Allowed.

	<p><i>Australia</i></p> <p><b>[2012] WASCA 215</b></p> <p>Delivered 29/10/2012</p> <p><b>NB: Facts set out in confidential annexure to judgement and subject to confidentiality order</b></p>	<p>Convicted after early PG.</p> <p>No relevant prior criminal record.</p> <p>Offending for cts 9, 10 and 11 breached bail for cts 1-8.</p> <p>Provided significant assistance to authorities.</p> <p>Supportive family.</p>	<p>Ct 3: Agg burg. Ct 4: Steal motor vehicle. Ct 5: Steal motor vehicle. Ct 6: Agg burg. Ct 7: Steal motor vehicle. Ct 8: Agg burg. Ct 9: Steal motor vehicle. Ct 10: Stealing. Ct 11: Arson.</p> <p>Appellant and co-offenders broke into residential properties in the early hours of the morning for the purpose of stealing motor vehicles. The intention was to sell them and share the proceeds. Burglaries were planned and premeditated and committed when the occupants of the properties were home.</p> <p>Arson related to a vehicle which had been set on fire to destroy any evidence it may have yielded.</p> <p>Most of the stolen vehicles were recovered with the assistance of the appellant.</p>	<p>Ct 3: 2 yrs 6 mths imp. Ct 4: 1 yr 6 mths imp. Ct 5: 1 yr 6 mths imp. Ct 6: 2 yrs 6 mths imp. Ct 7: 1 yr 6 mths imp. Ct 8: 2 yrs 6 mths imp. Ct 9: 1 yr 6 mths imp. Ct 10: 1 yr 6 mths imp. Ct 11: 4 yrs imp.</p> <p>EFP.</p> <p>Some insight into offending.</p>	<p>Re-sentenced taking into account post-sentencing co-operation with authorities. Sentence imposed for arson was held to be manifestly excessive.</p> <p><u>Sentences on appeal:</u> Ct 1: 2 yrs 2 mths imp. Ct 2: 15 mths imp. Ct 3: 2 yrs 2 mths imp. Ct 4: 15 mths imp. Ct 5: 15 mths imp. Ct 6: 2 yrs 2 mths imp. Ct 7: 15 mths imp. Ct 8: 2 yrs 2 mths imp. Ct 9: 15 mths imp. Ct 10: 3 mths imp. Ct 11: 3 yrs imp.</p> <p>TES reduced to 3 yrs 3 mths imp.</p> <p>EFP.</p> <p>At [91]-[132] Discussion of sentencing range for arson, impact of increase in maximum penalty and comparable cases.</p>
16.	<p><i>McLaughlin v The State of Western Australia</i></p>	<p>37 yrs at time offending.</p> <p>Convicted after early PG.</p> <p>Prior criminal record –</p>	<p>Ct 1: AOBH. Cts 2 &amp; 3: Threats to kill. Ct 4: Arson.</p>	<p>Ct 1: 1 yr 6 mths imp. Cts 2 &amp; 3: 10 mths imp each ct. Ct 4: 2 yrs 10 mths imp.</p>	<p>Dismissed – leave refused on papers.</p> <p>At [48]-[58] Discussion of range of sentences for</p>

<p><b>[2012] WASCA 204</b></p> <p>Delivered 12/10/2012</p>	<p>including violent offending.</p> <p>Cts 3 &amp; 4 breached bail for cts 1, 2 and s 32 offence.</p> <p>Traumatic childhood which has lead to deep seated fears of rejection.</p> <p>Drug and alcohol issues.</p>	<p>s 32 offence (poss controlled weapon).</p> <p>Appellant, who had been drinking alcohol, argued with the victim 1 (de facto partner) about an earlier incident involving her son. Appellant demanded victim 1 retrieve some cigarette butts from the bin so he could roll a cigarette. Victim 1 refused and appellant threw an ashtray at her, hitting her in the back. Appellant then locked external door and put the key in his pocket, picked up a large knife and cut the power cord to the vacuum the victim 1 was using.</p> <p>Later that day, appellant, in the bedroom with the victim 1, grabbed spat on her, grabbed her and then shook her. Appellant told her to leave the bedroom and victim 1 went to lounge room. Appellant then used a large knife to smash the glass table in the lounge and stabbed the walls. Appellant then held the knife to the victim 1's throat and threatened to kill her and members of her family. Appellant then stabbed the walls again, stopping when the blade of the knife broke. Victim 1 tried to leave the room but the appellant prevented her from leaving, shouted at her, pushed and shoved her and then punched her in the nose. Eventually the appellant fell asleep and victim 1, fearing for her life, remained awake. The next morning, victim 1 fled the house with her son. Appellant had a disagreement with victim 2 (estranged wife) and left her house. Over the course of the next few hours, appellant sent victim 2 increasingly violent and threatening text messages. Appellant drove to victim 2's home, banged on the door, shouted, swore and demanded to be let in. No one was home so appellant kicked in a rear gate and then smashed a window to gain entry to the house.</p>	<p>6 mths imp.</p> <p>TES 4 yrs 8 mths imp.</p> <p>EFP.</p>	<p>arson prior to the maximum penalty being increased to life.</p> <p>At [59]-[66] Noted by court, in the context of discussing the effect of a legislative increase of the maximum penalty, that new sentencing patters for offences of arson have not emerged in the wake of the increased maximum.</p>
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15.	<p><b><i>McConkey v The State of Western Australia</i></b></p> <p><b>[2012] WASCA 45</b></p> <p>Delivered 2/03/2012</p>	<p>30 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Lengthy prior criminal record – numerous armed robberies; steal motor vehicle; attempted robbery; driving offences.</p> <p>Started using drugs and alcohol at 12 yrs old.</p> <p>Supportive family.</p>	<p>1 x Criminal damage by fire. 2 x Agg armed robbery. 1 x Armed robbery. 1 x Stealing. 1 x Steal motor vehicle.</p> <p>Offence date 5/09/2010 – max penalty life imp.</p> <p>Overall criminality at upper end of scale of seriousness.</p> <p>Appellant and co-offender stole motorcycle and rode to supermarket. Appellant entered supermarket armed with a handgun and demanded money from victim 1 (the attendant). Victim 1 opened the cash register and gave appellant \$900. Victim 2 (the manager) approached appellant and appellant pointed gun at him and threatened to shoot him. Supermarket was busy at the time of the robbery.</p> <p>3 days later the appellant and same co-offender rode the same stolen motorcycle to a pharmacy. Both entered the pharmacy wearing full faced helmets and armed with handguns. They threatened the staff with the guns and demanded money from the till and the safe. They left with \$15,000.</p>	<p>TES 8 yrs imp.</p> <p>EFP.</p> <p>Moderate risk violent re-offending; engaged in victim mediation; some prospect of rehabilitation.</p>	<p>Dismissed – extension of time refused on papers.</p> <p>NB: Individual sentences not challenged.</p>

			<p>Later that day, appellant and same co-offender, travelling at excessive speeds on the stolen motorbike, had a car crash. Victim 3 came to their assistance and the appellant produced a handgun and threatened to shoot him if he didn't give him his car. Victim 3 complied and appellant drove off in his vehicle (\$50,000 Landcruiser). Appellant later set the car on fire, completely destroying it.</p>		
14.	<p><i>Evans v The State of Western Australia</i></p> <p>[2012] WASCA 13</p> <p>Delivered 25/01/2012</p>	<p>32 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Extensive prior criminal record- burglaries; stealing; fraud; assault; traffic offences.</p> <p>Entrenched substance abuse problem.</p>	<p>1 x Criminal damage by fire. 1 x Burglary. 3 x Receiving. 1 x Steal motor vehicle. 1 x Poss methyl wiss (21.2g at 56%).</p> <p>Offence date 24/11/2009 – max penalty 14 yrs imp.</p> <p>Appellant and co-offender 1 in a relationship. Co-offender 1 worked as receptionist for a production company. Co-offender 1 gave 3 fraudulently obtained cheques from her work to the appellant – total value \$24, 779.09 (receiving charges). Co-offender 1 became aware that an accountant was due to perform a reconciliation of the books at work and, fearing her thefts would be discovered, procured the appellant to burn down the premises. Appellant agreed and co-offender 1 gave appellant keys and the alarm code to her work premises. Appellant entered the work premises and set fire to the property – property was extensively damaged by the fire (approx value of damage \$420,000). An adjoining business also suffered \$30,000 damage and had to close for a period of time. Appellant suffered facial burns in the course of offending. Appellant ended his relationship with co-offender 1</p>	<p>4 yrs imp. 12 mths imp.</p> <p>12 mths imp each ct. 12 mths imp. 2 yrs imp.</p> <p>TES 7 yrs imp.</p> <p>No remorse.</p>	<p>Dismissed – leave refuse on papers.</p> <p>At [57] No tariff for arson but post-transitional range of 2 yrs 8 mths – 4 yrs 8 mths for serious offences and 2 yrs – 3 yrs 4 mths in less serious cases is identifiable as per <i>Wright v WA</i> [2010] WASCA 14 [54].</p> <p>At [61] Arson in this instance was undoubtedly a serious example of that type of offending.</p> <p>At [62] Dominant sentencing consideration with respect to arson is general deterrence.</p>

			<p>after the fire and began a relationship with co-offender 2. Following the breakdown of the relationship, co-offender 1 gave an unsigned statement to police implicating the appellant in the fire but not herself.</p> <p>Steal motor vehicle and drugs charge arose from routine police vehicle stop.</p>		
13.	<p><i>Lesay v The State of Western Australia</i></p> <p>[2011] WASCA 154</p> <p>Delivered 15/07/2011</p>	<p>45 yrs at time sentencing.</p> <p>Prior criminal record – minor traffic and drug convictions.</p> <p>2 children; separated from wife in 2008; good employment record (including 10 yrs Naval service).</p> <p>Amphetamine and alcohol abuse following emotional and financial difficulties related to marital problems.</p> <p>Mood disorder – anxiety and depression.</p>	<p>Ct 1: Wilful damage. Ct 2: Wilful damage. Ct 3: Criminal damage by fire. Ct 4: Fraud.</p> <p>Offence date 25/08/2009 – max penalty 14 yrs imp.</p> <p>Fraud involved high level criminality - deliberate and planned deception involving forgery of two documents, a not insignificant amount of money and occurred over period of time. Total amount defrauded \$24,250.</p> <p>Appellant devised plan to blow up ATMs in order to steal money they hold. Appellant stole a car and drove with his 15 yr old son to a shopping centre – dressed in white hooded coverall, balaclava and latex gloves. Son tried to gain access to inside of ATM using crowbar. Appellant then placed half a stick of explosive on the ATM and detonated it. Detonation failed to properly work and ATM damaged but no money accessed. Value of damage approx \$5,000 (ct 1). About 30 min later, appellant drove to another ATM – dressed in same manner. Again tried</p>	<p>Ct 1: 2 yrs 6 mths imp. Ct 2: 2 yrs 6 mths imp. Ct 3: 12 mths imp. Ct 4: 12 mths imp.</p> <p>TES 4 ½ yrs imp.</p> <p>EFP.</p> <p>Remorse.</p>	<p>Dismissed – leave refuse on papers.</p> <p>Individual sentences not challenged on TES.</p> <p>At [21] ‘...<i>the one transaction rule is not a rule at all. It will not always be the case that individual offences, when committed as part of one episode, will attract concurrent sentences...the ultimate requirement when sentencing a person who has committed multiple offences, is to impose punishment which is a just and proper reflection of the offender’s total criminality.</i>’</p>

			<p>unsuccessfully to gain access to money in ATM with crow bar. Appellant again attempted to use explosive to gain access to money. Detonation was again unsuccessful and no money obtained. \$65,000 damage done (ct 2).</p> <p>Appellant and son then drove stolen car they were using to bushland near a golf course, poured petrol over it and set it alight. Car, worth approx \$10,000, was totally destroyed by blaze (ct 3).</p> <p>Approx 6 weeks later, appellant applied for a loan and, in support of that application, produced a letter purporting to be from the appellant's employer stating that he was entitled to a \$28,750 bonus payment. A second letter produced by the appellant stated that payment was due to be made on 11 December 2009. On the strength of those letters a loan of \$24,250 was obtained by the appellants. Both letters were forged by the appellant.</p>		
12.	<p><b><i>JTP v The State of Western Australia</i></b></p> <p><b>[2010] WASCA 191</b></p> <p>Delivered 20/7/2010</p>	<p>14 yrs at time offending.</p> <p>Convicted after PG.</p> <p>No prior convictions.</p> <p>Strong family support.</p>	<p>Ct 1: Agg burg.</p> <p>Ct 2: Criminal damage by fire.</p> <p>Offence date Jan-March 2010 – max penalty life imp.</p> <p>Appellant went to a Primary School in Collie in early hours of the day with three other juvenile co-offenders They gained entry to a classroom by removing glass window panes and climbing through. Appellant searched classroom and adjoining rooms for property to steal and vandalised desks and walls. They gained entry to another classroom in adjoining wing of school by removing window panes and climbing through. They left that classroom after their searches failed to locate</p>	<p>Ct 1: 5 mths detention.</p> <p>Ct 2: 10 mths detention.</p> <p>TES 10 mths detention.</p> <p>Remorse; courage in admitting and taking responsibility for his part in causing loss of school; ceased associating with negative peers; no need for personal deterrence.</p>	<p>Dismissed.</p> <p>At [16] Arson very serious and general deterrence is ordinarily a dominant sentencing consideration.</p> <p>At [17] In appropriate circumstances, extreme youth can significantly reduce importance of general deterrence even for very serious offences but, in this case, there was no error made in drawing a conclusion that a sentence</p>

			<p>anything of value.</p> <p>Two co-offenders returned to first classroom and attempted to set alight a pin-up board using cigarette lighters. They entered another classroom and appellant followed them inside. Appellant and two co-offenders ignited several items in classroom with cigarette lighters. Appellant recalled lighting papers and string that were strung across classroom. Appellant and co-offenders became concerned and fearful when fire took hold and left the premises. By the time emergency services arrived the fire was out of control. The fire destroyed the school. Total cost of damage to school and contents was in excess of \$2.2 million.</p> <p>Offending was very serious. Appellant was old enough to know that if a person lights a fire it can get out of control and did not alert anyone, even after it became obvious that a fire was taking hold. Significant trauma and disruption caused to students, teachers, administrative staff and general community.</p>		<p>of detention was the only appropriate sentence.</p>
11.	<p><b><i>Wright v The State of Western Australia</i></b></p> <p><b>[2010] WASCA 14</b></p> <p>Delivered 29/01/2010</p>	<p>18 yrs at time offending. 21 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Loving and supportive family.</p> <p>Involved in criminal activity through the use of drugs.</p>	<p>Ct 1: Agg burg. Ct 2: Criminal damage by fire. Ct 3: Armed robbery. Ct 4: Steal motor vehicle. Ct 5: Criminal damage by fire. 6 x s 32 offences.</p> <p>Offence date 21/05/2006 and 1/02/2008 – max penalty 14 yrs imp.</p> <p>Arson committed during spree of offending - fact that offences were committed over a 3 yr period</p>	<p>Ct 1: 2 yrs imp. Ct 2: 3 yrs 3 mths imp. Ct 3: 3 yrs imp. Ct 4: 1 yr 3 mths imp. Ct 5: 2 yrs imp. less than 2 yrs imp.</p> <p>TES 6 yrs 3 mths imp.</p> <p>EFP.</p> <p>Genuine remorse -</p>	<p>Dismissed.</p> <p>NB: Appeal challenged sentence for criminal damage by fire.</p>



		<p>Depression - whether cause or effect of drug abuse uncertain.</p>	<p>indicated a serious and continuing criminality.</p> <p><u>Cts 1 &amp; 2:</u> Appellant entered premises in company with co-offender and smashed glass of office manager's window. He walked to a second building (main office), smashed rear window, climbed inside and searched office for money. Combustible material on shelf was ignited causing damage. Appellant said someone else lit fire. Appellant ran off after exiting through smashed window. Damage caused by fire in excess of \$100,000.</p> <p><u>Cts 4 &amp; 5:</u> At later date, appellant entered commercial premises by jumping a wire fence, with intention of stealing money from cars. He opened an unlocked BMW sedan, located keys, drove car from yard, ramming through front gates and smashing headlights and indicators. Appellant drove around for a short time before picking up a friend, who suggested they burn it to avoid identification. Appellant parked at an intersection, then used vehicle's cigarette lighter to ignite large bundles of paper on rear seat. Fire took hold and quickly engulfed car, causing \$10,000 worth of damage.</p> <p><u>Ct 3:</u> Police spoke to appellant after his DNA was found near location of armed robbery. Appellant denied all knowledge and was released. Police again spoke to appellant after his fingerprints were identified on glass from Stalker Pumps premises and was also re-questioned about a robbery, but denied all knowledge and was released. Later that day he contacted police and indicated that he wanted to clear up matters about which he had been</p>	<p>contacted police and confessed to crimes.</p>	
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			questioned. Appellant participated in an interview and made full admissions.		
<b>10.</b>	<b><i>Pustkuchen v State of Western Australia</i></b> <b>[2010] WASCA 11</b>  Delivered 2/01/2010	<p>25 yrs at time offending.</p> <p>Convicted after late PG on ct 1 (committed for trial). Convicted after trial ct 2.</p> <p>Lengthy prior criminal record – agg burg; stealing; armed robbery; first conviction at 10 yrs old.</p> <p>Offending breached suspended sentence (burg and stealing offences). Released from imp 6 mths prior to offending - previous response to supervision had been poor; history of non-compliance reflected poor attitude towards law and order.</p> <p>Spent much of adult life in prison; institutionalised.</p> <p>Single; no dependants.</p> <p>Parents separated; support of family, immediate and extended.</p>	<p>Ct 1: Agg burg. Ct 2: Criminal damage by fire.</p> <p>Offence date 26/10/2007 – max penalty 14 yrs imp.</p> <p>Appellant and co-offender (then girlfriend) went to a house. They did not know owners. Appellant had co-offender go to front door and knock to see if anybody was home. Appellant broke a window and crawled through. Appellant began to rummage through and ransack residence. He stole a large number of items to value of approx \$53,000. Co-offender brought car around to rear of house and parked it in a garage. They then loaded stolen property into back of car, filling the boot and back seat.</p> <p>As co-offender drove car out of garage, appellant went back inside to retrieve his telephone. When appellant emerged from house, it was on fire. Fire caused considerable damage to house and contents, including structural damage, to value of approx \$400,000.</p> <p>House itself was not insured for fire damage. Victims lost all personal possessions, and damage had a profound emotional and financial effect on their lives - emotional and financial consequences of offending were an aggravating factor.</p> <p>Appellant's conduct constituted a wanton act of vandalism and demonstrated a total disregard for property of others.</p>	<p>Ct 1: 3 yrs imp. Ct 2: 5 yrs imp.</p> <p>12 mths suspended sentence activated.</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>Genuine remorse; devastated at effect drug use and offending; progress towards rehabilitation; accepted responsibility.</p>	<p>Dismissed.</p> <p>At [50] TES not disproportionate to overall criminality of offending.</p> <p>At [42] &amp; [50] Offending were extremely serious - fire was lit at a home with intent of destroying DNA evidence and did severe damage.</p> <p>At [51] TES not crushing – heavy sentence but does not deprive appellant of a reasonable expectation of a useful life after release from prison.</p>

		<p>Introduced to heroin at 13 yrs by girlfriend who later died of a heroin overdose; made several reasonable efforts to avoid relapse into drug use, including participating in a residential rehabilitation programme.</p> <p>Reasonable level of education; engaged in a variety of occupations.</p>			
<p><b>Amendments to s 444 Criminal Code (19/12/2009)</b></p> <p><b>Maximum penalty increased to life imprisonment (previously maximum penalty was 14 yrs imp or, in circumstances of racial aggravation, 20 yrs imp). Definition of property extended to include vegetation.</b></p>					
9.	<p><i>The State of Western Australia v Bennett</i></p> <p>[2009] WASCA 93 Delivered 18/03/2009</p>	<p>46 yrs at time sentencing.</p> <p>Convicted after PG (not fast-track).</p> <p>Prior criminal record (WA and interstate) - threats; endanger or harm a person; agg burg; stealing; motor vehicle theft; theft, assault; receiving.</p> <p>Violent family life growing up; erratic work history; 8 children.</p>	<p>Ct 1: Steal motor vehicle. Ct 2: Arson. Ct 3: Threat to kill.</p> <p>Very serious instance of offending.</p> <p>Victim &amp; respondent in relationship. <u>Ct 1:</u> At a service station, the respondent found a motor vehicle unlocked with keys in ignition. Respondent drove the motor vehicle 50 m up the road and crashed into a brick wall outside a property. <u>Ct 2:</u> Respondent obtained jerry can containing petrol, entered the victim's house, spread petrol throughout the house, and lit it. House subsequently required</p>	<p>Ct 1: 6 mths imp. Ct 2: 15 mths imp. Ct 3: 9 mths imp.</p> <p>TES 15 mths imp.</p> <p>EFP.</p> <p>Remorse; high risk re-offending.</p>	<p>Allowed.</p> <p>TES increased to 4 yrs 9 mths imp.</p> <p>EFP. <u>Sentences on appeal:</u> Ct 1: 6 mth imp. Ct 2: 4 yrs imp. Ct 3: 9 mths imp.</p> <p>At [54] The background of domestic violence made the threat to kill all the more serious.</p>

		Substance/ alcohol abuse; mixed personality disorder, anti social and narcissistic traits.	demolition and rebuilding. Respondent was picked up by police while running down the driveway away from the burning house. <u>Ct 3:</u> Approx 1 week prior to cts 2 & 3, the victim attempted to end the relationship. The respondent threatened to kill her stating "If you think you're going to walk away I will kill you". Then came home late one morning, grabbed the victim by the throat and said 'I am going to kill you. If I can't have you no one can'.		At [56] Ordinarily a sentence of 2 yrs imp would properly mark out the seriousness of the offence of threatening to kill.
8.	<b><i>Dunks v The State of Western Australia</i></b> <b>[2009] WASCA 82</b>  Delivered 7/05/2009	28 yrs at time sentencing.  Convicted after PG at earliest opportunity.  Voluntarily confessed to offences when arrested by police on another matter.  Significant and lengthy prior criminal record – burglary; breaches; steal motor vehicle; receiving; stealing; criminal damage; drug and alcohol related offences.  Offending drug and alcohol related.  Exposed to substance abuse and violence during childhood.	7 x Criminal damage by fire. 18 x Agg burg. 2 x Burglary. 12 x Steal motor vehicle. 1 x Stealing.  Appellant engaged in persistent course criminal conduct in breaking and entering into residential properties and stealing items and vehicles. Arson offences relate to setting stolen vehicles alight to destroy the vehicle and evidence. Damage caused by fire approx \$200,000.	14 mths imp each ct criminal damage by fire.  TES 8 yrs imp.  EFP.	Dismissed.

		3 children; supportive girlfriend; limited family support.			
<i>Transitional provisions repealed (14/01/2009)</i>					
7.	<b><i>State of The Western Australia v Viskari</i></b> <b>[2008] WASCA 143</b>  Delivered 10/07/2008	31 yrs at time offending.  Convicted after PG at start of trial.  Prior criminal record - 'entrenched' history offending; spent majority adult life in custody.  Offending breached parole. Extensive history substance abuse and depression.	Ct 1: Steal motor vehicle. Ct 2: Armed robbery. Ct 3: Criminal damage by fire. Ct 4: Steal motor vehicle. Ct 5: Armed robbery. Ct 6: Criminal damage by fire. Ct 7: Steal motor vehicle. Ct 8: Armed robbery. Ct 9: Criminal damage by fire. Ct 10: Steal motor vehicle. Ct 11: Armed robbery. Ct 12: Criminal damage by fire.  <u>Cts 1-3:</u> Appellant stole car and drove to pharmacy. Dressed in paper cloth overalls and all that could be seen of appellant were his eyes and face. Entered chemist armed with screwdriver or knife and demanded money and drugs. Given both and left scene in stolen vehicle which he later set abandoned and set alight. <u>Cts 4-6:</u> Appellant stole car and drove to motel, again dressed in paper cloth overalls. Entered motel with knife and demanded money. Left with money – stolen vehicle became bogged and appellant set on	Ct 1: 9 mths imp. Ct 2: 4 yrs 9 mths imp. Ct 3: 2 yrs imp. Ct 4: 9 mths imp. Ct 5: 4 yrs 9 mths imp. Ct 6: 2 yrs imp. Ct 7: 9 mths imp. Ct 8: 4 yrs 9 mths imp. Ct 9: 2 yrs imp. Ct 10: 9 mths imp. Ct 11: 5 yrs 1mth imp. Ct 12: 2 yrs imp.  TES 7 yrs 1mth imp.  EFP.  High risk re-offending.	Allowed  TES increased to 9 yrs 1 mth. NB: individual sentences not disturbed.  NB: Double jeopardy applied to State appeals.

			<p>fire.  <u>Cts 7-9:</u>  Appellant stole car and drove to pharmacy, dressed in such a manner that only part of his eyes were visible. Appellant entered pharmacy with knife and demanded money and drugs. Having received both, the appellant left in stolen vehicle which he later abandoned and set alight.</p> <p><u>Counts 10-12:</u>  Stole car and drove to Subway Restaurant, again dressed in paper cloth overalls. Entered Subway with knife and demanded money. Left with money in stolen vehicle which appellant later set on fire.</p>		
6.	<p><b><i>Roffey v The State of Western Australia</i></b></p> <p>[2007] WASCA 246  Delivered 14/11/2007</p>	<p>21 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record - began offending at 15 yrs (11 juvenile convictions for armed robbery and attempted armed robbery – received 4yrs 6mths detention). Spent majority adult life in custody.</p> <p>Began using amphetamines at 15 yrs – causative factor in offending.</p> <p>Father member motor cycle gang and served numerous periods imprisonment.</p>	<p>15 x Armed robbery s392 <i>Criminal Code</i>.  3 x Attempted armed robbery.  13 x Deprivation liberty.  3 x Crim damage by fire.  5 x Steal motor vehicle.  1 x Possess altered firearm.  1 x AOBH with intent.  7 x s32 offences (no effect on aggregate sentence).  Offences at high end scale seriousness essentially all armed robberies with either a knife or a gun being used by the appellant. Some committed on own, some with co-offenders. Robberies involved threats to kill/harm employees and customers (also placed gun against head of customer in course one robbery), some damage to premises (eg broken windows).  Circumstances of criminal damage by fire offences were that 3 motor vehicles were damaged by fire, after being stolen and used in the commission of the armed robberies</p>	<p>3 yrs imp each ct  2 yrs imp each ct.  2 yrs imp each ct.  2 yrs imp each ct.  18 mths imp each ct  1 yr imp.  3 yrs imp.</p> <p>TES 18 yrs.</p> <p>EFP.</p> <p>Limited insight.</p>	<p>Allowed.</p> <p>TES reduced to 13 yrs 6 mths.</p> <p>Individual terms not altered.</p> <p>Nature and frequency offending require lengthy custodial sentence.</p> <p>Some case summaries for multiple offences armed robbery.</p>

		Parents normalised criminal activity and antisocial behaviour to high degree.			
5.	<p><i>Newton v State of Western Australia</i></p> <p>[2006] WASCA 247</p> <p>Delivered 21/11/2006</p>	<p>19 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Excellent antecedents.</p> <p>"Fine young man", well liked, hard worker, had a great deal to offer the community.</p>	<p>Ct 1: criminal damage by fire. Ct 2: Stealing. Ct 3: Att criminal damage by fire. Ct 4: Burg. Ct 5: Criminal damage by fire.</p> <p>Offending extremely serious.</p> <p><u>Ct 1:</u> Appellant and co-offender were driving in appellant's father's car. They purchased an aerosol can of de-greaser and petrol in a jerry can and came across a recycling bin. Appellant set it alight, causing some damage to the bin.</p> <p><u>Cts 2 &amp; 3:</u> Appellant and co-offender then travelled to a land sales office on a land site and removed 3 flags. They sprayed flags with de-greaser, set them alight and placed them under the demountable sales office. Intention was to set sales office alight, but they were unsuccessful. Appellant returned to car, took out jerry can containing fuel, returned to sales office, smashed a window in office and entered. Alarm sounded and appellant ran off.</p> <p><u>Ct 5:</u> Appellant and co-offender then travelled to another sales office. Appellant poured petrol into external air-conditioning unit and set sales office alight, causing damage to total value of \$69,500.</p>	<p>TES 12 mths imp.</p> <p>EFP.</p> <p>Dominant factor general deterrence.</p>	<p>Dismissed.</p> <p>At [10] It is evident from transcript that sentencing judge considered offending to be too serious to justify susp sentence. There was no requirement to say more than she did.</p> <p>At [13] Considerations in determining seriousness include motive, extent of damage, extent to human life endangered, and nature of property.</p> <p>At [20] Deliberate and persistent course of conduct by a person determined to cause significant damage.</p> <p>At [21] Seriousness and need for general deterrence so great that imposition suspended sentence inappropriate.</p>

<p>4.</p>	<p><i>Bruce v State of Western Australia</i></p> <p>[2006] WASCA 236</p> <p>Delivered 10/11/2006</p>	<p>24 yrs old at time of offending. 26 yrs old at time of sentencing.</p> <p>Convicted after trial.</p> <p>No relevant prior criminal record – had not served term imp prior.</p> <p>Good family.</p>	<p>Ct 1: Steal motor vehicle Ct 2: Stealing. Ct 3: Steal motor vehicle. Ct 4: Stealing. Ct 5: Criminal damage by fire.</p> <p>Offending in worst category of kind.</p> <p><u>Cts 1 &amp; 2:</u> Related to theft, by appellant and others, of a Kenworth prime mover and a trailer and its contents - various rugs, sunglasses, luggage, clothing, cosmetics, pharmaceuticals and other items. <u>Ct 3, 4 &amp; 5:</u> Related to the theft of International prime mover and Cope trailer and its contents - various white goods, electrical and other items. The truck and trailer were then set alight and destroyed.</p> <p>Total value of stolen goods and vehicles in excess of \$1 million and, following return of some stolen loss was approx \$464,000.</p>	<p>Ct 1: 4 yrs imp. Ct 2: 2 yrs imp. Ct 3: 4 yrs imp. Ct 4: 2 yrs imp. Ct 5: 5 yrs imp.</p> <p>TES 9 yrs imp.</p> <p>EFP.</p> <p>Ordered to be served cumulatively with term imp currently serving (3 yrs 3 mths – imposed July 2004).</p>	<p>Allowed by majority.</p> <p><u>Sentences on appeal:</u> Ct 5: 4 yrs 1 mth imp. All sentences to be served concurrent with term presently serving.</p> <p>TES reduced to 8yrs imp.</p> <p>EFP.</p> <p>At [15] Sentences were severe, but none was so severe as to be outside range of a sound sentencing discretion – sentence on ct 5 reduced on grounds totality only.</p>
<p><b><i>Amendments to s 444 Criminal Code (8/12/2004)</i></b></p>					
<p><b>Offence amended to include damage committed in circumstances of racial aggravation (max penalty 20 yrs imp).</b></p>					
<p>3.</p>	<p><i>Watterston v State of Western Australia</i></p> <p>[2004] WASCA 249</p>	<p>35 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Significant and lengthy prior criminal record.</p>	<p>Ct 3: Criminal damage by fire.</p> <p>Serious instance of offending.</p> <p>Appellant, co-offender 1 and a woman went to a house to collect a car one of them had purchased. Argument developed during course of which</p>	<p>5 yrs imp.</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>Limited insight into</p>	<p>Dismissed.</p> <p>At [12] given seriousness of offending and limited mitigation sentence within appropriate range.</p>



	<p>Delivered 22/9/2004</p>	<p>Poor response to previous supervision orders.</p> <p>Suffered from back pain as a result of car accident in 1997 – distorted thought process.</p> <p>Death of mother caused emotional and psychological problems.</p>	<p>appellant was truck in the face. The trio left without collecting the car. Appellant received phone call a short while later saying there had been a misunderstanding and that they could come and collect the car. A further argument flared on the phone and the car was not collected.</p> <p>In the early hours of the following morning, appellant and both co-offenders collected quantity dry pine, put it in a crate and placed it in a car together with two 3L milk bottles of petrol the appellant had earlier syphoned. The three then drove to the house they had earlier attended to collect the car.</p> <p>The pine was then spread near the house, doused with petrol and set alight. At the time there were two adults and two children asleep in the house. The adults and the 1 yr old child escaped unharmed but the 2 yr old child suffered serious burns to his back, arms, feet and head before being rescued. Appellant did not know that the house was occupied but took no steps to confirm that before setting the fire.</p> <p>Co-offender 1 PG att murder, GBH and criminal damage by fire – 8 yrs imp att murder, 5 yrs imp GBH and 4 yrs imp criminal damage by fire. TES 8 yrs imp. EFP. Commitment to give evidence against appellant saw TES reduced from 12 yrs imp.</p> <p>Co-offender 2 PG criminal damage by fire – TES 2 yrs 6 mths imp. EFP.</p> <p>Both co-offenders were sentenced prior to enactment transitional provisions - appellant sentenced after their introduction.</p>	<p>offending; completed some programs while in custody which suggested rehabilitation possible.</p>	<p>At 13]-[16] No issue with parity of sentence between co-offenders and appellant given differing levels of culpability and personal circumstances.</p>
2.	<i>State of Western</i>	50 yrs at time sentencing.	1 x Criminal damage by fire.	2 yrs imp.	Allowed.

<p><b><i>Australia v Warburton</i></b></p> <p><b>[2004] WASCA 228</b></p> <p>Delivered 19/8/2004</p>	<p>Convicted after trial.</p> <p>No prior criminal record.</p> <p>Served in Royal Australian Navy for 21 yrs; worked at high levels of security clearance until illness led to resignation.</p> <p>Three children; separated from wife as a result of illness related stress and financial difficulties.</p> <p>Suffering chronic fatigue syndrome; sleep apnoea; tinnitus; resulted in depression and affected concentration.</p> <p>No causal link between illnesses and offending but a combination of those factors might have contributed to disproportionate and irrational reaction to financial difficulties.</p>	<p>Deliberate burning by business owner in order to extricate himself from a financial situation was a particularly serious category of arson.</p> <p>In Jan 1999, respondent purchased stock, plant and goodwill of a service station and roadhouse and rented the premises. Respondent began having financial difficulties and by August 1999 owed in excess of \$70,000, payable immediately and business account was suspended.</p> <p>In August 1999, respondent contacted his insurance company and made enquiries about increasing level of insurance coverage of his business. Few days later, respondent again contacted his insurance company and increased his level of insurance cover for stock by a significant amount, requesting also additional cover for personal effects. Total of increases was \$65,000 and were to come into effect immediately.</p> <p>Between these two dealings respondent made a record, separate from his normal customer accounts, of certain amounts which he was owed. On night of 16 August respondent remained overnight at roadhouse. Within minutes of respondent leaving (approx 4am), a passing motorist noticed that interior of service station was on fire. Roadhouse was substantially damaged by fire as was a separate premise attached to the petrol station. Building was not insured and owner suffered financial loss as result of blaze.</p>	<p>TES 2 yrs imp susp 2 yrs.</p>	<p>TES 18 mths immediate imp substituted.</p> <p>At [22-23] term reduced to account for double jeopardy that attached to State appeals at the time.</p> <p>At [20] Period of planning was relatively short but still planned over a number of days at any point during which respondent could have withdrawn from plan.</p> <p>At [21] General deterrence primary sentencing consideration and there were no exceptional circumstances to take this case outside the general sentencing dispositions for offences of arson and make suspension of the term appropriate.</p>
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*Transitional provisions enacted (31/08/2003)*

<p><b>1.</b></p>	<p><b><i>Mitchell v The Queen</i></b></p> <p><b>[2003] WASCA 25</b></p> <p>Delivered 4/3/2003</p>	<p>44 yrs at time sentencing.</p> <p>Convicted after PG at earliest opportunity.</p> <p>No relevant prior criminal record.</p> <p>Single woman with no dependents; not close to her family; extreme attachment to her pets.</p> <p>Depression; anxiety; alcohol abuse issues.</p>	<p>Ct 1: Criminal damage. Ct 2: Burglary. Ct 3: Criminal damage by fire.</p> <p>Very serious instance of offending – caused immense damage and harm</p> <p>Appellant lived two houses away from victim. Appellant’s dog (6 yrs old) died in circumstances that suggested that he may have taken a poison bait. Appellant believed victim deliberately poisoned the dog – no evidence to indicate this was the case. Three weeks after the death of dog, appellant, who had been drinking alcohol, went to victim's house and caused significant damage - including writing “Shit happens” on lawn with herbicide as well as cutting the clothes line, flywire around house, tyres of motor vehicle and boat trailer. Following day, having again consumed alcohol to excess, appellant returned to victim’s house with intent of causing further damage. Appellant broke a number of windows with rocks and entered house without victim’s consent. Appellant cut the phone line, broke and damaged numerous items and then decided to burn the house. Appellant went to shed, got a container of fuel, re-entered house, splashed fuel about and set house alight before leaving. On seeing police attend the house the next day, appellant approached them and informed them that she was responsible for the fire.</p>	<p>TES 3 yrs 6 mths imp. Equivalent to 2 yrs 4 mths imp after implementation of transitional provisions.</p> <p>Conduct worthy of TES 5 yrs imp - reduced to 3 yrs 6 mths due to PG and personal circumstances.</p>	<p>Dismissed.</p> <p>At [13] &amp; [36] Sentence not excessive and well within range of a sound discretion.</p>
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