

# **Threats to Kill**

*s 338B Criminal Code*

**Prior to 1 January 2014**

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

## Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
agg	aggravated
burg	burglary
sex pen	sexual penetration without consent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
TES	total effective sentence
SIO	suspended imprisonment order
CBO	community based order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
18.	<p><i>Ackley v The State of Western Australia</i></p> <p>[2013] WASCA 199</p> <p>Delivered 26/08/2013</p>	<p>27 yrs at time offending.</p> <p>Convicted after second trial. First trial was aborted because the appellant refused to answer bail on the 5<sup>th</sup> day and absconded interstate; later apprehended on a bench warrant.</p> <p>Criminal record reflects violence and sexual offending against women including serious GBH against de facto and agg indecent assault of intoxicated woman.</p> <p>Mother died when 12 yrs; raised by father.</p> <p>Finished school partway through Year 12; consistently employed.</p> <p>Problematic use of cannabis and amphetamines until he obtained work at 23 yrs.</p>	<p>Ct 1: Deprivation of liberty. Ct 2: Threat to kill. Ct 3: Sex pen w/o consent. Ct 4: Sex pen w/o consent. Ct 5: Sex pen w/o consent. Ct 6: Sex pen w/o consent. Ct 7: Agg Sex pen w/o consent.</p> <p>The victim and appellant were known to each other as friends for a short period of time. The victim had been residing with the appellant at his house, since she returned to Australia some 4 weeks earlier. The victim had had consensual sexual intercourse with the appellant a few times since she returned; however told the appellant the relationship would not go any further and they were just friends.</p> <p>On the return from a party the appellant was behaving in an angry and aggressive manner. The victim attempted to leave the house but was stopped by the appellant who pushed her away from the locked back door, causing her to fall on the floor. The victim wanted to leave but the appellant refused to let her leave and took her mobile phone from her. She made repeated pleas to the appellant during the course of the night to let her leave.</p> <p>Shortly after first detaining the victim and while she was on the floor crying, the appellant produced a knife and held it in front of the victim's face. He told the victim she was not</p>	<p>Ct 1: 12 mths imp. Ct 2: 12 mths imp. Ct 3: 3 yrs 6 mths imp. Ct 4: 2 yrs 6 mths imp. Ct 5: 3 yrs 6 mths imp. Ct 6: 3 yrs 6 mths imp. Ct 7: 5 yrs 6 mths imp.</p> <p>Cts 1 &amp; 2 conc with each other but cum on Cts 3 &amp; 7 with balance served conc.</p> <p>TES 10 yrs imp.</p> <p>EFP.</p> <p>Did not accept any responsibility for the offending, maintaining his denial and continuing with his claim that the victim fabricated her allegations.</p> <p>No empathy or remorse.</p> <p>High risk of reoffending.</p>	<p>Dismissed – on papers.</p> <p>At [56] The offending was indeed very serious having regard to the nature and extent of the violence, physical and sexual, over an extended period.</p> <p>At [57] ... The fact that the appellant put the victim through two trials, necessitated by him absconding five days into the first trial, is an aggravating circumstance. He caused an unnecessary and unjustifiable continuation of the ordeal which he inflicted on the victim.</p>

		<p>going to leave and not to try anything stupid or he would kill her. The victim told the appellant that she did not want to have sex with him. He pulled her through various rooms of the house and despite her attempts to fight him off, she was eventually on the bed, naked. The appellant rubbed lubricant or gel on and inside the victim's vagina. The appellant grabbed the victim by the throat which caused her to have difficulty breathing. The appellant sexually penetrated her vagina with his penis, despite her resistance. The victim scratched the appellant's back, chest and arms and lost consciousness during intercourse. When she woke the appellant was still having sex with her. The appellant then pushed the victim towards the bathroom and forced her to have a shower to get rid of the skin under her finger nails. Whilst in the shower the appellant inserted his fingers into her vagina and washed it. The appellant then pushed the victim back onto the bed. He once again applied lubricant and penetrated the victim's vagina with his penis against her will. The victim screamed and the appellant grabbed her throat. He directed the victim to have another shower. She did. Back in the bedroom, the appellant said he was going to have sex with her again. She was feeling dizzy and frightened. Against her will, the appellant again penetrated the victim's vagina with his penis.</p> <p>Later the victim refused the appellant's request to perform oral sex on him. She was trying to fight the appellant off when he again inserted</p>		
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			his penis into her vagina. On this occasion the appellant put a pillow over the face of the victim so she would stop screaming. The appellant removed semen from the victim's vagina and rubbed it on the victim's face and breasts.		
17.	<p><i>KIP v The State of Western Australia</i></p> <p>[2013] WASCA 71</p> <p>Delivered 15/03/2013</p> <p><b>NB: Other information which mitigated the seriousness of the offending in schedule set out in confidential annexure to judgement and subject to confidentiality order</b></p>	<p>27 yrs at time offending. 28 yrs at time sentencing.</p> <p>Convicted after PG – Changed his plea from PG to PNG to PG.</p> <p>Extensive prior criminal record including multiple threatening words or behaviour and poss unlicensed firearm and ammunition.</p> <p>Significant periods of unemployment.</p> <p>History of illicit drug abuse.</p> <p>Under the influence of methyl when committed Cts 1-2.</p>	<p>Ct 1: Threats to kill. Ct 2: Armed and likely to cause fear. Ct 3: Agg poss firearm with no licence. Ct 4: Poss ammunition with no licence.</p> <p>There had been a history of tension between the appellant and Mr Z. The appellant drove to the house of Mr X with another. The appellant had previously been in a relationship with Mr X's daughter to which they had a young child. When the appellant arrived, the victim Mr Z was at the house. Mr Z was the partner of Ms X's sister.</p> <p>The appellant entered Mr X's house with a sawn-off rifle concealed in his trousers. The rifle was loaded with a hollow-tip bullet. A confrontation occurred between the appellant and Mr Z. This culminated in the appellant pointing the rifle at Mr Z, cocking the trigger and telling Mr Z: "I am going to blow your head off"; "If you come near me, I am going to blow your head off"; "I am going to get you"; and "Do you want to lose your foot over this?"</p> <p>The appellant was later apprehended by police. Police searched the appellant's vehicle and found an unlicensed firearm which matched the descriptions given by Mr X and Mr Z of</p>	<p>Ct 1: 2 yrs 10 mths imp. Ct 2: 2 yr 7 mths imp. Ct 3: 1 yr 6 mths imp. Ct 4: 9 mths imp. (All conc).</p> <p>TES 2 yrs 10 mths imp. EFP.</p>	<p>Dismissed.</p> <p>At [23] The appellant is not of good character. He has an extensive prior criminal record.</p> <p>At [36] Although the appellant could not be (and was not being) punished again for past criminal behaviour, his prior record reflected on his moral culpability for the offence in question. It also showed that this offence was not an uncharacteristic aberration.</p> <p>At [38] The high individual sentence for Count 1 was softened by the sentencing judge's order that the individual sentence for Counts 2, 3 and 4 be served concurrently with each other.</p>

			the weapon produced by the appellant at the house. When police located the firearm it was loaded with a round in the chamber, it had a full magazine of soft-nosed hollow-pointed bullets, and the safety mechanism was disengaged. Police also located an assortment of unlicensed ammunition.		
16.	<p><i>Clarke v The State of Western Australia</i></p> <p>[2013] WASCA 67</p> <p>Delivered 12/03/2013</p>	<p>30 yrs at sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal record including an assault against a previous girlfriend in NSW; In WA convicted of several offences relating to the victim including a number of Breach of VRO and Agg AOBH.</p> <p>Offences committed in breach of a suspended term of imp imposed for Agg AOBH, Breach VOR and Breach protective bail conditions.</p> <p>Exposed to domestic violence as a child.</p>	<p>1 x Breach of susp imp (original term 12 mths).</p> <p>Ct 1: Threats to kill</p> <p>Ct 2: Dep lib.</p> <p>Ct 4: Sex pen w/o consent (pen vagina with penis).</p> <p>Ct 6: Sex pen w/o consent (pen vagina with penis).</p> <p>Ct 7: AOBH.</p> <p>(Acquitted of Cts 3 and 5 on indictment).</p> <p>The offences arose out of a dysfunctional relationship between the appellant and the victim. They were engaged for a time, but after that the relationship deteriorated. The victim successfully applied for a VRO against the appellant which she then removed after a few months. They reconciled for a short time. The relationship followed a pattern of argument followed by reconciliation up until 2011 when the offences occurred.</p> <p>The victim went to the appellant's house to collect money that was owed to her parents. When the appellant did not answer the door the victim entered. The appellant then came through the front door from outside the house</p>	<p>Breach: 12 mths imp.</p> <p>Ct 1: 12 mths imp cum.</p> <p>Ct 2: 12 mths imp conc.</p> <p>Ct 4: 4 yrs imp cum.</p> <p>Ct 6: 2 yrs imp cum.</p> <p>Ct 7: 2 yrs imp conc.</p> <p>TES 8 yrs imp.</p> <p>EFP.</p> <p>Appellant spent 328 days on remand which was taken into account in relation to the sentence for Ct 6.</p> <p>No remorse.</p> <p>Lied to police in VROI.</p> <p>Assessed as presenting a medium to high risk of sexual re-offending.</p>	<p>Appeal against conviction and sentence dismissed – leave refused on papers.</p> <p>TES did not breach totality principle.</p> <p>Sentence on Ct 4 not manifestly excessive.</p> <p>At [92] Sentences for offences of sexual penetration without consent vary significantly.</p> <p>At [94] The appellant submits that the seriousness of this offence was reduced by the fact that there were no circumstances of aggravation. This submission has no merit because the ‘starting point’ of 4 to 6 years assumes that there are no aggravating factors. That would not put it into a less serious category for an offence</p>

			<p>and attacked her. He told her that she was going to ‘die here tonight’ a while holding her against the wall with his arm against her chest and his other hand around her throat so that she could not breathe, swallow or speak. The victim tried to run towards the door, but the appellant attached her again and pushed her to the ground, holding her head down with his knees. He again told her that she was going to die.</p> <p>The appellant pushed the victim into the bathroom and pushed her against the wall. He held her by the back of the neck with one hand and pushed her head towards the bathroom sink. He held her around the waist so that she could not move. He forcibly penetrated the victim. The victim cried and asked him to stop.</p> <p>The appellant held the victim’s arm while they stood on the front porch to look at the car. The victim wanted to check her sleeping child. The appellant then pushed her face against the wall and again forcibly had sex with her.</p> <p>The victim was eventually able to run to her car and leave the appellant’s house. The victim sustained injuries throughout the ordeal.</p> <p>The defence at trial was that the sexual intercourse took place but was consensual and he denied the other allegations.</p>		<p>under s325 of the <i>Criminal Code</i> (WA). At the appeal hearing, counsel for the appellant emphasised that the period of offending was relatively short. He submitted that the brevity of the ordeal should have been reflected in the sentence. However long the ordeal lasted, it was certainly long enough for the appellant to sexually penetrate the victim without her consent in the circumstances outlined above. Counsel for the appellant also submitted that the offence was of a less serious nature because the parties had previously been in a consensual sexual relationship. That is not a mitigating factor.</p> <p>At [100] There is no requirement, even where multiple offences arose out of a single transaction, that concurrent sentences be imposed.</p>
15.	<b><i>Rehu v The State of Western Australia</i></b> [No. 2]	32 yrs at time offending. Convicted after PG.	Ct 1: Armed and likely to cause fear. Ct 2: Threats to kill. Ct 3: No MDL.	Ct 1: 1 yr imp. Ct 2: 2 yrs imp. Ct 3: 3 mths imp.	Dismissed – leave refused on papers.

	<p><b>[2013] WASCA 50</b></p> <p>Delivered 26/02/2013</p>	<p>Numerous prior convictions in WA including multiple burglaries, stealing etc. Previously served terms of imp. Also prior convictions in VIC and QLD.</p> <p>Poor compliance with previous suspension.</p> <p>Ceased schooling at 13 yrs and used drugs since then.</p> <p>Unemployed and receiving sickness benefit.</p> <p>Suffers from asthma, some fused vertebrae and experiences back pain.</p> <p>Under the influence of amphet at the time of committing Cts 1-3.</p>	<p>Ct 4: Stealing</p> <p><u>Ct 3</u> The appellant drove a motor vehicle while he had no authority to drive. At the time he had been disqualified for life, on two occasions, from holding or obtaining a driver's licence.</p> <p><u>Ct 4</u> The appellant and co-offender (his partner) went to an IGA store in Silver Sands. They selected grocery and household items, which they concealed in the pockets of their clothes. At the checkout they presented only one item for payment. They were taken to an area at the back of the store and asked to remove the other items from their pockets. The appellant produced a container of sour cream. He then ran to a roller door which was fitted to the external wall. The store manager attempted to detain him, but the appellant opened the roller door and ran away. The manager then closed the roller door.</p> <p><u>Ct 1-2</u> A few minutes later, the appellant returned to assist his co-offender in escaping from the store. He opened the roller door. The appellant held a 30cm hunting knife in his right hand. He approached several employees of the store including the store manager's wife and two teenage sons. When he was about a metre from them, the appellant waved the knife in a menacing manner and said "You cunts I'll kill you". The group retreated because they</p>	<p>Ct 4: 1 mth imp.</p> <p>Ct 4 cum on Ct 2. Other sentences conc on each other and Ct 2. TES 2 yrs 3 mths imp.</p> <p>EFP.</p>	<p>At [24] A threat unlawfully to kill will be more serious if it is made in circumstances where the offender has a present ability to carry out the threat.</p> <p>At [35] The appellant's offending in relation to Count 2 was serious. There was little by way of mitigation apart from his plea of guilty.</p>
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			believed that the appellant intended to carry out his threat. The appellant and his co-offender then ran from the store.		
14.	<p><i>Quigley v The State of Western Australia</i></p> <p>[2013] WASCA 9</p> <p>Delivered 18/01/2013</p>	<p>23 yrs at time offending. 24 yrs at time sentencing.</p> <p>Convicted after late PG – PG to ct 1 on first day of trial; PG to cts 2-5 on second day of trial.</p> <p>Extensive prior criminal record – carry article with intent to cause fear; trespass; unlawful damage (multiple); obstruct public officer (multiple); criminal damage (multiple); stealing; poss things for graffiti (multiple); breach SIO; agg armed robbery (multiple); burg; accessory after the fact; fail obey order; stealing.</p> <p>Youngest of three children; parents divorced when appellant aged 14 yrs; mother mentally unwell and heavy drinker; good relationship with father.</p> <p>Poor employment history.</p> <p>Educated to yr 9.</p> <p>Entrenched history drug and alcohol abuse underpinning offending behaviour; current partner does not abuse drugs or alcohol as previous partners have.</p>	<p>Ct 1: Stealing. Ct 2: Armed and likely to cause fear. Ct 3: Armed and likely to cause fear. Ct 4: Threats to kill. Ct 5: Threats to kill.</p> <p>Appellant and two co-offenders entered a liquor shop and drew the Manager’s attention by appearing to be interested in stealing items. The manager carefully watched the appellant and co-offenders until the appellant challenged the manager. The Manager asked them to leave and the appellant grabbed a bottle from the shelf. The manager removed the bottle from the appellant’s hand and the bottle was broken in the ensuing struggle. A security guard then intervened. As the appellant was being escorted from the store, he grabbed the security guard’s neck tags and keys. The keys and tags were retrieved from the appellant. While this was happening, a co-offender stole a bottle of wine (ct 1). The security guard realised the wine had been stolen and pursued the appellant as he left. Another security guard approached the store and both security guards then gave chase to the appellant and the two co-offenders. The appellant became aggressive and began shouting and wielding the wine bottle, raising and swinging it at the security guards. The security guards began to move away so as not to inflame the situation and the appellant</p>	<p>Ct 1: \$200 fine. Ct 2: 12 mths imp. Ct 3: 12 mths imp. Ct 4: 14 mths imp. Ct 5: 14 mths imp.</p> <p>TES 28 mths imp.</p> <p>EFP.</p> <p>High risk re-offending; no remorse; minimised offending behaviour; some efforts at rehabilitation since arrest.</p>	Dismissed – leave refused on papers.



			<p>yelled to a co-offender “Give me a shank. Give me a shank”, knowing the co-offender had a knife in her purse. The security guards continued to move backwards as the co-offender threw a sheathed knife to the appellant. The appellant took the 19cm dagger from its sheath and began to move towards the security guards yelling he was going to kill them. A second co-offender yelled out that he had a dirty syringe and would stab the security guards with it. The appellant and two co-offenders then ran off, disposed of the knife and bottle and caught a train.</p> <p>Appellant did not co-operate with police, denied the most serious parts of the offending, lied and acted in rude and aggressive manner when being interviewed.</p>		
13.	<p><b><i>McLaughlin v The State of Western Australia</i></b></p> <p><b>[2012] WASCA 204</b></p> <p>Delivered 12/10/2012</p>	<p>37 yrs at time offending.</p> <p>Convicted after early PG.</p> <p>Prior criminal record – 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>Ct 1: AOBH.</p> <p>Cts 2 &amp; 3: Threats to kill.</p> <p>Ct 4: Arson.</p> <p>s 32 offence (poss controlled weapon).</p> <p>Appellant, who had been drinking alcohol, argued with 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</p>	<p>Ct 1: 1 yr 6 mths imp.</p> <p>Cts 2 &amp; 3: 10 mths imp each ct.</p> <p>Ct 4: 2 yrs 10 mths imp.</p> <p>6 mths imp.</p> <p>TES 4 yrs 8 mths imp.</p> <p>EFP.</p>	Dismissed – leave refused on papers.

		<p>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.</p> <p>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. Appellant set fire to the lounge chair and then left. Fire spread and \$30,000 damage was caused. After setting the fire, appellant left more violent and threatening text messages to victim 2.</p> <p>History of domestic violence during marriage</p>		
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			of appellant to victim 2 – although no convictions in that regard.		
12.	<p><i>The State of Western Australia v Cheeseman</i></p> <p>[2011] WASCA 15</p> <p>Delivered 19/01/2011</p>	<p>24 yrs at time offending.</p> <p>Convicted after fast track PG</p> <p>Prior criminal record – stealing; benefit by fraud; agg burg and stealing.</p> <p>History of violence - 2 yrs prior had been involved in a fight causing the death of the other party to the altercation - no charges were laid.</p> <p>Offending breached CBO (agg burg).</p> <p>Breached bail for these offences by failing to comply with residential requirement – remanded in custody.</p> <p>Respondent and victim 1 have 2 yr old child together; educated to yr10; good employment history.</p> <p>Suffered from anxiety and depressive disorder - on medication; psych report estimated slightly below average intelligence.</p> <p>Under influence alcohol and cannabis at time offending.</p>	<p>Ct 1: Dep lib. Ct 2: Dep lib. Ct 3: AOBH. Ct 4: Threat to kill.</p> <p>Respondent believed intimate relationship existed between his de facto (victim 1, 22 years) and victim 2 (20 years). Victim 1 and respondent separated at time offending.</p> <p>4 weeks after the separation, respondent met with victim 1 and victim 2. Spoke for awhile then victim 2 left premises, victim 1 remained with respondent. Victim 1 and respondent then went looking for victim 2, found her, spoke to her, and left again.</p> <p><u>Ct 1:</u> Respondent detained victim 1 in vehicle and drove to his home. Victim 1 attempted to escape to neighbours home, but respondent forced her back by putting his hand over her mouth and carried her back into his home, placed her on the lounge, then armed himself with a spear gun and loaded with a barbed spear.</p> <p><u>Ct 2:</u> When victim 2 arrived respondent pointed speargun at her and forced her to enter. Then demanded that mobiles be placed on the kitchen table. Victim 2 tried to leave but respondent pushed his left shoulder into victim 2's body to stop her. Respondent said 'no one</p>	<p>Ct 1: 12 mths imp. Ct 2: 12 mths imp. Ct 3: Fine \$1000 Ct 4: 2 yrs imp.</p> <p>\$1,000 fine imposed for breach CBO.</p> <p>TES 2 yrs imp susp 18 mths \$2,000 fine.</p> <p>Spent 120 days in custody prior to sentencing.</p> <p>Genuine remorse; accepted responsibility</p>	<p>Allowed.</p> <p>TES 18 mths imp substituted.</p> <p><u>Sentences on appeal:</u> Ct 1: 12 mths imp. Ct 2: 12 mths imp. Ct 3: 6 mths imp. Ct 4: 18 mths imp - reduced to recognise rehabilitative efforts since SIO imposed.</p> <p>Respondent and victim 1 had reconciled at time sentencing –erroneously identified by the sentencing judge as a mitigating factor. At [3] “<i>The hallmark of domestic or relationship related violence is the readiness of many victims to return to, or remain in, a relationship with perpetrator of the violence. The otherwise appropriate penalty should not be reduced because there is a return to the status quo that existed prior to the breakdown of the relationship which</i></p>

			<p>is leaving until I say so' and he was 'dying tonight' and would be taking someone with him. He looked directly at victim 2 while speaking.</p> <p><u>Ct 3:</u> Respondent then demanded victim 2 give her car keys, when victim 2 refused and tried to leave, respondent punched her left cheek with sufficient force to knock her down. He then picked victim 2 up by the throat and placed her on the ground facing him. Then hit her in the same area of her face causing her skin to split. Victim 2 suffered bruising (face, arm and groin), a laceration to her cheek and a non displaced fracture to her cheek.</p> <p><u>Ct 4:</u> Victim 2 then threw her keys onto the table. Respondent forced victim 2 onto a kitchen stool, pick up a loaded spear gun and pointed it at her chest. He then said he could shoot her in the chest now, then call the police, or call the police first, then shoot her in the chest. He also said 'You killed me, that's why I have to kill you'.</p> <p>Respondent eventually surrendered to police.</p> <p>Unprovoked assault over prolonged episode intimidation of victim 2 committed in the context of a domestic relationship with victim 1. Victim 2 suffered psychological difficulties as result of offending and moved towns to get away from respondent and his family.</p>		<p><i>precipitated the violence. It is also circular to rely on the return to the relationship status quo as the route to rehabilitation.'</i></p> <p>At [106] <i>"The usual sentencing disposition where a person is convicted of the offence of deprivation of liberty or the offence of threatening unlawfully to kill, where the offender is armed with a weapon and the offending is otherwise objectively serious, is a term of imprisonment to be served immediately"</i>.</p>
11.	<b><i>Royer v The State of Western</i></b>	30 yrs at time offending (victim 62 yrs).	1 x Agg burg. 1 x Deprivation of liberty.	5 yrs imp. 3 yrs imp.	Dismissed – 'severe' but reflective of criminality.

	<p><b>Australia</b></p> <p><b>[2009] WASCA 139</b></p> <p>Delivered 6/08/2009</p>	<p>Convicted after early PG. Prior criminal record – drugs; fraud; stealing; and burglary; no violent or sexual offending.</p> <p>History substance abuse.</p>	<p>1 x Threat to kill. 1 x Agg sex assault (digital pen vagina). 1 x Agg sex assault (digital pen anus). 1 x Agg sex assault (pen vagina with penis). 1 x Agg AOBH.</p> <p>Offending in worst category and ‘horrendous’ in nature - justify ‘something approaching the statutory maximum penalty’.</p> <p>Appellant separated from de facto of 3 years approx one week prior attack. Under influence of drugs and alcohol. Entered through unlocked door, went to victim’s bedroom and forced her onto bed. Removed clothes and tied up victim then placed pillow over victim’s face and digitally penetrated vagina. Turned victim onto her stomach, spat on her anus and inserted fingers. Both digital penetrations were repeated, used more than one finger each time and caused severe lacerations, bleeding and immense pain. Appellant masturbated to achieve erection and penetrated vagina until ejaculated. Struck victim on face, threatened to kill her if she told anyone and stole \$200 from purse before leaving. Victim was left naked and bound on her bed, eventually freed herself.</p>	<p>3 yrs imp. 8 yrs imp. 8 yrs imp. 8 yrs imp. 2 yrs imp.</p> <p>TES 16 yrs.</p> <p>EFP.</p>	<p>NB: original sentence, upheld by the Court of Appeal, was imposed whilst the transitional provisions were in force.</p>
10.	<p><b>The State of Western Australia v Bennett</b></p>	<p>46 yrs at time sentencing.</p> <p>Convicted after PG (not fast-track).</p> <p>Prior criminal record (WA and</p>	<p>Ct 1: Steal motor vehicle. Ct 2: Arson. Ct 3: Threat to kill.</p> <p>Very serious instance of offending.</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>Allowed.</p> <p>TES increased to 4 yrs 9 mths imp.</p>

	<p><b>[2009] WASCA 93</b> Delivered 18/03/2009</p>	<p>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>Substance/ alcohol abuse; mixed personality disorder, anti social and narcissistic traits.</p>	<p>Victim &amp; respondent in relationship.</p> <p><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.</p> <p><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 demolition and rebuilding. Respondent was picked up by police while running down the driveway away from the burning house.</p> <p><u>Ct 3:</u> Approx 1 week prior to cts 2 &amp; 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'.</p>	<p>EFP. Remorse; high risk re-offending.</p>	<p>EFP.</p> <p><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> <p>At [56] ordinarily a sentence of 2 yrs imp would properly mark out the seriousness of the offence of threatening to kill.</p>
<p>9.</p>	<p><b><i>Miller v The State of Western Australia</i></b></p> <p><b>[2009] WASCA 79</b></p> <p>Delivered 02/04/2009</p>	<p>31 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record - agg burg; assault.</p> <p>Substance abuse issues; lack of family support.</p>	<p>Ct 1: AOBH. Ct 2: Dep lib. Ct 3: Assault with intent to rob. Ct 4: Armed robbery. Ct 5: Stealing a motor vehicle. Ct 6: Threat to kill. Ct 7: Agg burg. Ct 8: AOBH. Ct 9: Agg burg.</p>	<p>Ct 1: 7 mths imp. Ct 2: 12 mths imp. Ct3: 30 mths imp. Ct 4: 41 mths imp. Ct 5: 7 mths imp. Ct 6: 7 mths imp. Ct 7: 30 mths imp. Ct 8: 5 mths imp. Ct 9: 12 mths imp .</p>	<p>Dismissed.</p>

		<p>Under influence methamphetamine use at the time of offence.</p> <p>PSR/ psych report suggested may have psychotic mental illness, and personality disorder causing fears of jealousy and abandonment – did not relieve moral culpability.</p>	<p>13 x s32 offences (arising from same facts). Appellant and victim in relationship and had been taking drugs for hours prior to offending.</p> <p>Appellant believed the victim was being unfaithful, was a prostitute and, as a result, wanted to kill her. Appellant forcefully removed victim from house and walked around the surrounding suburb for 3 hours. During this time the appellant attempted to steal a car. The appellant then succeeded in stealing a car and bankcard. At all material times the appellant was berating/ hitting victim, armed with knife, swung a blade at her, causing cuts to her hands, drove victim to bank and tried to force her to withdraw money using stolen bankcard. Victim escaped to nearby fast food outlet whose employees hid her. The appellant then broke into the fast food outlet by damaging premises and assaulted 2 employees.</p> <p>The appellant then got back into the car and was pursued by police, driving in excess of 140 km p/h. Appellant drove on wrong side of road, caused 4 separate traffic collisions involving six vehicles. Failed to assist the injured people in the collisions. When car was so damaged he could no longer drive it, he ran away.</p> <p>The appellant broke into another residence to steal another car.</p> <p>Police eventually located appellant, when interviewed he admitted the offences.</p>	<p>Sentence range loss demerit points – 12 mths imp.</p> <p>TES 7 yrs 5 mths imp. EFP.</p> <p>Remorseful; high risk of future violence.</p>	
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**Transitional Provisions Repealed (14/01/2009)**

<p><b>8.</b></p>	<p><b><i>The State of Western Australia v Turaga</i></b></p> <p><b>[2006] WASCA 199</b></p> <p>Delivered 5/10/2006</p>	<p>28 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record – armed robbery; agg sex pen (same victim).</p> <p>Offending breached parole (dep lib and agg sex pen w/o consent involving same victim).</p> <p>Alcoholic; history violent offending when intoxicated.</p>	<p>1 x Dep liberty. 1 x Threat to kill. 15 x Agg sex pen (includes digital, oral and penile pen of vagina; one penile pen of anus).</p> <p>Victim was respondent’s former wife – 3 children together. VRO in place. Reconciled briefly when appellant released on parole but separated at time of attack due to appellant’s alcoholism.</p> <p>Offending occurred over period approx 3 hrs – at [3] <i>‘horrible, humiliating and violent ordeal.’</i></p> <p>Respondent went to victim’s home at approx 5am, knowing she would not be there (living with her father and only returning to own home in afternoons and evenings to turn security lights on and off). Respondent hid bike so victim would not know he was there and used key to enter house. Victim came to house at approx 8.45am and as she walked down hall saw respondent sitting in chair in bedroom. Victim went to leave house. Respondent stopped her. Spoke for a short time before respondent became aggressive and pulled a knife from behind his back. Respondent put knife to victim’s throat and demanded she walk to the bedroom. Victim pleading not to rape her. Respondent told victim remove all clothes, threatening to ‘run the knife through her’ if refused. Respondent</p>	<p>4 yrs 6 mths each count.</p> <p>Owed 490 parole days.</p> <p>Total effective sentence 4 yrs 6 mths.</p> <p>EFP.</p> <p>Medium-high risk re-offending in a sadistic as well as sexual way.</p>	<p>Allowed.</p> <p><u>Sentences on appeal:</u> 8 yrs imp each first count penile pen, anal pen and oral pen. 3 yrs imp each other count oral or digital pen. 5 yrs imp each other count sex pen. 6 mths imp dep lib. 2 yrs 6 mths imp threat to kill.</p> <p>TES increased to 7 yrs 4 mths.</p> <p>EFP.</p> <p>NB: double jeopardy applied to State appeals (appropriate TES without this consideration 8 yrs 6 mths imp).</p> <p>At [12] no tariff for sexual offending but range 6 yrs-9 yrs single act penile pen vagina reaffirmed. Noted that 6 yrs often imposed after mitigating factors considered.</p>
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			<p>then committed 15 acts sex pen. During offending rubbed genitals on face and chest, cut her hair, made her crawl throughout house on hands and knees, demanded she dance for him and express pleasure at sexual assaults. Sex pen caused lacerations to victim's vagina (including one over 1cm in length) – speaks to force used.</p> <p>At [29] offending designed to '<i>demean, degrade and humiliate</i>'.</p>		
7.	<p><b><i>Tyler v The State of Western Australia</i></b></p> <p><b>[2005] WASCA 237</b></p> <p>Delivered 07/12/2005</p>	<p>29-30 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Significant prior criminal record - including offences of dishonesty and violence; no history of sexual offences.</p> <p>Disrupted childhood as a result of separated parents.</p> <p>Previous alcohol and drug abuse issues.</p>	<p>Ct 1: Sexual relationship child u 16 yrs. Ct 2: Agg burglary. Ct 3: AOBH. Ct 4: Threat to kill. Ct 5: Agg burglary.</p> <p>Cts 1 &amp; 2 unconnected to threat to kill and different victim to cts 3, 4 &amp; 5.</p> <p><u>Cts 3, 4 &amp; 5:</u> The victim was the appellant's former de facto partner - 2 yr old son together (present at time offending).</p> <p>The appellant pushed his way into the victim's home (ct 5).The victim sprayed the appellant with pepper spray. In retaliation, the appellant grabbed the victim by the throat and striking her (ct 3). The appellant, while choking the victim into unconsciousness, repeatedly stated "I'm going to kill you" (ct 4). The appellant ceased choking the victim when he became aware that their 2 yr old son was</p>	<p>Ct 1: 3 yrs imp. Ct 2: 18 mths imp. Ct 3: 2 yrs imp. Ct 4: 18 mths imp. Ct 5: 2 yrs imp.</p> <p>TES 6 ½ yrs imp.</p> <p>EFP. Medium/high risk of reoffending.</p>	<p>Dismissed.</p> <p>Presence of 2 yrs old child aggravated the threat to Kill and AOBH.</p>

			standing near-by and visibly upset. The appellant left, stealing the victim's mobile phone.		
6.	<i>Etheridge v The Queen</i>  [2004] WASCA 152  Delivered 23/07/2004	38 yrs at time offending.  Convicted after trial.  Prior criminal record - breaking and entering; stealing; possession of an unlicensed firearm; various traffic offences. Most convictions pre-dated this offending by 10 yrs.  Separated from his wife.  36 pending charges at time sentencing.	Ct 1: Threat to kill. Ct 2: Assault public officer.  <u>Ct 1:</u> Police found appellant slumped in the front seat of unlicensed vehicle. Police attempted to arrest appellant and asked him to step out of the car. Appellant refused. Police threatened to smash his rear window if he continued to refuse so as to be able to remove the appellant from the car. Appellant said to officer that he would 'blow his fucking head off' if he smashed the windscreen. Appellant also tried to pick up a replica revolver from under the seat of the car. <u>Ct 2:</u> When asked to remove his jewellery at the station the appellant refused and then assaulted a constable by biting him on the thigh, twisting his finger and then biting him on the edge of the palm of his right hand breaking officer's skin. Officer had to punch appellant 3 times to break his grip.	Ct 1: 18 mths imp. Ct 2: 18 mths imp.  TES 2 yrs imp (6 mths breach bail ordered to be served cumulatively).  EFP.  High prospect of re-offending; no remorse or acceptance of actions.	Dismissed.
5.	<i>The State of Western Australia v Anderson</i>  [2004] WASCA	31 yrs old at time offence.  Convicted after fast-track PG.  Prior criminal record – AOBH; unlawful wounding; GBH; 24 previous	Ct 1: AOBH s317. Ct 2: Threat to kill.  Categorised as close to the worst of its kind. Victim and respondent in de facto relationship.	Ct 1: 18 mths imp. Ct 2: 18 mths imp.  TES 18 mths imp.  Not EFP.	Allowed.  TES increased to 2 yrs imp.  <u>Sentences on appeal:</u> Ct 1: 2 yrs imp.

	<p><b>157</b></p> <p>Delivered 01/06/2004</p>	<p>convictions' for less serious offences involving violence; previously imprisoned for assaults against his former de facto.</p> <p>Mainly unemployed.</p> <p>History of alcohol abuse.</p> <p>2 children from previous de facto relationship in which alcohol related domestic violence had been a feature.</p>	<p>The respondent found the victim partially clothed in bed with another man. The respondent dragged the victim out of bed, and the continued to drag her 200 m down the street whilst repeatedly hitting her body with a steel stake he had removed from the ground. He ripped the victim's bra from her and threw it to the ground. The respondent grabbed the victim's throat and said repeatedly 'I'm going to kill you'.</p> <p>A vehicle approached and respondent released victim. They both then got a lift back to the house in the vehicle and fell asleep. Victim attended Aboriginal Medical Service in morning.</p> <p>Victim sustained bruising to left lower leg, right upper leg, right and left legs, left cheek, right shoulder and centre of head. Abrasions from being dragged, lacerations above right eye, centre of lower back and back of left hand.</p>	<p>Poor response to prior supervision and failure to report; previously completed anger management and substance abuse programs during imprisonment but continued to offend after release.</p>	<p>Ct 2: 2 yrs imp.</p> <p>Error to reduce sentence to compensate for no parole order.</p> <p>NB: double jeopardy applied to State appeals.</p>
<p><b><i>Transitional Provisions Enacted (31/08/2003)</i></b></p>					
<p><b>4.</b></p>	<p><b><i>Penny v The Queen</i></b></p> <p><b>[2002] WASCA 235</b></p> <p>Delivered 28/08/2002</p>	<p>Prior criminal history with some violent offences</p> <p>In a stable relationship.</p>	<p>1 x Threat to kill.</p> <p>Particularly serious example of the offence.</p> <p>Appellant and victim became involved in verbal altercation. The appellant left, and went to a friend's unit. The victim went</p>	<p>5 yrs imp.</p> <p>TES 5 yrs imp. Equivalent to 3 yrs 4 mths imp after implementation of transitional provisions.</p> <p>EFP.</p>	<p>Appeal dismissed.</p> <p>At [21] the sentencing judge was entitled to make a finding regarding the appellant's intention to inflict significant injury upon the victim - it is an aggravating factor, not a</p>

			<p>looking for the appellant and found him. The appellant took two knives and set upon the victim who tried to run away. The appellant tripped the victim over, held the knives near his head and threatened to kill him with the knives. Appellant's ability to carry out threat was aggravating factor. The victim managed to avoid being injured by holding onto appellant's wrists - otherwise would have suffered significant injury. Victim escaped when appellant was interrupted.</p>	Limited insight into offending.	statutory circumstance of aggravation, and is relevant to sentencing.
3.	<p><i>Payne v The Queen</i></p> <p>[2002] WASCA 186</p> <p>Delivered 17/07/2002</p>	<p>54 yrs at time offending.</p> <p>Convicted after PG.</p> <p>No prior criminal record.</p> <p>Distinguished career in British and Australian Armed Services; awarded Order of Australia.</p> <p>Diagnosed mental illness which affected judgment at time offending such that appellant not capable making informed or logical choices or rationalising consequences of his actions; illness fell short of rendering appellant incapable of knowing what he was doing was wrong or making his acts involuntary but was nonetheless causative of offending to a significant degree.</p>	<p>1 x Extortion. 1 x Kidnapping. 2 x Threats to kill.</p> <p>Offending categorised on appeal as near the top of the range of seriousness.</p> <p>Appellant demanded \$2,000,000 from Burswood Casino under threat that failure to pay would result in the detonation of explosive devices in the resort and casino capable of injuring anyone within a 50 foot radius of the devices.</p> <p>Following the initial letter of demand, the appellant rang the casino switchboard and used a pre-arranged code to establish his authenticity. Appellant then provided instructions as to how the money should be delivered to him. An undercover police officer (UCO) played the role as courier for this purpose and followed the appellant's</p>	<p>6 yrs imp. 6 yrs imp. 4 yrs imp each ct.</p> <p>TES 12 yrs imp. Equivalent to 8 yrs imp after implementation of transitional provisions.</p> <p>EFP.</p> <p>Remorse; full acceptance of responsibility.</p>	<p>Dismissed.</p> <p>At [36]-[50] Discussion as to the place mental illness plays in sentencing and how to balance that against the objective seriousness of the offending itself.</p>

		Married; 3 adult children.	<p>instructions. Eventually, the UCO was met by the appellant. The appellant was dressed in dark clothing, hooded jacket and camouflage plait and was armed with a semi-automatic weapon and grenade. The gun and grenade were later found not to be genuine but the UCO believed they were real at all times. The appellant threatened to shoot and kill the UCO and then told him to drive to a shopping centre. The appellant then ordered the UCO to take the money out of the parcel and put them in his bag. The UCO was then ordered to drive to a nearby location where the appellant called the casino from a payphone to make sure they knew if an attempt was made to catch him, the UCO would be shot in the head. The appellant also made the UCO drink a liquid he said contained a sleeping drug under threat of being shot. After drinking the liquid, the UCO was ordered to walk along a creek bed, take off his clothes and run back to the vehicle with the warning that if he looked back he would be shot. UCO ran back to the car and drove off – he was intercepted by police and taken to hospital, the liquid he was forced to drink doing him no harm.</p> <p>Appellant was arrested a few days later when he returned to the area he was last at with the UCO. The reasons for his return were not fully clear.</p>		
2.	<b><i>R v Starr</i></b>  <b>[1999] WASCA 119</b>	<p>Convicted after fast-track PG.</p> <p>Prior criminal record - no previous convictions for sexual offences.</p>	<p>Ct 1: Sex pen de facto child. Ct 2: Sex pen de facto child. Ct 3: Indecent dealing child u 13 yrs. Ct 4: Dep lib.</p>	<p>Ct 1: 5 yrs imp. Ct 2: 5 yrs imp. Ct 3: 1 yr imp. Ct 4: 1 yr imp.</p>	<p>Allowed.</p> <p>TES increased to 10 yrs imp.</p>

	<p>Delivered 02/08/1999</p>	<p>History of alcohol abuse.</p>	<p>Ct 5: AOBH. Ct 6: Threat to kill.</p> <p>Threat to kill in worst category, particularly serious example (due to age of victim). Victim 1 was the respondent's de facto daughter, aged 14 yrs at the time of offending. Victim 2 was a friend of the respondent's daughter, aged 9 yrs at the time of offending.</p> <p><u>Cts 1 &amp; 2:</u> The respondent engaged in sexual intercourse with victim 1.</p> <p><u>Ct 3:</u> Victim 2 was staying at the respondent's house. The respondent woke her in the night. He removed her pants, and rubbed his erect penis against Victim 2's leg.</p> <p><u>Ct 4:</u> Victim 2 became upset after the commission of Ct 3 and attempted to run away. The respondent threw a knife at her (causing superficial cut on her hand). When Victim 2 fell over when running, the respondent jumped on top of her, filled her mouth with sand, and told her he would break her neck.</p> <p><u>Ct 5:</u> The respondent took Victim 2 to his car and struck her twice on the back with a spanner (causing swelling and tenderness).</p> <p><u>Ct 6:</u> The respondent then took a long chain from the back of the car and threatened to hang Victim 2 from a tree branch. The respondent created a noose with the chain which he hung</p>	<p>Ct 5: 1 yr imp. Ct 6: 2 yrs imp.</p> <p>TES 7 yrs imp. Equivalent to 4 yrs 8 mths imp after implementation of transitional provisions.</p> <p>EFP.</p> <p>Aggravated by steps taken to carry out the threat.</p>	<p>EFP.</p> <p><u>Sentences on appeal:</u> Ct 6: 2 yrs imp to 5 yrs imp. Other sentences undisturbed.</p> <p>Making the threat is the offence – it is not required to prove an intention to carry out the threat. If this intention is established it is an aggravating factor to be considered in sentencing.</p> <p>NB double jeopardy applied to State appeals.</p>
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			from the tree, and directed Victim 2 to stand on a near-by refrigerator next to the chain. He ordered Victim 2 to put the chain noose around her neck and pushed her off the refrigerator. The victim began to choke, but managed to free herself.		
1.	<p><b>Green v R</b></p> <p><b>Supreme Court</b> <b>Library No</b> <b>BC9506560</b></p> <p>Delivered 08/11/1995</p>	Convicted after trial.	<p>Ct 1: Threat to kill (two police officers). Ct 2: Assault police officer. Ct 3: Assault police officer.</p> <p>Two police officers were looking for a suspect in a break and enter and attended the appellant's residence. The appellant answered the door and said the person of interest was not there. Later that day the two police saw the appellant travelling in a car and spoke to the appellant from their car. The appellant said 'you cunts are only picking on me because I'm black. Fuck off'. The appellant also said "Fuck off. I've had enough. I'll kill you cunts. I'll fucking kill you" (Ct 1).</p> <p>Appellant returned home and assaulted the officers as they tried to arrest him (cts 2 &amp;3).</p>	<p>Ct 1: 1 yr imp. Ct 2: 1 yr imp. Ct 3: 1 yr imp.</p> <p>TES 2 yrs imp. Equivalent to 16 mths imp after implementation of transitional provisions.</p> <p>EFP.</p>	Dismissed.