

# **Murder and Wilful Murder**

*s 279 Criminal Code and repealed murder provisions*

Transitional Sentencing Provisions: The table is divided into two relevant periods of Sentencing Provisions:

- Post homicide amendments (post 1/08/08)
- Pre homicide amendments (pre 1/08/08)

## Glossary:

conc	concurrent
cum	cumulative
EFP	eligible for parole
imp	imprisonment
PG	plea of guilty
TES	total effective sentence
VRO	violence restraining order
Min	minimum
AOBH	assault occasioning bodily harm
TOI	trial of issues
Dep lib	deprivation of liberty

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
35.	<p><i>Silva v The State of Western Australia</i></p> <p>[2013] WASCA 278</p> <p>Delivered 04/12/2013</p>	<p>52 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>No prior criminal record.</p> <p>Served in the Merchant Navy in Sri Lanka; worked as a lecturer at the Fremantle Maritime College at the time of the offence.</p> <p>Respected member of Sri Lankan community in Perth; committed parishioner of a local Catholic Church; devoted father.</p> <p>Good character; numerous people wrote letters or references in support.</p>	<p>1 x Murder.</p> <p>The appellant and victim were husband and wife and had two daughters. For a number of years before the offence, the relationship between the appellant and deceased was marred by ongoing domestic violence.</p> <p>In late 2010 the appellant discovered that the victim was having an affair. After the appellant became aware of it, the victim ended the affair. This incident exacerbated the marital disharmony. The appellant developed an obsession about the victim's infidelity and attempted to control her behaviour.</p> <p>On the day of the offence there was a conflict between the two which resulted in the appellant becoming extremely angry with the victim. The appellant got a gympie hammer which he had purchased earlier in the day and hit the victim on the right side of her head with it on at least 3 occasions. The appellant then telephoned police and told them he had killed his wife with a hammer.</p> <p>The appellant moved the victim's body through the house into the garage, before he left her on the floor just inside the house. The victim died from head injuries caused by the blows inflicted by the appellant with the gympie hammer.</p>	<p>Life imp.</p> <p>Minimum non parole period of 17 yrs.</p> <p>Remorseful; however sentencing judge satisfied appellant still tended to blame the victim for his fatal assault on her.</p> <p>The appellant admitted that when he struck the victim on the head with the hammer he intended to kill her, but said he had no 'specific memory of intending to do so'.</p> <p>No VIS were tendered but character references received from daughters.</p>	Dismissed on papers.

<p>34.</p>	<p><i>The State of Western Australia v Lee</i></p> <p>[2013] WASCA 246</p> <p>Delivered 22/10/2013</p> <p><b>Walker</b></p> <p>(Co-offender Lee – below)</p>	<p><u>Walker</u> 26 yrs at time of offending.</p> <p>Convicted after early PG.</p> <p>Prior criminal record for convictions of drug, assault damage and property offences.</p> <p>Diagnosed with ADHD at 6 yrs; in 2005 received treatment for drug induced psychosis.</p> <p>Long history of illicit drug and alcohol abuse; starting at 13 yrs.</p> <p>Period leading up to offence, drug use escalated.</p> <p>Living with parents; employed as a labourer in a fencing business; strong family support.</p> <p>Whilst on remand tackled his substance abuse issues and shown remarkable improvement.</p> <p><u>Lee</u> 23 yrs at time offending.</p> <p>Convicted after early PG.</p>	<p>1 x Murder.</p> <p>Both appellants were friends. Lee was in a relationship with co-offender Kelly.</p> <p>The appellants, Kelly and the victim were at a house in South Fremantle.</p> <p>Walker told Kelly that he was going to kill the victim. Upon hearing the victim scream, Lee and Kelly went into the kitchen area where they found Walker choking the victim. Lee then began kicking and stomping on the victim's head, causing one eye to bulge out of its socket. Believing they had killed the victim, they dragged his body to the shower but the victim regained consciousness which prompted Lee to kick him again.</p> <p>A post-mortem examination found the victim had severe head and chest injuries but he died from deck compression.</p> <p>Both appellants then wrapped his body in a barbecue cover and later Walker drove the corpse to a remote site where it was buried in a shallow grave. He then poured acid over the corpse to assist in its decomposition before filling the grave with sand, tar and concrete.</p>	<p>Life imp.</p> <p>Minimum non parole period of 12 yrs.</p> <p><u>Walker</u> Remorseful.</p> <p>Sentencing judge found the appellant intended to cause death of the deceased.</p> <p><u>Lee</u> Remorseful.</p> <p>Sentencing judge found the appellant intended to cause death of the deceased.</p> <p>High risk of violent reoffending.</p>	<p>Allowed.</p> <p>Re-sentenced to non-parole period of 21 yrs.</p> <p>Lee - Cross-appeal dismissed.</p> <p>At [35] ... this is the first occasion, to my knowledge, where a court has imposed a non-parole period for a murder under the current law which is below the statutory minimum for an equivalent offence under the old regime...</p> <p>At [45] The circumstances of the offending place it at the high end of the scale of seriousness of the offences of murder...</p> <p>At [46] ... Their capacity to behave</p>
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		<p>Criminal record including convictions for aggravated armed robbery, drugs and stealing.</p> <p>Left school at end of year 10; had sporadic employment history as a result of an entrenched pattern of polysubstance abuse.</p> <p>Commenced using cannabis at 14 yrs; from 15 yrs using variety of drugs including ecstasy and heroin.</p> <p>Extensive history of contact with mental health professionals, generally in the context of substance abuse.</p> <p>Exhibits a grandiose sense of his intelligence and an ability to manipulate people including psychologists and other professionals.</p> <p>Family support.</p>			<p>with such savagery and detachment cannot be laid solely at the door of their methylamphetamine-fuelled intoxication during the period of the offending and its aftermath.</p> <p>At [54] There are some material differences in the involvement of Lee and Walker in the offence. Walker's conduct was premeditated. Lee's was not...</p>
33.	<p><i>Khan v The State of Western Australia</i></p> <p>[2013] WASCA 193</p> <p>Delivered</p>	<p>33 yrs at time sentencing.</p> <p>Convicted after late PG – subject of negotiations.</p> <p>Criminal record – history of violent offending which commenced in childhood; including agg robb, common assault, AOBH, agg AOBH</p>	<p>1 x Murder.</p> <p>The appellant and victim had been friends for many years. The appellant travelled to Brunswick to visit family and friends. He stayed at the victim's home. The appellant and victim drank heavily together, ending up at a friends' house. Both men were significantly affected by alcohol, the victim more so than the appellant. In the early</p>	<p>Life imp.</p> <p>Minimum non parole period of 13 years.</p> <p>EFP.</p> <p>Displayed immediate regret.</p>	<p>Dismissed on papers.</p>

	<p>22/08/2013</p>	<p>and ass public officer.</p> <p>Indigenous.</p> <p>Dysfunctional family background; from early age suffered from physical abuse, deprivation and neglect; subject to, and witnessed, domestic violence.</p> <p>Commenced drinking alcohol at 13 years; abused both alcohol and cannabis through his teenage and adult life.</p> <p>Long history of depression.</p> <p>Limited education; little paid employment.</p> <p>Long adopted antisocial violent strategies to resolve interpersonal difficulties; in the past reluctant to engage in rehabilitative programs; previous response to supervision unsuccessful.</p>	<p>evening a dispute of some kind broke out between the two men, which saw them trade blows.</p> <p>The appellant then returned to the victim's house. Not long after, the victim followed, having indicated that he wanted to join the appellant.</p> <p>When the victim got home, there was a further physical altercation. During the altercation, the appellant stabbed the victim once in the stomach with a kitchen knife. The appellant immediately went to a neighbour's and asked for the emergency services to be called. He then returned to the victim's house with the neighbour, where he attempted to render first aid and comfort the victim.</p> <p>Prosecution made following factual concessions:</p> <ul style="list-style-type: none"> <li>• Did not intentionally kill the victim, nor did he intentionally cause him a life threatening injury;</li> <li>• Only intention was to cause the victim a bodily injury;</li> <li>• Intention to cause the victim a bodily injury was not long held and may have been only momentary. Once inflicted, it was immediately regretted;</li> <li>• No allegation of premeditation and the stabbing occurred on the spur of the moment;</li> <li>• PG was indicative of remorse and it was conceded that the non-parole period should be at the lower end of the scale.</li> </ul>	<p>Denied stabbing the victim in VROI.</p> <p>In light of State's concessions, the appellant was sentenced on the basis of s279(1)(b) <i>Criminal Code</i>; he had the subjective intention to cause a bodily injury that was, objectively, of such a nature as to endanger or be likely to endanger the deceased's life.</p> <p>High risk of violent reoffending.</p>	
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<p>32.</p>	<p><i>Goodwyn v The State of Western Australia</i></p> <p>[2013] WASCA 141</p> <p>Date delivered 07/06/2013</p>	<p>35 yrs at time of offence. 37 yrs at time of sentencing.</p> <p>Convicted after trial. Special verdict; that the jury did not consider the appellant intended to kill the victim. Sentenced on the basis he intended to cause bodily injury of such a nature as to endanger, or be likely to endanger, the victim's life.</p> <p>Relatively minor criminal record; principally traffic and property offences. No prior convictions for violent offences.</p> <p>No significant psychological disorder.</p> <p>Disrupted childhood, some history of drug abuse. Participated in rehab program since offence.</p> <p>Two children aged 11 and 9.</p> <p>Stable employment at all material times.</p> <p>Intoxicated at time of offence.</p>	<p>1 x Murder</p> <p>The appellant and victim were known to each other. The victim was the partner of the appellant's former de-facto and mother of his children (Ms Roberts).</p> <p>The victim, appellant, appellant's brother and Ms Roberts were drinking heavily on the day of the incident. The victim, appellant and appellant's brother entered into an argument and physical altercation. The victim was stabbed five times (three in shoulder, two in back). The fatal wound was 14cm deep requiring moderate to considerable force.</p> <p>The appellant contended he took a knife from the kitchen to scare the victim and did not want to hurt him. He stabbed the victim when he was standing over him, after the victim had punched him causing him to fall to the ground. Self defence (of himself and his brother) raised.</p> <p>Trial judge noted seriousness demonstrated by</p> <ol style="list-style-type: none"> <li>Obtaining a knife from kitchen showed degree of premeditation</li> <li>Considerable force used</li> <li>Victim unarmed</li> <li>Three young children (including victim's son) present in house</li> <li>Callous disregard for victim following stabbing: No attempt to ensure he got help.</li> </ol>	<p>Life imp.</p> <p>Minimum non parole period of 15 years.</p> <p>EFP.</p> <p>Sentencing judge found that the offence was less serious than if he had intended to kill, but 'only marginally given the use of the knife five times and the nature of the injuries inflicted'.</p> <p>Although regretted the victim died, appellant did not acknowledge his culpability for the offence and continued to maintain that the victim was responsible for what occurred.</p> <p>Facilitated the expeditious conduct of the trial by making various admissions.</p> <p>No evidence that</p>	<p>Appeal dismissed.</p> <p>At [147] Since the commencement of the <i>Criminal Law Amendment (Homicide) Act 2008</i>, very few cases have been considered by this court where lower minimum terms than 15 years have been imposed for murder.</p> <p>At [148] Minimum 15 years non-parole period did not exceed the sentencing range reasonably open to the trial judge on a proper exercise of sentencing discretion.</p>
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31.	<p><i>Sesay v The State of Western Australia</i></p> <p>[2012] WASCA 241</p> <p>Delivered 27/11/2012</p>	<p>49 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal record.</p> <p>Consistent employment.</p> <p>Born in Sierra Leone; sergeant major in Sierra Leone military; arrived in Australia with victim in 2001.</p> <p>Two children with victim and victim had two children prior to her relationship with the appellant.</p>	<p>1 x Wilful murder.</p> <p>Appellant and victim were married but separated at the time of offending. Appellant was subject to a misconduct restraining order at time of offending taken out by the victim.</p> <p>Appellant went to victim's home armed with a knife and wearing a mask as a disguise. Appellant stabbed victim 46 times. Victim's son heard the victim screaming and ran outside to find a masked man kneeling beside her as she lay face down in blood. Victim's son grabbed the man and his mask came off – victim recognised the appellant. Appellant told the victim's son "your mother was giving me problems.'</p>	<p>Sentence imposed 27.02.2006 - Strict security life imp</p> <p>Minimum non parole period 20 yrs.</p> <p>No remorse.</p> <p>NB: Sentence imposed under former sentencing regime; pre 2008 amendments.</p>	<p>Dismissed – leave refused on papers.</p>
30.	<p><i>Kuzimski v The State of Western Australia</i></p> <p>[2012] WASCA 202</p> <p>Delivered 12/10/2012</p>	<p>37 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Lengthy prior criminal record – assault; burglary; armed robbery; weapons and drug offences; traffic offences.</p> <p>Single.</p>	<p>2 x Murder.</p> <p>1 x Arson.</p> <p>Victims were in a relationship together. Offender met victims through a drug dealer that the offender knew. Drug dealer was living in a shed at the property the two victims and another person lived at. Offender went to the property with the intention of robbing the drug dealer but she left before he had the chance to do so.</p>	<p>Life imp each ct.</p> <p>7 yrs imp.</p> <p>Minimum non parole period 32 yrs each ct of murder.</p> <p>High risk violent future offending; no remorse.</p>	<p>Dismissed.</p> <p>At [20] As all statutory maximum non-parole periods have now been removed, sentences with minimum terms imposed prior to homicide</p>

		<p>Substance abuse issues; began negative peer associations and drug use at 14 yrs old; unemployed.</p> <p>One brother overseas; parents have had no contact with offender since arrest.</p>	<p>Offender remained at the house and socialised with the two victims. At some point, all three of them left the property together in a vehicle. Just before 5am the following morning, the vehicle was seen on the verge of a road on fire. The fire was put out and the badly burned bodies of the two victims were discovered.</p> <p>Victim 1 had 3 penetrating injuries caused by a weapon similar to a screwdriver to the right side of her face – two of these caused bleeding at the back of her throat. Victim 1 also had bruising in her neck muscles consistent with strangulation and a gaping 3cm wound on the top of her head. Victim 1 had post-mortem reading 2.3mg methylamphetamine per litre of blood which meant the pathologist was unable to ascertain a precise cause of death – death was determined as consistent with the neck injuries in a woman with that level of amphetamine intoxication.</p> <p>Victim 2 also affected by methylamphetamine at the time of her death and died as a result of head injuries with that level of intoxication. The head injury was a penetrating wound into the right eye which went into the brain – also caused by a screwdriver or similar weapon.</p> <p>Timber was placed in the car and the petrol cap opened before it was set alight with the bodies inside it.</p> <p>After setting the car alight, offender walked to a nearby house and told the occupant's he had been hijacked at a set of lights, offering them \$20 to drive him to the train station or home. The</p>		<p>amendments do not set a benchmark by which to measure sentences imposed under the new regime.</p> <p>At [21] The minimum non-parole period for each offence of murder is well within sound discretionary range.</p>
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			<p>occupants drove the offender to his father's house and the offender showered there. Offender's father then drove him to the train station. Offender threw the jeans he was wearing at the time of the murder in the bin at the train station – later recovered by police.</p> <p>Offender went back to victim's house to collect his bike.</p> <p>No motive for offending other than offender wanted to experience what it would be like to kill someone – no evidence of psychiatric illness.</p>		
29.	<p><i>Mikhail v The State of Western Australia</i></p> <p>[2012] WASCA 200</p> <p>Delivered 12/10/2012</p>	<p>Both convicted after trial.</p> <p><u>Adam Mikhail:</u> 21 yrs at time offending. 24 yrs at time sentencing.</p> <p>Prior juvenile criminal record – not of relevance to sentencing.</p> <p>Obsessive-compulsive disorder; major depressive order.</p> <p>Married; wife pregnant with first child at time sentencing.</p> <p><u>Frank Mikhail:</u> 54 yrs time offending. 57 yrs at time sentencing.</p>	<p>1 x Wilful murder each offender.</p> <p>Offenders are father and son. Circumstances of offending are such that offending falls at the very high end of the scale of seriousness.</p> <p>Adam Mikhail borrowed \$20,000 for his wedding from the victims (husband and wife). Unlikely to be able to repay debt given financial situation and fact that interest was accruing.</p> <p>Frank Mikhail, Adam's father, disliked victim 1 (the husband) due to his involvement in drugs. When Adam Mikhail decided to kill the victims to avoid repaying his debt Frank Mikhail joined in the plan.</p> <p>A double grave of considerable depth was dug (using machinery) in at a rural property Adam Mikhail was familiar with.</p>	<p>Life imp.</p> <p>Min non parole period 37 yrs each offender.</p> <p>Adam Mikhail – no remorse.</p>	<p>Dismissed.</p> <p>At [30] Minimum terms imposed in wilful murder cases prior to homicide amendments do not provide a benchmark against which broad consistency is to be measured.</p> <p>At [27] <i>“There is no significant mitigation in the son's age, which is simply overwhelmed by what he did and the</i></p>

		<p>Prior criminal record – pervert the course of justice (attempted to cover up offences committed by Adam Mikhail in 2003).</p> <p>Traumatic early childhood; emigrated from Egypt; marriage broke down in 2003.</p> <p>Depressive illness.</p>	<p>Offenders then lured both victims to a business property that both offenders had swipe card access to on the pretence of collecting a computer. On entering the premises both victims were killed by shotgun blasts.</p> <p>The next morning, the bodies were taken to the grave and buried. Bodies were found months later after 3 extensive police searches of the area and on the last scoop the digger was capable of making at that depth.</p> <p>The victims’ car was driven to a quarry and abandoned. Car was photographed not long after it was dumped by a person on a helicopter sightseeing tour.</p>		<p><i>danger he poses.”</i></p> <p>At [28] <i>“The sentencing judge was conscious of the consequences for the father, ... The point being made is that an appropriate non-parole period for the offences committed by the father would, because of his age when he committed them, necessarily make it likely that he would die in prison. That is correct. The punishment must reflect the crime and the seriousness of the father’s offending behaviour is such that he has forfeited his right to any expectation of a useful life after release.”</i></p>
28.	<b><i>Johnston v The State of Western</i></b>	<p>25 yrs at time offending.</p> <p>Convicted after trial.</p>	<p>1 x Murder. 2 x Dep lib (victim1; victim 2). 1 x Agg burg.</p>	<p>Life imp. 4 yrs imp; 3 yrs imp. 5 yrs imp.</p>	<p>Dismissed.</p> <p>Only minimum non</p>

	<p><i>Australia</i></p> <p><b>[2012] WASCA 18</b></p> <p>Delivered 25/01/2012</p>	<p>No relevant prior criminal record.</p> <p>Supportive family; good employment history.</p>	<p>Victim 1 was known to co-offender 1 as a drug dealer. Victim 2 was at the home of victim 1 and engaged in a drug transaction at the time of the offending – a fact all offenders were aware of.</p> <p>Appellant and two co-offenders, after ascertaining that victim 1 was home, forced their way into victim 1’s home with the intent of robbing her of the money and drugs believed to be at her home. Co-offender 2 detained victim 2, as per the pre-arranged plan, so that he could not assist victim 1. Appellant punched victim 1 in the face and tied her up with plastic clip ties and proceeded to punch her in the face and head repeatedly. Appellant also choked victim 1. Victim 1 was also repeatedly struck with a hammer to her arms knees and thighs. Injuries suffered by victim 1 – both the assault and the choking – caused fatal haemorrhaging in her brain.</p>	<p>TES life imp.</p> <p>Minimum non parole period 18 yrs.</p> <p>Low risk violent re-offending.</p>	<p>parole period challenged.</p> <p>At [19] Imposition of minimum non parole period is a discretionary judgement – appellate court cannot intervene unless error shown. Establishing implied error in such circumstances onerous task.</p>
27.	<p><i>Wongawol v The State of Western Australia</i></p> <p><b>[2011] WASCA 222</b></p> <p>Delivered 17/10/2011</p>	<p>29 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Lengthy prior criminal record.</p> <p>Traditional Aboriginal man.</p> <p>Grossly dysfunctional and deprived upbringing; regularly witnessed violent responses to disagreements – violence became normalised.</p>	<p>1 x Murder.</p> <p>Victim was appellant’s de facto partner.</p> <p>Appellant affected by alcohol and cannabis at time offending.</p> <p>Appellant believed victim has been misbehaving sexually with another man. After a day and night of heavy drinking, the appellant went in search of the victim, found her and made her return home with him. An argument developed over the</p>	<p>Life imp.</p> <p>Minimum non parole period 14 yrs.</p> <p>Genuine remorse; limited insight into offending; moderate to high risk re-offending; poor prospects of rehabilitation.</p>	<p>Dismissed.</p> <p>At [25] s 279(1)(b) <i>Criminal Code</i> is partly objective and partly subjective – it is to be properly interpreted as requiring the accused to subjectively intend to cause bodily</p>

		<p>Long term alcohol and cannabis abuse.</p> <p>Diagnosed psychiatric disorder – contributed to offending.</p>	<p>appellant’s suspicions and the victim partially confessed, telling the appellant not to be angry as it was of no consequence. Appellant then attacked the victim with a knife and, at a later stage, with another unspecified weapon. Victim attempted to defend herself but could not.</p> <p>Victim suffered stab wounds to the head, limbs, torso and neck and abrasions to her head, neck, trunk, arms and legs in a frenzied and persistent attack.</p>		<p>injuries which objectively endanger, or would be likely to endanger, life.</p> <p>At [39] Protection of community appellant lives in and both general and personal deterrence are highly significant sentencing considerations – <i>‘the incidence of alcohol and drug fuelled violence within Aboriginal communities is distressingly high. A new generation of children are scarred.’</i></p>
26.	<p><i>Cockram v The State of Western Australia</i></p> <p>[2011] WASCA 179</p> <p>Delivered</p>	<p>35 yrs at sentencing.</p> <p>Convicted after late PG - shortly before trial to commence and after 4 day voir dire relating to admissibility of police interview. Sentencing took place after TOI related to appellant’s claims victim had molested girlfriend’s son.</p>	<p>1 x Murder</p> <p>Appellant and co-offender were best friends and were staying the night at appellant’s girlfriend’s house. Went out on Sat night and returned approx 5am Sun morning. Appellant claimed he saw victim sexually molesting girlfriend’s 6 yr old son on return and told this to co-offender. Co-offender said appellant told him that victim also tried to</p>	<p>Life imp.</p> <p>Minimum non parole period 22 yrs imp.</p> <p>Limited empathy; little remorse.</p> <p>Co-offender received</p>	<p>Dismissed.</p>

	12/08/2011	<p>Significant prior criminal record since 16 yrs – including burglary; drug offences; armed robbery; 2 x AOBH. Served term imprisonment prior.</p> <p>History extensive substance abuse (alcohol, cannabis, heroin, morphine &amp; amphetamines)</p>	<p>rape boy’s mother. Both agreed to give victim beating – appellant asked victim to take them for a drive in his car on false pretext purchasing amphetamines. Appellant brought a bag containing knife he always carried in car with them. Appellant directed victim to remote boat ramp and when vehicle stopped, pretended to make a phone call to the drug dealer. Stories of appellant and co-offender diverge at this point. Appellant claimed co-offender stabbed victim in chest. Co-offender claimed appellant stabbed victim in chest and that he thought appellant was just punching the victim. Either way, victim got out of car and tried to run away. Victim ended up with 11 stab wounds from two different knives (9 from knife co-offender kept in his bag and 2 from a fishing knife kept in car). Each then blamed the other for inflicting the fatal injuries.</p> <p>Both considered unreliable witnesses prone to telling self-serving version events. No finding as to veracity of appellant’s claim that victim was molesting boy, but sentencing judge not satisfied appellant saw it happen as claimed and noted it would not excuse culpability or be a mitigating factor if it did.</p>	<p>life imp with minimum non parole period 23 yrs imp.</p>	
25.	<i>The State of Western Australia v Silich</i>	<p>Youth not mitigating factor. Convicted after trial.</p> <p>No prior history violence.</p>	<p>2 x Wilful murder. Offending occurred prior to 2008 homicide amendments – convicted under previous provisions but sentenced in accordance with amendments. Intent to kill was element of offence</p>	<p>Life imp. Minimum non parole period 15 yrs imp.  Remorseful; low risk</p>	<p>Allowed. Min non parole period increased to 19 yrs imp.</p>

	<p><b>[2011] WASCA 135</b></p> <p>Delivered 28/06/2011</p>		<p>and therefore undeniably present.</p> <p>Victims were elderly parents of appellant. Relationship between appellant and parents was loving and caring up to the time of the offending.</p> <p>Appellant went to parent's house for dinner. During course of the evening, appellant and father consumed substantial amount of alcohol. Appellant's father went to bed at approx 11.30pm. Appellant's mother did not go to bed. Appellant sat up after father went to bed and drank by himself at the kitchen table.</p> <p>At some point in the early hours of the morning, the appellant attacked both his parents in the bedroom. Appellant wearing steel capped boots and kicked his parents to death – kicks being forceful, repeated and aimed at the head and upper part of both victims' bodies. When bodies were found, their hands were adjoined – positioned in that manner by appellant after their deaths.</p> <p>At some point after the attack, appellant phoned and friend and asked him to come to the house. Friend did so and, after seeing the bodies, was told by the appellant that he had 'gone beserk' and didn't know what happened. Friend and appellant had a beer and cigarette and friend called police.</p> <p>Appellant severely intoxicated at time offending – between 0.23% and 0.397% - could not remember offending.</p>	<p>re-offending.</p>	<p>At [96] separate and sustained attacks on two victims – aggravates culpability and it is an error to equate appellant's culpability to that of a murderer with only one victim.</p> <p>At [97] offence significantly aggravated by brutal, prolonged and frenzied nature; by the age and frailty of victims' and by the fact that the attacks took place in victims' own home by their own son (someone whom they should have been able to trust).</p>
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<p>24.</p>	<p><i>The State of Western Australia v O’Kane</i></p> <p>[2011] WASCA 24</p> <p>Delivered 4/02/2011</p>	<p>40 yrs at time offending.</p> <p>Convicted after PG after trial date set.</p> <p>Under significant stress at time of offence – lost job as truck driver at approx same time assumed care of victim.</p> <p>Severely troubled childhood.</p> <p>Respondent had previously had children in NSW – daughter died aged 3 of rare genetic disease and son. Respondent physically abused son between age 5-6 mths. Charged with GBH and sentenced to 4 yrs imprisonment (increased to 6 yrs on Crown appeal) – causing multiple fractures on both arms and legs as well as broken ribs and blindness. Injuries inflicted on different occasions. Lied to victim’s mother about circumstances of imprisonment so she had no opportunity to take precautions to prevent re-occurrence.</p>	<p>1 x Murder.</p> <p>Victim was 4 mth old son of respondent.</p> <p>Victim’s mother and respondent began living together approx 2 mths before victim born. Shortly after victim’s birth, mother experienced complications and was re-admitted to hospital. Respondent began to care for victim at this point and continued to manage care after mother’s return from hospital, saying he wanted to prevent risk infection to victim. Approx 2 mths prior to death, respondent began to physically abuse victim – flicking, punching in head, slapping, pushing fists into stomach and choking (passed out on one occasion). Respondent deliberately kept victim away from mother to hide injuries. Exact circumstances death not known – respondent claimed he had bent victim’s head back and heard a loud crack day before death and that on following day victim had suffered seizures and eventually died. Respondent said he then placed victim, baby seat and other items in boot of his car and drove to respondent’s mother’s house. State case was that respondent drove victim to visit respondent’s mother and that during the drive, respondent inflicted fatal blow to victim. Respondent phoned victim’s mother and told her all was well. Respondent stayed at his mother’s house for 2 days with victim’s body in the boot of his car. Respondent then buried the body. Victim’s mother alerted police when she spoke to</p>	<p>Life imp.</p> <p>Min non parole period 18 yrs.</p> <p>Moderate risk violent re-offending – considerable risk if in similar situation.</p>	<p>Allowed.</p> <p>Min non parole period increased to 23 yrs.</p> <p>At [42] 2008 legislative changes restrict utility of sentencing comparisons pre and post those changes.</p>
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			<p>respondent's mother and discovered she had not seen victim during time respondent at her house. Following day respondent arrested and took police to where body buried.</p> <p>Accepted in sentencing no premeditation of death or abuse.</p>		
23.	<p><b><i>Kowaleff v The State of Western Australia</i></b></p> <p><b>[2010] WASCA 183</b></p> <p>Delivered 17/09/2010</p>	<p>39 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Prior criminal record - numerous breach of VRO (ex-wife and the victim in this matter); intervention order; stalking and burglary against ex wife (WA and inter-state).</p> <p>Happy and healthy child; did well at school; ex wife and three children, born in Canada.</p> <p>Period of depression when separated from ex wife.</p> <p>Before offence had insomnia and taking excessive doses of over counter antihistamine Phenergan.</p>	<p>1 x Murder.</p> <p>Appellant and victim in relationship approx 2 yrs prior to death. Turbulent relationship and appellant breached VRO on numerous occasions following the final breakdown of the relationship. Appellant heard rumour victim seeing someone else and began to plan her death. 2 days prior offence, appellant went to victim's home and interfered with laundry door lock so he could gain easy and quiet access. Sent text message to victim's niece telling her to 'tell that slut she better move to a different country...I'm going to kill her'. On date of offence, appellant went to victim's home with two bags containing a knife, hammer and tomahawk. Entered house and waited outside bedroom door approx 30 min. Entered bedroom, strangled and punched victim, leaving her bloody and unconscious. Then strangled her until her believed she was dead. Appellant then beat victim's dog in an attempt to kill it. Appellant noticed victim still breathing – dragged her to ensuite, showered and tried to clean her then placed her back on the bed – victim still alive.</p>	<p>Life imp.</p> <p>Min non parole period 26 yrs.</p>	<p>Dismissed.</p> <p>At [49] Categorised on appeal as “<i>a murder of the utmost seriousness. The appellant had intent to kill. His actions were carefully planned, ruthless, degrading and cruel. The offence was committed in the face of a violence restraining order in circumstances where the appellant had obsessively pursued Ms Nielsen over a period of months</i>”</p> <p>At [54] 2008 legislative changes restrict utility of</p>



			Committed 3 acts of sex pen while victim lay dying on bed. Appellant left house in victim's car believing she was dead.		sentencing comparisons pre and post those changes.
22.	<p><i>Pedersen v The State of Western Australia</i></p> <p>[2010] WASCA 175</p> <p>Delivered 9/09/2010</p>	<p>49 yrs at time offending.</p> <p>Convicted after late PG - initially tried to blame 3<sup>rd</sup> party (seen by sentencing judge as aggravating factor).</p> <p>Prior criminal record - mainly petty offences but also conviction for armed robbery.</p> <p>History drug and alcohol abuse – episodes of drug induced psychosis.</p>	<p>1 x Murder. 1 x Agg burg. 1 x Going armed causing fear. 1 x Crim damage.</p> <p>Victim 94 yr old man.</p> <p>Appellant, believing he had been threatened by his de facto partner's half-brother (Mr Dodd), went to victim's home with intent stealing gun and ammunition. Appellant entered house through unlocked sliding door. Whilst in the house, appellant was confronted by victim. Appellant stabbed victim several times with a knife he had brought to the premises. Victim died from fatal wound to chest which penetrated aorta. After stabbing victim, appellant hid body and stole rifle and ammunition from victim's gun cabinet. Appellant took gun and drove to Mr Dodd's house and fired two shots in the direction of Mr Dodd. Shots entered house but missed Mr Dodd – family members also present at time. Appellant then drove to brother-in-law, Mr Connolly's, property and shot dead a pet llama. Appellant then went to parent's house where he was restrained by family members and police called.</p> <p>Accepted by prosecution that intent was to cause</p>	<p>Life imp.</p> <p>Min non parole period 19 yrs.</p>	<p>Dismissed.</p> <p>At [46] noted that homicide amendments may result in some increase of minimum non parole period for offending that would have previously been at upper limit of previous range.</p> <p>At [63] '<i>The non-parole period...is no longer constrained by the presence or absence of an intention to kill</i>'.</p> <p>NB: Subsequent High Court special leave application dismissed.</p>

			GBH.		
21.	<p><i>Austic v The State of Western Australia</i></p> <p>[2010] WASCA 110</p> <p>Delivered 11/06/2010</p>	<p>32 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No relevant prior criminal record.</p> <p>Two children from previous de-facto relationship; breakdown of that relationship and increasing consumption alcohol factors in offending – suffered and been treated for depression.</p> <p>Good and stable work history.</p> <p>References attesting to “gentle and placid nature”.</p>	<p>1 x Murder.</p> <p>Murder “calculated and savage” with a “shallow and appalling motive”. Categorised by trial judge as upper end of range of seriousness – factors outlined judgement at [178].</p> <p>Appellant and victim known each other for many years and were in casual sexual relationship (appellant would visit victim’s home when drunk for sex). Relationship was kept secret by appellant. Victim fell pregnant (appellant was father) and appellant tried to convince victim not to have child. Appellant stabbed victim 21 times and left victim to bleed to death in her bedroom. Victim staggered out to street for help and collapsed before dying (approx 20-30min between stabbing and death).</p> <p>Victim 22 weeks pregnant at time offence – killing unborn child motive and seriously aggravating factor.</p> <p>Attack premeditated and appellant took great lengths in attempting to cover tracks (eg burning clothes, disposing weapon).</p>	<p>Life imp (strict security life imp abolished at time sentencing).</p> <p>Min non parole period 25 yrs.</p> <p>Deemed low risk future violent offending.</p> <p>Lack of remorse.</p>	<p>Dismissed.</p> <p>At [187] “....a minimum non parole period in the order of 25 years or more will not, of itself, be manifestly excessive for a murder involving (only) one victim.”</p> <p>NB: First murder sentence considered by CoA following amendments to homicide laws.</p> <p>At [174] 2008 legislative changes restrict utility of sentencing comparisons pre and post those changes.</p>
20.	<p><i>Butler v The State of Western</i></p>	<p>26 yrs at time offending.</p> <p>Convicted after trial.</p>	<p>1 x Murder.</p> <p>Upheld as at the higher end of scale of seriousness on appeal.</p>	<p>Life imp.</p> <p>Min non parole period 19 yrs.</p>	<p>Dismissed.</p>

	<p><b>Australia</b></p> <p><b>[2010] WASCA 104</b></p> <p>Delivered 31/05/2010</p>	<p>Relatively minor prior criminal history – mainly related to excessive use of alcohol/ cannabis.</p> <p>Central aboriginal desert man – grew up in traditional community.</p> <p>Appellant in drug induced psychosis at time offending – not mitigating as self induced and had suffered drug induced psychosis on previous occasions (aware dangers using cannabis and continued use regardless). Began using cannabis and alcohol at 15 yrs, usage increasing between ages 20 and 26 yrs.</p> <p>Subjected to tribal punishment for offence – speared in left and right legs and would have died were it not for immediate medical attention.</p>	<p>Victim appellant’s wife and 8 months pregnant at time offence.</p> <p>Appellant drove victim out of the community shortly after attending pre-natal check with her (told nurse wanted to burn his wife). Appellant and victim argued in car and appellant became physically abusive. Appellant drove to area outside community where he strangled wife in car, built a fire and burned her body. Appellant returned to community and refused to answer questions as to the whereabouts of his wife when asked by family members. Appellant eventually told victim’s mother she was ‘finished’ and ‘in the fire’ but did not disclose the location of the body. Members of the community began a search and eventually found the remains in the fire –body was unrecognisable and identified by DNA.</p>		
19.	<p><b>Heijne v The State of Western Australia</b></p> <p><b>[2010] WASCA 86</b></p> <p>Delivered 11/05/2010</p>	<p>44 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No relevant prior criminal record.</p>	<p>1 x Murder.</p> <p>Victim and appellant in de facto relationship approx 25 yrs – sleeping in separate rooms at time offence. Also business partners. Appellant pursued an intimate relationship with another man, Mr X, 19 yrs of age, who was an employee in the chicken business. The relationship between appellant and victim deteriorated prior to offending (deterioration also linked to business matters). Appellant strangled victim following a</p>	<p>Life imp.</p> <p>Min non parole period 13 yrs 6 mths.</p>	<p>Dismissed.</p> <p>NB: Appeal against conviction only - subsequent High Court special leave application dismissed.</p>

			verbal altercation during which the victim slapped the appellant's face.		
18.	<p><i>Atherden v The State of Western Australia</i></p> <p>[2010] WASCA 33</p> <p>Delivered 26/02/2010</p>	<p>60 yrs at time offending (victim 58 yrs).</p> <p>Convicted after PG.</p> <p>Offending breached VRO.</p> <p>Prior history stalking ex partner in 2001 – VRO taken out against him after he assaulted her.</p> <p>Prior criminal history – minor traffic offences and assault.</p> <p>Relatively stable upbringing; good employment history since leaving school at 15 yrs; divorced (amicable relationship with ex wife); 3 children; no history violence.</p>	<p>1 x Murder.</p> <p>Victim and appellant had been in a relationship for 3 ½ yrs. At time offending, they were separated and the victim had VRO against appellant.</p> <p>Appellant wanted to speak to victim to have VRO lifted as it would jeopardise the renewal of his yard manager's license, which he required for work. Appellant went to victim's house at approx 6.30am and waited for victim to leave her house. When victim came out, she shouted at appellant to leave and pushed him. Appellant got a rubber mallet from the garage and bashed her in the head repeatedly until victim lost consciousness and slumped to ground. Appellant then picked up a brick and hit her with it. Appellant out mallet in rubbish bin and left victim lying on the paving near her front door. Neighbours heard her screams as she was attacked.</p> <p>Approx 6 hrs after the screams were heard, the victim's ex partner arrived at her house. Victim had failed to come into work and he was worried about her. Victim was found lying on paving, groaning, bleeding, soaking wet and shivering. She was covered in blood, her face was white and there was a large wound to the side of her skull</p>	<p>Life imp.</p> <p>Min non parole period 16 yrs.</p>	<p>Allowed.</p> <p>Min non parole period reduced to 14 yrs imp – express error in failing to reduce non-parole period for PG.</p> <p>At [29] 2008 homicide amendments mean court no longer bound in sentencing by range previously identified.</p> <p>At [32]-[33] not inevitable, under new regime, that murder with intent to kill is more serious or to be punished more severely than murder lacking intent to kill. Value placed on human life suggests that killing with an</p>

			<p>with a large amount of blood and a jelly like substance coming from it. Ex partner called an ambulance and police.</p> <p>Victim taken to hospital and operated on but died as a result of her injuries. Injuries were so severe they were consistent with injuries normally seen in high speed car crash victims.</p> <p>Following breakdown of relationship with victim, appellant began drinking more and began to stalk victim – phone calls, emails, attempted to contact her through her friends and tried to physically approach her on numerous occasions.</p> <p>Aggravating factor was failure to obtain medical assistance for victim. Accepted in sentencing no intention to kill victim.</p>		<p>intention to do so would be regarded more seriously.</p>
<p>17.</p>	<p><i>Fraser v The State of Western Australia</i></p> <p>[2009] WASCA 23</p> <p>Delivered 23/01/2009</p>	<p>29 yrs at time of offending.</p> <p>Convicted after PG made shortly before trial.</p> <p>On parole at time of offence for serious assault and threats to harm charges.</p> <p>Extensive prior criminal record - robbery, burglary, threats to harm, assault &amp; dishonesty.</p> <p>Turbulent childhood with very little</p>	<p>1 x Wilful murder.</p> <p>Trial judges categorised offences as extremely high and towards upper end of scale of seriousness for wilful murder.</p> <p>Planned and violent assault on defenceless man that was premeditated and lacked any discernible motive. Appellant and co-offender travelling with victim. Stopped in Exmouth – appellant told co-offender wanted to kill victim. All 3 went to beach to watch turtles that night. Appellant returned to car, saying getting cigarettes but actually getting weapon. Returned to beach and directed victim's</p>	<p>Strict security life imp.</p> <p>Min non parole period 27 yrs.</p> <p>Deemed a significant risk of violent re-offending.</p>	<p>Dismissed - leave to appeal refused at appeal hearing.</p> <p>No prospect of success – sentence within discretionary range.</p>

		<p>parental support – incl physical &amp; sexual abuse, drug abuse (heroin at 9 yrs); working as street prostitute at 13 yrs (outweighed in sentencing by significant need for personal deterrence).</p>	<p>attention to ocean on pretext having seen turtles. Struck victim in forcefully on side of head and victim fell to ground. Continued to strike victim a further 6 times while he was on the ground and still conscious. Victim threw appellant car keys and wallet and told him to take them and to stop. Appellant took bank cards and demanded PIN. Appellant then pretended to call an ambulance. Appellant returned to car and cut a length of rope. Returned to victim and pretended to make another call to the ambulance. On pretext giving first aid, appellant placed rope around neck of victim and strangled him whilst singing a heavy metal song that included the words “Look into my eyes while you die”. Death categorised by trial judge as a “very painful and agonising death”. After victim dead, appellant emptied car boot and dragged body to car. Car wouldn’t start so body dragged and dumped in ocean.</p> <p>Once arrested, told repeated lies to police concerning events of that night. Characterised as “disturbingly offhand and casual, displaying no emotion” during his police interview.</p> <p>Psychiatric and psychological reports show lack of victim empathy, limited understanding of alternatives to violent behaviour and being unable to account for violent actions.</p>		
16.	<i>Stasinowsky v The State of</i>	19 yrs at time offending.	1 x Wilful murder.	Strict security life imp.	Dismissed.

<p><i>Western Australia</i></p> <p><b>(2009) 40 WAR 11; [2009] WASCA 20</b></p> <p>Delivered 22/01/2009</p>	<p>Convicted after early PG and admission of guilt.</p> <p>No prior criminal record.</p> <p>Taken stilnox tablet and consumed alcohol prior to murder. Along with co-offender, victim and another housemate.</p> <p>“Troubled background” – left home early age; drug abuse; prostitution.</p>	<p>Sentencing judge, owing to horrendous circumstances and gravity of crime, placed it towards the upper end of the scale of seriousness for wilful murder.</p> <p>Appellant and co-offender attacked 16 yr old boarder with piece of concrete, strangled her with a dog collar and dumped her body in a neighbour’s wheelie bin after deciding to kill her earlier in the day. The bin was then moved into the back shed, along with a bloodied mattress. After the killing, the appellant and co-offender “gleefully mocked [the deceased’s] body, joked and generally expressed pleasure at what [they] had done” – this was recorded on a mobile phone whilst they cleaned up the scene.</p> <p>Wrote about murder in “offensively graphic and sexualised terms” in a journal. The tone of the writings was described as “very euphoric”.</p> <p>Lack of substantial motive – murder took place because found victim “annoying”.</p>	<p>Min non parole period 24yrs.</p> <p>Continuing lack of remorse and insight.</p>	<p>Sentence within discretionary range.</p>
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**2008 Homicide Amendments – effective 1 August 2008**

<p><b>15.</b></p>	<p><b><i>Leyshon v The State of Western Australia</i></b></p> <p><b>[2007] WASCA 223</b></p> <p>Delivered 23/10/2007</p>	<p>29 yrs at sentencing.</p> <p>Convicted after trial – offered to plead guilty to murder but State declined to accept.</p> <p>Minor prior criminal record.</p> <p>Generally good antecedents.</p> <p>At time offence committed, victim had restraining order against appellant.</p> <p>Appellant drinking heavily prior to murder.</p> <p>History of substance abuse (amphetamine) but at time of murder was no longer involved in drug use.</p>	<p>1 x Wilful murder.</p> <p>Described in sentencing as “a very serious act of wilful murder”, placing it in the higher range of the scale of wilful murder offences.</p> <p>Victim was ex partner of appellant and they had a two year old child together at the time of her death. The child was present in the house when the offence occurred but did not witness it. Appellant went to victim’s house angry at being told the victim had allegedly said he was using amphetamine again. Appellant and victim fought – victim had high level of amphetamine in her blood at the time of death and the trial judge accepted this was likely to have made her aggressive. The victim received multiple blows and was strangled by a cord from a dressing gown that was hanging on the back of the door. After killing, appellant left house, locking child inside and rang victim’s mother and told her she should check on her daughter as she had something around her neck. Appellant gave himself up at local police station shortly after.</p>	<p>Strict security life imp.</p> <p>Min non parole period 20yrs.</p> <p>Accepted in sentencing that there was no premeditation and that the killing was spur of the moment.</p>	<p>Dismissed.</p> <p>Sentence upheld.</p>
<p><b>14.</b></p>	<p><b><i>Gamble v The State of Western Australia</i></b></p> <p><b>[2007] WASCA 120</b></p>	<p>49 yrs at sentencing.</p> <p>Convicted after a PG on morning trial due to begin.</p> <p>No relevant prior convictions.</p>	<p>1 x Wilful murder.</p> <p>Appellant stabbed ex de-facto in presence of her 9 year old son. The attack was unprovoked and described as “<i>truly horrific, consisting as it did of a sustained, ferocious and violent stabbing</i>”. There was a history of mutual violence in the</p>	<p>Strict security life imp.</p> <p>Min non parole period 20 yrs.</p> <p>Remorse.</p>	<p>Dismissed.</p>



	Delivered 29/05/2007	At the time the offence committed, victim had a restraining order against appellant.	relationship but at the time of the murder the only violence was perpetrated by the appellant.		
13.	<b><i>Teakle v The State of Western Australia</i></b>  (2007) 33 WAR 188; (2007) 168 A Crim R 483; [2007] WASCA 15;  Delivered 19/1/2007	Appeal judgment does not mention age.  Convicted after fast track PG.  Initially denied involvement prior to confessing during his police interview.  Good prior antecedents.	1 x Wilful murder.  Sentencing judge deemed it to be “a case of the very worst type”.  Appellant knew victim as they had been neighbours for approx 12 mths. The appellant had moved out approx 2 weeks prior to murder and had returned to collect mail. Appellant, suffering financial difficulties, decided to rob the victim. Knocked on door and was let in by victim. Argument over money ensued and appellant grabbed victim by hair, dragged her into the laundry room and threw her on the floor, placing his knee on her throat. The victim had been preparing lunch and had a knife in her hand and the appellant has received a deep cut, severing the tendons on one of his fingers. The appellant overpowered the victim, took the knife off her and stabbed her. During this attack the fatal wound (12cm deep stab which penetrated the heart) was inflicted. The appellant then turned the victim over and stabbed her a further 10 times in the back. The appellant then turned her over again and cut her throat and wrists – the appellant said he had done this to ensure she was dead. The appellant then attempted to clean the scene and remove any trace of his blood. The appellant then	Strict security life imp.  Min non parole period 22 yrs.	Dismissed.  Court of Appeal would have imposed same sentence even though sentencing judge failed to accord procedural fairness, by engaging in private communication with psychiatrist and failing to disclose this information prior to sentencing.

			left with the murder weapon, locking the victim's two young children inside the house with her body. The victim was found when relatives rang and her two year old son answered the phone prompting them to attend the unit.		
<b>12.</b>	<b><i>Vella v The State of Western Australia</i></b>  <b>[2006] WASCA 177</b>  Delivered 1/09/2006	Unsure of age but youth was not a mitigating factor.  Convicted after trial.  No relevant prior criminal record.	1 x Wilful murder.  Trial judge viewed offence as "in the upper end of wilful murder cases".  Appellant killed his estranged wife by battering her about the head with a baseball bat. As the victim lay dying, the Appellant has cut her throat with a hunting knife. The victim's youngest son was in the room at the time of the attack.	Strict security life imp.  Min non parole period 20 yrs.	Dismissed - leave to appeal refused.  No prospect of success – sentence within discretionary range.
<b>11.</b>	<b><i>Cooley v State of Western Australia</i></b>  <b>[2005] WASCA 160</b>  Delivered 19/8/2005	Appeal judgment does not mention age.  Convicted after trial.  No prior criminal record.  Mental illness reduced culpability – chronic paranoid schizophrenia.	1 x Wilful murder.  Sentencing judge categorised offending as 'extremely serious'.  Appellant and victim known each several years – victim 'fallen on hard times' and was receiving food parcels from Salvation Army soup kitchen each morning. On morning offending, appellant and victim both received breakfast from soup kitchen and took it to park opposite Supreme Court to eat. After eating, appellant plunged large hunting knife into victim's neck – blow so powerful, knife entered at jaw, penetrated neck and came out other side face. Victim staggered to	Strict security life imp.  Min non parole period 17 yrs.	Allowed.  Min non parole period 15 yrs substituted.

			footpath, screaming for help but died shortly after receiving injury.		
10.	<p><b><i>Mackenzie v The State of Western Australia</i></b></p> <p><b>[2004] WASCA 146</b></p> <p>Delivered 2/07/2004</p>	<p>Unsure of age but youth was not a mitigating factor.</p> <p>Convicted after trial.</p> <p>Prior criminal record in NSW, Victoria &amp; WA for dishonesty offences, traffic offences and aggravated assault.</p> <p>Unhappy childhood – alcohol abuse, domestic violence &amp; child sex abuse.</p> <p>History of alcohol dependence and sexual deviance.</p> <p>Unhappy marriage at time offending – appellant partly blamed wife for his offending.</p>	<p>1 x Wilful murder.</p> <p>Categorised as “<i>brutal killing</i>” and high on the scale of wilful murders.</p> <p>Rang escort agency and arranged services of a prostitute. At some point during evening, appellant tied victim’s wrists behind her back and stabbed her at least 7 times with two different weapons. Victim “wholly defenceless” at time of attack.</p> <p>Deemed by sentencing judge to be an element of premeditation as appellant decided prior to events to kill victim if things went wrong.</p> <p>Offence committed in 1986, arrested 2001 and tried 2004.</p>	<p>Strict security life imp.</p> <p>Min non parole period 25 yrs.</p> <p>Deemed to pose continuing danger to society – “significant &amp; serious personality &amp; behavioural problems”; avoidance of responsibility; lack of insight &amp; remorse.</p>	<p>Appeal dismissed.</p> <p>Sentence justified.</p>
9.	<p><b><i>Roberts v The State of Western Australia</i></b></p> <p><b>[2003] WASCA 237;</b></p> <p>Delivered 3/10/2003</p>	<p>Almost 30 yrs at time of offence.</p> <p>Convicted after second trial – first trial deemed to have miscarried because of judge’s directions. Sentence at first trial was 25yrs non parole period.</p> <p>No significant prior criminal history.</p> <p>Parents separated when 10 yrs old –</p>	<p>1 x Wilful murder.</p> <p>Placed in upper range of wilful murders and categorised as “a particularly serious example” of wilful murder by sentencing judge.</p> <p>Appellant met victim (64 yr old man previously unknown to him) in a park. The victim said or made gesture, possibly a homosexual approach that enraged the appellant. The appellant has</p>	<p>Strict security life imp.</p> <p>Min non parole period 20 yrs.</p> <p>Considered a possible future risk for violence and there were doubts that remorse expressed genuine.</p>	<p>Appeal dismissed.</p> <p>Strict security life imp justified.</p> <p><u>Note:</u> Only the imposition of security life imp appealed – not min term set.</p>

		history of family violence and excessive alcohol consumption prior to this; between ages 8yrs and 10 yrs, sexually abused by an older man who lived nearby.	pulled out a folding knife from his pocket and in an unprovoked, frenzied and prolonged attack, stabbed him 98 times. The victim, during the attack, tried to flee, but was pursued by the appellant and further attacked. The appellant then returned home, washed himself, hid the knife and told his housemates he had stabbed someone and asked them not to tell the police. They informed the police and, upon his arrest, the appellant has lied about the circumstances of the attack.		
8.	<b><i>Stapleton v The Queen</i></b>  <b>[2002] WASCA 328</b>  Delivered 4/12/2002	41 yrs at time offences committed.  Convicted after trial.  Gave police some assistance in investigations – showed police where body was buried and identified some exhibits.  No prior criminal record and well regarded by community prior.	1 x Wilful murder.  Trial judge deemed offence and its gravity at “highest end of the scale for wilful murder”. Judge stated in sentencing “hard to imagine a worse case of wilful murder by beating and asphyxiation”. Victim a child.  Appellant and co-offenders held victim (a child) in captivity for 4 to 5 hours. The victim was subjected to violent assaults and tortured during this time. The victim died after being tied up, having toilet paper jammed down his throat and after plastic bags were tied over his head. There was also racial vilification by the appellant. The victim’s body was then hidden and buried.  Appellant described in sentencing as principal offender.	Strict security life imp.  Min non parole period 23 yrs.  Continuing lack of remorse.	Dismissed.  Both strict security life imp and 23 yr min justified.

<p>7.</p>	<p><i>Jacovic v The Queen</i></p> <p>[2002] WASCA 149</p> <p>Delivered 7/06/2002</p>	<p>46 yrs at time sentencing.</p> <p>Convicted after trial (offered PG to manslaughter but not of significance in sentencing).</p> <p>Minor prior criminal record but nothing of relevance.</p> <p>Appellant injured by landmine in 1992 and unable to work since then.</p>	<p>1 x Murder.</p> <p>Sentencing judge considered offence at very top scale seriousness for murder (appeal court affirmed).</p> <p>Appellant and victim married with 4 children aged 4 – 10 yrs (living with appellant’s sister at sentencing).</p> <p>Appellant and victim arguing when victim told appellant she was leaving him for a younger man. Appellant went and got sledgehammer from garage. Victim tried to run to bedroom but appellant broke both legs by hitting them with sledgehammer. Appellant then beat her to death with sledgehammer as she lay on the floor (hit her mainly on the head). Appellant then removed victim, placed her in his car and dumped her on the roadside (not known if she was still alive at this point). Appellant cleaned house of bloodstains, disposed of sledgehammer and reported victim missing to police – stated they had argued, he had hit her and she ran away.</p> <p>History domestic abuse.</p>	<p>Life imp.</p> <p>Min non parole period 14 yrs (max at time).</p> <p>No remorse – claimed provocation and lied repeatedly to police,</p>	<p>Dismissed.</p> <p>Leave refused.</p> <p>At [19] Imprisonment depriving children of parental figure when appellant caused death of mother not exceptional or mitigating factor to be considered in sentencing.</p>
<p>6.</p>	<p><i>“F” (a child) v The Queen</i></p> <p>[2001] WASCA 247</p>	<p>15 yrs at time offending, 16 yrs at time sentencing.</p> <p>Convicted after PG.</p>	<p>1 x Wilful murder.</p> <p>Sentencing judge said were it not for the age, the offence would have warranted a sentence of strict security life imp.</p>	<p>Life imp.</p> <p>Min non parole period 12 yrs.</p>	<p>Dismissed.</p>

	Delivered 21/8/2001	<p>No prior criminal record.</p> <p>“Chaotic family background” – parents separated when appellant aged 10 yrs and involved in ongoing and acrimonious court action.</p> <p>Mental health issues immediately prior to event – histrionic personality disorder; mood disorder; in a state of acute suicidal preoccupation.</p>	<p>The appellant stabbed to death his former girlfriend (16yrs at time of death) in a classroom with other students present. The victim was stabbed, after being grabbed by the neck from behind, with a hunting knife 18 times in the chest, stomach, arms, legs and buttocks. The attack – described as deliberate, merciless and calm – continued as his victim tried to escape. The appellant strapped the knife to his back to carry it into the school.</p> <p>Clear elements of premeditation present.</p>		
5.	<p><b><i>Errey v The Queen</i></b></p> <p><b>[2001] WASCA 75</b></p> <p>Delivered 15/3/2001</p>	<p>23 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal history consisting of convictions in Courts of Petty Sessions and one conviction in Supreme Court for armed robbery.</p>	<p>1 x Wilful murder.</p> <p>Appellant and victim met as result advert placed by appellant offering services as male prostitute. Met several times in months prior to murder.</p> <p>Appellant, having nowhere to stay, went to home of victim. Victim reluctant to allow him entry so appellant broke into house using a fire extinguisher. Victim grabbed small knife but appellant knocked knife out of victim’s hand and threw him onto a chair. Appellant then grasped victim around neck and began throttling him, punching him several times in the head. After victim had died, appellant dragged body into bedroom so it could not be seen from the window. Appellant then had a bath and slept the night in the victim’s bed. In the morning, the appellant showered, dressed in the victim’s clothes and left</p>	<p>Life imp.</p> <p>Min non parole period 19 yrs.</p>	<p>Dismissed.</p> <p>Categorised in seriousness in the appeal judgement as “<i>a killing in the upper range</i>”.</p>

			taking with him the victim's beer, cigarettes and money. Lied numerous times when questioned by police.		
4.	<p><i>Alikhani v The State of Western Australia</i></p> <p>[2001] WASCA 55</p> <p>Delivered 7/03/2001</p>	<p>Unsure of age but youth not mitigating factor.</p> <p>Appeal judgment does not address prior criminal history.</p> <p>Convicted after trial.</p> <p>Victim had unserved restraining order against appellant at time offence.</p>	<p>1 x Wilful murder. 1 x Agg burg.</p> <p>Victim married with a young child and had a relationship with appellant. Victim terminated relationship and appellant did not accept this, becoming angered. Appellant harassed victim and her husband following termination of relationship.</p> <p>Appellant went to victim's home with knife in company of a friend. Broke into the house and stabbed her 68 times while his friend held her legs down and prevented her escape. Stabbings were deliberately aimed at the victim's left breast, the heart, the neck and the vaginal area. Appellant switched hands holding the knife when his right hand tired.</p> <p>Clear elements of premeditation present.</p>	<p>Strict security life imp. 5 yrs imp.</p> <p>Min non parole period 20 yrs.</p> <p>Remorse present – handed himself in to police and confessed to killing.</p>	<p>Dismissed.</p> <p>Attack categorised as “<i>particularly ferocious and violent</i>” in appeal judgement.</p>

<p>3.</p>	<p><b><i>Griffin v The State of Western Australia</i></b>   <b>[2001] WASCA 11</b>   Delivered  29/01/2001</p>	<p>36 yrs at sentencing.   Convicted after trial.   No relevant prior criminal record.   Alcohol and drug issues.   Had previously been in long term relationship (10 yrs) with victim and had a child with her.</p>	<p>1 x Wilful murder.   Sentencing judge categorised as in the worst category of wilful murder.   In the months prior to murder, appellant had subjected victim to numerous abusive and threatening phone calls.   Appellant stabbed victim while she was in bed in a violent and unprovoked attack.</p>	<p>Life imp.   Min non parole period 18 yrs 6 mths.   No desire shown for rehabilitation by appellant; no evidence of remorse; deemed to pose a possible future risk of violence.</p>	<p>Dismissed.   Sentencing discretion did not miscarry.</p>
<p>2.</p>	<p><b><i>Lauritsen v The State of Western Australia</i></b>   <b>(2000) 22 WAR 442; (2000) 114 A Crim R 333; [2000] WASCA 203</b>   Delivered  4/08/2000</p>	<p>22 yrs at time offending.   Convicted after guilty plea one day prior to trial listed to commence.   Prior criminal record - one prior conviction arising from threat to Aunt with a wood splitting axe.   History of recent violent and threatening incidents with family members.   Numerous medical reports put forward and all agreed mental illness present but that it did not provide a legal defence to killing. Also affected by alcohol at time offence and the anniversary of father's suicide.</p>	<p>1 x Wilful murder.   Appellant killed his defenceless and innocent 67 yr old grandmother in a horrific and barbaric attack. Appellant attacked victim with a lawn edger and, possibly, a hammer. After her death, victim attempted to sever her head and disembowelled her. Appellant also killed victim's dog.   Evidence that appellant had thought about and spoken about killing victim previously.</p>	<p>Strict security life imp.   Min non parole period 27 yrs.   Offence described as in sentencing as "amongst worst of its sort".   Posed extreme and dangerous threat to community and family.</p>	<p>Allowed.   Moral culpability greatly reduced due to mental illness (even though that illness did not provide a defence under s27 Criminal Code).   Non parole period reduced to 20yrs – parole to be assessed on psychiatric advice.</p>



1.	<p><b><i>Garrett v The State of Western Australia</i></b></p> <p><b>[1999] WASCA 169</b></p> <p>Delivered 10/09/1999</p>	<p>57 yrs at sentencing.</p> <p>Convicted after a trial.</p> <p>Prior criminal record – incl violent offences.</p> <p>Suffering from paranoid delusions at time of killing.</p>	<p>1 x Wilful murder.</p> <p>Unprovoked attack on defenceless man.</p> <p>Victim, along with girlfriend and two friends lived in flat below the appellant. Appellant under delusional belief that victim and flatmates were conspiring to kill him by wearing down his health with their constant smoking, noise and harassment. Appellant went to flat and saw victim, who was alone, sitting in a chair. Appellant stabbed victim in a frenzied attack while girlfriend and flatmates tried to pull him inside to safety.</p>	<p>Life imp.</p> <p>Min non parole period 18 yrs.</p> <p>Significant future risk to community.</p>	Dismissed.
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**Recent sentences not appealed or currently under appeal of comparative use**

	<p><b><i>The State of Western Australia v Hedgeland</i></b></p> <p><b>[2013] WASCA 97</b></p> <p>Delivered 12/04/2013</p>	<p>36 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No relevant prior criminal record – traffic offences.</p> <p>Heroin user since 2007 – offending incurred after relapsing into heroin use once naltrexone implant had worn off.</p> <p>Close and supportive family with strong Christian values; separated from wife; 2 young children (actively</p>	<p>2 x Murder.</p> <p>Each victim subjected to a separate and brutal attack with a blunt weapon – the second attack must have had an element of premeditation to it. Separate and sustained nature of the attacks significantly aggravates offender’s culpability.</p> <p>Victim 1 was a friend of the offender and his wife. Offender knew victim was a heroin user and able to obtain large quantities of heroin. Offender made an arrangement with victim 1 to purchase 1 ounce of heroin for \$11,000. Offender not able to arrange money but pressed ahead with</p>	<p>Life imp.</p> <p>Minimum non parole period 21 yrs imp.</p> <p>No remorse – denies offending.</p>	Dismissed.  NB: Appeal against conviction only.
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		involved in their day to day care) Steady employment. No history of violence.	the deal regardless. Victim 2 was the person supplying heroin to victim 1 for the sale arranged by the offender. Victim 2 was to bring the heroin to victim 1's house so the sale could take place. Unclear what happened at the arranged sale – unable to determine the time or order of death of the two victims. At some point, the appellant has inflicted three blows of significant force to victim 2's head killing him. The weapon used to inflict the injuries has not been identified. The appellant has also inflicted 5 forceful blows to victim 1's head killing her. Victim 1's body was found hidden beneath carpet and tarpaulin in a shed at the rear of the property. A pool of blood at the front of the shed was concealed with a wooden plank. Appellant took actions after the attacks to conceal the crimes – concealed victim 1's body; turned on the gas in the kitchen in the hopes an explosion would occur and conceal the manner of victim 2's death; moving victim 2's car and setting it alight; giving a false alibi when interviewed by police and a subsequent fabricated story to explain his presence at the house around the time of the murders.		
<i><b>The State of Western Australia v Westberg</b></i>	30 yrs at time offending. Convicted after fast-track PG – TOI for purposes of sentencing.	1 x Murder. Victim was 84 yrs old but offender was not aware of this at time offending.	Life imp. Minimum non parole period 15 yrs imp.	<b>SENTENCE APPEAL DISCONTINUED</b>	

<p>[2011] <b>WASCSR 206</b></p> <p>Delivered 23/12/2011</p>	<p>Prior criminal record – incl juvenile and adult convictions for agg assault; threats to injure; burglary; dang driving causing GBH; damage; breach bail.</p> <p>History substance abuse since teenager – cannabis, amphetamines and alcohol. History of violence and black-outs associated with alcohol abuse.</p> <p>Unremakable family history and childhood.</p> <p>Relationship for 15 yrs – episodes of domestic violence; 6 children.</p> <p>Educated to yr 10; limited employment history.</p> <p>Diagnosed schizophrenic and psychotic depression after offending – not linked to offending or culpability in anyway.</p>	<p>Offender argued with partner and was severely intoxicated. Offender wanted money to leave and visit family in Northam so broke into victim’s house with intent of robbing her. Victim heard offender and confronted him. Offender repeatedly struck her with rolled up newspaper. Attack was prolonged and caused severe injuries – victim asphyxiated on her own blood during the attack. Offender left house while victim was still alive and despite being aware of the injuries inflicted offender did not seek any help for her.</p>	<p>Some remorse (uncertain if regret as opposed to genuine remorse); victim empathy; risk violent re-offending if alcohol abuse not addressed.</p>	<p><b>BY WESTBERG</b></p> <p>Sentenced on basis did not intend to kill victim.</p> <p>At [55] Court can, in instance of murder, have regard to juvenile criminal record for purposes of sentencing.</p>
<p><i>The State of Western Australia v Kenneth John Smith, Colin John Smith &amp; Tanya Louise</i></p>	<p>20 yrs at time offending. 22 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal record.</p>	<p>1 x Murder (KJ Smith).</p> <p>Offender’s parents both convicted manslaughter as result of same incident (father 6 ½ yrs imp; mother 4 yrs imp).</p> <p>Victim was a friend of offender’s ex-partner –</p>	<p>Life imp.</p> <p>Min non parole period 18 yrs imp.</p> <p>No remorse.</p>	<p><b>SENTENCE NOT APPEALED</b></p> <p><b>Conviction appeal dismissed <i>Smith v The State of Western</i></b></p>

	<p><b><i>Smith</i></b></p> <p><b>INS 96 of 2010</b></p> <p>Sentenced 16 May 2011</p>	<p>Unstable, violent &amp; turbulent up-bring; periods in foster care; poorly educated; solid work history.</p> <p>Serious alcohol problem; regularly smoked cannabis; used ecstasy and amphetamine on occasions.</p> <p>Periods of depression and self harm (including overdoses and an attempted hanging); 4 weeks prior to offending in constant contact with Mental Health services telephone helpline.</p>	<p>innocent bystander who offered no provocation.</p> <p>Offender and ex- partner had recently moved out of the Smith family home but relationship deteriorated and offender moved back into parent's home. Ongoing acrimonious dispute as to ownership certain household items between offender and ex-partner – offender's parents became involved in dispute. Approx one week prior to offending, police were called to ex-partner's home as result of an altercation with the Smith family.</p> <p>On night offending, offender had been at a party and consumed alcohol and smoked marijuana. On returning home, offender had angry telephone conversation with ex-partner – shouting woke up offender's father.</p> <p>Offender, violent and agitated, demanded father drive him to ex-partner's house. Father and mother both went with offender to ex-partner's home.</p> <p>Ex-partner saw offender and parent's arrive and rang the police. Victim was a friend of the ex-partner's who was visiting her that night – they were not involved in a relationship. Victim decided he should leave and walked to his car. Offender attacked him - punching and kicking him to the ground in a frenzied attack. Offender picked up a piece of wood and repeatedly hit victim in the back. Offender then, as victim lying on ground unable to defend himself, took a folding knife from his pocket, unfolded the knife</p>		<p><b><i>Australia [2012]</i></b></p> <p><b>WASCA 78</b></p>
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			and deliberately stabbed victim in the middle of the chest – force of stab was such that victim’s breastbone was fractured and penetrated the pulmonary artery. Offender and parents returned home (mother threatening to kill ex-partner next time) and all three attempted to destroy evidence – washed clothes, hid the knife.		
	<p><i>The State of Western Australia v Freeman</i></p> <p><b>INS 134 of 2010</b></p>	<p>28 yrs at time offending.</p> <p>PG earliest opportunity – rang police while intoxicated to confess approx 3 weeks after crime (person of interest at that point but not main focus of investigation).</p> <p>Prior criminal record includes offences for armed robbery committed with knife.</p> <p>Difficult childhood – physical abuse from parents; teen years spent in hostels and on streets; incomplete schooling; no stability.</p> <p>Personality disorder with paranoid, antisocial and narcissistic traits but no psychosis or mental illness to mitigate or explain actions.</p>	<p>1 x Murder.</p> <p>Offender casual acquaintance of victim (21yrs), met him approx 10 times prior through his cousin (co-accused).</p> <p>Offender, his cousin and victim drinking together in afternoon. Victim went home, intoxicated, fell asleep on sofa and left keys in front door. Offender decided he was going to kill victim – motive unascertainable but grossly disproportionate to killing. Offender went to victim’s house to kill him, saw him on sofa and took keys from front door. Offender went home and “kitted up” for the killing – put on overalls, beanie and reef walking shoes, armed with knife and took his ipod to listen to music as he committed the killing.</p> <p>Offender entered victim’s home, used the toilet and roused victim from sleep. As soon as victim was awake, offender put hand over mouth and stabbed his throat (deliberately intended to sever vocal chords so as to stop him being able to cry</p>	<p>Life imp.</p> <p>Min non parole period 24yrs – sentencing judge noted very close to ordering offender never be released</p> <p>Significant future risk to community.</p> <p>No remorse at any stage – gloated, laughed, expressed pleasure at power killing brought him, signed letters “Venda Ender” (Venda nickname of victim) and “The Tuart Hill Assassin”.</p>	<p><b>NOT APPEALED</b></p> <p>Described by trial judge as “<i>a very calculated, callous and cold-blooded crime</i>”.</p>

			<p>out for help). Total 21 stab wounds inflicted using 2 different knives (to eyes, face, chest and throat). At some point, offender stopped stabbing victim and began to clean up scene with bleach – victim on floor and still alive. After that, victim stabbed several times again (uncertain whether these wounds inflicted by offender or co-accused). Offender buried victim’s keys separately under several street trees (later led police to sites and keys recovered); washed overalls several times; disposed of two knives used in shopping centre bin (took police to bin but had been emptied – knives never recovered).</p>		
<p><i>State of Western Australia v Singh</i></p> <p><b>INS 97 of 2010</b></p> <p>Delivered 1/10/2010</p>	<p>23 yrs at sentencing.</p> <p>Convicted after PG at earliest opportunity.</p> <p>No prior criminal record.</p> <p>Intoxicated at time offending.</p> <p>Single; no dependants; born and raised in Punjab; loving, supportive, middle class family.</p>	<p>2 x Murder.</p> <p>Offender used to share a house with two victims (who were brothers). Landlady ordered offender to leave house and offender blamed victim A for this.</p> <p>Offender armed himself with knife and returned to house and stood at door listening to conversation inside. Victim A opened door and came out – offender stabbed him in head and stomach. Victim B tried to leave house but offender forced him back inside and stabbed him in the head and abdomen. Offender then drove off.</p>	<p>2 x life imp.</p> <p>Min non parole period 20 yrs each count.</p> <p>Sentences to run concurrently.</p>	<p><b>NOT APPEALED</b></p>	