

# Grievous Bodily Harm

*s 297 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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:

agg	aggravated
att	attempted
AOBH	assault occasioning bodily harm
burg	burglary
CBO	community based order
conc	concurrent
cum	cumulative
ct	count
dep lib	deprivation of liberty
EFP	eligible for parole
GBH	grievous bodily harm
imp	imprisonment
OMG	outlaw motorcycle gang
PG	plead guilty
sex pen	sexual penetration
susp	suspended
TES	total effective sentence
VRO	violence restraining order

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
29.	<i>The State of Western Australia v Saleh</i>  [2020] WASCA 205  Delivered 07/12/2020	<p><u>Saleh</u> 22 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after late PG (12% discount).</p> <p>Minor criminal history; one prior conviction.</p> <p>Good family support.</p> <p>Qualified electrician; secure employment time of sentencing; good work ethic; contributes to a sporting club.</p> <p>Good physical health; experienced depression and anxiety after the offending; prescribed medication.</p> <p>History of binge drinking alcohol.</p> <p><u>Assaad</u> 22 yrs at time offending. 25 yrs at time sentencing.</p>	<p>Ct 1: GBH Ct 2: AOBH</p> <p>In the early hrs of the morning Saleh, Assaad and three other males, A, B and C were at a karaoke bar. Also at the venue were another group, which included the victims, Slatter and Pointing.</p> <p>There was no interaction or altercation between the groups prior to the offending.</p> <p>The incident was captured on CCTV.</p> <p>Outside the venue A argued with an unknown male. A asked Slatter, who was standing nearby, what he was looking at, to which he replied, 'Nothing mate'. He then approached Slatter in a fighting stance and other members of his group followed.</p> <p>Slatter and his brother backed away, but A and others from his group advanced on them. A kicked Slatter's brother, so Slatter defended him by attempting to punch A. Slatter and his brother, who were now backed against a railing, were</p>	<p><u>Saleh</u> Ct 1: 19 mths imp. Ct 2: 6 mths imp (conc).</p> <p>Sentences susp 18 mths; without conditions.</p> <p><u>Assaad</u> Ct 1: 15 mths imp. Ct 2: 9 mths imp (conc).</p> <p>Sentences susp 18 mths, program and supervision conditions.</p> <p>A, B and C also charged, but yet to be tried at time of appeal.</p> <p>The sentencing judge found the offending was so serious that it was not appropriate to impose anything other than sentences of imp, but concluded that it</p>	<p>Allowed (ct 1 only).</p> <p>Appeal concerned type and length of sentences.</p> <p><u>Saleh</u> Ct 1: 2 yrs 5 mths imp. Ct 2: 8 mths imp (conc).</p> <p>TES 2 yrs 5 mths imp. EFP.</p> <p><u>Assaad</u> Ct 1: 2 yrs 9 mths imp. Ct 2: 3 mths imp (cum).</p> <p>TES 3 yrs imp. EFP.</p> <p>At [56] ... Slatter had no time to defend himself [from Assaad] .... He was standing on concrete and against a metal railing or gate, carrying the potential for more serious injury to result from an assault of this kind. The initial forceful blow on an undefended victim had real</p>

		<p>Convicted after late PG (10% discount).</p> <p>Prior criminal history; no prior offences of violence as an adult; juvenile convictions for GBH and AOBH.</p> <p>On bail time of offending.</p> <p>Parents separated when aged 14 yrs; subjected to domestic violence; father heavy user of cannabis and physically and emotionally abusive; father no involvement in his life.</p> <p>Close relationship with mother; stepfather and half siblings.</p> <p>Commenced but did not complete apprenticeship on leaving school; sporadic employment; not working at time of sentencing.</p> <p>History of alcohol abuse; commenced drinking as a teenage; drinking excessively</p>	<p>surrounded by A, B and Assaad.</p> <p>Suddenly and without warning, Saleh, who was standing some distance away, moved quickly towards Slatter and delivered a forceful blow to his face. Slatter fell backwards into the railing.</p> <p>Other members of the group, in particular Assaad, then struck Slatter a number of times. He then stumbled to the other side of the carpark where he continued to be struck by A, B and Assaad.</p> <p>Pointing attempted to assist Slatter so Assaad, A and C grapple with him and struck him a number of times. He was also struck a number of times when on the ground.</p> <p>During the attack on Pointing, Saleh stood nearby. He did not strike any of the blows, but was criminally liable for the assault as a consequence of participating in an unlawful purpose with the other men.</p> <p>Slatter sustained a fractured cheekbone, broken nose and fractured jaw. He required surgery and continues to suffer</p>	<p>was appropriate to suspend the sentences.</p> <p>The sentencing judge found the culpability of Saleh and Assaad ‘roughly equal’ in respect of ct 1; however Assaad bore greater culpability than Saleh in respect of ct 2 and Assaad’s involvement in the offending was more persistent.</p> <p><u>Saleh</u> Remorseful; victim empathy; acknowledged impact offending had on victims; steps taken towards rehabilitation, including alcohol consumption; distanced himself from others involved in the incident; complied with strict bail conditions, including overnight curfew 2½ yrs.</p>	<p>potential to cause devastating injuries.</p> <p>At [57] Mr Saleh’s culpability is equal to that of Mr Assaad on ct 1 because while the latter delivered more blows, the blow by Mr Saleh was the first and clearly most forceful. ...</p> <p>At [58] The fact that these offences were committed in company was a seriously agg factor. The respondents were part of a larger group that acted as the aggressors in the confrontation. The victims for the most part did not fight back, rather they were backing away or trying to retreat from their attackers. At each stage of the attack there were multiple members of the respondents’ group outnumbering the victims. ... This is a factor that distinguishes this case from many other cases which involve drunken one-on-one</p>
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		by age 20 yrs.	<p>lasting consequences in the form of facial numbness.</p> <p>Pointing suffered a laceration to the back of his head, which required stiches.</p>	<p><u>Assaad</u> Remorseful; victim empathy; accepts full responsibility for his behaviour; steps taken towards rehabilitation; stopped drinking alcohol prior to sentencing and distanced himself from negative peers; complied with stringent bail conditions for 11 mth period; some risk of reoffending in similar manner.</p>	<p>violence between strangers. It placed the offending towards the higher end of the scale.</p> <p>At [67] ... In respect of each of the respondents the circumstances of ct 1 were so serious that favourable personal circumstances in respect of each of them could not justify susp their sentences. Nor did the sentences imposed adequately reflect the important of general deterrence.</p> <p>At [68] The imposition of a susp sentence on ct 1 in respect of Mr Saleh and a conditionally susp sentence on ct 1 in respect of Mr Assaad were unreasonable or plainly unjust in the circumstances of this case. ...</p>
28.	<p><i>The State of Western Australia v Cronin</i></p> <p>[2020] WASCA</p>	<p>29 yrs at time offending. 30 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p>	<p>Ct 1: Wilful damage. Ct 2: Agg GBH. Ct 3: Obstruct public officer.</p> <p>The victim was a 68 yr old male.</p>	<p>Ct 1: 4 mths imp (conc). Ct 2: 2 yrs 8 mths imp (cum). Ct 3: 4 mths imp (cum).</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence ct 2.</p> <p>Re-sentenced to:</p>

<p><b>203</b></p> <p>Delivered 07/12/2020</p>	<p>Lengthy criminal history; first offended aged 14 yrs; history of violence and property damage, including burglaries.</p> <p>Deprived childhood; troubled family history; death of father from drug overdose before his birth; mother in a series of violent relationships involving substance abuse; surrounded by drug and alcohol abuse and domestic violence; raised in an environment where family and friends committed offences.</p> <p>Illiterate; no history of employment since a teenager.</p> <p>No stable relationships; children he rarely sees.</p> <p>Drug use from a young age; cannabis and methyl.</p> <p>Diagnosed as being on the schizophrenia spectrum.</p>	<p>At the time of the offending Cronin was under the influence of drugs and was having a psychotic episode.</p> <p>Following a disagreement Cronin attempted to gain entry to a unit, causing damage to the unit's security screen door.</p> <p>A short time later Cronin approached the victim as he walked through the common area of his residence. He struck the victim four to five times on the head, knocking him to the ground. He then straddled the victim, bit off a large part of his ear and choked him, to the point where the victim believed he was about to die.</p> <p>The attack was entirely unprovoked.</p> <p>Cronin left the scene and was located by police a short distance away. He was highly agitated and abusive and refused to listen to anyone trying to shift him.</p> <p>At one point he kicked out at an officer, striking them in the groin area. He then went to the ground and started kicking his legs around in an effort to resist police detaining him.</p>	<p>TES 3 yrs imp.</p> <p>EFP.</p> <p>Sentenced on basis the respondent has mental health issues which are drug related and drug exacerbated.</p> <p>The sentencing judge found the offending the subject of ct 2 was in the mid-range of seriousness; it was not the most serious case of agg GBH and no weapon was used in the attack.</p> <p>The sentencing judge found the victim had not provoked the attack; it was sustained and vicious and left the victim with serious injuries; his ear will not heal.</p> <p>Victim psychologically</p>	<p>Ct 2: 4 yrs 10 mths imp (cum).</p> <p>Cts 1 &amp; 3 not interfered with, or the accumulation of the sentence for ct 3.</p> <p>TES 5 yrs 2 mths imp. EFP.</p> <p>At [36] This was a random, entirely unprovoked, attack upon a 68-yr-old man. ... the attack occurred in a public place. The physical injuries may not have involved the catastrophic permanent impairment of bodily or mental function which constitute the most serious types of GBH. However, the respondent used his teeth to bite off part of the victim's ear in a vicious attack, causing the victim to be permanently disfigured.</p> <p>At [37]-[39] The effects of the injury resulting from the</p>
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			<p>Cronin continued to act in an aggressive manner, including attempting to head butt a wall. He continued to resist police once handcuffed. He was eventually subdued after being administered a sedative by paramedics.</p> <p>The victim was hospitalised and suffered serious injuries and disfigurement from his partly amputated ear. His breathing was also affected by the swelling in his throat, which was life endangering. His voice was still hoarse seven mths after the attack.</p>	<p>damaged by the attack and left with a high degree of anxiety.</p> <p>Some demonstrated degree of insight and remorse into his offending; continues to believe the victim represented a ‘threat’ from which he needed to defend himself; some acceptance of the need to cease using illicit drugs; steps taken towards rehabilitation; high risk of re-offending if illicit drug use continues.</p>	<p>compression of the victim’s neck were ongoing seven mths after the attack. There was a high degree of risk that the sustained compression of the victim’s neck would be fatal or result in a serious brain injury. While those consequences did not eventuate, the likelihood was an agg feature of the offence, and indicated that the endangerment of the victim’s life was very real. Applying sustained pressure to the victim’s neck to the extent that the victim thought he was going to die constituted the infliction of violence of the utmost gravity. ... The attack was sustained and continued while the victim was on the ground in an entirely helpless position. It resulted in serious and likely permanent psychological injury to the victim. ... The violence offered in the present case by a physically fit young man to a relatively helpless older</p>
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					<p>victim is to be deprecated. ...</p> <p>At [42] ... the individual sentence of ... imp on ct 2 is unreasonable or plainly unjust. Error is to be implied from an individual sentence for that ct which is manifestly inadequate.</p>
27.	<p><i>Hansen v The State of Western Australia</i></p> <p><b>[2019] WASCA 170</b></p> <p>Delivered 01/11/2019</p>	<p>31 yrs at time offending.</p> <p>Convicted after PG (20% discount).</p> <p>Lengthy criminal history; prior convictions for violent offending.</p> <p>Reasonably stable, secure; happy childhood; devoid of abuse.</p> <p>Completed yr 12.</p> <p>Good employment history; labouring positions; recent unemployment, citing a back injury.</p> <p>Suffers seizures; evidence of</p>	<p>Ct 1: Agg AOBH. Ct 2: Agg GBH.</p> <p>The victim, A, was aged 36 yrs. She and Hansen were in a family relationship.</p> <p>The victim, T, was aged 67 yrs and was Hansen's neighbour.</p> <p>Hansen made abusive and derogatory comments to A as they walked along the street. A walked away.</p> <p>Hansen ran up to A from behind, grabbed her hair and punched her in the face and head. She fell to the ground. He then stood over her and punched, kicked and racially insulted her.</p> <p>The commotion caused several residents to come out of their homes. Fearing for</p>	<p>Ct 1: 2 yrs 6 mths imp (cum). Ct 2: 4 yrs imp (cum). TES 6 yrs 6 mths imp. EFP.</p> <p>The sentencing judge characterised the appellant's overall behaviour as 'extremely violent' and he subjected the victims to 'a terrifying ordeal'.</p> <p>The sentencing judge found the assault on A was persistent in nature and the assault on T, which had the potential</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [26] ... each offence was plainly a serious offence of its type. The appellant's actions were borne out of anger and were completely unjustified. The offences were committed in an ordinary suburban street, in the view of householders. Both victims were vulnerable. A was no physical match for the appellant, and T was much older than him. The attack on A was brutal, sustained and merciless. ... To the appellant's knowledge, A</p>

		<p>epilepsy; receiving treatment.</p> <p>History of methyl and alcohol abuse.</p>	<p>A's safety and welfare T, armed with a wooden implement, approached Hansen and yelled at him to stop.</p> <p>Hansen threw a single punch, striking T in the jaw. The blow knocked T unconscious and he fell backwards, causing him to hit the back of his head on the roadway.</p> <p>Hansen then picked up the wooden implement and resumed his assault upon A, hitting her in the ribs with great force.</p> <p>Hansen eventually fled the scene. He was arrested a short time later.</p> <p>A was taken to hospital and treated for pain and abrasions. She was fortunate not to have suffered fractured ribs.</p> <p>T suffered facial fractures and bleeding on his brain. He required surgery. He continued to suffer adverse side effects from his injuries, including poor short-term memory; headaches and disruption to his senses of taste and smell.</p>	<p>to result in his death, had physical and psychological consequences.</p> <p>The sentencing judge acknowledged the offences occurred over a relatively brief period of time, but involved two victims in two separate attacks.</p> <p>Co-operative; expressed regret and remorse; limited insight into his offending behaviour; high risk of violent reoffending.</p>	<p>may have been pregnant.</p> <p>At [27] ... the offence committed against T involved a single punch, ... delivered to T's face with such force as to cause facial fractures and immediately render him unconscious. It cannot be overlooked that T had acted to protect A by attempting to prevent the appellant's continuing assault upon her. Instead of desisting ... the appellant escalated the situation and punched T. The consequences to T ... have been very significant. ...</p> <p>At [31] ... the TES imposed ... was entirely appropriate, having regard to all of the relevant circumstances and all of the relevant sentencing factors. ...</p>
26.	<i>The State of Western Australia v TLP</i>	<p>24 yrs at time offending.</p> <p>25 yrs 6 mths time sentencing.</p>	<p>Ct 1: Agg GBH.</p> <p>Ct 2: Agg AOBH.</p> <p>Cts 3-7 &amp; 9: Agg sex pen.</p>	<p>Ct 1: 3 yrs imp (conc).</p> <p>Ct 2: 16 mths imp (conc).</p>	<p>Allowed.</p> <p>Appeal concerned length of</p>



<p><b>[2019] WASCA 66</b></p> <p>Delivered 24/04/2019</p>	<p>Convicted after PG (20% discount).</p> <p>No prior criminal history.</p> <p>Unstable upbringing; parents separated before aged 2 yrs; lived with various family and friends as a child (including grandmother, victim P); mother often lived elsewhere.</p> <p>Completed yr 10.</p> <p>Bullied at school; socially isolated; retreated into computer gaming world; accessed pornography at a young age, exposed to explicit pornography depicting incest and bondage.</p> <p>Employed various casual roles; unemployed 18 mths prior to offending.</p> <p>History of alcohol and illicit drug use; escalated prior to offending; intoxicated with</p>	<p>Ct 8: Att agg sex pen.</p> <p>TLP went to his grandparents' home. His grandmother, P, aged 73 yrs, and his half-sister E, aged 17 yrs were home. P let him into the house. After a time, and without warning, he attacked P by grabbing her by the neck, throwing her to the ground and punching her repeatedly to her face and head (ct 1).</p> <p>TLP then assaulted E by grabbing her by the hair and punching her in the face and head repeatedly (ct 2). He dragged E to where the victim P was still lying and, in her presence, he committed and att to commit acts of sexual violence against E (cts 3-9).</p> <p>During the sexual assaults he repeatedly told E and P that if they did not do what he said he would kill them.</p> <p>TLP then left, taking his grandfather's car. He travelled to Collie where he was arrested.</p>	<p>Ct 3: 18 mths imp (cum).</p> <p>Ct 4-5 &amp; 8-9: 18 mths imp (conc).</p> <p>Ct 5: 18 mths imp (conc).</p> <p>Ct 6: 5 yrs imp (cum).</p> <p>Ct 7: 2 yrs (conc).</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge characterised the offending as extremely serious; involving a sustained, prolonged, vicious and violent attack on P and E; his conduct 'obviously degrading'; it inflicted serious physical injuries and psychological trauma on the victims.</p> <p>Remorseful; co-operative with police.</p> <p>Moderate to high risk of</p>	<p>sentence (cts 1, 3-5, 7-9) and totality principle.</p> <p>Re-sentenced to:</p> <p>Cts 1: 5 &amp; 9: 4 yrs imp (cum).</p> <p>Ct 2: 16 mths imp (conc).</p> <p>Ct 3: 4 yrs imp (conc).</p> <p>Cts 4 &amp; 7: 5 yrs imp (conc).</p> <p>Ct 6: 6 yrs imp (conc).</p> <p>Ct 8: 3 yrs imp (conc).</p> <p>TES 12 yrs imp.</p> <p>EFP.</p> <p><u>Ct 1</u> At [87] – [88] The circumstances ... of this offence ... are self-evidently extremely serious. The victim was the respondent's grandmother. She was 73 yrs old .... The respondent was much younger than his grandmother and there was a significant size difference between him and his victim. P was completely vulnerable. The respondent attacked her</p>
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		<p>alcohol and cannabis at time offending.</p>		<p>re-offending in a sexual manner; particularly if alcohol and cannabis use not addressed.</p>	<p>without warning. She had no ability or means with which to fight back. ... At the time the respondent was sentenced, P was still receiving medical and psychological treatment.</p> <p>At [89] The acts of the respondent can fairly be characterised as callous, brutal and sustained. ... The respondent did nothing to help P, despite her injuries. Instead, he forced E to humiliate and then kick P. The respondent forced P to witness the respondent's sexual attacks on E.</p> <p><u>Cts 3, 4, 5, 7, 8 and 9</u>  At [90] ... it is clear that the offending was at the upper end of the range of seriousness for offences of agg GBH.</p> <p>At [96] Each of the offences ... was a very serious example of its type. ... He did</p>
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					so with a high level of violence and while threatening to kill her. E's humiliation and distress in each case was compounded by the respondent committing the offence in the presence of P. The respondent traumatised E, who had not previously engaged in sexual intercourse. The respondent exposed her to the risk of pregnancy. Each of the offences ... was cruel and was committed without a modicum of pity for the ordeal he inflicted upon E. ...
25.	<p><i>The State of Western Australia v Yamalulu</i></p> <p>[2019] WASCA 6</p> <p>Delivered 14/01/2019</p>	<p>31 yrs at time offending. 32 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Significant prior criminal history; numerous offences of violence, including domestic violence and breaches of VROs.</p> <p>Aboriginal male; English not</p>	<p>1 x GBH.</p> <p>The victim was 38 yrs old. She and Yamalulu had been in a relationship and they had a three yr old child together. Their relationship was marred by domestic violence and at the time of the offending their relationship had ended and a VRO was in force protecting the victim.</p> <p>Yamalulu had been drinking heavily and was intoxicated when he discovered the</p>	<p>3 yrs 8 mths imp.</p> <p>EFP.</p> <p>Remorseful and acceptance of responsibility.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence.</p> <p>Resentenced to 7 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [68] The respondent committed a frenzied, savage and relentless attack upon a</p>

		<p>his first language.</p> <p>Dysfunctional upbringing and deprived background; four siblings; loss of mother at a young age; alcoholic and violent father; regularly observed violence within his family and community.</p> <p>Raised by aunt and uncle after mother's death; stable home life.</p> <p>Schooled until yr 9 or 10; did not perform well; good at sport.</p> <p>Employed by community development programme on leaving school; worked as a teachers' assistant; unemployed at time sentencing; time spent moving from one community to another.</p> <p>Alcohol abuse from 17 yrs; cannabis use from 18 yrs.</p>	<p>victim having sex with his brother.</p> <p>Yamalulu violently assaulted the victim. He repeatedly jumped on her chest, legs and head, rendering her unconscious. He then fled the scene failing to render first aid or seek any medical assistance.</p> <p>The victim was flown to hospital. She suffered very serious injuries, including a traumatic brain injury resulting in quadriplegia.</p>		<p>vulnerable, unarmed and defenceless woman. He inflicted shocking injuries. ... ignored [the victim's] repeated pleas for him to stop attacking her. He showed no mercy. [The victim] is permanently disabled and has an exceptionally high level of impairment. Her prospects of improvement are limited.</p> <p>At [69] The relationship between [the victim] and the respondent had ended before the offending occurred. He was not deterred by the VRO that was in force for her protection.</p> <p>At [71] ...His history of violence (in particular, domestic violence towards his partners) underscored the importance of personal deterrence as a sentencing factor. ...</p> <p>At [74] ... The sentence was not merely 'lenient' or 'at the</p>
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					lower end of the available range'. It was substantially less than the sentence that was open to her Honour on a proper exercise of her discretion.
24.	<p><b><i>Palmer v The State of Western Australia</i></b></p> <p><b>[2018] WASCA 225</b></p> <p>Delivered 20/12/2018</p>	<p>40 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No relevant prior criminal history.</p> <p>Born and raised in NZ.</p> <p>Transgender; birth-assigned male; identified as female her adult life; prescribed female hormones since her early 20s.</p> <p>Completed high school; commenced but did not complete teacher's college.</p> <p>Commenced using methyl late 20s; sex work and drug use intertwined.</p>	<p>1 x GBH.</p> <p>Palmer was a sex worker and intravenous drug user. A blood test revealed she was HIV positive. Despite this, she continued to conduct sex work.</p> <p>Palmer advertised her services online, representing herself as 'clean' and was contacted by the victim. In response to his enquiries she confirmed she was 'clean' and that she underwent monthly checks for sexually transmitted diseases. At the time she knew she was not 'clean' and had been infected with HIV.</p> <p>Over a period of about eight mths Palmer and the victim engaged in unprotected anal sex. At no time did she disclose to the victim she was HIV positive.</p> <p>The victim became ill and a blood test revealed he was HIV positive.</p>	<p>6 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the appellant's criminality as 'at the upper end of the range of seriousness'; she had a 'callous disregard' for the victim and as a sex worker she was plainly aware of the seriousness of sexually transmitted diseases'.</p> <p>The trial judge found the offending was significantly agg by the appellant's dishonesty in the representations she made to the victim; the length of time over which she was prepared</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence.</p> <p>Re-sentenced to 4 yrs imp. EFP.</p> <p>At [60]-[67] Discussion of comparable cases.</p> <p>At [68] ... Despite the fact that advances in medicine mean that, provided the victim maintains a regime of daily medication, he will live a normal life, the fact remains that he has been infected with a lifelong and potentially deadly virus. The appellant deliberately deceived the victim, claiming that she was free from sexually transmitted diseases. As a result of that</p>

				<p>to engage in sexual activity with the victim without informing him of her HIV status was ‘significant and aggravating’; she displayed ‘a wilful and wanton disregard for the safety or welfare of the victim’.</p> <p>Incarceration more difficult; detained in male prison in protective custody for her own safety.</p> <p>Undertook volunteer work to educate sex workers about HIV prior to sentencing.</p> <p>No on-going risk to public safety; now accepting of HIV status and effectively medicated.</p>	<p>deceit, the victim engaged in unprotected anal sex.</p> <p>At [69] ... It must be accepted that, from the victim’s perspective, his HIV positive status has been a great burden. It has adversely and significantly affected his enjoyment of life and will continue to do so into the future, ...</p> <p>At [70] ... the sentence imposed upon the appellant was severe, having regard to the range of sentences customarily imposed for offences of GBH. ...</p> <p>At [71] ... the appellant will serve the custodial portion of her sentence in a male prison, under protection, and will experience hardship beyond that experienced by mainstream prisoners. ...</p> <p>At [72] ... having regard to all of the relevant facts and</p>
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					circumstances, the sentence that was imposed was, having regard to the max penalty, the seriousness of the offending, the range of sentences customarily imposed, the importance of providing an appropriate measure of punishment and deterrence, and having regard to all mitigating factors, the length of the term was unreasonable or plainly unjust.
23.	<p><i>Ugle v The State of Western Australia</i></p> <p>[2018] WASCA 221</p> <p>Delivered 12/12/2018</p>	<p>35 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal history; no relevant convictions.</p> <p>Married; eight children.</p> <p>Gainfully employed since leaving school; regarded as a mentor to others.</p>	<p>1 x GBH.</p> <p>Ugle, his wife and two young children spent the day socialising. Ugle was extremely intoxicated so his wife drove him and their children home.</p> <p>On the drive home they came upon the victim and a friend, Mr L walking down the street. Both were loud and making a noise. Ugle and his wife heard them make comments which they took to be directed towards them.</p> <p>The vehicle in which Ugle was travelling drove back to the victim and Mr L, where he then verbally confronted them.</p>	<p>18 mths imp.</p> <p>EFP.</p> <p>The trial judge found the victim's injuries were 'towards the lower end of the range of injuries constituting GBH'; but they were, nevertheless, serious.</p> <p>The trial judge found the appellant started the physical confrontation; although Mr L had acted provocatively and</p>	<p>Dismissed.</p> <p>Appeal concerned error in conceding immediate imp appropriate and length of sentence.</p> <p>At [21] ... His Honour's consideration of whether or not to impose a susp term of imp was completely orthodox and conformed with the requirements of the <i>Sentencing Act 1995 (WA)</i> ...</p> <p>At [31] ... While the injuries sustained by the victim were</p>

			<p>Mr L, affected by alcohol, approached the vehicle, aggressive and confrontational. Ugle got out of the car to confront him and they commenced to push and shove each other.</p> <p>As the physical confrontation escalated the victim attempted to defuse the situation. In order to ‘get at’ Mr L, Ugle punched the victim in the jaw, rendering him unconscious.</p> <p>The victim suffered a fractured jaw which required surgical intervention.</p>	<p>with aggression towards the applicant, the victim had acted as a peacemaker; Mr L’s behaviour did not excuse or condone what the appellant did.</p> <p>Remorseful; real prospects of rehabilitation; unlikely to reoffend.</p>	<p>towards the lower end of the scale of seriousness of injuries that constitute GBH, they were nevertheless serious.</p> <p>At [32] While ... the appellant delivered only one blow to the victim, that blow was delivered to [the victim’s] face and was delivered with such force that it knocked him into a garden bed and rendered him unconscious. Such a forceful blow, in circumstances where the victim had no real opportunity to defend himself, had the potential to inflict more serious injury than in fact occurred.</p> <p>At [33] The circumstances in which the appellant punched the victim do him (the appellant) no credit. ... [The victim] offered no provocation to the appellant whatsoever. The blow struck by the appellant was not, in</p>
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					any way, justified or excusable.
22.	<p><i>Lee v The State of Western Australia</i></p> <p><b>[2018] WASCA 156</b></p> <p>Delivered 03/09/2018</p>	<p>38 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Prior criminal history; including an AOBH and drug offences; prior sentences of imp.</p> <p>Excellent work ethic.</p> <p>At time offending nominee or prospective member of the Rebels OMG.</p> <p>Married; separated since time of offending; joint custody of their child.</p>	<p>1 x GBH.</p> <p>Lee and his five co-offenders were associated with an OMG.</p> <p>The victim went to the home of a friend. While at the property he heard a vehicle arrive and opened the garage door to find Lee and the co-offenders standing in the driveway.</p> <p>This was the second occasion the five co-offenders (but not Lee) had visited the home. Their first visit was earlier that same evening, prior to the victim's arrival.</p> <p>The victim produced a firearm. A confrontation resulted in some of the offenders striking the victim multiple times. One of the offenders struck him with a baseball bat they had bought with them. The victim fell to the ground where he continued to be assaulted.</p> <p>Lee did not physically attack the victim.</p> <p>The offenders then departed the premises.</p>	<p>4 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offence was of a very serious kind; the victim was 'lured' to the house; the offenders intended to confront the victim by surprise; it was six men against one; it was premediated and not a spontaneous reaction to provocation by the complainant.</p> <p>The sentencing judge was not prepared to sentence each offender on the basis of the physical role that he played in the attack; each offender was sentenced on the basis that he was a party to the blows that caused</p>	<p>Dismissed.</p> <p>Appeal concerned parity; errors of fact and finding (appellant present at the home on the earlier occasion and victim lured to the home) and length of sentence.</p> <p>At [52] and [54] There is ambiguity as to whether the sentencing judge's comment that '[y]our group had visited ... earlier that night' was an erroneous reference to all of the offenders rather than all of them except the appellant. ... we are of the opinion that the error was not, in all of the circumstances, material to the sentencing outcome.</p> <p>At [64] and [65] There is ambiguity as to whether the sentencing judge, in stating that the complainant had been 'lured' to [the] house, was making a finding that it was</p>

			<p>Despite his injuries the victim drove home, where he was conveyed to hospital by ambulance. He required surgery for multiple fractures to his leg, hand, arm and skull.</p>	<p>the GBH.</p>	<p>the offenders who had lured him (either directly or through someone else, ...) ... we are of the opinion that the error was not, in all of the circumstances (in particular, having regard to her Honour's unchallenged and correct finding that the offenders intended to confront the complainant by surprise), material to the sentencing outcome.</p> <p>At [74] ... the appellant voluntarily became involved in the plan to threaten the complainant ... The appellant knew that he was one of six offenders and that one of his group was armed with a baseball bat. The appellant accepted criminal responsibility for the offending on the basis that the decision to attend [the] house and threaten the complainant, as a group, was a common unlawful purpose and that it was a probable consequence</p>
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					<p>of the prosecution of such purpose that the offence of unlawful GBH would be committed. ... The appellant's presence with the other members of the group was calculated to ensure that the complainant was outnumbered and overpowered. ... The sentencing judge observed, correctly, that the appellant was 'as much part of the group as the others were on that night and [he was] equally as responsible ... for what occurred on that night' ...</p> <p>At [80] ... the appellant was not deserving of a materially lesser sentence ... than any of [the co-offenders].</p>
21.	<p><i>Merlo v The State of Western Australia</i></p> <p>[2018] WASCA 71</p>	<p>34 yrs at time offending.</p> <p>Convicted after trial (acquitted cts 1 and 2).</p> <p>Prior minor criminal history.</p>	<p>Ct 3: GBH.</p> <p>Ct 4: GBH with intent.</p> <p>The victim, AR is a US citizen. She met Merlo overseas and they began living together in WA.</p>	<p>Ct 3: 18 mths imp (cum).</p> <p>Ct 4: 5 yrs imp (cum).</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned error in finding this offending agg by prior violent behaviour towards victim; and totality principle.</p>

	<p>Delivered 15/05/2018</p>	<p>Supportive family; support within the community.</p> <p>Successful businessman.</p> <p>Married at time sentencing.</p> <p>Illicit substance abuse at time offending; since ceased drug use.</p>	<p>Merlo was controlling and violent and AR eventually asserted some degree of independence from him, however they retained a relationship.</p> <p><u>Ct 3</u> AR attended Merlo's apartment. He consumed methyl and in a drug-fuelled rage battered AR with his fists, delivering at least 'two targeted powerful blows' to her face rendering her semi-conscious.</p> <p><u>Ct 4</u> Merlo then took a meat cleaver, put her hand on a chopping board and with a single blow of the cleaver severed, almost entirely, her little finger.</p> <p>AR suffered a fractured cheekbone and eye sockets, resulting in nerve damage to her face, affecting her appearance. Surgical attempts to reattach the finger were unsuccessful.</p>	<p>The trial judge found the offences not an 'uncharacteristic aberration' and did not happen 'out of the blue'; they were a 'dramatic escalation of prior conduct'; it was unprovoked and senseless, although not premediated.</p>	<p>At [44] The appellant's criminal behaviour involved two distinct acts, ... The first was punching AR to the face. ... with considerable force. He did so without any justification. ... AR was already vulnerable, being much smaller and nowhere near as strong as the appellant, but his actions left AR weakened and semi-conscious. While AR was in this state, the appellant committed ct 4.</p> <p>At [45] The appellant's actions in taking a meat cleaver and deliberately severing part of the appellant's little finger ... was a particularly senseless, cruel and violent act. To take AR's hand ... and wield the meat cleaver as he did was terrifying and pitiless. While not life-threatening, the loss of the finger is unsightly and painful, and has deprived AR of pursuits she once enjoyed. ...</p> <p>At [51] ... having regard to all of the relevant circumstances ... including the separate and distinct acts committed by the</p>
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					appellant, and that his Honour adjusted the individual sentence on ct 3 for totality reasons, it would have been inappropriate to apply the so-called one transaction rule ...
20.	<p><b><i>Baker v The State of Western Australia</i></b></p> <p><b>[2018] WASCA 15</b></p> <p>Delivered 16/02/2018</p>	<p>35 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history in NSW; including assault; damage and breach of an AVO.</p> <p>Born New Zealand; positive family upbringing; moved to Australia aged 19 yrs.</p> <p>Left school 16 yrs.</p> <p>Reasonably regular employment history.</p> <p>History of illicit substance use.</p>	<p>1 x GBH.</p> <p>The victim and Baker were unknown to each other.</p> <p>Baker knocked on the victim's door and when he answered he was struck in the head and body with a wooden article. When he fell to the ground Baker continued the attack.</p> <p>The victim suffered substantial head injuries, including a fractured skull with permanent loss of sense of taste and smell.</p> <p>Offence committed while in methyl induced psychosis [10], [13].</p>	<p>4 yrs 6 months imp.</p> <p>No explanation for his offending; except offence committed while in drug-induced psychosis.</p> <p>The sentencing judge found the appellant committed an unprovoked assault; agg by the use of a weapon; the extent of the victim's injuries; the persistence of the attack; the victim gave no cause whatsoever for grievance; was not known to the appellant; had no means of defending himself and it occurred on the front door of his home.</p> <p>The sentencing judge found the case was in the mid to high level of seriousness of offences of</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [26] Consideration of reasonably comparable cases does not support a conclusion that the appellant's sentence was manifestly excessive. ... the appellant's sentence is broadly consistent with the sentences in other reasonably comparable cases.</p> <p>At [27] ... it is not reasonably arguable that the length of the term of imp was unreasonable or plainly unjust. The sentence ... was commensurate with the seriousness of the offence and was within the range open to the sentencing judge on a proper exercise of his discretion.</p>

				this kind.	
19.	<p><i>Fernandez v The State of Western Australia</i></p> <p>[2017] WASCA 223</p> <p>Delivered 05/12/2017</p>	<p>43 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior convictions.</p> <p>Loving and supportive family.</p> <p>Well educated, intelligent.</p> <p>Hard working; highly thought of by work colleagues and friends.</p>	<p>1 x GBH.</p> <p>The victim is Fernandez's estranged husband. There was a custody dispute over their two children.</p> <p>Fernandez arranged to meet the victim at a park, to spend some time with their youngest child.</p> <p>After playing with the child a short time, it was agreed the victim would leave with the child and collect their other child later that afternoon.</p> <p>While at his car the victim noticed someone behind him. He turned and saw Fernandez with a knife. She stabbed him in the stomach and again in the chest, causing him to fall to the ground on all fours. He took hold of the knife to prevent being stabbed again, causing severe injury to his left palm.</p> <p>The victim required surgery for two major penetration wounds to his chest and abdomen. One of the lacerations was 4-5cm deep and almost 15cm long. The second lacerated the small bowel.</p>	<p>5 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge was satisfied beyond reasonable doubt that the appellant brought the knife to the park, but was not satisfied beyond reasonable doubt that she formed the intent to use it until shortly before the stabbing occurred.</p> <p>The sentencing judge found there was a degree of premeditation in the appellant's offending by the carrying of the knife and forming the intent.</p> <p>The sentencing judge described the attack as brutal; it involved the use of a weapon in a public park in the middle of the day, with people, including children, present.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence; error in taking into account complainant was collecting his children pursuant to a consent order as agg factor; error in finding of fact appellant brought the knife to the park.</p> <p>At [154] The appellant's contention that the judge treated the fact that the complainant was picking up his child in accordance with a court order as an agg factor is mere assertion ... The judge was making the uncontroversial point that the complainant was entitled to go about his ordinary daily business without fear of being attacked.</p> <p>At [158] ... It was well open to the jury, and the sentencing judge, to be satisfied beyond reasonable doubt of the truth and reliability of the complainant's evidence that he did not bring the knife to the park, and that the appellant produced the knife. The only reasonable inference</p>

					<p>from those findings was that the appellant brought the knife to the park.</p> <p>At [163] ... the sentence ... imposed upon the appellant in this case is broadly consistent with all reasonably comparable cases.</p> <p>At [166] The appellant's offence was unquestionably serious. She deliberately used a dangerous weapon. She inflicted two major wounds. The attack was unprovoked. Her attack on the complainant caused serious life-threatening injuries and has had far-reaching and enduring consequences for him.</p>
18.	<p><b><i>Reynolds v The State of Western Australia</i></b></p> <p><b>[2017] WASCA 214</b></p> <p>Delivered 24/11/2017</p>	<p>38 yrs at time sentencing.</p> <p>Convicted after PG (20% discount) (ct 1).</p> <p>Convicted after trial (cts 2-3).</p> <p>Extensive criminal history; offending across four States; no significant gaps since age of 18 yrs.</p> <p>On bail for ct 1 at time of</p>	<p>Ct 1: Receiving.</p> <p>Ct 2: GBH.</p> <p>Ct 3: Unlawful wounding.</p> <p><u>Ct 1</u></p> <p>Police executed a search warrant at Reynolds' home and located various items, valued at about \$12,800, recently stolen from a home burglary.</p> <p><u>Cts 2 &amp; 3</u></p> <p>Mr B's home was burgled and some of his</p>	<p>Ct 1: 9 mths imp (cum).</p> <p>Ct 2: 5 yrs imp (cum).</p> <p>Ct 3: 12 mths imp (conc).</p> <p>TES 5 yrs 9 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the overall offending on cts 2 and 3 in the upper range of</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle and length of sentence.</p> <p>At [36] ... the offence of unlawfully doing GBH committed by the appellant was at the upper end of seriousness. The victim suffered the permanent loss of sight in his right eye. The consequences of</p>

		<p>committed offences subject of cts 2 and 3.</p> <p>Abandoned by both parents at a young age; childhood dogged by lack of opportunity and homelessness.</p> <p>Sporadic history of employment as a mechanic.</p> <p>15 yr relationship; two children 13 and 8 yrs; 2015-2016 partner suffered cognitive deficits from brain aneurism.</p> <p>Insular and isolated family life; no friends or support within the community.</p> <p>Some mental health issues; illicit drug use from 12 yrs; fluctuated in and out of daily drug use since; time spent on methadone program for heroin addiction.</p>	<p>CDs were stolen. He believed the CDs were at Reynold's home. Mr B, accompanied by Mr T, decided to go to Reynolds home to retrieve them.</p> <p>Mr B and Mr T went to a locked gate at the rear of Reynolds' property. His partner appeared and they asked for the return of the CDs. Mr B was told to go away.</p> <p>Reynolds came into the backyard and exchanged angry words with the two men, before going back into his unit and asking his partner to call police.</p> <p>Reynolds was already carrying a pocket-knife but he armed himself with another and went back outside. As Mr B was looking through a hole in the gate Reynolds stabbed him in the eye with one of the knives (ct 2).</p> <p>As both victims walked away Reynolds jumped the fence and came towards Mr T, stabbing him twice in the back (ct 3).</p> <p>As a result of the attack Mr B was blinded in one eye. Mr T's two wounds were able to be sutured and glued.</p>	<p>seriousness by use of a knife and there were two victims. The offences were unprovoked and did not occur in self-defence or defence of his household.</p> <p>Limited capacity for empathy; little remorse; justified his actions.</p>	<p>this injury to the victim have been serious and profound. ... The use of a weapon is ... an aggravating factor. ... the offence was unprovoked. [Mr B] did not enter or attempt to enter the appellant's premises and posed no threat to the appellant or the appellant's family.</p> <p>At [39] The appellant's overall offending was very serious. Not only did he stab [Mr B] but he also stabbed [Mr T]. Although the injuries that [Mr T] suffered were not as serious as those suffered by [Mr B], the potential for serious injury is obvious. The receiving charge the subject of ct 1 was a serious example of its type.</p> <p>At [40] ... It was well open to her Honour to impose some additional punishment for [ct 1], bearing in mind that it was committed some time before cts 2 and 3. ... it is aggravating that cts 2 and 3 were committed while the appellant was on bail for ct 1.</p>
17.	<i>The State of</i>	46 yrs at time offending.	Ct 1: GBH.	Ct 1: 2 yrs 6 mths imp.	Allowed.



<p><b>Western Australia v MacKey</b></p> <p><b>[2017] WASCA 204</b></p> <p>Delivered 02/11/2017</p>	<p>48 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; no prior history of violent offending.</p> <p>Disturbed childhood; violent alcoholic father; left home aged 11 yrs; little contact with family.</p> <p>18 yr former relationship; 15 yrs her registered carer due to her serious mental health issues; mother to his 13 yr old daughter.</p> <p>New relationship; much younger partner; young baby together.</p> <p>Good work history; employed time offending.</p> <p>No health issues; long standing drug addiction; previous engagement in substance abuse programs.</p>	<p>Ct 2: Steal MV.</p> <p>MacKey and the victim were friends.</p> <p>MacKey was a passenger in the victim's car when he received a text message from his partner alleging that she had engaged in sexual relations with the victim. This upset and angered him. He told the victim he wanted to return home immediately.</p> <p>MacKey produced a knife and attempted to stab the victim a number of times. The victim, though driving, was able to block the attempts. However, on the third or fourth attempt he stabbed the victim, causing a very serious abdominal wound.</p> <p>The victim stopped the car and got out. MacKey then got into the driver's seat and drove off.</p> <p>A passing motorist eventually assisted the victim and he was taken to hospital and underwent immediate emergency surgery.</p>	<p>Ct 2: 9 mths imp (conc).</p> <p>TES 2 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge described the offending as serious. The victim suffered significant injury; the respondent used a knife and he attacked out of the blue while the victim was driving and unable to defend himself.</p> <p>The sentencing judge found the victim did not provoke the attack; it was not a planned act, but a spontaneous reaction to the text message.</p> <p>No expressions of remorse; continued to justify the stabbing as an accident.</p>	<p>Appeal concerns length of sentence on ct 1 and totality principle.</p> <p>Re-sentenced to:</p> <p>Ct 1: 3 yrs 6 mths imp. Ct 2: 6 mths (cum).</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>At [36] The harm that resulted from the respondent's assault was serious.</p> <p>At [37] The act which caused the injury was a single blow with a knife. The use of a weapon is an aggravating factor... It was delivered with such force that two of [the victim's] ribs were also broken. Clearly the respondent intended to harm ... and forcefully used a weapon in order to do so.</p> <p>At [38] The respondent's attack on his victim was entirely unprovoked. The use of a</p>
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					<p>weapon on the driver of a moving car seriously aggravated this offence. ... Despite the obvious seriousness of the injury caused, the respondent abandoned [the victim] at the scene and made no attempt to call an ambulance.</p> <p>At [44]-[49] Discussion of comparative cases.</p> <p>At [53] ... The stealing of the motor vehicle was a separate offence made more serious by the fact that it involved leaving [the victim] injured and helpless on the road. ... the stealing offence called for some accumulation.</p>
16.	<p><i>Allen v The State of Western Australia</i></p> <p>[2017] WASCA 203</p> <p>Delivered 31/10/2017</p>	<p><u>Allen</u> 32 yrs at time offending. 35 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>First trial aborted, PG accepted week prior to second trial commencing.</p> <p>Substantial criminal history,</p>	<p><u>Allen and Gatarov</u> 1 x AOBH.</p> <p><u>Marsandi</u> 1 x GBH.</p> <p>Late at night the victim and his heavily pregnant partner attended a car park to collect his car. He used a baseball bat to smash a window to gain access to his car, causing the vehicle's alarm to sound.</p>	<p><u>Allen</u> 2 yrs 10 mths imp. EFP.</p> <p><u>Gatarov</u> 3 yrs 6 mths imp. EFP.</p> <p><u>Marsandi</u> 6 yrs 4 mths imp. EFP.</p>	<p>Allowed.</p> <p>Appeals concerned lengths of sentences.</p> <p>Re-sentenced to:</p> <p><u>Allen</u> 20 mths imp. EFP.</p> <p><u>Gatarov</u></p>

	<p>including three prior convictions for AOBH; released from prison about one month before committing present offence.</p> <p>Parents deceased; single; no dependents.</p> <p>Supportive ex-partner.</p> <p>Business owner-operator; successful for a while.</p> <p>Leg injury resulting in a limp; postural problems and headaches. Suffers from depression.</p> <p>Prior history of drug abuse.</p> <p><u>Gastarov</u> 38 yrs at time offending. 41 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>First trial aborted, PG accepted week prior to second trial commencing.</p> <p>Prior criminal history; mostly</p>	<p>The proprietor of the adjacent workshop was woken by the alarm. He had previously been engaged by Marsandi to work on the vehicle so he telephoned one of the appellants to inform them of what was happening.</p> <p>A short time later Marsandi and Allen arrived. Marsandi spoke to the victim. During the conversation Marsandi picked up the victim's baseball bat and without warning swung the bat the victim's head.</p> <p>The victim fell to the ground. Marsandi swung at the victim with the bat a further five or six times. Not all of those strikes made contact with the victim.</p> <p>The victim got to his feet and run. At this time Gastarov arrived and he pursued the victim in his car, while Allen ran after the victim on foot.</p> <p>When Gastarov and Allen caught up with the victim he started jogging back towards the car park. Allen continued to chase the victim on foot and unsuccessfully attempted to kick the victim from behind.</p> <p>Marsandi remained at the car park and when the victim returned, rushed towards him. Gastarov arrived and also rushed towards the victim with the raised baseball bat, before</p>	<p>The sentencing judge characterised each appellant's offence as objectively very serious and at the high end of the objective criminality for offences of its kind.</p> <p>The sentencing judge found it was a sustained attack and the injuries to the victim represented serious examples of the respective offences; carried out in a brazen manner while in company.</p>	<p>2 yrs 4 mths imp. EFP.</p> <p><u>Marsandi</u> 5 yrs imp. EFP.</p> <p><u>Marsandi</u> At [61] ... A sentence in the range of 3 to 5 yrs will commonly be imposed in cases involving the use of weapons.</p> <p>At [68] ... The beating which the victim suffered was severe, ... While the injuries were moderately severe examples of GBH, they were not established to have resulted in serious permanent disability.</p> <p>At [69] ... It may be inferred that at least most of the injuries constituting GBH were caused by [his] initial use of a baseball bat to repeatedly and forcefully strike the victim's head. ... The sustained nature of the assault, and the fact that a weapon was used in a manner which was objectively likely to cause serious injury, were significant</p>
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		<p>traffic offences; convictions for dep of liberty and AOBH.</p> <p>Born Australia; raised in the USA after parents' separation.</p> <p>Two children to ex-wife; one child to current partner.</p> <p>Completed yr 12 equivalent in USA.</p> <p>Consistent work history; own tattooing business before suffering financial difficulties.</p> <p><u>Marsandi</u> 28 yrs at time offending. 31 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>First trial aborted; PG accepted week prior to second trial commencing.</p> <p>Limited prior criminal history in WA; no previous terms of imp. After this offence convicted in NSW of AOBH.</p>	<p>punching and kicking him. Gastarov then pulled the victim to the ground where Marsandi continued to kick and stomp on him several times.</p> <p>The appellants then allowed the victim and his partner to leave.</p> <p>Marsandi and Allen then hosed down the car and the car park where the assault took place. They also changed their clothes. Gastarov collected the baseball bat and left.</p> <p>The assault was captured on CCTV footage installed at the workshop premises. At some point it was manually deleted, however it was later able to be recovered by police.</p> <p>Later the same day Gastarov also attempted to obtain the CCTV footage from a nearby business, but it had already been seized by police.</p> <p>The victim was hospitalised and required surgery for a number of injuries, including the insertion of a metal plate in his head.</p>	<p>aggravating features of the offence.</p> <p>At [70] The victim did not offer any provocation for the assault.</p> <p>At [72] The conclusion that the appellant felt he could seriously assault others with impunity elevated the significance of personal deterrence and community protection as sentencing considerations. ... It is capable of explaining the imposition of a sentence greater than the sentences customarily imposed for serious examples of causing GBH. However, it does not explain the extent of the disparity in this case.</p> <p>At [73] ... the sentence imposed ... was not commensurate with the seriousness of Marsandi's offence ...</p> <p>At [76] ... In all the circumstances, while Marsandi's offence is a serious example of the offence of unlawfully doing GBH, a sentence of 6 yrs 4 mths imp is unreasonable or plainly</p>
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		<p>Close and supportive family; supportive friends.</p> <p>De facto relationship; good and loving father to three young children.</p> <p>Educated to yr 11; completed apprenticeship; good trade and work history.</p>			<p>unjust.</p> <p><u>Allen</u> At [81] Allen did not himself actually inflict any of the injuries which the victim sustained. His criminal responsibility is to be assessed on the basis that, by his presence and support ... he aided ... Marsandi and Gastarov, in assaulting the victim ...</p> <p>At [82] ... Allen did not actually inflict any injury, and did not instigate the violence initially directed towards the victim ...</p> <p><u>Gastarov</u> At [87] Gastarov was not present when the injuries constituting GBH were inflicted. ... His culpability is reduced by the fact that he was not present for the whole of the sustained assault on the victim, although it is aggravated by the fact that he himself assaulted the victim who [he] must have appreciated was already seriously injured.</p>
15.	<i>Bowe v The State of Western</i>	<u>G Bowe</u> <u>R Bowe</u>	1 x GBH.	<u>G Bowe</u> 3 yrs 8 mths imp.	Dismissed.

<p><i>Australia</i></p> <p><b>[2017] WASCA 166</b></p> <p>Delivered 11/09/2017</p>	<p><u>L Bowe</u> <u>J Bowe</u></p> <p>Convicted after trial.</p> <p><u>R Bowe</u> At time offending subject to a susp term of imp imposed Magistrates Court for 2 x driving without authorisation.</p>	<p>R; L and J Bowe are brothers; G Bowe is their father.</p> <p>The victim and Ms P went to the Bowe family home to discuss money owed to Ms P's husband for the purchase of a vehicle.</p> <p>After a short conversation the victim agreed to go and get Ms P's husband to discuss the matter with him.</p> <p>The victim asked to be dropped off down the street to maintain watch on the vehicle, concerned it may be removed from the property.</p> <p>The victim was standing across the street when the three Bowe brothers approached him. R Bowe was armed with a baseball bat. After a short conversation the victim was taken by surprise and struck from behind with a weapon by G Bowe. He dropped to the ground and when he stood up R Bowe struck him twice on the forehead with the baseball bat. All four then kicked and punched the victim, striking him with baseball bats, a piece of wood and other weapons.</p> <p>The victim's injuries included a fractured skull and bleeding on his brain. He suffered damage to his brain involved with language and developed a stutter.</p>	<p><u>R Bowe</u> <u>Indictment</u> 4 yrs imp; <u>Breach</u> 7 mths imp (cum).</p> <p><u>L Bowe</u> 3 yrs imp.</p> <p><u>J Bowe</u> 3 yrs imp.</p> <p>All EFP.</p> <p>The trial judge found G and R Rowe the principal offenders and that L and J Bowe participated in the physical attack on the victim and were not only there as backup.</p> <p>The judge categorised the offences as a serious example of GBH, although not the most serious or worst case of its kind.</p> <p>The judge found the seriousness of the</p>	<p><u>G Bowe</u> Appeal concerned length of sentence; type and parity.</p> <p><u>R Bowe</u> Appeal concerned totality.</p> <p><u>L Bowe</u> Appeal concerned length of sentence and parity.</p> <p><u>J Bowe</u> Appeal concerned parity.</p> <p><u>G Bowe</u> At [95] ... the differing sentences imposed upon the offenders were entirely justified by the differing levels of culpability ... [R Bowe] and [G Bowe] were the principal offenders who had planned the attack upon [the victim]. Although [G Bowe] struck the first blow from behind, it was [R Bowe] who struck the blows which caused GBH ... and his most significant injuries. Those differences justify the imposition of a sentence upon [R Bowe] which was four mths longer than that imposed upon</p>
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				<p>offending was aggravated by the premeditation involved; the crime was perpetrated by four men again one; the use of weapons; the sustained nature of the assault and serious nature of the injuries sustained.</p> <p>Appellants not remorseful.</p>	<p>[G Bowe].</p> <p>At [96] ... the roles played by each of [L Bowe] and [J Bowe] were less significant, although each participated in the assault .... The differences in their level of participation in the attack ... justify the lower sentences ... imposed upon each.</p> <p><u>R Bowe</u></p> <p>At [102] ... It was clearly open to her Honour to find that there was no injustice in directing that [R Bowe] serve the sentence previously imposed upon him ... Given that the offence for which that sentence was imposed was entirely unrelated to the offence of GBH, there was no reason why her Honour should not have directed the sentence to be served cumulatively. The imposition of the additional term ... could not be said to contravene the first limb of the totality principle given the culpability of [R Bowe's] conduct, and the fact that the TES ... was in any event within the range available to the judge</p>
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					<p>in the sound exercise of her discretion in respect of the offence of GBH alone.</p> <p><u>L Bowe</u> At [106] ... it was entirely appropriate for her Honour to take the principle of parity into account when deciding whether or not to susp the term of imp imposed ... noting, ... the differences between the circumstances of his case and the circumstances of the other offenders.</p> <p>At [108] ... the sentence ... was at the lower end of the range of sentences customarily imposed for serious offences of GBH ...</p> <p><u>J Bowe</u> At [113] ... her Honour did not err in referring to, and appropriately applying the principle of parity in deciding whether or not to susp the term of imp imposed.</p>
14.	<b><i>Kere Kere v The State of Western Australia</i></b>	<p>35 yrs at time offending.</p> <p>Convicted after late PG (5% discount).</p>	<p>1 x GBH.</p> <p>The victim, aged 31 yrs, was socializing with a friend at a club. As they left the venue</p>	<p>3 yrs imp.</p> <p>EFP.</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged length of sentence.</p>



	<p><b>[2016] WASCA 189</b></p> <p>Delivered 02/11/2016</p>	<p>Prior WA and QLD criminal history; convictions of common assault; AOBH; assault public officer and obstructing public officers. No prior sentences of imp.</p> <p>Satisfactory childhood.</p> <p>Completed school and holds a university degree.</p> <p>Good work history.</p>	<p>Kere Kere approached the victim's friend and punched him in the face.</p> <p>In an attempt to defuse the situation the victim spoke to Kere Kere. Without warning he threw a flurry of punches, striking the victim six times in the face and head, knocking him to the ground.</p> <p>The victim's eye socket was badly fractured and required corrective surgery.</p>	<p>The sentencing judge noted his offending behaviour was worsening and that the appellant was very aggressive towards the victim and his friend.</p> <p>The sentencing judge found the victim 'considerably smaller' than the appellant and that he seriously injured the victim 'for no reason at all' and that the victim was 'backing up with his hands up' and the appellant 'kept after him until [he] hit him to the ground'. The victim's injuries could not be described as 'trivial'.</p>	<p>At [35]-[36] Discussion of comparative cases.</p> <p>At [40] In the present case, the appellant's offending was serious. He inflicted numerous forceful blows to the victim's face and head. The violence was gratuitous and senseless. The victim did not, in any sense, provoke the attack. Indeed, he was retreating. ... He appears to have made a full recovery, but the appellant's behaviour had the potential to result in a more serious injury than was in fact suffered.</p>
13.	<p><i>Yaqubi v The State of Western Australia [No 2]</i></p> <p><b>[2016] WASCA 187</b></p> <p>Delivered 31/10/2016</p>	<p>18 yrs at time offending. 20 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history, including a common assault committed 6 weeks after offence subject of this appeal.</p>	<p>1 x GBH.</p> <p>The victim, aged 17 yrs, was out with friends at the same venue as Yaqubi and his friends. There had been previous tension between members of the two groups.</p> <p>As the victim and his friends were leaving Yaqubi made an insulting comment about the victim's mother. In a demanding and aggressive tone the victim questioned Yaqubi</p>	<p>16 mths imp.</p> <p>EFP.</p> <p>Later offence of common assault indicated violence was not wholly out of character for Yaqubi and that he had initiated the incident and was the physical aggressor.</p>	<p>Dismissed.</p> <p>Yaqubi challenged length and type of sentence.</p> <p>At [49] ... the offending was serious. The victim suffered a significant injury as a result of the appellant's gratuitous violence. ... The victim has apparently made a full recovery,</p>

		<p>Uneventful childhood.</p> <p>Supportive family and in a committed relationship.</p> <p>Steady employment and studying for a degree.</p> <p>In good health; does not drink alcohol or use illicit drugs.</p>	<p>about what he said.</p> <p>Yaqubi punched the victim forcefully to the left side of the face and then kicked the victim in his lower back as he and the victim were being separated.</p> <p>The victim's jaw was fractured in two places and required surgery.</p>	<p>No genuine remorse, despite Yaqubi eventually writing a letter of apology to the victim.</p> <p>The seriousness of the offending and the importance of personal and general deterrence made it inappropriate to suspend the term of imprisonment.</p>	<p>but the appellant's conduct had the potential to result in a more serious injury than was in fact suffered. The victim did not provoke the attack. The sentencing judge was rightly sceptical about the degree to which the appellant was genuinely remorseful.</p> <p>At [53] ... despite the appellant's youth and prior good character and the other mitigating factors, the seriousness of the offending, the need for personal and general deterrence and the lack of genuine remorse made a sentence of immediate imprisonment the only appropriate sentencing option.</p>
12.	<p><i>The State of Western Australia v WTG</i></p> <p>[2016] WASCA 175</p> <p>Delivered 12/10/2016</p>	<p>31 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>At time offending, WTG was subject to an SIO for convictions of 3 x breach VRO protecting the victim.</p> <p>Significant prior criminal history, including AOBH, agg</p>	<p>1 x Agg AOBH.</p> <p>1 x Threat to harm.</p> <p>1 x Agg GBH.</p> <p>WTG and the victim had been in a relationship, marred by domestic violence for about 15 yrs. They had been separated for 2 yrs and, despite a VRO, the victim had contact with WTG.</p> <p>WTG stayed a weekend at the victim's home</p>	<p>Agg AOBH: 12 mths imp (cum).</p> <p>Threat to harm: 10 mths imp (conc).</p> <p>Agg GBH: 2 yrs 10 mths imp (head sentence)</p> <p>Breach of SIO: 6 mths imp (conc).</p> <p>TES 3 yrs 10 mths imp.</p>	<p>Allowed.</p> <p>Appellant challenged length of sentence and totality.</p> <p>Sentence set aside. WTG re-sentenced to:</p> <p>Agg AOBH: 6 mths imp (cum with head sentence).</p> <p>Threat to harm: 9 mths imp</p>

		<p>assault, breaches of protective bail, carrying a weapon with intent to cause fear, agg burg, breaches of VRO and agg AOBH. A number of convictions of agg assault, agg AOBH and breach VRO against this victim.</p> <p>Difficult childhood, without positive parental guidance.</p> <p>No significant employment history.</p> <p>Three children with the victim.</p> <p>Long history of illicit substance abuse.</p> <p>Prior to offences and whilst on remand in custody attempts made to rehabilitate himself, through religion, rehabilitation and training programmes.</p>	<p>with their children. They both took drugs and had sexual relations.</p> <p>On the Sunday afternoon, having made arrangements for the children to be looked after by a friend, WTG became aggravated with the victim over her declining to have sex with him and her prior relationship with another man. WTG became increasingly aggravated by the victim's refusal to discuss the prior relationship. Over the course of the Sunday evening and into the early hours of Monday morning, WTG assaulted the victim a number of times. He struck the top of the victim's head with a knife, cutting her near her left temple (Agg AOBH).</p> <p>Later, the victim locked herself in a bedroom. WTG kicked open the door and punched her hard to the face once or twice with a clenched fist, knocking her to the ground unconscious. WTG then drove the victim around, and punched her in the face again. Later, when the car was parked, WTG asked the victim about the prior relationship and when she refused to answer he punched her in the left side of the face. This occurred at least four or five times. One blow caused her head to hit the car window. During this incident WTG said he would kill the victim (threat to harm).</p>	<p>The sentencing judge found that the offences caused the victim to suffer significant adverse consequence, physically and emotionally.</p> <p>No genuine remorse.</p> <p>The offences were committed against a slightly built, defenceless and vulnerable former partner who had placed a degree of faith and trust in WTG by recommending contact.</p> <p>The GBH took place over a sustained period.</p>	<p>(conc). Agg GBH: 4 yrs 6 mths imp. Breach: 6 mths imp (cum). TES 5 yrs 6 months imp. EFP. At [44]-[51] Discussion of comparative cases. At [52]... the sentence imposed in this case for the offence of agg GBH is so far outside the range of sentences open to the sentencing judge in the sound exercise of his discretion as to manifest implied error. At [54] As I have concluded that the head sentence was manifestly inadequate, it follows that the TES was also manifestly inadequate...</p>
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			The victim suffered bruising and swelling to the eye, a split lip and a fractured jaw (Agg GBH).		
11.	<p><i>The State of Western Australia v Smith</i></p> <p>[2016] WASCA 153</p> <p>Delivered 31/08/2016</p>	<p>25 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Significant and lengthy prior criminal history, including convictions for breaching VRO, agg common assault and being armed in public in a way that may cause fear.</p> <p>History of domestic violence towards his partners.</p> <p>Emotional trauma associated with the death of his father.</p> <p>History of methyl use; affected by drugs at time offending.</p> <p>Offending occurred while appellant was subject to an SIO of 10 months imp, susp 12 mths.</p>	<p><u>Indictment</u> Ct 1: Agg unlawful wounding. Ct 2: Agg GBH. Ct 3: Att steal motor vehicle. Ct 4: Assault public officer. Ct 5: Obstructing public officer.</p> <p><u>s.32 notice</u> Ch 1: Trespass. Ch 2: Steal motor vehicle. Ch 3: Cruelty to an animal.</p> <p><u>Ct 1</u> Smith and the victim were in a domestic relationship. They were at home using drugs and Smith left the house armed with a hammer and in an agitated state. He returned with the hammer and argued with the victim. He threatened to hit her with the hammer. The victim turned her back to Smith and he violently hit her head with the hammer, exposing her skull.</p> <p><u>Ct 2</u> Smith struck the victim again as she tried to flee, hitting and fracturing her hand.</p> <p><u>Ct 3</u> Police found Smith walking down the street.</p>	<p><u>Indictment</u> Ct 1: 6 mths imp (conc). Ct 2: 18 mths imp. Ct 3: 3 mths imp (conc). Ct 4: 6 mths imp (cum). Ct 5: 3 mths imp (conc).</p> <p><u>s.32 notice</u> Ch 1: \$500 fine. Ch 2: 3 mths imp (conc). Ch 3: 2 mths imp (cum).</p> <p><u>SIO</u> Ordered to serve 6 mths of 10 mths SIO (conc).</p> <p>TES 2 yrs 2 mths imp.</p> <p>EFP.</p> <p>The sentencing judge noted the offences reflected an escalation in his offending behaviour, but that Smith had not been before the courts from 2005-2010.</p> <p>Remorseful; claimed no</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence for cts 1 and 2 and totality.</p> <p>Re-sentenced to:</p> <p>Ct 1 (ind): 2 yrs imp (conc). Ct 2 (ind): 3 yrs 6 mths imp.</p> <p>Sentences for ct 4 (ind) and ch 3 (s32 notice) and 6 mths imp for SIO cum upon each other and cum upon new sentence for ct 2 (ind). All other sentences conc.</p> <p>TES 4 yrs 8 mths imp. EFP.</p> <p>At [30] The respondent had a history of domestic violence towards his partners, and this underscored the importance of personal deterrence as a sentencing factor.</p> <p>At [39] ... the respondent's offending was serious... The respondent armed himself with a</p>

			<p>As the officer got out of his patrol car and approached Smith, Smith ran to the other side of the car, got into the driver's seat and attempted to drive away.</p> <p><u>Cts 4-5 and ch3</u> The officer tried to stop Smith and was struck on the arm by the car's door. They wrestled for control of the car. Smith pulled out a knife and the officer attempted to knock it from his hand. The officer then attempted to taser Smith.</p> <p>A police dog grabbed Smith by his leg and pulled him from the car. Smith struck the dog on the head with the hammer and hit the officer's arm with the hammer. He attempted to hit the dog again, but the officer tasered him and he fell to the ground. Continuing to fight the officer, still armed with the hammer, he was tasered a third time. The officer kicked the hammer from Smith's hand and restrained him until assistance arrived.</p>	<p>recollection of actions due to drug intoxication.</p> <p>Psychological report indicated developing insight into his behaviour and reasons for it.</p> <p>High risk of re-offending if illicit drug use continues.</p>	<p>... weapon capable of inflicting serious harm, and his attack upon the victim was unprovoked... The respondent's conduct in striking the victim ... had the potential to cause her extremely serious injury. He was physically stronger and more powerful than her.</p> <p>At [95] ... it was significant that the injury in fact sustained [for ct 2] was a defensive wound caused by an attempt to strike the victim with a hammer, in circumstances where the respondent had just struck her with the hammer to the back of her head. The use of the hammer in that manner was likely to permanently injure or even kill the victim. The level of violence employed against the victim was high. The infliction of the injury formed part of a sustained attack against the victim which ceased only after she was able to take refuge at the neighbour's premises. The victim had not provoked the attack, and posed no threat to the respondent.</p>
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					<p>At [100] The respondent acknowledged that he had perpetrated domestic violence on a regular basis.</p> <p>At [104] Any AOBH to a police officer performing his or her important community function is a serious matter. That is particularly so where weapons are involved. The respondent produced a knife, which he did not have the opportunity of using, and employed a claw hammer to inflict bodily injury...</p>
10.	<p><b><i>Gowan v The State of Western Australia</i></b></p> <p><b>[2016] WASCA 98</b></p> <p>Delivered 15/06/2016</p>	<p><u>Gowan</u> 33 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No criminal history.</p> <p>Good employment record.</p> <p>History of drug use.</p> <p><u>Burnside</u> 30 yrs at time offending.</p> <p>Convicted after trial.</p>	<p>Ct 1: Agg burg. Ct 2: GBH. Ct 3: Criminal damage. Ct 4: Agg burg. Ct 5: GBH.</p> <p><u>Cts 1 -3</u> The victim owed Gowan money for drugs.</p> <p>Gowan and Burnside forcibly entered the victim's home. Gowan was armed with an axe handle and Burnside with a wheelbarrow handle. They repeatedly struck the victim about the head, face, upper arms and legs. Burnside fractured the victim's leg and damaged some of his property.</p>	<p>Ct 1: 4 yrs imp. Ct 2: 2 yrs 6 mths imp (conc). Ct 3: 12 mths imp (cum). Ct 4: 4 yrs imp (cum). Ct 5: 2 yrs imp (conc).</p> <p>TES 9 yrs imp each.</p> <p>The sentencing judge characterised the offences as 'most serious', noting that they were planned and involved persistent assaults upon the victims and the use of weapons.</p>	<p>Dismissed.</p> <p>Appeals concerned totality.</p> <p>At [52] ... the TES imposed by the sentencing judge were high... the appellants' personal circumstances were unusually favourable for this type of offending. However, I do not consider that the sentences were unreasonable or plainly unjust.</p> <p>At [53] ... the appellants' offending was very serious. It involved two home invasions in</p>

		<p>Minor prior criminal history.</p> <p>Father of twin daughters and two step-children from a long standing relationship.</p> <p>Good employment record.</p>	<p><u>Cts 4-5</u></p> <p>Gowan and Burnside then went to an address in search of a person whom they did not know, and who they believed was associated with the first victim.</p> <p>Despite being told by the second victim that they had the wrong house they forced their way in. They assaulted the second victim by repeatedly punching him and striking him with wooden implements. The victim suffered an injury to the left eye that required surgery.</p>	<p>The sentencing judge characterised the injuries as ‘not as serious as frequently encountered’ for GBH.</p> <p>The sentencing judge found the injuries to be inflicted by ‘deliberate repeated violence with use of weapons in sustained violent attacks upon the victims’. The attacks being out of revenge and a demand for money.</p>	<p>company that were planned, undertaken at night and were for the purpose of enforcing a debt. The appellants were armed with weapons. They repeatedly assaulted their victims and the violence involved was significant and gratuitous. They persisted in attacking the victim of cts 4 and 5 even after they must have realised he was not the person that they had been seeking.</p> <p>At [54] The offences that constituted cts 1-3 occurred at a different time and place to the offences alleged by cts 4 and 5. Although the home invasions occurred on the same night, they did not form part of a single criminal episode... it was appropriate to accumulate the sentences for each home invasion and for the criminal damage offence. The home invasion offences were separate offences and the criminal damage offence involved separate acts and damage of a different kind to the assaults that occurred during the first home</p>
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<p><b>9.</b></p>	<p><i>Winmar v The State of Western Australia</i></p> <p><b>[2016] WASCA 62</b></p> <p>Delivered 15/04/2016</p>	<p><u>Winmar</u> 31 yrs at time offending. 33 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history, including violent offences.</p> <p>As a teenager, witnessed domestic violence and alcohol abuse in extended family.</p> <p>Left school in yr 10; occupied with studies, training and employment.</p> <p>Close relationship with family.</p> <p>Two-yr-old daughter from previous relationship.</p> <p>History of alcohol abuse; hardly consumed prior to offending.</p> <p><u>Lawrence</u> 23 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after trial.</p>	<p>Ct 1: Criminal damage. Ct 2: GBH. Ct 3: GBH.</p> <p>There was long-standing animosity between Winmar and Lawrence and the victim and his cousin.</p> <p>The victim and his cousin were significantly under the influence of alcohol. To antagonise Winmar's and Lawrence's family, they did a burnout in front of their home.</p> <p>Winmar and Lawrence and two males armed themselves and ran towards the victim and his cousin. They struck the victim's vehicle, causing extensive damage to the exterior panels, the lights and windscreen (ct 1).</p> <p>The victim's cousin escaped. Winmar and Lawrence and the two males pursued the victim with an intention of inflicting physical harm on him. Winmar threw an iron bar at him, which struck his leg causing a significant open wound and fracture (ct 2).</p> <p>The victim ran away with significant pain and difficulty, and rang 000. Winmar and Lawrence and the two males chased him again in their vehicle and clipped him while he was trying to escape. While he was lying</p>	<p><u>Winmar</u> Ct 1: \$1000 fine. Ct 2: 1 yr 3 mths imp (cum). Ct 3: 3 yrs 3 mths imp (cum).</p> <p>TES 4 yrs 6 mths imp.</p> <p>EFP.</p> <p><u>Lawrence</u> Ct 1: \$1000 fine. Ct 2: 9 mths imp (cum). Ct 3: 3 yrs 3 mths imp (cum).</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>Trial judge assessed Winmar's offending for ct 2 as "falling somewhere between the lower and the middle of the range of seriousness of its type" and for ct 3 as "falling towards the middle of the range of seriousness of offences of its type". Trial</p>	<p>invasion.</p> <p>Dismissed – on papers.</p> <p>Appeals concerned the length of sentence for ct 3 and totality principle.</p> <p>At [75] The fear engendered by the appellants was sufficiently powerful to cause Mr Corbett to flee despite the injury to his leg. The trial judge found that when Mr Corbett made the emergency 000 telephone call he was genuinely terrified... His Honour was satisfied beyond reasonable doubt that each of the appellants, in striking Mr Corbett, intended to cause him significant physical harm.</p> <p>At [76] The injury to Mr Corbett's finger was materially less serious than the injuries suffered by victims in numerous prior cases of unlawfully doing GBH. However, that fact was decisively outweighed by the serious features of the offending in relation to ct 3.</p> <p>At [77] Mr Winmar's prior</p>
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		<p>Prior criminal history, including robbery.</p> <p>Positive upbringing.</p> <p>De facto relationship; three yr old child.</p> <p>Employed as factory hand.</p> <p>History of alcohol and illicit drug use; ceased using when child was born.</p>	<p>in a defenceless position, they and the two males struck him a number of times with their weapons. Lawrence inflicted a blow which struck the victim on the head, causing a laceration to his scalp. He was rendered unconscious for a short period of time. The combined assault caused an injury, including a laceration, to the extensor tendon of the victim's middle finger (ct 3).</p> <p>The victim also suffered a small stab wound and some small lacerations.</p> <p>The victim underwent surgery for his leg and finger. Without the surgery, it was probable that the victim's leg would have become infected and may have needed amputation. If the finger injury had not been repaired, the likely outcome would have been a high rate of infection and flexion deformity.</p>	<p>judge made the same assessment for Lawrence, but in relation to ct 2, Lawrence was "marginally less culpable" than Winmar.</p> <p>Winmar and Lawrence at some risk of reoffending.</p> <p>Trial judge imposed a more lenient sentence on Lawrence than Winmar to reflect Lawrence's culpability for ct 2, his age and his less extensive prior criminal history than that of Winmar.</p>	<p>criminal record was materially worse than Mr Lawrence's. Nothing in the circumstances leading up to the offending reduced Mr Winmar's or Mr Lawrence's culpability or moral blameworthiness. Both of the appellants failed to accept responsibility for the offending. They were at 'some risk' of reoffending.</p> <p>At [78] Personal deterrence, general deterrence and the protection of the public were sentencing factors of importance.</p> <p>At [86] Cts 2 and 3 were separate and distinct offences and there was a material interval between their commission... the trial judge reduced, in the application of the totality principle, the individual sentences he would otherwise have imposed for ct 2.</p>
8.	<p><i>Gurgone v The State of Western Australia</i></p> <p>[2016] WASCA 9</p>	<p>48 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Minor prior criminal history.</p>	<p>1 x GBH.</p> <p>Gurgone lived with the victim. The victim was Gurgone's step-brother. Their relationship was strained.</p>	<p>4 yrs 3 mths imp.</p> <p>EFP.</p> <p>VRO and order for</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged the length of sentence.</p>

<p>Delivered 13/01/2016</p>	<p>Positive employment record.</p> <p>No significant mental health issues.</p> <p>Acted as a good Samaritan in relation to the victim.</p>	<p>Gurgone and victim were intoxicated. After a heated argument Gurgone lost his temper and punched the victim twice. They struggled and the victim bit Gurgone. To terrorise the victim Gurgone pointed a rifle at him, before walking away.</p> <p>Gurgone came back in an angry state armed with a large hunting knife and a machete. The victim raised his hands to defend himself. Gurgone struck the victim with both weapons a number of times to his hands and head. As the victim scrambled for the gate, Gurgone again struck the victim with the knife and machete. One connected with the victims back and penetrated through his chest cavity.</p> <p>When police arrived Gurgone was abusive.</p> <p>The victim suffered serious injury; he had a 12cm long laceration to his back; his left lung was punctured and collapsed. He was struggling to breathe.</p> <p>The victim underwent surgery. He would have died without that surgery.</p>	<p>forfeiture of weapons.</p> <p>No remorse; low risk of reoffending.</p> <p>The sentencing judge categorised the victim’s injuries as “falling in the middle of the range of seriousness for injuries amounting to GBH” and the appellant’s actions as falling “towards the higher end of the range of seriousness of acts causing GBH”.</p> <p>The seriousness of the appellant’s conduct was aggravated by the fact that the most serious injuries were inflicted when the victim was trying to escape; the victim was at that point, “completely and utterly vulnerable and unable to offer any form of defence”.</p> <p>The sentencing judge assessed the offence “as being between the middle</p>	<p>At [40] The appellant inflicted life-threatening injuries upon the victim.</p> <p>At [41] The act which caused the injury was a persistent and relentless attack by the appellant with two potentially lethal weapons. His Honour was right in characterising the appellant’s actions as falling towards the high end of the range of seriousness of acts causing GBH.</p> <p>At [42] ... there was no reasonable justification or explanation for the violence perpetrated upon the victim.</p> <p>At [43] The overall circumstances of the offence fell very much between the middle and higher range of seriousness of offences of this type.</p>
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				and the higher range of seriousness of offences of this type”.	
7.	<p><i>The State of Western Australia v Ellement</i></p> <p><b>[2016] WASCA 1</b></p> <p>Delivered 06/01/2016</p>	<p>25 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after PG (10% discount).</p> <p>Minor prior criminal history.</p> <p>Left school in yr 10; steady employment history.</p> <p>Long history of alcohol and illicit drug abuse; used cannabis regularly at time offending.</p> <p>At time offending, in a dysfunctional relationship with Ms Doonan; relationship ceased after the offence.</p> <p>Supportive parents.</p> <p>Lifestyle changed since offence; has a young baby with new partner; ceased using illicit drugs.</p> <p>Sent letter of apology to victim.</p>	<p>1 x Agg GBH.</p> <p>The victim was 62 yrs old. Ellement was in a relationship with the victim’s daughter Ms D. Ms D had a drug problem and was unable to care for her son, A, on a full-time bases. With Ms D’s consent, A was in the unofficial custody of the victim.</p> <p>On the afternoon of the offence, against the victim’s wishes, Ms D and Ellement drove to the victim’s home to collect A. Ellement was in an angry and a hostile mood. He swore at the victim and rushed towards her. The victim gestured to Ellement to stop coming towards her.</p> <p>Ellement forcefully grabbed each of the victim’s upper arms and propelled her backwards with sufficient force that her feet left the floor. She fell to the floor, landing on her backside and right elbow. The impact caused a fracture of the femur. The following day, the victim underwent a total hip replacement.</p>	<p>18 mths imp, susp on conditions 18 mths.</p> <p>Permanent VRO.</p> <p>The sentencing judge said the decision to susp was made “by the narrowest of a hair’s margin”.</p> <p>Remorse; positive steps towards rehabilitation; some allowance for youth.</p>	<p>Allowed.</p> <p>Appeal only challenged suspension, not the leniency of the length of the term.</p> <p>Re-sentenced to 18 mths immediate imp. EFP.</p> <p>At [1] It is not uncommon for grandparents to step in and take physical custody and care of grandchildren at risk. The carers need to be protected from aggression directed at them in connection with the performance of their care function. The physical violence inflicted by the appellant on the victim occurred in this context. The consequences for the victim have been life-changing. Deterrence is the weightiest sentencing consideration.</p> <p>At [44] This case involved an entirely unprovoked attack upon a vulnerable victim in her own home. The respondent went</p>

					<p>there in an angry and aggressive mood. He was much younger and stronger than the victim. He swore at her, plainly to intimidate her. The victim then gestured to the respondent to stop coming towards her. Not only did he ignore her, he grabbed the victim firmly by the upper arms and forcefully propelled her backwards so that her feet left the ground. The backwards motion was more than a mere shove or a push. It was, in effect, a throw. Unsurprisingly, the victim fell heavily to the floor. While the respondent did not intend to cause GBH to the victim, throwing a 62-year-old person heavily to the floor runs the obvious risk of serious physical injury. That risk eventuated here.</p> <p>At [45] The injury the victim suffered was severe by any measure. The effects have had a pervasive and negative impact upon her life and will continue to do so in the future.</p>
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					<p>At [46] A seriously aggravating aspect of the respondent's offending is that he violently assaulted the victim at the time she was, in effect, discharging parental responsibilities towards A and acting to prevent him from being taken away by persons who were unable to properly care for him. The use of violence with the aim of removing a child in such circumstances evinces serious criminality.</p> <p>At [51] ...a sentence of 18mths imp could be said to be lenient.</p>
6.	<p><i>Peake v The State of Western Australia</i></p> <p>[2015] WASCA 239</p> <p>Delivered 27/11/2015</p>	<p>21 yrs at time offending. 22 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Minor prior criminal history; including AOBH.</p> <p>Supportive parents.</p> <p>Left school at age 14; overweight and bullied; talented golfer until shoulder injury.</p> <p>While on bail for this offence,</p>	<p>1 x GBH.</p> <p>There was a negative exchange between the victim's group and Peake's group. The victim was not involved in the conversation and was standing nearby.</p> <p>Peake, without warning and without provocation, forcefully struck the victim to the head with a clenched fist. The victim fell, unprotected, into a metal meter box. He suffered a significant scalp laceration and substantial bleeding.</p> <p>Peake left the scene immediately and did not</p>	<p>3 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found that the appellant showed no remorse or concern for victim on the night of offending.</p> <p>The sentencing judge found that the appellant eventually understood the substantial effect his criminal conduct has had</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned backdating and length of sentence.</p> <p>At [63] He attacked, without warning, a man who was significantly shorter and smaller in stature. The blow was very forceful. The victim suffered an injury which required his admission to hospital, surgery and other medical treatment. His injuries were of such a nature as to endanger or be likely to</p>

		appellant was charged with another offence allegedly committed while he was on bail.	inquire about the victim's welfare or endeavour to obtain assistance for him.	upon the victim; some credit given in the sentencing process for remorse, but pointed out that his late remorse stemmed, at least in part, from a realisation of the consequences that his actions would have for him.  The sentencing judge found the offending to be "at the mid-range of seriousness of offences of this kind".	endanger life. Although, fortunately, the victim does not have any permanent physical disability, he does have a significant permanent scar on his head. Also, he has suffered ongoing psychological trauma.
5.	<b><i>Hunter-Aragu v The State of Western Australia</i></b>  [2015] WASCA 80  Delivered 29/04/2015	20 yrs at time offending.  Convicted after PG (15% discount).  Irrelevant prior criminal history.  Supportive family.	Ct 1: Criminal damage. Ct 2: Unlawful wounding. Ct 3: Agg robbery. Ct 4: GBH.  Hunter-Aragu behaved aggressively outside a nightclub. He demanded money and mobile phones from other people.  Hunter-Aragu became involved in a physical altercation with Lyle. Lyle went to a taxi and sat in the front passenger seat. Hunter-Aragu threw a rock at the taxi, smashing the window (ct 1) and wounding Lyle's arm (ct 2).	Ct 1: 6 mths imp (conc). Ct 2: 6 mths imp. Ct 3: 2 yrs 6 mths imp (cum). Ct 4: 4 yrs 3 mths imp (cum).  TES 7 yrs 3 mths imp.  EFP.  It was an extremely serious example of gratuitous violence.  Serious permanent	Dismissed.  At [55] ...the offence of unlawfully doing GBH against Mr Gabriel was extremely serious...the offence of robbery against Mr Gabriel was serious... the individual sentence for robbery was high but nevertheless within the appropriate sentencing range.

			<p>Hunter-Aragu then sought to confront Gabriel. Not wanting a confrontation Gabriel raised his hands and backed away. Hunter-Aragu pursued him. When he fell to the ground Hunter-Aragu kicked him in the chest and stomped on his head, rendering him unconscious and causing a serious brain injury. Hunter-Aragu dragged Gabriel about 15 metres, robbed him of his mobile phone and \$100 cash and abandoned him. Gabriel was found a few hours later, still unconscious.</p> <p>Offending caused devastating adverse consequences for Gabriel, including problems walking, talking and poor vision and balance.</p>	<p>consequences for Gabriel; impacted seriously on Gabriel's partner.</p> <p>Remorse; motivated to rehabilitate.</p>	
4.	<p><i>The State of Western Australia v Ghilardi</i></p> <p>[2015] WASCA 61</p> <p>Delivered 23/03/2015</p>	<p>23 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Criminal history including disorderly conduct, AOBH, stealing, agg burg, burg, being armed or pretending to be armed and making threats to destroy property.</p> <p>Unstable childhood; left school in year 9; constant employment.</p> <p>Young daughter in the care of</p>	<p>1 x GBH.</p> <p>The victim was at a BP service station with his two daughters waiting for a taxi. He had consumed a reasonable amount of alcohol.</p> <p>Ghilardi arrived at BP in a car with two friends. He was affected by alcohol to some extent. He spent a short period of time sitting in the car eyeing off the victim's daughters and talking about them.</p> <p>As Ghilardi's friend started to drive the car out of BP, one of the three occupants yelled a derogatory remark to the victim's daughters.</p>	<p>2 yrs 6 mths imp.</p> <p>EFP.</p> <p>Mitigation afforded by provocation was limited.</p> <p>May not have committed offence without the influence of alcohol; genuinely sorry for injuries; did not fully accept responsibility for conduct; risk of reoffending no more than</p>	<p>Allowed.</p> <p>Re-sentenced to 4 yrs 3 mths imp.</p> <p>EFP.</p> <p>At [17] His Honour assessed the offence 'as being around the middle of the range of seriousness of offences of its type'.</p> <p>At [45] It was, on any view, an extremely violent act and,</p>

		<p>former partner.</p> <p>Majority of offending behaviour alcohol related.</p>	<p>The victim heard the remark and yelled angrily towards the car. The driver stopped the car and Ghilardi got out to teach the victim a lesson.</p> <p>The victim and Ghilardi shouted abuse at each other and adopted fighting stances. Ghilardi threw the first punch. During the altercation the victim threw one or two punches at Ghilardi; they did no harm or damage. During the altercation Ghilardi delivered a full-blooded punch to the front of the victim's head causing a significant fracture in the victim's skull. The victim became immediately unconscious. He fell backwards and the back of his head hit the road with considerable force.</p> <p>The victim did not pose any real threat to Ghilardi before or during the altercation.</p> <p>The victim suffered immediate life-threatening brain injuries, long term and possibly permanent physical, cognitive and emotional difficulties which impact on his everyday life and the life of his close family members.</p>	<p>moderate.</p>	<p>although the respondent did not use a weapon, in a very real sense he used his fist with the same effect.</p> <p>At [49] ...there is no tariff for GBH.</p> <p>At [55] ...the offence involved a high level of criminality.</p>
3.	<p><i>Hansen v The State of Western Australia</i></p> <p>[2014] WASCA</p>	<p>54 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Long criminal history; mostly</p>	<p>1 x Agg AOBH.</p> <p>1 x Agg GBH.</p> <p>The victim (Lee) was in a family and domestic relationship with Hansen. She had</p>	<p>1 yr 6 mths imp.</p> <p>4 yrs 6 mths imp (cum).</p> <p>TES 6 yrs imp.</p>	<p>Dismissed – on papers.</p> <p>At [24] The offences were each serious examples of their type. Each was born out of anger and</p>



	<p><b>229</b></p> <p>Delivered 11/12/2014</p>	<p>traffic offences; agg AOBH and common assault.</p> <p>Good upbringing; completed year 10; regular employment.</p> <p>Indigenous; has standing and respect amongst indigenous people in the Bunbury area.</p> <p>Father of seven children; four of whom are adults.</p> <p>Hereditary heart condition and hypertension.</p>	<p>previously been in a relationship with the victim (Hill). The victims had a child who was in Lee's care. Lee was pregnant with Hansen's child.</p> <p>The victims and their two children were walking along the street. Hansen followed them in his vehicle. He stopped and alighted from the vehicle carrying a wooden implement. He struck Hill with the stick, seven or eight times, to the ribs, kidney and elbow. Hill suffered a large lump-type bruise to the elbow, a fractured ulna bone, bruising and a laceration and bleeding in and around the kidney.</p> <p>A short time later Lee miscarried and Lee went and stayed with a friend.</p> <p>About 20 days later Lee and Hansen were drinking together then returned to the friend's house. Hansen asked Lee for sex, but she refused. Hansen became angry and punched her seven to ten times to her face with a closed fist. Lee was taken to hospital and airlifted to RPH where she underwent surgery to repair a fractured eye socket.</p>	<p>EFP.</p> <p>Denied responsibility; no victim empathy or remorse.</p> <p>The sentencing judge characterised agg AOBH as 'in the mid-range of offences of this kind'; agg GBH as 'in the mid to upper range of seriousness'.</p> <p>Moderate risk of re-offending.</p>	<p>was brutal, sustained and completely without justification. On both occasions, the victim was defenceless.</p>
<p><b>2.</b></p>	<p><b><i>Knight v The State of Western Australia</i></b></p>	<p>55 yrs at time sentencing.</p> <p>Convicted after trial.</p>	<p>Ct 1: Agg burg (home invasion).</p> <p>Ct 2: GBH.</p> <p>Ct 3: AOBH.</p>	<p>Ct 1: 3 yrs imp (conc).</p> <p>Ct 2: 3 yrs 6 mth imp.</p>	<p>Dismissed – on papers.</p>

	<p><b>[2014] WASCA 217</b></p> <p>Delivered 21/11/2014</p>	<p>Criminal history; including firearms, traffic, drug sales and possession charges.</p> <p>Father of four children.</p> <p>Constant work record.</p> <p>History of cannabis and methyl use.</p> <p>Knight's son convicted of agg burg; sentenced to 2 yrs 4 mths imp, susp 2 yrs.</p>	<p>As a result of an earlier incident involving one of Knight's sons, Knight and three others drove to the victim's house to seek revenge. Three of the four men were armed. Knight picked up a metal weights bar from the front porch and all offenders then forced their way into the house. The victim and two of his friends were set upon.</p> <p>Knight started striking the victim with the metal bar before escaping outside. Outside the victim was restrained by Knight's son. Knight then struck the victim again. He also struck a second victim at least twice with the metal bar to the leg.</p> <p>The victim suffered a pneumothorax, bruising to his ankle and shin and a laceration to his knee. If not for medical assistance and treatment, the pneumothorax was likely to have endangered his life.</p> <p>The second victim sustained a fractured ankle and bad bruising and swelling on his thigh.</p>	<p>Ct 3: 18 mths imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>No remorse.</p> <p>Principal offender.</p> <p>The sentencing judge described attack as 'a violent and senseless attack' born out of anger from an earlier incident; also found attack was a premeditated and planned 'act of retribution'.</p>	
1.	<p><i>Spence v The State of Western Australia</i></p> <p><b>[2014] WASCA 171</b></p>	<p>38 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history including one common assault.</p>	<p>Ct 1: GBH.</p> <p>Ct 2: Att to pervert the course of justice.</p> <p>On the evening of the incident Spence was managing a club. In the early hours of the morning the victim was at the nightclub with two companions. A brawl ensued when</p>	<p>Ct 1: 3 yrs 6 mths imp.</p> <p>Ct 2: 3 yrs imp (cum).</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>Re-sentenced to 2 yrs imp in ct 2 (cum).</p> <p>TES 5 yrs 6 mths imp.</p>

	<p>Delivered 05/09/2014</p>	<p>Married now separated; four children.</p> <p>Completed year 12 and Bachelor of Business; partially completed Bachelor of Engineering.</p> <p>Employed as an accountant; then part owner and manager of the nightclub.</p> <p>Positive references.</p>	<p>security attempted to remove the victim's companions from the club.</p> <p>The victim approached the brawl and attempted to pull a bouncer off one of his friends. Spence punched the victim to the left side of his head. The punch caused the victim to fall, striking the back left hand side of his head on the step of a 4WD.</p> <p>The victim sustained a severe traumatic brain injury that required urgent surgery.</p> <p>Following the incident Spence sought to deflect the police investigation by arranging for the security cameras to be switched, concealing his role in the assault and advising employees not to speak to police.</p>	<p>Remorse.</p> <p>Positive steps towards rehabilitation.</p> <p>Letter to sentencing judge expressing his regret.</p>	<p>At [52] The offending was of very short duration and involved no planning or sophistication. As serious as offences of this nature are, this was a less serious example of its type.</p> <p>At [53] That sentence did not properly reflect the relative seriousness of the offence and the personal circumstances of the appellant.</p>
<i>Transitional Provisions Repealed (14/01/2009)</i>					
<i>Transitional Provisions Enacted (31/08/2003)</i>					
<i>Maximum penalty increased from 7 yrs to 10 yrs – effective 3/08/1998</i>					