

Aggravated burglary

Commercial Premises

s 401 Criminal Code

From 1 January 2021

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
burg	burglary
conc	concurrent
cum	cumulative
EFP	eligible for parole
imp	imprisonment
PG	plead guilty
susp	suspended
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
1.	<p><i>The State of Western Australia v ADS</i></p> <p>[2021] WASCA 99</p> <p>Delivered 02/06/2021</p>	<p>23 yrs at time offending and sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history; on parole for previous offending at time offending.</p> <p>Born Europe; very young when came to Australia; normal childhood; loving family.</p> <p>Learning difficulties; left school after yr 9; struggles with reading and writing.</p> <p>Employment history adversely affected by drug use and time in prison; worked as a painter.</p> <p>One long term relationship; little contact with 6 yr old son.</p> <p>Illicit drug use from aged 15 yrs; commenced using methyl aged 16-17 yrs; affected by methyl at time of offending.</p>	<p>1 x Unlawful detention with intent to gain a benefit by threat or demand.</p> <p>Ct 2: Agg burg (commercial property).</p> <p>Ct 3: Agg robbery.</p> <p>Ct 4: Wilful destruction of evidence.</p> <p>The victim, Mr L, was aged 81 yrs and he walked with the aid of a walking stick. He owned a business dealing in firearms and military collectables.</p> <p>After closing the store for the day Mr L departed in his motor vehicle. ADS and his co-offender followed in a hired van, which ADS had earlier in the day fitted with stolen registration plates.</p> <p>At an intersection ADS and the co-offender deliberately drove the van into the rear of Mr L's vehicle. They directed Mr L to drive a short distance and park. After doing so Mr L got out of his vehicle and approached the offenders' van with the intention of exchanging details. ADS and the co-offender dragged and forced Mr L into the van.</p> <p>Mr L was punched in the face and threatened repeatedly that he would be killed if he did not provide them access to his store and the vaults of his business. He was handcuffed, his feet were tied together with cable ties and a cloth was placed over his head and secured with duct tape. He was also struck on the leg with an object and punched on various parts of his body and once</p>	<p>Ct 1: 3 yrs imp (cum).</p> <p>Ct 2: 3 yrs imp (conc).</p> <p>Ct 3: 3 yrs 4 mths imp (cum).</p> <p>Ct 4: 8 mths imp (cum).</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending involved planning and preparation and involved some persistence; the respondent was actively involved in the preparation to commit the offences, including carrying out surveillance of the store and the victim, he purchased items needed for the offending and obtaining the van and the stolen number plates; he was 'actively and willingly involved in all aspects of this offending' and was equally culpable; he participated for financial reward.</p>	<p>Allowed.</p> <p>Appeal concerned length of individual sentences cts 1, 2 and 3 and totality principle.</p> <p>Resentenced (25% discount):</p> <p>Ct 1: 5 yrs imp (cum).</p> <p>Ct 2: 2 yrs 6 mths imp (conc).</p> <p>Ct 3: 4 yrs imp (cum).</p> <p>Ct 4: 9 mths imp (conc).</p> <p>TES 9 yrs imp.</p> <p>EFP.</p> <p>At [80] The facts and circumstances of each of cts 1, 2 and 3 were extremely serious.</p> <p>At [81] As to ct 1, the offenders monitored [Mr L's] movements for some time prior to the offending. They planned to ambush [him] when he was alone and most vulnerable. The staging of</p>

			<p>on his head. They took his mobile phone and his bag containing personal items.</p> <p>ADS then drove the van to Mr L's store, where, acting under threats, he supplied the offenders with the alarm code to the security system and the access code to the vault.</p> <p>Mr L was locked inside the van as ADS and the co-offender entered the store and removed large quantities of firearms and ammunition. They then returned to the van and struck Mr L with an object, demanding the codes and keys to the safe. He provided those details to avoid being assaulted again.</p> <p>Mr L was then taken into the store and the handcuffs and blindfold removed. He was threatened with further violence if he did not provide the safe codes.</p> <p>When the safe was unlocked ADS and the co-offender removed a large quantity of handguns, which they loaded onto trolleys and wheeled out of the store.</p> <p>Mr L was able to lock the door to the store and activate the duress alarm. ADS and his co-offender then left. Police arrived a short time later.</p>	<p>The sentencing judge found the victim was vulnerable because of his advanced age and physical condition; they detained and restrained him; threatened him with actual violence and to kill him and inflicted bodily harm on him.</p> <p>Very traumatic affect on victim; continues to suffer emotional and psychological consequences, including trauma, recurring nightmares; difficulties sleeping and painful recurring problems with his back and shoulders.</p> <p>Expressions of remorse and victim empathy; medium risk of future offending.</p>	<p>the traffic accident to lure [him] from his vehicle to the offenders' van was a pernicious feature of the offending. [Mr L] was subjected to a very frightening ordeal. He was physically assaulted and threatened, including by threats to kill. [He] feared for his life. He was unlawfully detained for a significant period, namely about two hrs. [Mr L] has suffered emotional and psychological consequences from the offending ... The kidnapping was undertaken to facilitate the commission of the planned agg burg and the planned agg robbery. Bearing in mind all of those features of the offending in relation to ct 1, there is no doubt that ct 1 was a very serious example of the offence ...</p> <p>At [82] As to ct 2, the manner in which the</p>
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			<p>A total of 141 firearms, valued at \$215,000, were stolen, along with 10,700 rounds of assorted ammunition valued at \$6,000.</p> <p>Mr L was taken to hospital by ambulance. He suffered bruising/swelling to his leg, wrists, ankles and above his eye and a cut to one of his fingers.</p> <p>Later the same day ADS and the co-offender drove to a location where they burnt the clothing they had worn while committing the offences as well as items taken from Mr L, including his wallet, glasses and keys.</p> <p>Less than a week later police located the firearms and ammunition in a storage room at business premises connected to ADS.</p> <p>ADS continued to deny knowing what the co-offender was planning.</p>	<p>offenders gained entry to the store highlighted the seriousness of their offending against commercial premises.</p> <p>At [83] As to ct 3, the offending involved the offenders stealing a large quantity of firearms and ammunition, having a substantial commercial value, for the purpose of selling the firearms and ammunition on the black market. ... If the firearms and the ammunition had been sold and distributed to criminals, there was a real risk that they may have been used for dangerous and life threatening activities.</p> <p>At [84] ... The fact that all of the offences were committed while the respondent was on parole for previous offending was an egregious feature of his conduct.</p>
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<i>Transitional Provisions Repealed (14/01/2009)</i>					
<i>Transitional Provisions Enacted (31/08/2003)</i>					