

Deprivation of Liberty

s 333 Criminal Code

From 1 January 2014

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

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| agg | aggravated |
| att | attempted |
| AOBH | assault occasioning bodily harm |
| burg | burglary |
| conc | concurrent |
| cum | cumulative |
| ct | count |
| dep lib | deprivation of liberty |
| EFP | eligible for parole |
| GBH | grievous bodily harm |
| imp | imprisonment |
| PG | plead guilty |
| susp | suspended |
| TES | total effective sentence |
| VRO | violence restraining order |

| No. | Case | Antecedents | Summary/Facts | Sentence | Appeal |
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| 12. | <p><i>Bradbury v The State of Western Australia</i></p> <p>[2020] WASCA 214</p> <p>Delivered 18/12/2020</p> | <p>35 yrs at time offending. 37 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Significant criminal history; convictions for threats to kill; agg AOBH; being armed to cause fear and armed robbery.</p> <p>Offending committed within six wks from release from prison for other violent offending.</p> <p>Very significant difficult background; traumatic childhood; experienced sexual abuse; murder of his aunt at aged 12 yrs and suicide of an uncle aged 17 yrs.</p> <p>Supportive parents.</p> <p>Suffered chronic depression number of yrs.</p> <p>History of illicit drug use; cannabis, alcohol and methyl since aged 13 yrs.</p> | <p>Cts 1 & 2: Dep lib. Ct 3: Unlawful wounding. Ct 5: Agg armed robbery.</p> <p>The victim Hewitt acquired a car. One of Bradbury's friends was driving the vehicle when he was stopped by police because it was stolen. Bradbury and the co-offender, Lindsay, thought Hewitt should pay some form of compensation as a result of the police having detained Bradbury's friend.</p> <p>A couple of months later, on Bradbury's direction, Lindsay contacted Hewitt and arranged for him to urgently attend the address, where he and Bradbury were waiting. Hewitt, accompanied by the victim Pinker, arrived at the premises.</p> <p>Hewitt was seated when Bradbury entered the room and punched him in the face. Bradbury locked the back door and Lindsay sat next to Hewitt to ensure he did not try to leave.</p> <p>Hewitt was then subjected to an interrogation by Bradbury and Lindsay's partner. The interrogation was recorded on a mobile phone and included abuse and threats.</p> <p>After a protracted interrogation Bradbury stabbed Hewitt three times in the knee with a hunting knife.</p> <p>During the offending Bradbury threatened both victims and told them if they wished to leave they</p> | <p>Ct 1: 14 mths imp (cum). Ct 2: 12 mths imp (conc). Ct 3: 18 mths imp (cum). Ct 5: 4 yrs imp (cum).</p> <p>TES 6 yrs 8 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant and the co-offenders conduct was premediated; the fact that there would be a confrontation with the victim was 'pre-planned and successfully engineered'; there were two victims; they were threatened; their detention was protracted and a weapon was used.</p> <p>Previous attempts by appellant at rehabilitation; recent attempts made to engage in counselling; sought support and religious instruction while in prison; motivated to change his life; letters of apology written to the victim Hewitt and to the court pleading for a</p> | <p>Dismissed.</p> <p>Appeal concerned error in finding remorse not established and failure to find conditions of incarceration not mitigating.</p> <p>At [58] In our opinion, the appellant's description in his letter to the court and in his letter to Mr Hewitt of his offending against Mr Hewitt as a 'fight' was of significance. The description of his offending as a 'fight' indicated that the appellant minimised the seriousness of his criminal behaviour towards Mr Hewitt and, also, minimised his responsibility for it. ... The appellant initiated the violence. Later, the appellant escalated the violence by stabbing Mr Hewitt with the knife. The appellant also punched, threatened, made demands upon and detained Mr Hewitt. [His] overall offending was violent and</p> |

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| | | | <p>would have to promise to pay \$5,000, being compensation for Bradbury's friend. He told the victims if they did not promise to pay the money Hewitt would be put in the boot of a car and taken to the bush. Hewitt promised to pay the money over a period of time from his Centrelink payments.</p> <p>Bradbury, assisted by Lindsay, then cut off some of Hewitt's pubic hair and threatened to frame him with the rape of a little girl if he did not pay the \$5,000.</p> <p>Bradbury also told the victims to give him everything they had. They handed over \$150 cash, a gold watch and some cannabis. Not satisfied with this he then told Pinker to go home and return with any valuable items, otherwise he would 'open Hewitt up'. Out of fear, Pinker when home and returned with a number of items.</p> <p>While Pinker was away Bradbury continued to assault Hewitt by punching him. He was detained for between 40 minutes and two hrs.</p> <p>Hewitt's injuries required medical treatment, the most serious was the injury to his knee which required sutures and fractured nasal bones.</p> | <p>further opportunity.</p> <p>The sentencing judge found the appellant posed a significant risk to public safety and he was not satisfied the appellant had established genuine remorse on the balance of probabilities.</p> | <p>protracted. ...</p> <p>At [59]-[60] It is also significant that ... the appellant said he was sorry that Mr Hewitt 'got hurt'. Those statements did not involve a direct acceptance of responsibility. [He] did not expressly acknowledge that he had deliberately hurt Mr Hewitt. ... Although the letters must, of course, be read and considered as a whole, both of the appellant's letters focus on the impact of the appellant's offending on himself and his family.</p> <p>At [65] ... his expression of responsibility for his offending and of apology for the impact that his offending has had on Mr Hewitt appears to reflect a shallow emotional response rather than true remorse.</p> <p>At [68] We are satisfied that the sentencing judge was entitled, in all the circumstances, to fail to be</p> |
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| | | | | | <p>satisfied, on the balance of probabilities, that the appellant was genuinely remorseful. ...</p> <p>At [77] ... it was apparent that the appellant's time in custody had been more onerous and would continue to be more onerous for the reasons explained ... However, it does not appear that the appellant was at risk in prison because of any cooperation with law enforcement authorities.</p> <p>At [84] We are satisfied that ... the sentencing judge took into account, as a mitigating factor, the present and future conditions of the appellant's incarceration and that his Honour recognised that factor by reducing the sentence he would otherwise have imposed.</p> |
| 11. | <i>The State of Western Australia v Hussian</i> | <p><u>Hussian</u> 35 yrs at time sentencing. Convicted after trial.</p> | <p>Cts 1; 2 & 3: Dep lib. Cts 4-9: Sex pen. Ct 10: Agg robbery. The victim S owned and managed a massage</p> | <p><u>Hussian</u> Ct 1: 12 mths imp (cum). Ct 2: 2 yrs imp (conc). Ct 3: 4 yrs 6 mths imp (cum).</p> | <p>Allowed.</p> <p>Appeal concerned length of sentence and totality principle.</p> |

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| <p>[2020] WASCA 186</p> <p>Delivered 16/11//2020</p> | <p>Minor criminal history; poss cannabis; no prior criminal history outside WA.</p> <p>Born Myanmar; second of 10 children to father's two wives.</p> <p>Very basic education; cannot read or write; left school young age; worked parents' farm; very limited English.</p> <p>Married; not seen his wife or 10 yr old son about 10 yrs.</p> <p>Time in refugee camp; came to Australia 2013; held 12 mths in immigration detention.</p> <p>Difficulties obtaining consistent employment; relies on benefits.</p> <p>Medicated for condition resulting in intestinal bleeding.</p> <p><u>Pyu</u> 37 yrs at time sentencing.</p> | <p>parlour. The victims B and C worked at the parlour.</p> <p>With the intention of stealing money and property Hussian and Pyu went to the parlour, armed with a knife and plastic tubing and cables. They decided that, if necessary, they would use threats of violence to facilitate the theft. They also intended to compel the women to engage in sexual activity with them.</p> <p>On arrival Hussian and Pyu discussed what services they wanted and selected B and C.</p> <p>When being led to his room Hussian placed his arm around B's neck and produced the knife. He then pushed, shoved and dragged B and S into the room.</p> <p>Hearing the screams C went to the room. Pyu followed. Hussian and Pyu tied the three victims' hands with the tubing and cables.</p> <p>When Pyu left the room to search the parlour for items to steal Hussian sexually offended against C (cts 4 and 5). During the assaults he continued to hold the knife and C's hands remained tied.</p> <p>Pyu returned and took C to another room and sexually assaulted her (ct 7) and (ct 8). C's hands remained tied throughout the offending.</p> <p>While Pyu was out of the room with C, Hussian sexually offended against B. He was still holding the knife. (ct 9).</p> | <p>Ct 5: 5 yrs 2 mths imp (conc). Ct 9: 5 yrs imp (cum). Ct 10: 18 mths imp (conc).</p> <p>TES 10 yrs 6 mths imp. EFP.</p> <p><u>Pyu</u> Ct 1: 12 mths imp (cum). Ct 2: 2 yrs imp (conc). Ct 3: 2 yrs imp (conc). Ct 6: 4 yrs 8 mths imp (cum). Ct 7: 4 yrs 2 mths imp (conc). Ct 8: 4 yrs 4 mths imp (cum). Ct 10: 2 yrs 4 mths imp (conc).</p> <p>TES 10 yrs imp. EFP.</p> <p>The trial judge found Hussian and Pyu engaged in a very serious course of criminal conduct; it was premeditated and involved a degree of planning; the unlawful detention offences were relatively</p> | <p>Resentenced to:</p> <p><u>Hussian</u> Ct 1: 2 yrs 6 mths imp (cum). Cts 2 & 3: 3 yrs imp (conc). Ct 4: 7 yrs imp (conc). Ct 5: 8 yrs 6 mths imp (cum). Ct 9: 8 yrs imp (conc). Ct 10: 2 yrs imp (cum).</p> <p>TES 13 yrs imp. EFP.</p> <p><u>Pyu</u> Ct 1: 2 yrs 6 mths imp (cum). Cts 2 & 3: 3 yrs imp. Ct 6: 6 yrs imp. Ct 7: 5 yrs 6 mths imp. Ct 8: 6 yrs 6 mths imp (cum). Ct 10: 3 yrs imp (cum).</p> <p>TES 12 yr imp. TE.</p> <p>At [109] The facts and circumstances of the unlawful detention offences ... were very serious. ... The offences were premeditated and planned ... were</p> |
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| | | <p>Convicted after trial.</p> <p>Minor criminal history; drug convictions; no criminal history outside WA.</p> <p>Born Myanmar; one of a large number of children; good upbringing; good relationship with his parents; family financially comfortable.</p> <p>Two brothers killed in Myanmar; unknown whether parents and siblings alive.</p> <p>Limited education; left equivalent of yr 4; worked family farm.</p> <p>Time in refugee camp before arriving in Australia by boat operated by people smugglers 2013; 6 mths spent in immigration detention; itinerant lifestyle in Perth; secure accommodation at time offending.</p> <p>Limited English.</p> | <p>Pyu returned with C, untied B from S and took B from the room. He then sexually assaulted B (ct 6) before returning her to the room.</p> <p>Pyu again searched the parlour for money and property to steal. Hussian, still holding the knife, remained in the room guarding the three victims.</p> <p>Pyu returned to the room and left with S, asking her where the money was. He asked S for sex, but she refused without a condom. He touched her breasts with his hands, before threatening someone would get hurt if she did not tell him where the money was. S pointed to a draw containing \$700, which he took, along with a gold necklace S was wearing (ct 10).</p> <p>Pyu and Hussian then left the parlour, leaving the victims tied up. They took with them the \$700 cash, jewellery, handbags and mobile telephones. They also took with them the hard drive from the parlour's CCTV system to prevent their identities being discovered.</p> | <p>serious examples of their type; having regard to the period for which the three women were detained, the use of the knife to assist in detaining them and their conduct in tying the hands of the women with tubing and cables to further restrict their ability to escape.</p> <p>Pyu was the principal offender in the commission of the agg robbery.</p> <p>The trial judge found the sexual acts the victims were forced to engage in were significant, degrading and humiliating; the seriousness of the offences committed against C were agg by the fact that her hands were tied; the victims were subjected to a very frightening and traumatising ordeal over an extended period; they were at their workplace; the offending occurred at night and they were</p> | <p>committed in company. ... were committed at the victims' place of work. ... involved the use of physical force and threats of violence while Mr Hussian was armed with the knife. ... involved forcing the victims into a room where they would be guarded ... The victims were detained for about 2 hrs. ... after committing the offences, the victims remained physically restrained. ... S suffered bruising and pain on her wrists as a result of the restraints.</p> <p>At [113] In our opinion, the sentence ... for each of the unlawful detention offences ... was not commensurate with the seriousness of the offence ... the length of each sentence was unreasonable or plainly unjust</p> <p>At [115] ... Each sentence was manifestly inadequate.</p> <p>At [123] The facts and circumstances of the sex</p> |
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| | | <p>Married; not seen wife and two children since leaving refugee camp; regularly speaks to his family.</p> <p>Employed.</p> <p>Type 2 diabetic; suffers depression; prescribed antidepressant medication.</p> | | <p>extremely vulnerable.</p> <p>Victims suffered significant emotional trauma.</p> <p><u>Hussian</u> No demonstrated remorse; continued to deny offending; refusal to accept responsibility; limited language skills significant barrier to engaging in treatment programs.</p> <p>Subject to deportation upon release from prison.</p> <p><u>Pyu</u> No demonstrated remorse; continued stance of denial; limited English barrier to treatment options.</p> <p>Unlawful non-citizen; subject to deportation upon release from prison.</p> | <p>offences committed by Mr Hussian and Mr Pyu were very serious. ...</p> <p>At [126] In our opinion, the sentence for each of the sex offences was not commensurate with the seriousness of the offence. ... the length of each sentence was unreasonable or plainly unjust.</p> <p>At [136] ... The agg rob offence was also serious. It was premeditated and planned. The massage parlour was a vulnerable small business. It operated at night. No actual violence was used in committing the offence. However, none was necessary, having regard to the facts and circumstances that preceded it. The value of the property stolen was not insignificant.</p> |
| 10. | <p><i>WRT v The State of Western Australia</i></p> <p>[2020] WASCA 68</p> | <p>51-52 yrs at time offending. 69 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history;</p> | <p>Cts 1 & 5: Indec dealing child U13. Ct 2: Att sex pen child U13. Cts 3-4: Sex pen child U13. Ct 6: Dep lib.</p> <p>The victim was WRT's biological daughter and</p> | <p>Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: 3 yrs imp. Ct 4: 3 yrs (conc). Ct 5: 2 yrs (cum). Ct 6: 3 yrs (cum).</p> | <p>Dismissed.</p> <p>Appeal concerned totality principle; length of sentence ct 6 and error in making ct 6 fully</p> |

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| <p>Delivered 01/05/2020</p> | <p>sentence of imp for drug offending 1981.</p> <p>Single at time sentencing; no contact with the victim; separated from her mother.</p> <p>Carer, along with his older sister, of his 91 yr old mother.</p> <p>Left school young age.</p> <p>Hardworking; constant work history; employed very well paid and skilled job in the oil industry; worked many yrs around the world.</p> <p>No drug or alcohol issues.</p> <p>Health issues; suffers diabetes; cardiovascular disease; gout; degenerative lumber spine issues and carpal tunnel syndrome.</p> | <p>the offending occurred over a period of about 10 yrs, commencing when she was aged 4 yrs.</p> <p>WRT would harshly discipline the victim and would hit her with objects, including a wooden broom and wooden spoon.</p> <p>When the victim was aged 4 yrs WRT lay next to her on her bed. She was naked. He engaged in a game he called 'riding the horsey' in which he put her on top of him and rubbed her vagina against his penis (ct 1).</p> <p>On the next occasion WRT was pretending to take a nap when the victim got onto the bed. He made her perform fellatio until he ejaculated (ct 4).</p> <p>WRT made the victim perform oral sex in this way on other occasions.</p> <p>When the victim was 8 or 9 yrs old WRT tried to penetrate her vagina with his penis. He was unsuccessful in the attempt (ct 2).</p> <p>On another occasion, when she was aged 8 or 9 yrs, WRT made the victim sit on his face. He performed cunnilingus on her (ct 3).</p> <p>WRT performed cunnilingus on the victim on a number of other occasions.</p> <p>When the victim was 12 yrs old WRT took her to a motel. When in bed with the victim he rubbed her vagina for a period of time (ct 5).</p> | <p>TES 8 yrs imp.</p> <p>The sentencing judge found the offending the subject of cts 1 to 5 aggravated by the abuse of trust; the victim was a very young child and the appellant was significantly older; it occurred over a long period of time and involved such a normalisation of the behaviour that the victim came to believe she was the instigator of it.</p> <p>The sentencing judge found the aggravating factors of the offending the subject of ct 6 were that it occurred over a period of more than 26 hrs; involved the use of physical restraints and it humiliated the victim.</p> <p>No demonstrated remorse; strongly denied the sexual offending; lacked insight into the dep lib offence; maintaining his actions were justified.</p> | <p>cumulative.</p> <p>At [48] ... His offending conduct was appalling. The appellant's victim was his daughter. She was vulnerable and as entitled to expect that her father would protect her from harm, not inflict it upon her. The appellant used handcuffs, a chain and cable ties to restrain [her]. He purchased the chain and cable ties for the purpose of using them in this way. He detained and restrained [her] in a manner and in circumstances calculated to humiliate her and that involved an element of cruelty. ... The appellant's offence of dep lib was sustained – he detained [her] for a period of 26 hrs.</p> <p>At [52] ... we are satisfied that it was not reasonably arguable that the sentence for ct 6 is unreasonable or plainly unjust.</p> <p>At [63] ... the appellant has fallen well short of</p> |
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| | | | <p>At aged 14 yrs the victim was suspended from school. WRT grounded her. Without permission she left the house and stayed out overnight. WRT reported her missing to police. She was quickly contacted and agreed to attend a police station.</p> <p>On hearing this WRT purchased a 2m length of chain, a D shackle, cable ties and duct tape. He inserted a bolt into the concrete floor of the victim's bedroom and removed most of her belongings and clothes.</p> <p>After collecting the victim WRT handcuffed her and chained her to the floor. She complained the handcuffs were uncomfortable so he cable tied her ankles to keep her chained to her bedroom. She was given a bucket to use as a toilet. She was allowed a shower, but with the chain still attached to her legs. She was left chained in her bedroom overnight.</p> <p>The following day WRT took the victim and his mother with him in his car. The victim was restrained with cable ties and the handcuffs to prevent her from leaving the car. He also cable-tied a lunchbox lid around her neck labelling her a runaway. She was left restrained in the car for about an hr.</p> <p>When he returned home WRT again restrained the victim using the chain and cable ties.</p> <p>The following day the police arrived at the home. WRT was not at home. They found the victim still chained to her bedroom floor. She had been</p> | <p>demonstrating that his TES of 8 yrs imp infringes either limb of the totality principle.</p> <p>At [68] ... The serious features of his sexual offending against his daughter included the following. The offending was an abuse of what is perhaps the ultimate position of trust, namely the relationship between parent and child. The offending commenced when the complainant was very young ... and, as a result, highly vulnerable. It continued over many yrs. While the offending did not include penile pen of [her] vagina, it included an att to do so and offences of both fellatio and cunnilingus. Those latter acts, ... did not reflect isolated conduct. ... It is true, ..., that his offending did not involve violence. But it had other insidious effects on his victim. The appellant's offending against his daughter so normalised his depraved</p> |
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| | | | restrained for at least 26 hrs. | | <p>conduct that [she] came to believe, with the appellant's encouragement, that she was the instigator of it.</p> <p>At [71] ... In this case, appropriate punishment of the appellant's serious and sustained offending against his daughter, and general deterrence of such offending, required that the appellant be sentenced to a very substantial term of immediate imp, notwithstanding his age and ill health</p> <p>At [73]-[74] In our opinion, the TES ... did not, even arguably, infringe the first limb of the totality principle. ... Further, the TES does not infringe the second limb of the totally principle. ...</p> |
| 9. | <p><i>Merritt v The State of Western Australia</i></p> <p>[2019] WASCA 203</p> <p>Delivered</p> | <p>21 yrs at time offending. 45 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Long and extensive criminal history; prior</p> | <p>Ct 1: Dep lib. Ct 2: Burglary. Ct 3: Agg indec assault. Cts 4-8: Agg sex pen.</p> <p>The victim, P, was a female about 13 ½ yrs of age.</p> | <p>Ct 1: 4 yrs 6 mths imp (conc). Ct 2: 5 yrs 5 mths imp (conc). Ct 3: 2 yrs 9 mths imp (conc). Ct 5 & 8: 4 yrs 2 mths imp (conc).</p> | <p>Dismissed.</p> <p>Appeal concerned totality principle; individual sentences not challenged.</p> <p>At [70] ... it is beyond question that the offences</p> |

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| 17/12/2019 | <p>serious convictions for serious sexual and violent offending towards girls and women.</p> <p>Dysfunctional childhood; characterised by neglect; instability and extensive physical abuse in State care.</p> <p>Indigenous heritage; few positive role models.</p> <p>Illicit drug use.</p> | <p>P was at home with her sister when Merritt entered the home without consent. His face was covered to conceal his identity.</p> <p>Entering her bedroom Merritt grabbed P by the back of her head and told her to get up and do as she was told.</p> <p>Merritt then forced P to walk into bushland where he committed various sexual offences against her.</p> <p>Merritt was identified, more than twenty yrs later, through DNA technology.</p> | <p>Ct 6: 6 yrs imp (cum). Ct 7: 6 yrs 6 mths imp (cum).</p> <p>TES 12 yrs 6 mths imp.</p> <p>EFP.</p> <p>At time of sentencing was a declared dangerous sex offender and subject to a continuing detention order.</p> <p>In 1994 (5 days after committing the above offences) the appellant committed further sexual offences against a 9 yr old female. Sentenced in 1995 to a TES of 10 yrs imp with EFP.</p> <p>The sentencing judge found the offending towards the higher end of the scale; clearly persistent and unrelenting and involved various forms of penetration; the offences are not isolated or uncharacteristic.</p> <p>The sentencing judge found the offending had a</p> | <p>committed by him were of the utmost gravity. As serious as the offences were ... the offences committed [5 days later] were, if anything, even more serious. They involved the coercion of a very young and vulnerable child into bushland, where the appellant sexually penetrated her in such a way as to inflict serious physical injuries that required surgery. ... it could not be said that the offences under consideration were uncharacteristic of the appellant. To the contrary, they were entirely consistent with his prior offending to that point. He plainly posed then a danger to the community.</p> <p>At [71] ... the appellant remains unrehabilitated and poses a serious risk of reoffending.</p> <p>At [72] ... By the time the appellant came to be sentenced ... for the offences committed ... he</p> |
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| | | | | <p>devastating impact on the victim and that she suffered ‘a terrible ordeal’.</p> <p>Some acceptance of responsibility; a significant danger of serious sexual reoffending.</p> | <p>was no longer youthful and so the increased importance of efforts to rehabilitate a youthful offender was no longer applicable. ... The time he has spent in custody subject to the continuing detention order and the period referred to in [23] ... were relevant considerations in the application of the totality principle.</p> <p>At [73] However, having regard to all relevant circumstances and all relevant sentencing factors ... the TES imposed ... did not infringe the first limb of the totality principle.</p> <p>At [75] ...the TES was not unreasonable or plainly unjust.</p> |
| 8. | <p><i>Eravelly v The State of Western Australia</i></p> <p>[2018] WASCA 139</p> <p>Delivered 10/08/2018</p> | <p>Convicted after trial.</p> <p>No prior criminal history in Australia; prior criminal convictions in USA for voyeurism and battery.</p> <p>Raised stable, hardworking and respected family.</p> | <p>Ct 1: Burglary. Ct 2: Dep lib. Ct 3: Unlawful wounding. Cts 4 & 8: Agg sex pen.</p> <p>Eravelly was a stranger to the victim.</p> <p>In the early hours of the morning Eravelly broke into the victim’s unit whilst she was sleeping.</p> | <p>Ct 1: 3 yrs imp (cum). Ct 2: 18 mths imp (conc). Ct 3: 1 yrs imp (conc). Ct 4: 4 yrs imp (cum). Cts 5-7: 5 yrs imp (conc). Ct 8: 6 yrs imp.</p> <p>TES 13 yrs imp.</p> | <p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [96] ... the appellant subjected the complainant to a sustained, humiliating and degrading series of</p> |

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| | | <p>Held in high regard by family and friends.</p> <p>Good employment history; successful career as international airline pilot.</p> <p>Married three times; suffered loss of second wife due to illness; third wife remains supportive; two children.</p> | <p>Once inside he threatened to cut her with a knife, tied her hands behind her back, blindfolded her and sexually penetrated her vagina, anus and mouth with his penis.</p> <p>The victim sustained cuts and abrasions, including a 2cm long laceration to her wrist that required suturing.</p> <p>Eravelly was identified many years later through an international DNA database.</p> | <p>The trial judge found while the offending was not in the worst category, it was very serious; it was premediated; he arrived with a knife, a torch, a stocking to conceal his identify and a rope to bind his victim.</p> <p>The trial judge found the appellant was in denial and without remorse, with no insight into his offending or victim empathy.</p> <p>Average risk of reoffending.</p> <p>Accepted the appellant's experience in prison would be more isolating and difficult than usual as a foreign national.</p> | <p>sexual assaults. The attack was premediated. It involved the appellant violating the sanctity of both the complainant's home and her body. The attack engendered great fear into the complainant. The appellant broke into her unit at night and took advantage of the complainant's vulnerability by attacking her while she was alone in the unit, asleep in her bed. ... This very serious sustained series of sexual assaults demanded a very significant term of immediate imp.</p> <p>At [99] ... the TES bears a proper relationship to the overall criminality involved in all the offences, viewed in their entirety and having regard to the circumstances of the case, ...</p> |
| 7. | <p><i>CYD v The State of Western Australia</i></p> <p>[2018] WASCA 66</p> | <p>37 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Prior criminal history; no relevant prior offending.</p> | <p>Ct 1: Dep lib.</p> <p>Ct 2: Indec assault.</p> <p>Ct 3: Dep lib.</p> <p>Ct 4: Indec assault.</p> <p>The victim, M, was aged 18 yrs. CYD was her</p> | <p>Ct 1: 4 yrs imp (cum).</p> <p>Ct 2 & 4: 2 yrs imp (conc each other and ct 3).</p> <p>Ct 3: 5 yrs imp (cum).</p> <p>TES 9 yrs imp.</p> | <p>Dismissed.</p> <p>Appeal concerns length of sentences cts 1 and 3 and totality principle.</p> |

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| | <p>Delivered 11/05/2018</p> | <p>Longstanding childhood issues.</p> | <p>step-father, having been in a relationship with her mother since she was 5 yrs old.</p> <p><u>Cts 1 and 2</u> CYD took M for a driving lesson. On a country road he switched the fuel from petrol to gas. This tank contained little fuel so as the vehicle lost power he took over driving and reversed the car into a secluded track.</p> <p>CYD told M he was going to walk down the road to try for a mobile signal to call for assistance. Shortly afterwards he returned with pliers, wearing a mask and a voice-changing mechanism he had earlier concealed on his person.</p> <p>CYD held the pliers to M's throat, tied her hands together and placed cable ties around her neck, which he secured to the headrest. He then fondled her breasts, rubbed her vaginal area on the outside of her clothing and told her she was going to be gang-raped. When M cried loudly he desisted, cut the cable ties and ran away.</p> <p>Shortly afterwards CYD returned to the vehicle, pretending that he knew nothing of the incident.</p> <p>Interviewed by police CYD claimed no knowledge and no involvement in the assault. He was subsequently charged and released to bail, on the condition he not contact M or be present when she visited the family home.</p> <p><u>Cs 3 and 4</u> Some weeks later CYD waited for M to leave his</p> | <p>EFP.</p> <p>The sentencing judge characterised the offences as very serious; involved premeditation and planning; there was an element of 'sexual intent' in the offences.</p> <p>The sentencing judge found the offences were committed in circumstances designed to instil fear and involved the use of force and physical restraints on a vulnerable young woman with whom he was in a trusting family relationship.</p> <p>The sentencing judge accepted cts 1 and 2 were an aberration; but this could not be said about cts 3 and 4.</p> <p>Remorseful; cooperative with authorities after committing cts 3 and 4</p> | <p>At [80] It is difficult to find previous cases which are broadly comparable with the appellant's offending in relation to cts 1 and 3.</p> <p>At [81] ... it is not reasonably arguable that the sentence for ct 1 or the sentence for ct 3 is unreasonable or plainly unjust.</p> <p>At [85] ... it was necessary, in order properly to mark the very serious nature of the appellant's overall offending, for the individual sentences imposed on each of cts 1 and 3 to be served cum. Cts 1 and 3 involved separate, distinct and very serious offending.</p> |
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| | | | <p>home after she visited family. Having earlier covered two spotlights on his car with blue and red plastic he followed her in his vehicle. Causing the spotlights to flash intermittently M stopped her vehicle, believing it be a police vehicle.</p> <p>Disguising his appearance and altering his voice with the voice-changing mechanism, CYD approached M's vehicle and forced her to move into the passenger seat. After wrapping her head with a bandage to cover her eyes he drove her vehicle to a country road.</p> <p>CYD demanded M remove her clothing. Noticing the bandage had displaced he put duct tape over her eyes. He then then forcibly removed her clothing. Using her mobile phone he took photographs of her naked body before sending them to his own mobile, with a text message purporting to be from her.</p> <p>CYD then drove M in her vehicle back to where he had earlier deceived her into stopping. He disposed of the red and blue plastic and the voice-changing mechanism.</p> <p>CYD later sent a text to M claiming he was going to make a complaint to the police that she was sending him naked photos of herself.</p> | | |
| 6. | <p><i>McAllister v The State of Western Australia</i></p> <p>[2017] WASCA 183</p> | <p>47 at time offending. 49 at time sentencing.</p> <p>Convicted after late PG (5% discount) (ct 1). Convicted after trial (ct 2).</p> | <p>Ct 1: Dep lib. Ct 2: With intent to harm did an act likely to endanger life, health or safety.</p> <p>McAllister owned his own business and the victim was a former employee.</p> | <p>Ct 1: 15 mths imp (cum). Ct 2: 3 yrs 9mths imp (cum). TES 5 yrs imp.</p> | <p>Dismissed.</p> <p>Appeal concerned length of sentence; parity and totality principles.</p> |

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| <p>Delivered 12/10/2017</p> | <p>Prior criminal history; traffic and alcohol related offences.</p> <p>Born UK; moved to Australia aged 9 yrs; abused and traumatised as a child during time at Fairbridge Farm.</p> <p>Self-employed removalist; good character references; business collapsed after his detention in custody for these offences.</p> <p>Two adult children previous marriage.</p> <p>Medicated for depression; otherwise in good physical health.</p> <p>No history of illicit substances abuse.</p> | <p>When McAllister's business was burgled and items stolen he believed the victim to be the offender.</p> <p>With a promise of work McAllister contacted the victim and arranged to meet him at his business premises. The victim attended at the scheduled time. McAllister and two of his associates, Annakin and Bowden, the co-offenders, arrived soon after.</p> <p>McAllister was armed with a baseball bat and the two co-offenders with wooden sticks. They proceeded to assault and verbally abused the victim for a period of about 30 minutes.</p> <p>During the assault the victim denied any involvement in the burglary. McAllister called the victim a liar and threatened to smash his knee caps if he went to the police.</p> <p>The victim's hands were tied behind his back. He again denied any knowledge of the burglary or location of the stolen property so McAllister struck him on the knee with the bat, while laughing and joking with the co-offenders.</p> <p>At some point a substance, believed to be petrol, was sprayed on the victim's face, mouth and clothes and he was threatened with being set on fire.</p> <p>The victim eventually claimed to know where the stolen property was located and offered to show</p> | <p>EFP.</p> <p>The trial judge found the offending involved a degree of premeditation over a sustained period; there were three armed offenders against an unarmed victim; who for part of the assault, had his hands tied behind his back; it was completely unprovoked.</p> <p>The trial judge found the appellant believed the victim had committed the burglary and this factor required him to place significant emphasis on general deterrence to remind the community that vigilante behaviour will not be tolerated.</p> <p>The trial judge found the appellant significantly more culpable than his co-offenders having regard to the element of vigilantism in his conduct</p> <p>No significant remorse shown.</p> | <p>At [44] ... it is not reasonably arguable that the sentence of 15 mths' immediate imp for ct 1 was manifestly excessive. That is, when the sentence is viewed from the perspective of the maximum penalty (10 years' imp), and after taking into account all relevant facts and circumstances and all relevant sentencing factors ...</p> <p>At [50] ... it is not reasonably arguable that the sentence of 3 years 9 months' immediate imp for ct 2 was manifestly excessive. That is, when the sentence is viewed from the perspective of the maximum penalty (20 years' imp), and after taking into account all relevant facts and circumstances and all relevant sentencing factors,</p> <p>At [56] ... the trial judge found, and was entitled to find, that the appellant was the instigator of the</p> |
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| | | | <p>them. He then managed to escape and call police.</p> <p>The victim suffered a broken eye socket which required surgery. He has ongoing problems with his jaw locking and his face droops on the left side.</p> | | <p>offending. The appellant lured the victim to the appellant's business premises with a promise of work, the appellant arranged for Mr Annakin and Mr Bowen to be present and there was an element of vigilantism in his conduct. ... the appellant entered a very late PG on ct 1 and went to trial on ct 2 whereas Mr Annakin and Mr Bowen entered early PG on both cts.</p> <p>At [61] The appellant's overall offending was serious. It was necessary for the trial judge to order that the individual sentence for ct 1 be served cum upon the individual sentence for ct 2 in order properly to mark the serious character of the offending on cts 1 and 2 as a whole.</p> |
| 5. | <p><i>Atkinson v The State of Western Australia</i></p> <p>[2017] WASCA 154</p> | <p>45 yrs at time sentencing. 25 and 27 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p> | <p>Cts 1 & 5: Agg burglary. Cts 2, 6-8: Agg sex pen. Cts 3 & 9: Dep lib. Ct 4: Att agg robbery.</p> <p>The offences arise from two separate incidents.</p> | <p>Ct 1: 7 yrs 6 mths imp (head) Ct 2: 7 yrs imp (conc). Ct 3: 2 yrs imp (conc). Ct 4: 2 yrs imp (conc). Ct 5: 7 yrs 6 mths imp</p> | <p>Allowed.</p> <p>Appeal concerned length of sentence, totality, failure to consider remorse and discount for voluntary</p> |

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| <p>Delivered 17/08/2017</p> | <p>Minor criminal history.</p> <p>Dysfunctional family; parents separated when young adult; eldest sister epileptic; younger brother involved in heavy drug use; mother imprisoned for fraud.</p> <p>Strained relationship with mother for many yrs, now close; maintains some contact with father.</p> <p>Frequently truant at school; expelled in yr 10.</p> <p>Single; no children.</p> <p>Worked many yrs mining industry; currently unemployed.</p> <p>Long history of alcohol and illicit drug use.</p> <p>Diagnosed bipolar disorder; history of non-compliance with medication.</p> | <p>One in 1997 and the other in 1999.</p> <p><u>Cts 1-4 (1997)</u></p> <p>The victim, N, was 18 yrs old and home alone. He forced his way into her home after knocking on her door wearing a balaclava on his face.</p> <p>Atkinson held a knife to N's throat, tied her up and covered her face before sexually penetrating her and demanding money, which she said she did not have.</p> <p>He warned her not to talk, scream or move before leaving the premises.</p> <p><u>Cts 5-9 (1999)</u></p> <p>The victim, E, was 19 yrs old and home alone.</p> <p>Atkinson let himself into her home and covered her face, before tying her up and repeatedly sexually penetrating her.</p> <p>He told her not to phone anyone because he would be watching before leaving the premises.</p> <p>In 2016 Atkinson's DNA was matched to the 1999 offences. During a second police interview he voluntarily disclosed the 1997 offences to police.</p> | <p>(cum ct 1). Ct 6: 7 yrs imp (conc). Ct 7: 3 yrs imp (conc). Ct 8: 7 yrs imp (conc). Ct 9: 2 yrs imp (conc).</p> <p>TES 15 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge noted the offences only came to light following a DNA match to the 1999 offences and it was to the appellant's credit that he made some admissions with respect to the 1997 offences.</p> <p>The sentencing judge found the appellant's cooperation indicated some degree of contrition and acceptance of culpability and that he understood the issues likely to have been confronted by the two victims. He took a neutral stance on the appellant's remorse as the psychologist and psychiatrist had differing views as to whether the</p> | <p>disclosure of guilt on cts 1-4.</p> <p>Re-sentenced:</p> <p>Ct 1: 5 yrs 6 mths imp. Ct 2: 5 yrs 2 mths imp. Ct 3: 1 yr 6 mths imp. Ct 4: 1 yr 6 mths imp.</p> <p>All other sentences and orders for cum, conc and EFP otherwise unaffected.</p> <p>TES 13 yrs imp.</p> <p>At [61] The offences were extremely serious offences of their type. They involved planning and the use of force to overwhelm young and vulnerable victims at night in their homes. Physical restraints and threats were used, including the use of weapons, in order to obtain the victim's compliance. The offences caused great psychological trauma to the victims and have had long-lasting effects.</p> <p>At [64] ... the appellant's disclosure of the 1997</p> |
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| | | | | <p>appellant had victim empathy and was genuinely remorseful.</p> <p>Moderate to low-risk of reoffending.</p> | <p>offending was significant because it was a disclosure to the authorities of otherwise unknown offences. ... It might be suggested that the appellant made the disclosure because he feared ... other undisclosed DNA evidence that would implicate him. However, there was no suggestion of that ... and in fact it was not the case. Whatever the appellant's motivations, and he said that he was motivated by remorse, the fact is that but for his disclosure there is no reason to think that the appellant would have been charged with the 1997 offences. In these circumstances his disclosure was a significant matter to the credit of the appellant to be taken into account in sentencing on cts 1 to 4.</p> <p>At [65] ... the individual sentences for cts 1 to 4 were the same as those imposed for the similar offending in cts 5 to 9.</p> |
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| | | | | | This cannot be accounted for by any significant difference in the offending. The two groups of offences were of a comparable level of seriousness. Indeed, the respondent accepted before this court that, if anything, the second group of offences were more serious. |
| 4. | <p><i>Pureau v The State of Western Australia</i></p> <p>[2017] WASCA 115</p> <p>Delivered 26/06/2017</p> | <p>24 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; including a conviction of AOBH in a domestic setting.</p> <p>Born in NZ; arrived in Australia aged 17 yrs.</p> <p>Employed.</p> <p>No illicit substance or alcohol use.</p> | <p>Ct 3: Threat to kill. Ct 4: Agg AOBH. Ct 5: Dep lib.</p> <p>The victim, M, was several wks pregnant and had been in relationship with Pureau about 6 wks. They shared a home with three other people.</p> <p>M left to attend appointments, borrowing Pureau's mobile phone and car. When she returned he was angry with her for being away for so long. They argued and he abused and spat in M's face. She called out for someone to call the police, however other occupants did not do so as illicit substances were in the house.</p> <p>Pureau left the house. Other occupants bound M with tape and assaulted her. Bulk of injuries caused by others.</p> <p>Pureau returned home. Armed with a knife and taser and wearing gloves, he ordered M into a room and told her he was going to kill her. He pointed the knife and threatened her with the</p> | <p>Ct 3: 3 yrs imp (cum). Ct 4: 2 yrs imp (conc). Ct 5: 3 yrs imp (cum).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the appellant's overall offending constituted a very serious example of domestic violence and the real seriousness of the offence was his threats to unlawfully kill M and the deprivation of liberty. The real harm was psychological.</p> <p>Denied the offending.</p> <p>Lack of remorse and genuine empathy.</p> | <p>Dismissed.</p> <p>Appeal challenged the individual sentences on cts 3 and 5 and concerned totality.</p> <p>At [75] ... M was defenceless and particularly vulnerable by reason of the greater physical strength of the appellant and her pregnancy. The offences occurred in a domestic setting. The fact that the offences were committed in such a setting increases the seriousness of what the appellant did. It does not matter that their relationship was brief.</p> <p>At [76] ... Although the</p> |

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| | | | <p>taser, telling her the more she screamed the more pain he would inflict. He att to taser M in the face but she raised her arms to protect herself, the taser cut her thumb.</p> <p>Pureau pulled M's hair and dragged her from the room. She was subjected to further threats and assaults before she was able to escape.</p> <p>Between everyone involved, the ordeal lasted more than five hours.</p> | | <p>offences occurred in the one transaction, the imposition of conc sentences would have resulted in a TES that would be an inadequate and inappropriate reflection of the overall criminality of the appellat's conduct.</p> |
| 3. | <p>AMH v The State of Western Australia</p> <p>[2016] WASCA 180</p> <p>Delivered 19/10/2016</p> | <p>31 yrs at time offending.</p> <p>PG to Ct 7 (10% discount). Convicted after trial remaining counts.</p> <p>Minor criminal history; no previous relevant offending.</p> <p>15-16 yrs witnessed his mother in a physically abusive relationship.</p> <p>Emotionally unstable as a result of a succession of family tragedies.</p> <p>History of heroin abuse; abstinent from the drug at time offending.</p> | <p>Ct 1: Dep liberty. Cts 2, 6 & 7: Agg AOBH. Ct 3 & 4: Agg sex pen. Ct 5: Sex coercion.</p> <p>AMH and the victim, A, had a violent and abusive relationship. When they separated AMH spied and stalked A, and committed acts of violence upon her.</p> <p>The time between the initial offending and the report to police was approx 10 days.</p> <p>AMH tried to persuade A to attend a function with him. He drove to where she was staying, forced her into his car and drove towards Ravenswood (ct 1).</p> <p>During the drive and at an isolated area AMH verbally abused and repeatedly struck A in the head (ct 2) and forced her to perform fellatio on him (ct 3). Threatening to insert a rusty tool into A's anus, he used it to strike A on the legs. He also kicked her in the ribs (ct 6). Forcing A,</p> | <p>Ct 1: 3 yrs imp (conc). Ct 2: 1 yr imp (conc). Ct 3: 4 yrs imp (conc). Ct 4: 7 yrs 6 mths imp (cum). Ct 5: 3 yrs 6 mths imp (cum). Ct 6: 1 yr 6 mths imp (conc). Ct 7: 2 yrs 8 mths imp (conc).</p> <p>TES 11 yrs imp. EFP.</p> <p>The sentencing judge found the offending premeditated and very serious examples of their kind and agg 'by his callous, selfish and ... cruel and evil behaviours after the event ...'.</p> | <p>Dismissed.</p> <p>Appeal concerned length of sentence; individual sentences not challenged.</p> <p>At [42] ... the appellat's overall offending was extremely serious. While it was not in the worst category of offending of its kind, it approached that level. The offending was premeditated, sustained, cruel and humiliating ... The appellat's post-offence conduct cannot be ignored and underscores the appellat's criminality.</p> |

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| | | | <p>naked, onto all fours he inserted a spanner into her anus (ct 4). He forced A to put a drink bottle into her vagina and threatened to kick it in if she didn't push it all the way in (ct 5). He repeatedly bashed her to the head and ribs (ct 7).</p> <p>AMH burnt her with a cigarette or lighter. He placed the flame close to her genitals. He continued to threaten to harm A and her family.</p> <p>AMH forced A to telephone her employer and quit her job. At various points he got A to call and send text messages, so that police would not look for her. AMH took A to his mother's house and when police attended told her she had to get over the fence. She complied, despite being badly injured.</p> <p>A suffered a swollen ear, severely bruised eyeball and eye socket, and bruising and burns to her body. Her rib cage and left leg were badly injured.</p> | <p>The offending was found to be not about sexual gratification, but about sexual dominance, embarrassment and humiliation.</p> <p>No remorse or victim empathy.</p> | |
| 2. | <p><i>FWB v The State of Western Australia</i></p> <p>[2016] WASCA 118</p> <p>Delivered 11/07/2016</p> | <p>47 yrs at time sentencing. 42-44 yrs at time offending for indictment 1.</p> <p>Convicted after PG (20% discount).</p> <p>Prior criminal history; no prior sexual offending.</p> <p>Left school aged 15 yrs.</p> <p>Recent steady employment.</p> | <p><u>Indictment 1</u> Ct 1-4, 6-10: Sex pen of de facto child U 16 yrs. Ct 5: Indec dealings with de facto child U 16 yrs.</p> <p><u>Indictment 2</u> Ct 1: Dep lib. Ct 2: Threat to kill. Ct 3: Agg sex pen. Ct 4: GBH with intent.</p> <p><u>Indictment 1</u> FWB had been the de facto father of the victim, M, since she was about 2 yrs old.</p> | <p><u>Indictment 1</u> Ct 1-2 and 7: 2 yrs imp each (conc). Ct 3, 6 and 10: 6 yrs imp each (conc). Ct 4 and 9: 4 yrs imp each (conc). Ct 5: 1 yr imp (conc). Ct 8: 6 yrs (cum ct 3).</p> <p>TES 12 yrs imp (cum with TES on indictment 2).</p> | <p>Allowed.</p> <p>Appeal concerned totality.</p> <p>Only re-sentenced on <u>indictment 1</u> to:</p> <p>Ct 8: 6 yrs imp (cum with 2 yrs on ct 1).</p> <p>TES 8 yrs imp (cum with TES on indictment 2).</p> |

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| | | <p>Regularly consumes alcohol and occasionally smokes cannabis. Daily use of amphetamines and heroin, but did not believe he had a substance abuse problem.</p> <p>FWB on bail for indictment 1 at time offending on indictment 2.</p> | <p>When M was aged 11-12 yrs, FWB digitally penetrated her vagina twice (ct 1-2). He then penetrated her vagina with his penis (ct 3). He slapped M's face when she tried to escape. FWB then made M suck his penis, before masturbating and ejaculating on her face (ct 4). Later, M awoke with FWB touching her vagina (ct 5). The following night, FWB went into M's bedroom and had sexual intercourse with her (ct 6).</p> <p>When M was aged 12-13 yrs, FWB filmed himself sexually abusing M over two hrs. FWB put his fingers in her vagina (ct 7) and then had sexual intercourse with her (ct 8). FWB made M suck his penis (ct 9), before having sexual intercourse with her again (ct 10). FWB continued the abuse and repeated the acts until he ejaculated onto her stomach. M was crying and was fearful of FWB who threatened to harm her or members of her family.</p> <p><u>Indictment 2</u> FWB and H (M's mother) had been in a de facto relationship for 13 yrs, but had separated approx. 6 mths earlier.</p> <p>The dep lib charge (ct 1) was a continuing offence. When visiting H, FWB produced a knife and threatened to kill her, telling her that he loved her, couldn't live without her and wanted her to suffer like she had made him suffer (ct 2). FWB tied H's wrists with cable ties, forced her into a car and drove her to the vicinity of a country town. FWB ordered H out of the vehicle, removed</p> | <p><u>Indictment 2</u> Ct 1: 1 yr imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: 8 yrs imp (conc). Ct 4: 5 yrs imp (conc).</p> <p>TES 8 yrs imp (cum with TES on indictment 1).</p> <p>Overall TES 20 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge described the offending against M as involving "the most gross breach of trust" and "at or near the top of the range of gravity, justifying the maximum penalty as a starting point".</p> <p>Offending occurred when M was alone and FWB sometimes engineered opportunities to be alone with her. The sentencing judge said that the offending against M had features of sex pen without consent; offending was not the result of grooming.</p> | <p>TES 16 yrs imp.</p> <p>EFP.</p> <p>At [65] The charges in the first indictment were representative of a course of conduct.</p> <p>At [66]... in relation to the first indictment...The two episodes of offending involved planning and premeditation...The offending occurred in the family home, a relatively isolated farmhouse, where M was vulnerable and the appellant could abuse her for an extended period without fear of being discovered....The appellant filmed the offences the subject of cts 7, 8, 9 and 10. He had previously told M that once he had recorded the abuse he would stop offending against her. That was not the case... The appellant's offending against M's mother... would have adversely affected M in view of the threats to harm her family</p> |
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| | | | <p>her clothing had sexual intercourse with her until he ejaculated (ct 3). FWB stabbed H in the chest (ct 4) and during the struggle she cut her finger on the knife. When H got out of the car FWB dragged her by the hair back into the car. FWB said he was taking her for medical assistance but H feared for her safety and jumped from the moving car and ran to a nearby house. As a result of being stabbed H suffered a 5cm wound that caused one of her lungs to collapse.</p> | <p>FWB's offending against H "was a terrifying ordeal" and involved "criminality of the highest degree".</p> <p>FWB was at a moderate to high risk of future sexual offending and a moderate risk of future violent offending, most likely family violence.</p> | <p>which the appellant made in the course of his offending against M.</p> <p>At [69] The appellant claimed to have little or no recollection of the offending and, accordingly, little weight could be given to any remorse. No victim empathy was apparent.</p> <p>At [70] the TES of 12 yrs' imp, especially in the context of the PG, was not broadly consistent with reasonably comparable cases and was not commensurate with the overall seriousness of the offending... The proper exercise of the sentencing discretion required lesser accumulation of the individual sentences.</p> <p>At [90] ...the TES of 8 yrs' imp for the offences in the second indictment was...well within the range open to the sentencing judge ... and reflects ... totality issues arising as a result of the appellant</p> |
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| | | | | | <p>standing for sentence not only in relation to the offences in the second indictment but also the offences in the first indictment.</p> <p>At [91] the overall TES of 20 yrs' imp in relation to the first and second indictments, especially in the context of the PG, was not commensurate with the overall seriousness of the offending the subject of the first and second indictments.</p> |
| 1. | <p><i>Adams v The State of Western Australia</i></p> <p>[2014] WASCA 191</p> <p>Delivered 28/10/2014</p> | <p>44 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>No relevant criminal history.</p> <p>Parents separated when 3 yrs old; raised by his mother; very difficult upbringing.</p> <p>Previously married; long term relationship; no children.</p> <p>Former AFP, Customs and Immigration officer.</p> | <p><u>Indictment</u></p> <p>1 x Dep lib.</p> <p>1 x Att armed robbery.</p> <p>1 x Armed robbery.</p> <p>9 x Fraud.</p> <p>9 x Att fraud.</p> <p>1 x Possess identification material w/i to commit an offence.</p> <p><u>Section 32 Notice</u></p> <p>1 x Stealing Commonwealth property.</p> <p>1 x Bringing stolen goods into State.</p> <p>2 x Stealing.</p> <p>3 x Poss prohibited weapon.</p> <p>1 x Poss controlled weapon.</p> <p>1 x Unlicensed ammunition.</p> <p>2 x Possess stolen or unlawfully obtained property.</p> | <p>TES 10 yrs imp.</p> <p>EFP.</p> <p>\$300 fine.</p> <p>Remorse; victim empathy; acceptance of responsibility.</p> <p>The sentencing judge described robberies and sexual offences as involving 'a significant measure of premeditation, sexual motivation and planning'; described fraud as 'deliberate, systematic</p> | <p>Allowed – Grounds 3 & 6.</p> <p><u>Section 32 notice</u></p> <p>Ct 1 varied – release after serving 7 mths of it on recognizance in the sum of \$10,000.</p> <p>At [8] It is very difficult, for the purposes of comparison in the context of the first limb of the totality principle, to identify any relevant total effective sentences imposed in previous cases. The nature, extent and diversity of the appellant's</p> |

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| | | | <p>1 x Possess false number plates.</p> <p>Adams worked for the AFP. Sometime during his employment he dishonestly appropriated a number of items belonging to his employer, including a police radio, a ballistic vest & a container of OC spray.</p> <p>Between 2006 and 2010 Adams resided and was employed as a customs officer in Darwin. Whilst his neighbours were on holiday he broke into their unit and stole property and identification. He subsequently transferred to Perth and took with him these items.</p> <p>In 2011 Adams became an immigration officer. During this time he applied online for credit cards using the stolen identity details as well as incorrect information as to his employment, assets and liabilities. Some of the false information as to his employment came from documents he had accessed through his employment. The applications were approved. Adams also attempted to apply for further credit cards but when asked for further documentation he did not proceed or did not collect the card.</p> <p>That same year Adams stole a cheque from a letterbox and deposited into one of his false accounts, withdrew money from the credit account he had opened and stole cheques from a cheque deposit box at a bank and then deposited the cheque into an access account he had opened.</p> <p>In 2012 Adams rented a self-storage unit and post</p> | <p>and planned criminality over a significant period’.</p> <p>Low - moderate risk of re-offending in a sexual way; moderate – high risk of committing further dishonesty offences.</p> | <p>overall offending, by a person with his antecedents, is very unusual. No previous case is truly comparable.</p> <p>At [61] The past, present and likely future conditions of the appellant’s imprisonment, by reason of his status as a former police officer, were a relevant sentencing consideration that his Honour was bound to take into account.</p> <p>At [138] The appellant’s overall offending was self-evidently very serious. It was varied and substantial. It involved deliberate, systematic and planned criminality executed with considerable sophistication... The appellant used the skills he had gained in the work he had undertaken in the banking and law enforcement sectors to commit the offences, and went to considerable lengths to avoid detention.</p> |
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| | | | <p>office box under the false name and address previously stolen. The box was used as a mailing address for invoices for the rented storage unit and applications for bank accounts.</p> <p>That same year Adams received two parking infringements for failing to display an unexpired ticket. Affixed to the vehicle were registration plates from another vehicle. The purpose being he would avoid paying the parking fees.</p> <p>Several wks later the victim, a 19 yr old Finnish national, was at a bus stop waiting for a bus. Adams approached the victim, armed with a BB gun and demanded money. He forced the victim to a secluded location where he digitally penetrated her and performed cunnilingus. The victim tried to attempt to remove the handgun however he produced a large knife from his backpack and threatened to slash her throat.</p> <p>One mth later Adams approached another female victim. He exposed a handgun tucked into his shorts. Terrified, the victim threw her handbag at him and ran.</p> <p>A search warrant executed on Adams house located 38 items of mail stolen from addresses in Perth. A further search warrant was executed at the storage facility where nine items of stolen mail was located. Also found were unlicensed registration plates, weapons and unlicensed ammunition.</p> | | <p>Discussion on the scope of section 32 notices and Commonwealth offences.</p> <p>At [174] Ground 3 is capable of affecting the total effective sentence imposed by his Honour. However, having regard to all of the circumstances of the case and particularly to the seriousness of the appellant's overall offending and the need for deterrence, I would not impose a different sentence.</p> |
| <p><i>Transitional Provisions Repealed (14/01/2009)</i></p> | | | | | |

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| <i>Transitional Provisions Enacted (31/08/2003)</i> | | | | | |
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Office of the Director of Public Prosecutions