

# **Property Laundering**

s 563A 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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 burg	aggravated burglary
att	attempted
conc	concurrent
cum	cumulative
ct	count
circ	circumstances
CRO	conditional release order
EFP	eligible for parole
imp	imprisonment
ISO	intensive supervision order
PG	plead guilty
PNG	plea not guilty
poss	possess
susp	suspended
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
4.	<p><i>Singh v The State of Western Australia</i></p> <p>[2023] WASCA 31</p> <p>Delivered 14/02/2023</p>	<p>35 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Criminal history; prior convictions of fraud.</p> <p>Born India; youngest of three children; profoundly impacted by death of father 2016.</p> <p>Moved to Australia 2004.</p> <p>Separated; ex-wife only significant relationship; one child; continued to live together; not divorced at time sentencing.</p> <p>Varied work history.</p> <p>Alcohol use; extreme gambling addiction.</p>	<p>Cts 1-8; 10 &amp; 11: Fraud. Ct 9: Property laundering. Ct 12: Preparation for forgery.</p> <p>Mr Kilsby engaged Singh, a software developer, to develop an adult entertainment application suitable for mobile devices (the app). Mr Kilsby had conceived and developed the underlying idea and had registered a patent.</p> <p>Singh made a series of fraudulent representations to Mr Kilsby, including the creation of several fictitious persons and entities, who were purported to be interested in purchasing the app for substantial sums of money.</p> <p>There were a total of 67 cash transfers over a period of almost four yrs.</p> <p>With this conduct Singh defrauded Mr Kilsby and nine other individuals of a total of \$1,462,461.70.</p> <p>None of the money has been repaid.</p>	<p>Ct 1: 4 yrs imp (cum). Cts 2 &amp; 3: 2 yrs imp (cum). Cts 4; 8; 9 &amp; 11: 2 yrs imp (conc). Cts 5-7 &amp; 10: 3 yrs imp (conc). Ct 12: 1 yrs imp.</p> <p>TES 8 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending 'a very serious example of each type of offence'; the offending was serious by the amount he derived through the course of his offending; the duration and persistence of the offending and the level of deception in which he engaged to hide his offending; he went to great lengths to cultivate Mr Kilsby's trust through false representations convincing Mr Kilsby to turn to people who knew and trusted him to secure investment funds.</p> <p>The sentencing judge characterised the fraud</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned totality principle.</p> <p>At [73] ... a particularly serious example of offending of this kind: ... The appellant's offending was not constituted by the maintenance or repetition of a single continuing false representation. ... He engaged in an elaborate fraudulent scheme involving a series of fictitious persons, companies and documents. He repeatedly manufactured ongoing extensive chains of communication between fictitious persons he had created and Mr Kilsby. ... [He] was motivated by greed ... there can be no doubt that the appellant was aware that Mr Kilsby was not the source of all of the funds being paid towards the purported project ... [He] must have known that at least a substantial part of the funds he obtained from Mr Kilsby ... came from others. ... The appellant's offending has had a devastating effect on</p>

				<p>offence as highly sophisticated, extensive; deliberate, brazen and sustained and ‘nothing short of callous’; the appellant’s offending was motivated by greed and not need.</p> <p>The sentencing judge found the seriousness of the offending such that terms of imp were the only justifiable outcome and the fact so many offences had been committed over so many victims over four yrs justified a strong measure of accumulation in his sentence.</p> <p>Offending had profound psychological impact on victims; devastated by the financial losses sustained; some lost their homes or are unable to meet health or other ordinary living expenses.</p> <p>No finding appellant remorseful.</p>	<p>his victims. ...</p> <p>At [75] The appellant commenced this offending about two yrs after being convicted of two cts of fraud and about a yr after completing a susp term of imp for that offending. ...</p> <p>At [88] ... the appellant’s TES cannot, even arguably, be said to infringe the first limb of the totality principle. The appellant’s sentence sits comfortably within the bounds of an appropriate exercise of the sentencing discretion and bears a proper relationship to the overall criminality involved in all of the offences.</p>
3.	<b>Knowler v The State of Western Australia</b>	28 yrs at time offending. 29 yrs at time sentencing.	1 x Property laundering.  Knowler was part of a criminal enterprise	2 yrs 4 mths imp.  EFP.	Dismissed (leave refused).  Appeal concerned length of

<p><b>[2023] WASCA 27</b></p> <p>Delivered 10/02//2023</p>	<p>Convicted after PG (22% discount).</p> <p>‘Really bad’ criminal history; on bail other serious offending at time.</p> <p>Prior NSW conviction for property laundering; offending committed two months after release from custody.</p> <p>Parents separate aged 3 yrs; childhood marred by exposure to domestic violence and abuse.</p> <p>Supportive friend.</p> <p>Completed yr 11; commenced, but did not complete, apprenticeship.</p> <p>Unemployed sustained period.</p> <p>12-month-old child with former partner time of sentencing; has contact with his child.</p> <p>Significant drug history; no plans to abstain from drug use.</p>	<p>stealing large quantities of diesel fuel from petrol stations and then onselling the fuel to others.</p> <p>In total the group stole about \$23,400 worth of fuel.</p> <p>Knowler admitted to stealing fuel on eight occasions, worth between \$12,000 and \$15,000 in total, which he then laundered by onselling.</p>	<p>On bail for other serious offending at time of offending.</p> <p>The sentencing judge found the appellant was an integral part of a very organised and somewhat sophisticated scheme; he was involved in the scheme from the outset and had full knowledge of what he was involved in; he disguised himself and used false number plates so as to avoid detection; he targeted petrol stations he knew were vulnerable and the offending was persistent.</p> <p>The sentencing judge found the appellant motivated purely by financial gain; he wanted ‘quick cash’ to help provide for his young child.</p> <p>Some degree of insight and remorse into offending; rehabilitation courses undertaken; obtained work and a secure place to live and removed himself from previous peers at time sentencing.</p>	<p>sentence.</p> <p>At [27] ... The appellant was a key member of an organised syndicate. Unlike the offenders in most of the cases to which [he] referred, he was not in the nature of a courier. The appellant was a full participant in the enterprise, from start to finish. [He] dealt with the stolen property – namely, the fuel, - in full knowledge that it had been stolen, having himself been involved in the original theft. The appellant’s offence involved a number of transactions and so was not isolated. The offence was motivated by financial gain.</p> <p>At [29] ... the fact that the appellant was on bail for other serious offending at the time he committed this offence, and that he committed the offence only two mths after being released from custody for property laundering in NSW – when he was supposed to be on good behaviour – all underlined the significance of personal deterrence.</p>
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					At [30] ... the appellant has fallen well short of demonstrating that his sentence was manifestly excessive. ...
2.	<p><i>Nguyen v The State of Western Australia</i></p> <p><b>[2021] WASCA 198</b></p> <p>Delivered 25/11/2021</p>	<p>49 yrs at time offending. 51 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Born and educated to tertiary level in Vietnam.</p> <p>Arrived WA 2015; limited English; communication difficulties.</p> <p>Married; three children; wife and two youngest children residing Vietnam; some family members in Vietnam in frail and poor health at time sentencing.</p> <p>Supportive family in Vietnam; no family support WA.</p> <p>Business interests in Vietnam.</p>	<p>Cts 1 &amp; 2: Property laundering (\$70,000 and \$15,630 cash).</p> <p>Cts 3-9: Cultivation cannabis wiss.</p> <p>Nguyen was part of a sophisticated and extensive commercial cannabis growing enterprise. Although not involved in the physical operation of growing cannabis, he managed the financial operation of a number of grow houses, including keeping records of the expenses and revenues for each grow house and the preparation of financial analyses for each property.</p> <p><u>Cts 1-2</u> A search warrant was executed at Nguyen's home. During the search two cash bundles of \$70,000 and \$15,630 were located. This money was the proceeds of the sale of cannabis cultivated at one or more of the grow houses at an earlier time.</p> <p>Nguyen had control of the money essentially for the purpose of paying business expenses, but the money did not belong to him.</p> <p><u>Cts 3-9</u> Seven separate 'grow house' had been converted for cultivating cannabis. Each</p>	<p>Ct 1: 1 yr 4 mths imp (cum).</p> <p>Ct 2: 10 mths imp (conc).</p> <p>Ct 3: 2 yrs 8 mths imp (head).</p> <p>Ct 4: 2 yrs 4 mths imp (conc).</p> <p>Ct 5: 2 yrs 6 mths imp (cum ct 3).</p> <p>Ct 6: 2 yrs 8 mths imp (conc).</p> <p>Ct 7: 2 yrs 8 mths imp (conc).</p> <p>Ct 8: 2 yrs 8 mths imp (conc).</p> <p>Ct 9: 2 yrs 4 mths imp (conc).</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge accepted other people apart from the appellant were involved in the cannabis growing operations and that the appellant was not the principal of the cannabis</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [42]-[44] The appellant managed the financial operation associated with the grow houses. He did so over a lengthy period of time. While he was not involved in the physical set-up of the operation or the actual cultivation of cannabis plants, he must have been aware of the scale and sophistication of the enterprise. ... and must have been closely monitoring their progress. ... [He] oversaw and managed the payment of expenses. It cannot be doubted that his function was to ensure, as far as he could, the maximum commercial benefit from each grow house. ... [He] was an important, trusted and willing participant in the enterprise and shouldered significant</p>

			<p>house consisted of a sophisticated hydroponic set-up, including the use of an electricity bypass system.</p> <p>A total of 1081 plants were being cultivated.</p> <p>During the search of Nguyen's home police located handwritten notes, feed charts, excerpts from account books and receipts for items (including nutrients to feed the cannabis plants) purchased to facilitate the growth of cannabis plants.</p> <p>Six mobile telephones, one for each of the grow houses were also found. Nguyen was found also in possession of the floor plans and measurements of four of the grow houses.</p> <p>Nguyen received bills relating to two of the properties and he communicated with the owner of one of the houses regarding the payment of rent.</p>	<p>growing enterprise; but he played an important and trusted role in respect of each grow house; he provided his services for a 'not insignificant' reward.</p> <p>The sentencing judge found the money held by the appellant showed he played an 'important role' and demonstrated the trust that had been placed in him by his superiors; his possession of the cash enabled it to be held separately from the owners of the grow houses, reducing the prospect of it coming to the attention of police.</p> <p>Prison more onerous on the appellant given his limited English and no personal family support available to him in WA.</p> <p>Moderate risk of reoffending.</p>	<p>responsibility in it. The enterprise was potentially highly profitable, concerning, as it did, the hydroponic cultivation of a large number of cannabis plants in seven separate grow houses with the potential value of the cannabis being grown being several hundred thousand dollars. We regard the appellant's role as involving a high degree of criminality. ... his importance to the organisation of the enterprise cannot be doubted.</p> <p>At [46] ... The appellant's role was to ensure that the grow houses operated efficiently and to maximise the financial returns for the owners of the business. Those who, for reward, use their financial expertise to assist those who grow cannabis and enhance the profitability of their illegal operation must understand that their actions involve a high degree of criminality and that, if convicted, substantial punishment will surely follow.</p> <p>At [48] ... we are not persuaded that the TES in this</p>
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					case did not bear a proper relationship to the overall criminality involved in the nine offences, viewed in their entirety ... While we would regard the TES that was imposed as high, it was not unreasonable or plainly unjust.
1.	<p><b><i>The State of Western Australia v Zhuang</i></b></p> <p><b>[2021] WASCA 56</b></p> <p>Delivered 01/04/2021</p>	<p><u>Zhuang</u> 33 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Resides Victoria; no family in WA.</p> <p><u>Li</u> 29 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Resides Victoria; no family in WA.</p>	<p>Ct 2: Poss unlawfully obtained property (\$467,000 cash). Ct 4: Poss unlawfully obtained property (\$998,900 cash). Ct 5 &amp; 7: Property laundering (\$1,420,000 and \$1,608,920 cash).</p> <p>The total amount of cash the subjects of the indictment was \$4,494,820.</p> <p>Zhuang and Li were involved in a large scale money laundering syndicate based in Victoria.</p> <p>On four separate occasions Zhuang and Li travelled from Victoria to WA by commercial aircraft, for the sole purpose of collecting cash. Zhuang hired motor vehicles for the purpose of collecting and transporting the cash.</p> <p>While in WA, Zhuang and Li met with unidentified 'cash sources'. A member of the syndicate organised and facilitated the meetings and gave instructions to Li. During the meeting Zhuang and Li were jointly involved in receiving substantial amounts of</p>	<p><u>Zhuang</u> Ct 2: 9 mths imp (conc). Ct 4: 12 mths imp (cum). Ct 5: 2 yrs imp (cum). Ct 7: 2 yrs imp (cum).</p> <p>TES 5 yrs imp. EFP.</p> <p><u>Li</u> Ct 2: 9 mths imp (conc). Ct 4: 12 mths imp (cum). Ct 5: 2 yrs imp (cum). Ct 7: 4 yrs imp (cum).</p> <p>TES 7 yrs imp. EFP.</p> <p>The trial judge found that the money the subject of cts 5 and 7 was derived by criminals and/or criminal organisations from criminal activities on a very significant scale.</p> <p>The trial judge found it a</p>	<p>Allowed.</p> <p>Appeal concerned length of sentences cts 4; 5 &amp; 7 and totality principle.</p> <p>Resentenced:</p> <p><u>Zhuang</u> Ct 2: 6 mths imp (cum). Ct 4: 9 mths imp (cum). Ct 5: 5 yrs 3 mths imp (conc). Ct 7: 5 yrs 9 mths imp (cum).</p> <p>TES 7 yrs imp. EFP.</p> <p><u>Li</u> Ct 2: 9 mths imp (cum). Ct 4: 12 mths imp (cum). Ct 5: 6 yrs 9 mths imp (conc). Ct 7: 7 yrs 3 mths imp (cum).</p> <p>TES 9 yrs imp. EFP.</p> <p>At [171] ... the offending of</p>

			<p>Australian currency, which they then transported to Victoria, either by motor vehicle or commercial aircraft.</p> <p>In Victoria Li would deliver the cash. Others would then offset the cash by means of a series of online banking transactions to various Chinese bank accounts. Li would act as the 'go between' to verify the transfers.</p> <p>On one of the occasions Zhuang and Li were in Perth they were stopped driving a motor vehicle. In the vehicle police found two suitcases containing \$1,608,920 cash and three mobile phones.</p> <p>Later analysis of the mobile phones revealed communications negotiating the terms of the collection of money. Li acted as a general agent in Australia.</p> <p>The syndicate was structured to provide anonymity to those higher in the chain of command and to distance the origin of the cash from its intended destination. The collection of the cash was clandestine and protected by the use of tokens and an intermediary to facilitate the handover.</p>	<p>very serious example of property laundering; it involved very significant amounts of cash; it was serious in its repetition and duration and in its planning and organisation; the offending could not be regarded as a result of naivety or an isolated lapse of judgement.</p> <p>The trial judge found the appellant's played an active and significant role (in particular Li who was in charge of transporting the money and who was entrusted to take possession of it) and it was a reasonably sophisticated operation, as illustrated by the use of tokens, the involvement of an international controller and the interstate transportation of money.</p> <p>The trial judge found the appellants were joint principal offenders; but the criminality of the appellant Li's offending was objectively more serious; he recruited the appellant</p>	<p>Mr Li and Mr Zhuang in relation to ct 7 was very serious. Mr Li's offending on ct 7 was more serious than Mr Zhuang's offending. ... The offending involved a large amount of money ... The offending was not isolated, but formed part of an ongoing course of criminal conduct ... Each ... committed ct 7 for the purpose of financial gain. ... Each ... (especially Mr Li) had an active and significant role in the offending on ct 7. ... The offending on ct 7 was reasonably sophisticated ....</p> <p>At [173] ... the length of the sentence imposed on each of Mr Zhuang and Mr Li for ct 7 was unreasonable or plainly unjust. ... Each sentence was not merely 'lenient' or 'at the lower end of the available range'. In each case, it was substantially less than the sentence that was open to the trial judge on a proper exercise of his discretion.</p> <p>At [176]-[177] Mr Li's overall offending on the cts in the ind of which he was convicted was very serious. ... Mr</p>
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				<p>Zhuang as an assistant and at all material times Zhuang acted at his direction.</p> <p>The trial judge rejected submissions appellants remorseful; low risk of reoffending; good prospects of rehabilitation.</p>	<p>Zhuang's overall offending on the cts in the ind of which he was convicted was also very serious, although less serious than Mr Li's overall offending. ...</p> <p>At [182] ... we are satisfied, ... that the sentence imposed on each of Mr Li and Mr Zhuang for ct 7 was manifestly inadequate and that the TES imposed on each of them infringed the first limb of the totality principle.</p>
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