

Possess cocaine with intent to sell or supply

s 6(1)(a) and 6(1)(c) *Misuse of Drugs Act*

From 1 January 2021

Transitional Sentencing Provisions: Each of the two tables 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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:

att	attempt
agg	aggravating
conc	concurrent
cum	cumulative
ct	count
EFP	eligible for parole
imp	imprisonment
MDMA	3,4-Methylenedioxy-n, Alpha Dimethylphenylethylamine (Ecstasy)
methyl	methylamphetamine
PG	plead guilty
poss	possession
susp	suspended
TES	total effective sentence
VRO	violence restraining order
wiss	with intent to sell or supply

Weight of cocaine: above 65 grams

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
-----	------	-------------	---------------	----------	--------

Weight of cocaine: 3 – 65 grams

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
2.	<p><i>IIO v The State of Western Australia</i></p> <p>[2022] WASCA 38</p> <p>Delivered 01/04/2022</p>	<p>20s at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>Modest criminal history.</p> <p>Came to Australia as a child.</p> <p>Supportive family and friends.</p> <p>Educated to yr 10; completed apprenticeship; employed; made redundant early 2020.</p> <p>History of drug use.</p>	<p><u>Indictment A</u></p> <p>Cts 1-4: Sold/supplied MDMA 129.79 g at 79% & 85% purity.</p> <p>Ct 5: Poss cocaine wiss 2.7 g at 35% purity.</p> <p><u>Indictment B</u></p> <p>Ct 1: Poss unlawfully obtained property (\$1,640 cash).</p> <p>Cts 2-3: Poss MDMA wiss 12.41 g at 64% and 76% purity and 69% purity.</p> <p><u>Indictment A</u></p> <p>On four separate occasions, IIO sold MDMA to an UCO for \$350; \$1,700; \$3,500 and \$2,650 respectively (cts 1-4).</p> <p>A SW was executed at IIO's home. He was found in poss of a quantity of cocaine (ct 5). He had previously offered the UCO a free sample of cocaine.</p> <p><u>Indictment B</u></p> <p>About a mth prior to the offence the subject of ct 5 on Ind A, a vehicle driven by IIO was stopped by police. In the vehicle and on his person police located \$1,640 in cash (ct 1)</p>	<p><u>Indictment A</u></p> <p>Ct 1: 6 mths imp (conc).</p> <p>Ct 2: 2 yrs imp (cum).</p> <p>Ct 3: 3 yrs 3 mths imp (cum).</p> <p>Ct 4: 3 yrs imp (conc).</p> <p>Ct 5: 6 mths imp (conc).</p> <p><u>Indictment B</u></p> <p>Ct 1: 6 mths imp (conc).</p> <p>Ct 2: 6 mths imp (conc).</p> <p>Ct 3: 1 yrs imp (conc).</p> <p>TES 5 yrs 3 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant a mid-level street dealer; the offences were not isolated incidents, but part of an ongoing drug dealing enterprise for commercial gain to fund his cocaine addiction and to pay off drug debts.</p> <p>The sentencing judge found</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [23] The appellant's offending was a serious example of its type. He was engaged in a commercial operation in selling ounces of MDMA, of a high purity, over six wks.</p> <p>At [24] In order to properly reflect the appellant's overall criminality, some accumulation of the individual sentences that were imposed was required. To have imposed conc sentences for each of cts 1 – 5 on Ind A and cts 1 – 3 on Ind B would have resulted in</p>

			<p>and two clip-seal bags containing a total of 3.52 g of MDMA powder (cts 2). IIO told police that \$300 - \$400 of the cash belonged to him and the rest was from friends to whom he intended to provide drugs.</p> <p>At an address where IIO had just delivered drugs police located a clip-seal bag containing 31 capsules, containing a total of 7.9 g of MDMA. A further five capsules containing 0.99 g of MDMA were also found (ct 3).</p>	<p>immediate imp the only appropriate sentencing option.</p> <p>Demonstrated remorse and insight into his offending; progress made towards rehabilitation; positive character references; low risk of reoffending.</p>	<p>the imposition of a TES which would not have properly reflected the appellant's overall criminality.</p> <p>At [25] ... a TES of 5 yrs 3 mths imp was within the discretionary range properly open to the sentencing judge, even if it may be regarded as being towards the upper end of that range.</p>
1.	<p><i>Celani v The State of Western Australia</i></p> <p>[2021] WASCA 215</p> <p>Delivered 16/12/2021</p>	<p>25 yrs at time offending. 29 yrs at time sentencing.</p> <p>Convicted after PG (15% discount).</p> <p>Prior criminal history; largely consistent with his drug addiction.</p> <p>Parents separated when aged 12 yrs; witnessed domestic violence.</p> <p>Supportive family.</p> <p>Educated to yr 10; completed apprenticeship; later trained and worked in plastic fabrication.</p>	<p>Cts 1; 11; 17 & 18: Offer to sell cannabis 3.6212 kg. Cts 2-6; 8-10; 12-16; 19-31 & 33-35: Offer to sell methyl 93.145 g. Ct 7: Offer to sell cocaine 28 g. Ct 32: Offer to sell heroin 1.75 g.</p> <p>Celani was travelling in a motor vehicle when it was stopped by police. His mobile telephone was seized and an examination of the text messages stored on the phone revealed he had made offers to sell prohibited drugs to 32 contacts listed in his phone. Each ct related to one named contact, a small number of contacts the subject of more than one ct as he offered to sell them more than one kind of prohibited drug. In total he made a 120 separate offers to his various customers.</p> <p>Many of the cts were committed over a</p>	<p>Cts 1-3; 8 & 10: 12 mths imp (conc). Ct 4 & 18: 20 mths imp (conc). Cts 5-6 & 21: 14 mths imp (conc). Ct 7: 36 mths imp (head). Ct 9; 11; 13-14; 17; 22; 24-25 & 28-31: 6 mths imp (conc). Cts 12; 34 & 35: 9 mths imp (conc). Ct 15: 18 mths imp (conc). Ct 16; 19 & 23: 24 mths imp (conc). Cts 20 & 26: 10 mths imp (cum). Ct 27: 15 mths imp (conc). Ct 32: 6 mths imp (cum). Ct 33: 10 mths imp (conc).</p> <p>TES 5 yrs 2 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the</p>	<p>Dismissed - leave refused.</p> <p>Appeal concerned plea discount and totality principle (individual sentences not challenged).</p> <p>At [44] ... Having regard to the fact that the text messages which founded the charges were on the appellant's mobile telephone and their content involved clear offers to sell prohibited drugs, his Honour's characterisation of the case as being 'very strong' was well open. ... the sentencing judge was entitled to take into</p>

		<p>Cannabis use from aged 12 yrs; methyl from aged 16 yrs; regular user of methyl; heavy user at time of offending.</p>	<p>period of time.</p>	<p>appellant's offending serious and aggravated by its repeated and persistent nature and that he committed the offences in order to fund his drug habit.</p> <p>Remorseful; positive steps taken towards rehabilitation; 2 yrs clear of drug use; no further offending.</p>	<p>account the strength of the case against the appellant in assessing the appropriate discount under s 9AA of the <i>Sentencing Act</i>. In these circumstances, and having regard to when the pleas were entered, we are satisfied that a 15% discount was not unreasonable or plainly unjust. It was not manifestly inadequate.</p> <p>At [55] ... the appellant was involved, during the commission of the offences, in a commercial enterprise in which he sold prohibited drugs. The offers that he made were in respect of four different prohibited drugs, ... He was engaged in this business for the purpose of funding his own methyl habit. It was not suggested that the appellant did not have the capacity or intention to fulfil the offers.</p> <p>At [56] It is clear the appellant had a large</p>
--	--	---	------------------------	--	---

					<p>coterie of customers, and it was not suggested that he did not have access to the prohibited drugs he offered to sell. While it was not said that all of the offers resulted in actual sales, it was not claimed the offers were unfulfilled.</p> <p>At [60] ... it is not reasonably arguable that the TES ... infringed the first limb of the totality principle. ...</p>
--	--	--	--	--	--

Office of the Director of Public Prosecutions