

Arson, Breach of Duty by Person in Control of Ignition Source or Fire and Light Fire Likely to Injure

ss 444 & 445A *Criminal Code*
s 32(2) *Bush Fires Act*

From 1 January 2014

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

agg	aggravated
att	attempted
AOBH	assault occasioning bodily harm
burg	burglary
cir	circumstances
conc	concurrent
cum	cumulative
ct	count
dep lib	deprivation of liberty
GBH	grievous bodily harm
imp	imprisonment
PG	plead guilty
susp	suspended

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
14.	<p><i>Abraham v The State of Western Australia</i></p> <p>[2020] WASCA 192</p> <p>Delivered 16/11/2020</p>	<p>20 yrs at time offending. 21 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Very limited criminal history; prior convictions for fraud, stealing and traffic offences; previous offending punished by fines.</p> <p>Good childhood; close-knit family; raised by his grandparents from 2 yrs; parents substance issues and involved in criminal justice system and not involved in his childhood.</p> <p>Completed yr 12; enrolled TAFE, withdrew after a couple of wks.</p> <p>Intermittent employment; unemployed at time of PSR.</p> <p>Relationship time of sentencing; partner history of illicit drug use; no children.</p>	<p>Ct 1: Steal motor vehicle. Ct 2: Arson.</p> <p>Abraham attended a house party. In the early hrs of the morning he located the keys to a motor vehicle parked at the home and drove it without the owner's consent.</p> <p>Later Abraham parked the vehicle. Ripping a strip of fabric from his t-shirt he placed it into the vehicle's fuel intake. He then lit the fabric, partly protruding from the fuel intake.</p> <p>Abraham left the scene in another vehicle.</p> <p>Several hrs later the vehicle was located completely burnt.</p> <p>Some six mths later Abraham was arrested. He declined to participate in a video interview with police.</p>	<p>Ct 1: 12 mths imp (conc). Ct 2: 15 mths imp (conc).</p> <p>TES 15 mths imp.</p> <p>EFP.</p> <p>The sentencing judge concluded 'the seriousness of the offence of arson [was] such that ... a susp or a conditionally susp imp, partial or otherwise, ... order would simply not be an appropriate sentencing option'.</p> <p>Limited insight into his offending behaviour; attributed his criminal behaviour to alcohol abuse; commenced substance abuse counselling; elevated risk of reoffending.</p>	<p>Dismissed - on papers.</p> <p>The appeal concerned type of sentence.</p> <p>At [47] In the present case, the appellant's offending, especially in relation to ct 2, was serious.</p> <p>At [49] ... we are of the opinion that it was reasonably open to the sentencing judge to fail to be satisfied that it was inappropriate to impose conditionally susp imp. His Honour was entitled to be positively satisfied that it was not appropriate to conditionally susp the term of imp he imposed for ct 2. The sentence for ct 2 was not unreasonable or plainly unjust.</p>

		Commenced using alcohol and cannabis aged 18 yrs; methyl and ecstasy use; ceased cannabis use; reduced alcohol intake after current offending.			
13.	<p><i>Campbell v The State of Western Australia</i></p> <p>[2020] WASCA 131</p> <p>Published 20/08/2020</p>	<p>19 yrs at time offending. 20 yrs at time sentencing.</p> <p>Convicted after early PG (22% discount).</p> <p>No prior criminal history.</p> <p>Normal childhood; free of trauma or bad influences within the home.</p> <p>Supportive family.</p> <p>Diagnosed with ADD at a young age; medicated for the condition.</p> <p>Bullied at school; few friends; suffered moderate levels of depression and anxiety; assessed as having a mild cognitive impairment; significant learning and social difficulties; difficulties with literacy and numeracy; uses a hearing aid.</p>	<p>1 x Wilfully lit fire under circ likely to injure or damage.</p> <p>Campbell was a volunteer fire fighter. In the 24 hrs prior to the offence he attended and helped to extinguish 6 separate fires that had started along a 14 km stretch of road.</p> <p>The offence occurred on a mild January afternoon, the fire danger rating was low to moderate and there was no strong wind.</p> <p>Campbell spoke via a poor signalled audio call to a friend who heard him say something about a turn-off, which intersects with the road on which the earlier fires had started.</p> <p>A short time later a truck driver approached the intersection. He saw Campbell standing there alone. Campbell told him 'Some bugger has lit a fire'. The driver could not see or smell any fire or see any burnt ground anywhere nearby. The driver drove away.</p> <p>Campbell then lit a fire on the road verge near the intersection. He was in his employee's vehicle, that could be used for extinguishing fires. The fire was a small fire and he commenced putting it out.</p>	<p>12 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant was very well aware of the risks in lighting a fire in January; the wind could change; it was a rural environment, with paddocks; the fire was lit near trees; it was dry and a grass fire can move very, very quickly.</p> <p>The sentencing judge took into account the fire was small; the risk was less than if the conditions that day had been high; but the risk was not slight; the fire was lit at a time when the land is dry and ready to burn and there was no guarantee he was going to be able to put it out.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence.</p> <p>Resentenced to 9 mths imp; susp 12 mths with a programme requirement.</p> <p>At [39] ... the actual harm caused by the offence was negligible: a small amount of burnt grass on the roadside and in a paddock. Further, the seriousness of the offending, in terms of the risk of harm to persons and property, was reduced by the fact that ... the road verge area in which the fire was started was not heavily or densely vegetated, and was readily accessible to firefighters. ... The appellant did not leave the area after starting the fire. ... The appellant had firefighting equipment with him, which he could</p>

		<p>Removed from high school aged 14 yrs; attended agricultural college; more accepted and settled; remained until aged 17 yrs.</p> <p>Reasonable work history; good work ethic; employed as a farm hand; more recently as a cleaner.</p>	<p>A short time later Campbell spoke to his friend again and told him there was a fire at the turn-off. Minutes later firefighters arrived and he assisted them in putting the fire out.</p> <p>The fire was lit next to pasture which was yellow and dry. It burned a gum tree lined area of verge and got into the adjacent paddock.</p>	<p>and did use to help extinguish the fire. ... The fire was not started in proximity to buildings used for commercial or residential purposes.</p> <p>At [41]-[42] What was described as the appellant's 'mild cognitive impairment' must also be taken into account. ... The cognitive impairment was found to be causally linked to the appellant's offending. ... The ... impairment ... somewhat reduces the appellant's moral culpability for the offending. ... prison is likely to be a very difficult environment, having regard to his impairments and his experiences of bullying at school. Prison will be a more onerous experience for him than for a person without the appellant's cognitive and hearing impairments ...</p> <p>At [43] While the appellant's offending was undoubtedly serious, when account is taken of the</p>
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					nature and degree of risk of harm to persons or property, the offending was not so serious as to demand the immediate imp of a very young man of prior good character who suffered from the cognitive impairment described above. ... The decision to impose a term of immediate imp was unreasonable and plainly unjust.
12.	<p><i>NI v The State of Western Australia</i></p> <p>[2020] WASCA 78</p> <p>Published 22/05/2020</p>	<p>31 yrs at time offending.</p> <p>Convicted after PG (20% discount).</p> <p>No prior criminal history.</p> <p>Born Iran; difficult childhood; marked by significant discrimination and trauma; witnessed extensive violence between his parents and subjected to severe discipline by his mother.</p> <p>Supportive family and friends.</p> <p>Immigrated to Australia with family aged 18 yrs.</p>	<p>Ct 2: Att fraud. Ct 3: Arson.</p> <p>NI operated his own business, which he ran from a property he rented from his co-offender Mr Pourzand.</p> <p>The business was not doing well and NI had substantial debts. Mr Pourzand indicated he could help him out with his problem as he wanted to set fire to the building. NI refused.</p> <p>Mr Pourzand continued to approach NI about committing arson. On two occasions NI covertly recorded his discussions with Mr Pourzand, in which he gave NI instructions as to how to go about committing the offence.</p> <p>NI purchased and paid for in cash items for the purpose of committing arson, including citronella, a sash cord and candles and personal protective</p>	<p>Ct 2: 8 mths imp (cum). Ct 3: 4 yrs 4 mths imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending, in respect of both offences, were at the upper end of the scale of seriousness; the appellant was a principal offender in relation to the arson; and an aider in relation to the att fraud.</p> <p>The sentencing judge found that while the</p>	<p>Dismissed.</p> <p>Appeal concerned plea discount and error of fact (estimated cost of damage sustained).</p> <p>At [78] ... there is no warrant for this court to interfere in the exercise of the discretion invested in the sentencing judge by s 9AA of the <i>Sentencing Act</i>.</p> <p>At [97] The sentencing judge approached the case on the basis that the damage to the ... building was 'in the millions of dollars, and the building may be unusable'. This is</p>

		<p>Excelled in study and employment opportunities.</p> <p>Single; no dependants.</p> <p>No substance abuse issues.</p>	<p>equipment.</p> <p>One evening NI attended the building where he laid out the sash cord between furniture piled together at various locations. He soaked the cord with citronella. He then turned off the electricity and removed the CCTV recording devices before lighting the fire.</p> <p>The fire spread throughout the two-story building causing extensive damage, rendering it unstable, unusable and likely to be demolished.</p> <p>The damage was estimated to be between \$14.4 million and \$19.9 million.</p> <p>The next day Mr Pourzand submitted an insurance claim. His insurer did not pay on the claim and he later withdrew it.</p> <p>The cost to the DFES was approx \$38,000.</p> <p>NI was interviewed by police. He initially denied the offence, however made full admissions and implicated himself in the att fraud in a second interview.</p>	<p>appellant's criminal responsibility was less than Mr Pourzand his contribution was crucial.</p> <p>The sentencing judge found the appellant's criminal responsibility did not stop the moment he left the building, which was on fire; he continued to be a party to the att fraud and he did nothing to prevent it or to bring the truth to light until charged.</p> <p>The sentencing judge found the arson offence aggravated in that it was premediated and involved a great deal of planning; it was committed as part of a plan to commit fraud for a very substantial sum; the appellant was motivated by the promise of a significant financial benefit; the damage caused to the building was very substantial and amounted to the destruction of a very valuable property; and emergency service</p>	<p>an accurate assessment of the scale of the damage caused by the fire, whether the range of reinstatement estimates in the RBB report or the Taylor report are adopted. ... There is nothing in the material before the court to lead to the conclusion that either estimate is unreasonable, based on the qualifications and assumptions contained in the respective reports. ...</p> <p>At [98] ... the quantification of the actual cost, or range of costs, of reinstating the ... building has very little significance for the assessment of the criminality involved in the appellant's offending.</p> <p>At [99] ... we are not satisfied that the absence of the RBB report in the sentencing proceedings gave rise to any miscarriage of justice.</p> <p>At [116] ... [The appellant] had discussed with Mr Pourzand how and</p>
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				<p>officers were unnecessarily put at risk.</p> <p>The sentencing judge found the att fraud aggravated by the size of the claim the appellant believed would be made and the planning and degree of deception.</p> <p>Appellant found to be vulnerable to manipulation; remorseful; cooperative; realised the seriousness of his offences.</p>	<p>when the offence would be committed, and for what purpose. The offending was far from an impulsive act on the appellant's part. There was no error in the sentencing judge referring to the appellant's involvement in the planning of the offence as an aggravating factor.</p> <p>At [126] ... The sentencing judge correctly recognised that the seriousness of the appellant's offending was such as to make suspended or conditionally suspended sentences inappropriate sentencing options. ... it was not open to the sentencing judge to suspend or conditionally suspend the appellant's sentences.</p>
11.	<p><i>Biruta v The State of Western Australia</i></p> <p>[2019] WASCA 52</p> <p>Published 02/04/2019</p>	<p>50 yrs at time offending. 51 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Minor criminal history; two prior convictions for dishonesty offending.</p>	<p>Ct 1: Arson. Ct 2: Fraud.</p> <p>Biruta was struggling to repay a credit card debt. She and two co-offenders, her son Ferritto-Di Franco and Dulson, formed a plan to destroy her car so she could claim the insurance money.</p> <p>Biruta drove her vehicle to a hospital where she was to be admitted for treatment, parking it in the</p>	<p>Ct 1: 2 yrs imp (cum). Ct 2: 8 mths imp (cum).</p> <p>TES 2 yrs 8 mths imp.</p> <p>EFP.</p> <p>The sentencing judge noted the seriousness of arson offences and found</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned length of sentence for ct 1; totality and parity principles.</p> <p>At [38] While the appellant's offence was by no means the most serious example of an offence of</p>

		<p>Happy and pro-social upbringing; very close family; no violence, drug use or dysfunction.</p> <p>Left school aged 14 yrs.</p> <p>Married; separated 11 yrs; three children; one aged 15 yrs time offending.</p> <p>Employed part-time prior to workplace injury after offending; on worker's compensation at time sentencing.</p> <p>Significant financial troubles leading up to offending.</p> <p>Good physical health; suffers from and medicated for depression and anxiety.</p>	<p>hospital's carpark. Later that day the two co-accused visited her in hospital, where she gave Ferritto-Di Franco the keys to her car, knowing he intended to take it and destroy it by setting it on fire.</p> <p>Ferritto-Di Franco drove Biruta's car from the hospital carpark. Dulson followed in her car. Ferritto-Di Franco later drove the car to a semi-rural area where he doused it in petrol and set it on fire. Dulson remained close by in her car and then drove him from the scene.</p> <p>The car was completely destroyed.</p> <p>The next day, Biruta reported her car stolen to police. She also informed her insurer and commenced an insurance claim.</p> <p>During an interview with a representative of her insurer Biruta indicated she did not know who had taken her car and that she had no involvement in either its theft or damage.</p> <p>She was later interviewed by a private investigation company and denied any involvement in the theft of her car or to engaging a third party to take it.</p> <p>Biruta received an insurance payment of \$11,782.98 for her car.</p>	<p>the appellant deliberately targeted her own vehicle to obtain a financial benefit; the offending was premeditated; she acted as leader and instigator, in concert with her 19 yr-old son and she alone made the claim for insurance as a calculated and premeditated act of dishonesty.</p> <p>The sentencing judge found the appellant involved others, including her son, for the sole purpose of benefiting herself financially and she maintained her deception when interviewed.</p> <p>The sentencing judge found the appellant to be significantly more culpable than her son; she was the architect of the plan and the beneficiary of the fraud.</p> <p>Remorseful.</p>	<p>criminal damage by fire, it nevertheless exhibited serious elements. It was premeditated, done for commercial gain and done in concert with others.</p> <p>At [39] ... the appellant's sentence ... on ct 1 cannot be seen as manifestly excessive. To the contrary, it lies at the bottom of the range of sentences commonly imposed for less serious cases of arson, at a time before the max sentence was increased to life imp. ...</p> <p>At [42] Both the appellant and her son were sentenced on the basis that the appellant had led her son into committing the offences. That finding, of itself, amply justified the imposition of a higher sentence ... than was imposed on her son. Moreover, [her] son was 19 yrs old when he was sentenced, and thus had the significant mitigating benefit of youth. ... [Her] son also PG at an earlier</p>
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					stage, resulting in a high discount under s 9AA.
10.	<i>Hope v The State of Western Australia</i> [2019] WASCA 12 Published 16/01/2019	51 yrs at time of offending. Convicted after trial. No prior criminal history. Victim of serious crimes as a child; suffers continued adverse effects of this offending. Single; never married. History of paid employment; unemployed at time offending; in receipt of workers' compensation payout. Close to her mother and sister; no other close relationships. Significant chronic health problems; including severe dermatitis and allergies; experiences of depression, anxiety and stress; once attempted suicide.	Ct 1: Arson. Ct 2: Att fraud. Hope was living in a house with her sister. Both contributed to the mortgage and it was accepted they were joint owners of the property. The home and its contents were insured. A deliberately lit fire caused soot and smoke damage to the interior of the home. No charges were laid in respect of this fire. About a wk later Hope and her sister prepared to leave the house. Hope remained inside a short time while her sister waited for her outside. She set fire to items in her bedroom, then left the home, locking the house as she left. The fire spread through the house and emergency services attended. The fire caused significant damage to the house and its contents. A claim was made to the insurance company on the house and contents policy. Hope represented to the company that she did not know how the fire started. A payment was later made to her sister, but not to Hope.	Ct 1: 2 yrs imp (cum). Ct 2: 6 mths imp (cum). TES 2 yrs 6 mths imp. EFP. Sentenced on the basis that the lighting of the fire the subject of ct 1 was not the only occasion the appellant had set fire to the house. Low risk of reoffending; prison more onerous due to the appellant's physical and mental health.	Dismissed. Appeal concerned error in finding (appellant lit first fire) and type of sentence. At [56] ... it was well open to the learned sentencing judge, ... to be satisfied beyond reasonable doubt that the appellant was the person who caused the [first] fire ... There is no other reasonable inference open on the evidence adduced at trial. At [82] The ... sentencing judge correctly characterised the arson offence as 'a very serious crime'. ... the appellant deliberately caused the house to be damaged by fire. The property was in a built-up area and there was a risk of the fire spreading to other properties. ... the appellant's actions resulted in the need for fire and emergency services personnel to attend the house and place

					<p>themselves at risk in fighting a fire that was still burning.</p> <p>At [83] ... the earlier fire shows that the offence ... was not isolated and shows that the appellant was determined to carry out her wish to damage the house by fire. The offence could not be characterised as spontaneous. ... A serious additional aspect of the appellant's offending was that the appellant att to obtain ... half of the proceeds of the insurance claim. ...</p> <p>At [86] ... his Honour was right to conclude, ... that it was not open to him, in the circ, to impose a susp term of imp, and that the only appropriate sentence was immediate imp.</p>
9.	<p><i>Squance v The State of Western Australia</i></p> <p>[2018] WASCA 25</p> <p>Published</p>	<p>38 yrs time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Prior criminal history; offences of damage but not involving fire.</p>	<p>1 x Arson.</p> <p>In the early hrs Squance set fire to a commercial barge, using a canister of fuel. He then left the area.</p> <p>Emergency services extinguished the fire, but the barge and various tools and equipment were</p>	<p>3 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge observed the fire caused very significant damage; the use of an accelerant</p>	<p>Dismissed.</p> <p>Appeal concerned error of principle re appellant's mental illness and length of sentence.</p> <p>At [46] ... This was a</p>

	27/02/2018	<p>Unsettled and angry in childhood and adolescence; parents separated aged 2 yrs.</p> <p>Lived with father from aged 13 yrs; volatile relationship; became involved with drugs and negative peer groups; then homeless.</p> <p>Disruptive at school; suspended aged 16 yrs.</p> <p>Short-term periods of work in labouring and factory jobs; disability pensioner time of offending.</p> <p>Teenage daughter; raised by an aunt; both parents deemed unfit to care for her.</p> <p>TAFE studies 5-6 yrs prior to sentencing; failed to complete due to drug abuse.</p> <p>History of mental illness; diagnosed paranoid schizophrenic and co-morbid mental and behavioural disorder due to</p>	<p>extensively damaged.</p> <p>The cost of repairs and replacement of the damaged property was \$26,500. Loss of income approx. \$10,000.</p>	<p>and the real risk it could spread; it was lit in the early hours of the morning, when it might be expected to take longer for the fire to be detected and it was necessary for resources to be deployed to extinguish the fire.</p> <p>The sentencing judge noted the appellant's mental illness had been difficult to treat, partly because of the resistant nature of his schizophrenia and partly because of his resistance to compliance; need to protect the community and to ensure that persons are aware of the need to comply with treatment regimens put in place.</p> <p>Psychiatric report noted management and stability of his mental illness complicated by both substance use and disorganised lifestyle; poor insight into his mental illness; need for ongoing treatment; some symptoms of an enduring</p>	<p>relatively serious example of the offence of criminal damage by fire ... having regard both to the extent of actual damage caused and the damage which could potentially have been caused if the fire had spread further. The fact that the appellant started a fire in a public area in the early hours of the morning and then simply left the area for the fire to take hold, and potentially spread, is an agg feature of the offence.</p> <p>At [48] The appellant's mental illness is a mitigating factor which reduces his moral culpability and the significance of general deterrence as a sentencing consideration. However, the mitigating effect of the appellant's paranoid schizophrenia is counterbalanced by the imperative to impose a sentence which protects the community from future offending by the appellant. It is true that the appellant</p>
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		<p>substance abuse; mentally ill time of arrest.</p> <p>History of cannabis and methyl abuse; long history of alcohol abuse.</p>		<p>nature, unresponsive to treatment and likely to persist.</p>	<p>has not previously committed an offence of this gravity despite his long-standing mental illness. However, the medical evidence indicates that the appellant's uncontrolled mental illness was a significant factor in this arson offence. Combined with his history of poor compliance with treatment requirements and illicit drug use, this indicates a significant risk of future offending of the same general kind.</p>
8.	<p><i>Ashford v The State of Western Australia [No 2]</i></p> <p>[2016] WASCA 222</p> <p>Delivered 08/12/2016</p> <p>Published 19/12/2016</p>	<p>20 yrs at time offending. 21 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p> <p>Strong family support; no male role model.</p> <p>Struggled at school.</p> <p>Good work history.</p> <p>Use of alcohol and MDMA at time of offending; otherwise no history of</p>	<p>Ct 1: False belief. Ct 2: Arson. Ct 3: False belief.</p> <p>At the time of the offences Ashford was a volunteer bushfire fighter.</p> <p>Ashford called 000 and reported a fire, knowing the fire did not exist (ct 1).</p> <p>The same morning Ashford called 000 to report a fire. Immediately after making the call he set fire to bushland. He and other members of the bushfire brigade attended and spent about 10 minutes extinguishing the fire (ct 2).</p> <p>A few weeks later Ashford called 000 and reported a fire. He and members of the brigade</p>	<p>Ct 1: 6 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 6 mths imp (conc).</p> <p>TES 12 mths imp.</p> <p>The sentencing judge accepted the offending was at the lower end of the scale of seriousness. However agg by the fact he was a volunteer firefighter who knew the risks involved.</p> <p>The sentencing judge took into account the damage caused was negligible</p>	<p>Allowed.</p> <p>Appellant challenged type, not length of sentence.</p> <p>Re-sentenced to 9 mths imp, susp 9 mths.</p> <p>At [37] ... the unusual features of the appellant's offence placed it very much at the lower end of the range of seriousness of offending of this kind. That, combined with the appellant's personal circ, meant that a sentence of immediate imp was not</p>

		illicit drug use.	attended. No sign of any fire was found (ct 3).	and, given the weather conditions, the risk of a serious conflagration was much reduced. Remorseful; recognised his stupidity. Substantial positive steps taken towards rehabilitation. Negligible risk of reoffending.	open. At [38] The fire lit by the appellant caused very little damage ... The appellant lit this fire on a day ... on which more than 40 mm of rain had fallen. He called the fire brigade before or substantially at the time as he lit the fire ... the risks arising from the fire ... were of a substantially different magnitude to any ordinary case.
7.	<i>Suleiman v The State of Western Australia</i> [2017] WASCA 26 Delivered 20/09/2016	27 yrs at time offending. 28 yrs time sentencing. Convicted after early PG (25% discount). Minor criminal history; including possess and use of cannabis. Born in Kenya; no history of trauma or abuse; homeless as a child in Africa. Permanent resident since 2008; facing deportation on completion of sentence. History of on and off casual	Ct 1: Breach of duty by person in control of ignition source or fire. Ct 2: Agg burg. Ct 3: Damage. Suleiman had been in a relationship with the victim, who lived in a unit with their two children. Suleiman went to the unit and used petrol to set fire to his car parked at the premises. The fire destroyed the car, damaged the carport, and the exterior of the building suffered smoke damage. The fire threatened to spread to the unit, where he knew the victim and his children were inside. When igniting the petrol Suleiman suffered burns to his face and hands. Suleiman then broke a window of the house and climbed inside. The victim and the children took	Ct 1: 3 yrs imp. Ct 2: 3 yrs imp (to commence 1 yr after the sentence for ct 1). Ct 3: No penalty. TES 4 yrs imp. EFP. The sentencing judge took into account the appellant's mental illness, but was not satisfied he was suffering an acute relapse of his mental illness to the extent that his judgment was impaired.	Allowed. Appeal concerned procedural fairness relating to psychiatric illness. Resentenced: Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: No penalty. TES 2 yrs imp. EFP. At [35] ... in determining the appellant's mental state ... his Honour relied to a significant extent on his personal assessment of the

		<p>part-time employment; unemployed at time offending.</p> <p>7 yr relationship with victim; mother of his two daughters, aged 5 and 4 yrs.</p> <p>Homeless at time offending.</p> <p>Diagnosed paranoid schizophrenic; history of admittance to mental health clinic.</p> <p>Psychiatric report stated that the appellant had an acute relapse of his mental illness at the time of offending.</p> <p>Used cannabis since aged 10 and regular user of alcohol.</p>	<p>refuge in a bedroom.</p> <p>Inside Suleiman smashed numerous items, before forcing entry into the bedroom that the terrified victim and the children were hiding. He grabbed the victim's phone as she was speaking to police and smashed it. He then forcefully grabbed hold of his youngest daughter and attempted to leave the house with her. Neighbours intervened and persuaded him to hand over his daughter before assisting the victim and his eldest daughter.</p> <p>Suleiman left the scene but was arrested close by a short time later.</p>	<p>Remorseful.</p>	<p>appellant's appearance, and the manner in which the appellant conducted himself, in the electronically recorded interview</p> <p>At [48] ... the sentencing judge's failure to raise with defence counsel that his Honour was proposing to reject the State's concession in relation to [the psychiatrist's] report; and ... the basis on which he proposed to reject the State's concession, denied the appellant procedural fairness.</p> <p>At [49] ... the diagnosis of a mental illness requires expert evidence from a psychiatrist and is not to be made by the application of a non-expert's common-sense, rationality and experience.</p> <p>At [56] The only conclusion reasonably open, having regard to [the psychiatrist] reports, is that the appellant had suffered an acute relapse of mental</p>
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					illness at the time of the offending and that there was a causal connection between the relapse and the commission of the offences.
6.	<p><i>Harris v The State of Western Australia</i></p> <p>[2016] WASCA 34</p> <p>Delivered 19/02/2016</p>	<p>43 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Lengthy criminal history; offended after charged with this offence.</p> <p>Traditional Aboriginal from a large family.</p> <p>Irregular employment.</p> <p>User of cannabis since 14 yrs; alcohol and illicit substances, including amphetamines, since 21 yrs.</p> <p>Paranoid schizophrenic; compounded by illicit substance abuse and complicated by abuse of prescribed medication.</p>	<p>Ct 1: Burglary. Ct 2: Arson.</p> <p>Harris held anger and animosity toward the victim and decided to confront her at her home.</p> <p>Harris located a samurai sword and att to arm herself with it, with the intention of using it to injure the victim.</p> <p>At some point Harris ascertained that the victim was not at home.</p> <p>Harris then approached another and asked for a baseball bat or iron bar to assault the victim. This was refused.</p> <p>Harris returned and gained entry into the victim's house and deliberately lit some flammable material in a bedroom, which caught fire.</p> <p>The house was extensively damaged by fire.</p>	<p>Ct 1: 2 yrs imp. Ct 2: 4 yrs imp (conc).</p> <p>TES 4 yrs imp.</p> <p>EFP</p> <p>Sentencing judge considered mitigating factor to be the appellant's mental illness; however this did not deprive her of the capacity to differentiate between right and wrong.</p> <p>Appellant's lack of remorse and insight into her mental health and illicit drug problems. High risk of further offending and moderate risk of setting fires.</p>	<p>Dismissed.</p> <p>Appeal challenged length of sentence of arson offence.</p> <p>At [27] Although the offending involved no real planning it was deliberate and born out of anger and revenge. The appellant's mental state is a relevant mitigating factor, but it remains the fact that she knew that what she was doing was wrong. Her actions caused extensive damage and,, although there was no one else inside the house, fires in built-up areas have the potential to spread.</p> <p>At [28] The mitigation that could be given to the appellant's mental impairment was limited by the appellant's risk of reoffending; lack of insight</p>

					into her mental illness; and her entrenched illicit drug use.
5.	<p><i>IEB v The State of Western Australia</i></p> <p>[2015] WASCA 207</p> <p>Delivered 24/07/2015</p> <p>Published 15/10/2015</p>	<p>18 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Lengthy criminal history.</p> <p>Born in West Africa; spent most of childhood in a refugee camp.</p> <p>Using marijuana since age 14 and used synthetic cannabis.</p> <p>Suffers from paranoid schizophrenia and PTSD.</p>	<p><u>Indictment</u> 1 x Arson.</p> <p><u>Section 32 Notice</u> Ch 1: Breach of bail. Ch 2: Breach of CRO.</p> <p>IEB attended a residential house with a box of matches. No one was home.</p> <p>IEB went into the backyard, kicked a hole in the wall. He used the matches to light some unknown item and threw that inside with a view to setting the house on fire. He knocked another hole in the side wall, used the matches to light another item, and threw that item inside the opening. Part of the wall and roof structure caught fire, causing smoke and heat damage.</p> <p>Iwas arrested and released on bail. He subsequently failed to answer that bail (ch 1).</p> <p>The arson offence breached a CRO previously imposed by the Children's Court (ch 2).</p> <p>Police obtained a signed witness statement from IEB. He claimed he was paid \$200 by X to commit the indictable offence.</p>	<p><u>Indictment</u> 2 yrs 3 mths imp (conc).</p> <p><u>Section 32 Notice</u> Ch 1: 1 mth imp (conc). Ch 2: forfeiture of \$200.</p> <p>TES 2 yrs 3 mths imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>Re-sentenced to:</p> <p><u>Indictment</u> 16 mths imp (conc).</p> <p><u>Section 32 Notice</u> Not disturbed.</p> <p>TES 16 mths imp.</p> <p>EFP.</p> <p>At [7] ... the prosecuting counsel, the appellant's counsel and the sentencing judge were all unaware of the existence of a letter of recognition...</p> <p>At [24] The appellant's cooperation with police included, but went beyond, the provision of the witness statement. Indeed, the provision of the letter of recognition and its contents demonstrate that the appellant's cooperation was regarded by police as of actual and potential</p>

<p>4.</p>	<p><i>Stokke v The State of Western Australia</i></p> <p>[2015] WASCA 131</p> <p>Delivered 11/03/2015</p> <p>Published 25/06/2015</p>	<p>26 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Lengthy criminal history, including poss of drugs and criminal damage.</p> <p>Good relationships with parents and siblings.</p> <p>Using methyl since age 14; prone to binge drinking.</p> <p>Under influence of alcohol and methyl at time offending.</p> <p>At the time the appellant was sentenced, principal offender Kristien Stokke (appellant's brother) had not yet been sentenced. Kristien was convicted after PG for a number of offences and sentenced to TES 4 yrs 8 mths imp. Individual sentence for stealing was 7 mths imp (conc) and arson was 27 mths imp (conc).</p>	<p>Ct 1: Stealing. Ct 2: Accessory after the fact to arson.</p> <p>Stokke drove a Holden Commodore, without a valid driver's licence. His brother Kristien was a passenger. Stokke parked the Commodore next to a Holden Astra.</p> <p>Kristien got out of the Commodore and walked over to the Astra. Stokke remained seated in the Commodore. Kristien smashed the window of the Astra and transferred property, valued at \$2,650, to the Commodore. Stokke warned Kristien when strangers left the tavern and walked in their direction.</p> <p>Kristien walked back to the Astra and set fire to the car after realising he had left forensic evidence which might incriminate him. The fire destroyed the car, valued at \$12,300. Stokke was not aware that Kristien intended to commit the arson offence. Stokke immediately drove Kristien from the scene.</p> <p>Stokke lied to police to conceal his own involvement and that of his brother.</p> <p>CCTV footage recorded the offence.</p>	<p>Ct 1: 14 mths imp. Ct 2: 30 mths imp (start 6 mths after ct 1).</p> <p>TES 3 yrs imp.</p> <p>EFP.</p> <p>Disqualified from holding or obtaining driver's licence for 18 mths.</p> <p>Not premeditated; no remorse; unwilling to accept responsibility for conduct.</p>	<p>assistance.</p> <p>Allowed.</p> <p>Re-sentenced to: Ct 1: 7 mths imp (cum). Ct 2: 20 mths imp (cum).</p> <p>TES 2 yrs 3 mths imp.</p> <p>EFP.</p> <p>At [78] The individual sentence imposed upon the appellant for the offence of stealing was, in our view, high, but ... not... manifestly excessive.</p> <p>At [99] ... the correct approach to be taken to the parity principle is to have regard to the TES imposed upon the appellant, on the one hand, and Kristien Stokke, on the other hand, rather than merely the sentences that were imposed for the [stealing and arson] offences...</p> <p>At [103] Even taking into account the matters favourable to Kristien Stokke, it must be said that his overall criminality was</p>
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					much greater than the appellant's. In our opinion, the differences in their criminality is insufficiently reflected in the disparity of 20 mths imp in the TES they received.
3.	<p><i>Rimington v The State of Western Australia</i></p> <p>[2015] WASCA 102</p> <p>Delivered 29/05/2015</p>	<p>47 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Of previous good character.</p> <p>Led a blameless and hardworking life.</p> <p>Prior to offending, the appellant had separated from his wife and discussions had commenced regarding disbursement of assets.</p> <p>Suffered from depression at time offending; alcohol likely contributed to offending.</p> <p>Engaged counselling and taking antidepressants prior to sentencing.</p>	<p>4 x Arson.</p> <p>All offences occurred on the same date within a short period of time.</p> <p><u>Ct 1:</u> Rimington and his former wife effectively owned and controlled a business premises, situated in a unit. Rimington dispersed petrol within this unit, and ran a rope doused in fuel from the unit into the car park. He ignited the rope causing the unit to be engulfed by fire. The contents were destroyed. The replacement value of the contents totalled \$715,000.</p> <p><u>Ct 2:</u> The fire from ct 1 also caused extensive damage to the neighbouring unit and common fire wall. Cost of repairs totalled \$260,000.</p> <p><u>Ct 3:</u> Rimington went to a residential construction site of a future dwelling that was near completion. The property was effectively owned by his estranged wife.</p> <p>Rimington entered the house, dispersed petrol and fuel cans, and ran a trail of fuel from the house</p>	<p>Ct 1: 3 yrs imp. Ct 2: 3 yrs imp (conc). Ct 3: 3 yrs 9 mths (start 12 mths after ct 1). Ct 4: 4 yrs (start 12 mths after ct 3).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Offending involved some preparation; endangered the lives and safety of other people.</p> <p>Motive was to defeat his ex-wife's claim to the properties.</p> <p>Remorseful; good prospects of rehabilitation; low risk of reoffending.</p>	<p>Dismissed.</p> <p>At [77] ...when the maximum sentence for arson was 14 yrs, the range of sentences for an individual offence was up to 4 yrs 8 mths... the maximum sentence has been increased to life imp, indicating that sentences for the offence of arson should be increased from the previous range.</p>

			<p>into the front yard. He ignited the fuel which caused petrol vapours within the house to explode and parts of the house the catch fire. The building sustained heat, explosion and smoke damage. The cost of repairs totalled \$57,160.</p> <p><u>Ct 4:</u> Rimington returned to his home. He doused the house and contents in petrol, removed his housemate's belongings and then parked his car in the garage. He ignited a fuel trail running from within the house to the front yard. The vehicle, dwelling and entire contents were completely destroyed by the fire. The cost of the damage totalled \$460,000.</p>		
2.	<p><i>The State of Western Australia v Smith</i></p> <p>[2015] WASCA 87</p> <p>Delivered 04/05/2015</p>	<p>28 yrs at time offending; 30 yrs at time sentencing.</p> <p>Convicted of ct 1 after trial; convicted of ct 2 after PG.</p> <p>Prior criminal history, including AOBH and dishonesty offences.</p> <p>Dysfunctional childhood; witnessed domestic violence; parents separated when he was five; left home by age 14.</p> <p>Single; father of 7 yr old daughter; no contact with daughter.</p>	<p>Ct 1: Murder. Ct 2: Arson.</p> <p>Smith was homeless. The victim invited him to stay with him. The second night, Smith and victim drank alcohol at the victim's unit and had an argument.</p> <p>Smith launched an unprovoked, extremely violent and sustained attack on the victim. Using a coffee table leg, Smith repeatedly hit the victim on the head, face and arms, causing lacerations and haemorrhages to the head and a fractured nose and lower jaw. Smith used a knife to repeatedly stab the victim. He stabbed him in the back, which pierced his lung and caused internal bleeding. He cut the Achilles tendon on his left leg. Intending to kill the victim, Smith inflicted nine wounds to the victim's neck. Several of these wounds severed his jugular vein, which was the likely</p>	<p>Ct 1: Life imp. Min non parole period of 17 yrs.</p> <p>Ct 2: Arson: 4 yrs 6 mths imp (conc).</p> <p>Depression; antisocial personality; poor coping and problem-solving skills; anger management problems associated with episodes of rage in the context of alcohol abuse.</p> <p>Significant remorse; low risk of reoffending.</p>	<p>Dismissed.</p> <p>At [49]-[122] and [178]-[180] Discussion of comparative cases.</p> <p>At [184] In our opinion, the minimum term of 17 yrs was lenient. If we had been sentencing the respondent at first instance we would have imposed a higher non-parole period. However... we are not persuaded that the minimum term of 17 yrs was below the range open to his Honour on a proper exercise of the sentencing discretion.</p>

		<p>Supportive mother.</p> <p>History of substance abuse.</p>	<p>cause of death.</p> <p>Smith had no memory of killing the victim. His next memory after the argument is standing over the victim, who was covered in blood and not breathing. Smith covered the body with a blanket, showered and went to bed. The following morning he set fire to the unit, to conceal what he had done, and left. The unit was a ground floor unit in a double storey apartment building. The fire gutted the unit.</p> <p>Smith initially denied the offence. He later made partial admissions but maintained he had no memory of inflicting violence upon the victim.</p>		
1.	<p><i>Bordley v The State of Western Australia</i></p> <p>[2014] WASCA 18</p> <p>Delivered 24/01/2014</p>	<p>38 yrs at time offending.</p> <p>Convicted after early PG.</p> <p>Significant criminal record including convictions for property and dishonesty offences.</p> <p>Psychologically challenged childhood and adolescence.</p> <p>Immediately prior to offending, lived in a caravan park for 2 yrs and was completely socially isolated.</p> <p>Abused prescription and over the counter codeine-</p>	<p>1 x Wilfully lit a fire.</p> <p>Bordley deliberately set fire to bushland in 3 places over a distance of 500 m in a reserve adjacent to residential and commercial areas. It was a hot summer day with a very high fire danger. The bushland was traversed by public paths, a police station and local fire brigade.</p> <p>A total of 2.3 ha of bushland was burnt before the fires were brought under control by 5 units assisted by 5 police units and municipal officials.</p>	<p>22 mths imp.</p> <p>EFP.</p> <p>Premeditated.</p> <p>High risk of re-offending.</p>	<p>Dismissed – on papers.</p> <p>At [17] ... We were not referred to, and our own research has not unearthed, any cases under s 444 in the relevant period which are comparable.</p>

		<p>based medications and experienced withdrawal symptoms.</p> <p>At time of offending was experiencing an acute psychotic episode and symptoms of paranoia, anxiety and opiate dependence.</p>			
<p><i>Amendments to s 444 Criminal Code (19/12/2009)</i></p> <p>Maximum penalty increased to life imprisonment (previously maximum penalty was 14 yrs imp or, in circumstances of racial aggravation, 20 yrs imp). Definition of property extended to include vegetation.</p>					
<p><i>Transitional provisions repealed (14/01/2009)</i></p>					
<p><i>Amendments to s 444 Criminal Code (8/12/2004)</i></p> <p>Offence amended to include damage committed in circumstances of racial aggravation (max penalty 20 yrs imp).</p>					
<p><i>Transitional provisions enacted (31/08/2003)</i></p>					