

Grievous Bodily Harm

s 297 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

Glossary:

agg	aggravated
att	attempted
conc	concurrent
cum	cumulative
ct	count
CRO	conditional release order
CSI	conditionally suspended imprisonment
dep lib	deprivation of liberty
EFP	eligible for parole
GBH	grievous bodily harm
imp	imprisonment
ISO	intensive supervision order
methy	methamphetamine
PG	plead guilty
sex pen	sexual penetration without consent
susp	suspended
SOTP	sex offender treatment program
TES	total effective sentence

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
7.	<p><i>O'Dea v The State of Western Australia</i></p> <p>[2023] WASCA 70</p> <p>Delivered 05/05/2023</p>	<p>44 yrs at time offending.</p> <p>Convicted after late PG (10% discount).</p> <p>Criminal history; prior offence of AOBH and poss controlled weapon.</p> <p>Parents separated when aged 6 yrs; resided with his mother; father often absent; both parents now deceased; estranged from his brother; supportive sister.</p> <p>Educated to yr 10; average academic achievements; better at sport; expelled for fighting.</p> <p>Commenced working aged 16 yrs; qualified heavy machinery driver and employed as plant operator until loss of his MDL in 2018.</p> <p>Four children from long term relationship; now separated; maintains contact with his adult children; in a relationship at time sentencing.</p>	<p>1 x GBH.</p> <p>In the early hrs of the morning the victim disturbed a woman, Ms Dimer, committing a burglary. When she fled the premises the victim followed in pursuit yelling 'Thief, thief. Ms Dimer ran towards a house, screaming loudly and yelling for help.</p> <p>O'Dea and the co-offender Webb were in the house and on hearing the screams walked outside. O'Dea armed with a hockey stick.</p> <p>The victim and Ms Dimer engaged in a struggle. Ms Dimer approached O'Dea and Webb and told them something. O'Dea then walked towards the victim and swung the hockey stick at him, knocking him to the ground. As the victim lay on the ground he was kicked and punched by both O'Dea and Webb.</p> <p>The victim sat up and was kicked in the face by O'Dea, causing him to fall back down. O'Dea swung and hit the victim with the hockey stick, before dropping the stick and punching the victim at least 10 times to the face and head with a clenched fist, whilst Webb held the</p>	<p>5 yrs 2 mths imp.</p> <p>EFP.</p> <p>Co-offender Webb convicted of alternative offence of GBH (simpliciter). Sentenced to 3 yrs 2 mths imp.</p> <p>Appellant sentenced on the basis that the offence of GBH was a probable consequence of an unlawful purpose, namely to assault the victim with a significant level of violence, including the use of a weapon.</p> <p>The sentencing judge found the appellant's culpability was significantly greater than that of Webb; the appellant was the initiator of the violence; was the one who used a weapon, was the one who inflicted most of the violence on the victim and the violence that he used involved multiple blows, both with the hockey stick, his fists and his feet.</p> <p>The sentencing judge found</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of sentence; parity principle and error (plea discount).</p> <p>At [66] ... the harm caused to [the victim] was properly characterised by the sentencing judge as severe. [The victim] sustained a serious and enduring disability which impacted significantly upon every aspect of his life, including his independence and ability to care for himself.</p> <p>At [67] ... In the present case, the appellant was armed with a weapon, the hockey stick, which he repeatedly used to strike the victim throughout a sustained assault. The appellant also used his fists and feet, inflicting repeated blows to [the victim's] head. The number of blows, the degree of force used, the use of a weapon, the concentration of the blows to the vulnerable area of the head and the persistent nature of the attack, place this</p>

		<p>Commenced drinking alcohol aged 15 yrs; methyl used aged 18 yrs; patterns of heavy drinking; loss of employment on three occasions due to positive alcohol tests; reports he has now ceased drinking.</p>	<p>victim down.</p> <p>O'Dea slammed the victim's head to ground by pushing his chest, before punching him in the head twice. The second punch caused the victim's head to bounce on the ground.</p> <p>When the victim managed to sit up Webb grabbed him from behind and dragged him with force onto a concrete driveway. He then slammed the victim to the ground, causing his head to hit the driveway with force. Both Webb and O'Dea circled the victim as he sat on the ground.</p> <p>When the victim att to stand O'Dea struck him to the ankle with the hockey stick with force, causing him to fall to the ground.</p> <p>The victim eventually stood up and was able to walk away. O'Dea and Mr Webb followed him. When police attended the victim was being held by O'Dea and Webb.</p> <p>The victim was unable to speak due to his injuries and was taken to hospital by ambulance.</p>	<p>the offending fell towards the upper end of the scale of seriousness; the harm suffered by the victim was severe and there were a number of aggravating features; the victim was outnumbered; he was defenceless after he had fallen to the ground; he was struck multiple times; the attack was unprovoked and unnecessary and a weapon was used.</p> <p>Offending significant impact on victim; required ongoing support; suffered a relationship breakdown and ability to work; loss of his business and ability to provide financially for himself and his family.</p> <p>Remorseful; undertaken educational opportunities while in custody; gained full-time employment whilst on bail.</p>	<p>into a very serious category of offending.</p> <p>At [68] ... The use of violence as an act of vigilantism is particularly serious and deserving of denunciation by the courts.</p> <p>At [69] The fact that the appellant may have originally armed himself and gone to the door in circumstances where he honestly believed that a woman was being attacked provides some explanation for how he came to be involved, but affords little mitigation for what he did thereafter. ... the appellant made no enquiry of [the victim] or Ms Dimer before launching into an attack on [the victim] with his hockey stick. None of the subsequent violence was aimed at restraining [the victim]. The appellant persisted in a brutal assault on [the victim] using the hockey stick, his fists and kicks, despite [the victim] plainly being seriously injured and outnumbered. [The victim] was clearly vulnerable and</p>
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			<p>When questioned by police O'Dea claimed he had stopped Mr K from attacking a girl and suggested Mr K had received his injuries from falling down.</p> <p>Mr K suffered a traumatic brain injury, skull and facial fractures and a fractured ankle. He required comprehensive rehabilitation, nursing and medical oversight.</p>		<p>defenceless during the attack, having been struck to the ground repeatedly and then attacked whilst on the ground. The extreme vigilante-type violence ... placed the offence at the higher end of the scale of seriousness.</p> <p>At [75] In this case, having regard to the degree of violence, the use of a weapon, the persistence of the violence and the severe injuries inflicted, the appellant's conduct fell at the more serious end of the spectrum of offences of this nature. ... the sentence ... that was imposed was clearly within the discretionary range available ... That sentence is not unreasonable or plainly unjust and does not manifest error.</p> <p>At [88] ... The 10% discount was, having regard to all of the relevant factual circumstances, a proper reflection of the timing of the plea, the strength of the prosecution case and the benefits flowing from that plea.</p>
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					At [97] Having regard to all relevant factors, the degree of difference between the appellant's sentence and that imposed on Mr Webb was entirely justified by the differences in their degree of culpability, ... The parity principle has not been infringed.
6.	<p><i>Jones v The State of Western Australia</i></p> <p>[2023] WASCA 30</p> <p>Delivered 17/02/2023</p>	<p>33 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history.</p> <p>Three siblings; experience trauma aged 6 when taken from his mother; otherwise raised in a positive and supportive family environment; reconnected to his biological mother and a sister.</p> <p>Positive family relationships to assist on release.</p> <p>Educated to yr 10; trade qualifications.</p> <p>Consistent work history; employed since leaving school; own business; strong work ethic.</p>	<p>1 x GBH.</p> <p>Jones and an acquaintance were at a service station. The victim, who was intoxicated and unsteady on his feet, accidentally bumped into Jones and his acquaintance.</p> <p>A short time later CCTV footage showed Jones standing behind the victim, while the victim spoke with the acquaintance. When the acquaintance left to walk around the victim, the victim blocked his path and continued to talk to the acquaintance. The victim's hands were by his side or in front of him and he did not offer any threat.</p> <p>Without warning and whilst standing behind the victim, Jones struck the victim to the back of his head with his arm, which was encased in a cast. The victim immediately became unconscious</p>	<p>5 yrs imp.</p> <p>The trial judge found the appellant's offending serious; the victim was struck without warning, when he was unprepared and not expecting to be hit; the victim was vulnerable and defenceless; with the cast on his arm he struck the victim with a forceful blow, immediately knocking the victim unconscious, causing him to fall heavily to the ground; the victim suffered a significant and serious injury and it was fortunate it was not far more serious, as there is always the risk of brain injury to a person knocked unconscious and who falls to a hard surface.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of sentence.</p> <p>At [49] ... the offence involved a forceful unprovoked surprise attack on a vulnerable victim which resulted in an injury having significant effects on the victim and carried the real risk of causing even greater harm. There were limited mitigating factors and, in particular, the appellant did not have the benefit of a PG to the offence.</p> <p>At [52] ... we are not persuaded that a sentence of 5 yrs imp is unreasonable or plainly unjust in accordance with the principles in <i>House v The King</i>. In this regard, the following matters</p>

		<p>Long-term relationship; four children; one of whom suffers a neurological condition, is wheelchair bound and requires daily medical care.</p>	<p>and fell forward onto the pavement. His face and forehead struck the pavement, violently forcing his head backwards.</p> <p>A lifeguard assisted the victim, placing him in the recovery position.</p> <p>Jones and his acquaintance simply walked away.</p> <p>The victim suffered a significant neck injury, along with concussion, chipped teeth and bruising. He underwent surgery for a fractured vertebra and ruptured disc and required a neck brace for a period of time.</p>	<p>Offending significant impact on victim; unfit for work six mths; frequently in pain and likely to suffer a permanent lifelong restriction in neck movement.</p> <p>The trial judge acknowledged appellant's separation from his children difficult and stressful for the mother caring for their special needs child.</p> <p>No demonstrated remorse; some insight into his offending.</p>	<p>seem to us to be of most particular significance ... the appellant did not have the mitigation that a PG would have brought. ... The unprovoked nature of the attack. ... The forceful nature of the attack, and its apparently calculated nature ... inflicted on a defenceless and vulnerable victim. ... The appellant's indifference to the consequences of the assault, marked by his 'simply [having] walked away'. ... The seriousness of the injuries, ... The potential for the assault to have caused more serious injury, including brain damage. ... The likelihood of permanent injury in the form of restricted neck movement. ... The limited remorse shown by the appellant. ... the appellant's prior criminal record including, most relevantly, his prior conviction for an offence of being armed, or pretending to be armed, in a way that may cause fear, underscored the importance of personal deterrence.</p>
5.	<i>Littlely v The State of Western</i>	<p>30 yrs at time offending.</p> <p>31 yrs at time sentencing.</p>	1 x GBH.	18 mths imp.	Dismissed (leave refused - on papers).

	<p>Australia</p> <p>[2022] WASCA 102</p> <p>Delivered 08/08/2022</p>	<p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Good relationship with family and friends; family supportive.</p> <p>Completed yr 12; qualified heavy-duty mechanic.</p> <p>Good work ethic; employed mining industry.</p> <p>5-yr-old son with former partner; close relationship; shares in child's care since separation.</p> <p>Suffers ADHD; anxiety; depression after marriage breakdown.</p> <p>No entrenched substance abuse problems.</p>	<p>Littlely and his wife had separated. Ms Littlely was, at that time of the offence, in a relationship with Mr Free, the victim.</p> <p>Mr Free, Ms Littlely and some friends were at a hotel. Littlely was also at the premises.</p> <p>Mr Free did not know that Littlely was also at the hotel that night.</p> <p>During the evening Mr Free and a friend went to the toilet area of the hotel. As they were returning to their friends Mr Free was punched to the side of his face. He did not see who had punched him.</p> <p>Mr Free's friend saw Littlely had thrown the punch.</p> <p>The incident was also captured on CCTV cameras.</p> <p>As a result of the punch Mr Free's jaw was broken in two places. He required surgery for the fractures and plates, screws and arch bars were inserted.</p>	<p>EFP.</p> <p>The trial judge found the offending was unprovoked and an unexpected attack with considerable force, which caused a considerable injury.</p> <p>The trial judge found the offence not the most serious offence of its kind; it did not involve the use of a weapon and involved one punch only.</p> <p>Victim permanent residual disability; ongoing pain; nerve damage and loss of lip sensation.</p> <p>Very low risk of reoffending.</p>	<p>Appeal concerned errors (previous sentencing decisions and force of punch) and length of sentence.</p> <p>At [27] ... It is plain from the observation that her Honour had regard to relevant previous sentencing decisions of this court.</p> <p>At [37] ... evidence combined with the fracture of Mr Free's jaw in two places was adequate to sustain her Honour's findings that the appellant had delivered a forceful punch or a strong blow.</p> <p>At [60] ... we are satisfied that it was reasonably open to the trial judge to conclude that it was inappropriate to susp or conditionally susp (wholly or partly) the sentence of imp. ...</p> <p>At [61] We are also satisfied that the length of the sentence ... was not manifestly excessive having regard the max penalty, the facts and circumstances of</p>
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					the offending. The standards of sentencing customarily observed, the place which the appellant's offending occupies on the relevant scale of seriousness, the appellant's personal circumstances and antecedents and all other mitigating factors.
4.	<p><i>The State of Western Australia v Babakarkhil</i></p> <p>[2022] WASCA 59</p> <p>Delivered 03/06/2022</p>	<p>25 yrs at time offending. 29 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; conviction for violent offence.</p> <p>One of eight children born to Afghanistan refugees.</p> <p>Struggled at school.</p> <p>Mixed involvement in employment up to time of offending.</p> <p>Binge drinking and consuming drugs at time offending; self-medicating after witnessing a murder and the killing of a close friend.</p>	<p>1 x GBH.</p> <p>Babakarkhil was jointly charged with four co-offenders, Kakar, Saleh, E Assaad and I Assaad.</p> <p>The offending was captured on CCTV footage.</p> <p>In the early hours of the morning the victim, his brother Rhys and some friends were outside a nightclub. They were intoxicated. Another group of men, including Babakarkhil and the co-offenders, were also on the footpath outside the club.</p> <p>There was some antagonism between the two groups. The victim and Rhys stepped backwards on the footpath as the group approached. Kakar stepped up to the two brothers, with his hands in a fighting stance. Babakarkhil tried to prevent the</p>	<p>12 mths imp, CSI 12 mths; supervision and programme requirement.</p> <p>The trial judge sentenced the respondent on the basis he was criminally responsible for aiding his co-accused to commit the offence; seriousness of the offending was primarily the harm done to the victim and that the offending occurred in a public street; seriousness of offending was such that imp the only appropriate sentence.</p> <p>Offending significant impact on victim; unable to work for a yr; required significant treatment for mental health issues; continues to suffer numbness to his cheek.</p>	<p>Allowed (Mazza J dissenting).</p> <p>Appeal concerned error of finding (aid provided by the respondent limited to Acts D and E) and length and type of sentence.</p> <p>Resentenced to 21 mths imp.</p> <p>EFP.</p> <p>At [63] ... The respondent's presence, and his joining in the assault ..., must have been intended to assist his co-accused in an assault. That is, the proper inference to be drawn from the CCTV footage is that the respondent must have intended all his acts from the point when he first threw a punch at [the victim] (Act A) until and</p>

		<p>situation escalating and immediately intervened. In doing so he threw a punch towards the victim's body (Act A). It is not clear whether or not this punch connected.</p> <p>Within moments the victim and Rhys had their backs to the railing, facing Babakarkhil and Kakar, both of whom were 'shaping up' to the victim and Rhys (Act B). Babakarkhil and Kakar were joined by E Assaad, who invited the victim and Rhys to engage in a fight.</p> <p>At that point, the co-offender Saleh ran at speed at the victim, delivering a forceful blow to his head. This blow was quickly followed by blows from E Assaad and Kakar to the victim's upper body.</p> <p>At virtually the same time Babakarkhil threw a punch towards Rhys (Act C). Rhys was able to turn away and fend him off. Babakarkhil retreated, then returned and delivered a punch to the front of the victim (Act D).</p> <p>Babakarkhil also delivered a forceful blow to the victim's upper body (Act E). This blow was delivered at a time when the victim was not offering a threat to</p>	<p>Low-risk of reoffending; ceased alcohol and drug use; engaged in counselling.</p>	<p>including the last blow he delivered to [the victim] (Act E) to assist his co-offenders in their assault of [the victim].</p> <p>At [64] Further, in our view, all of Acts A – D actually had the effect of assisting the respondent's co-offenders in assaulting [the victim]. ...</p> <p>At [81] ... The criminality involved in the respondent's offending may be regarded as less than that of Mr Saleh and Ebraheem Assaad, as the physical assaults performed by the respondent himself were less violent and less damaging than the blows struck by Mr Saleh and Ebraheem Assaad. However, the respondent threw the first and last punches that were directed by the group against [the victim], and was an active participant throughout the assault.</p> <p>At [83] It was the respondent's participation in the assault which helped ensure that [the victim] was outnumbered and</p>
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			<p>anybody. The trial judge was not satisfied that this blow made contact with the victim's head.</p> <p>The victim suffered fractures to his face requiring surgery.</p>		<p>facilitated the assault which caused the GBH</p> <p>At [85] ... in our view the seriousness of the offence committed by the respondent is such as to make a sentence of susp or conditionally susp imp inappropriate. ...</p>
3.	<p><i>Fernie v The State of Western Australia</i></p> <p>[2022] WASCA 20</p> <p>Delivered 18/02/2022</p>	<p>23 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Substantial criminal history.</p> <p>Highly dysfunctional upbringing; left home aged 14 yrs; homeless a number of yrs.</p> <p>Left school yr 9.</p> <p>Some labouring work.</p> <p>Relationship at time of sentencing.</p> <p>Commenced cannabis use in his youth; methyl from aged 19 yrs.</p>	<p>Ct 1: Agg burglary. Ct 2: Unlawful wounding. Ct 3: GBH.</p> <p>Late at night Fernie, and two co-offenders, armed with a machete and crowbar, went to the home of the victims, CMK and his son, CDK. The three men were disguised. They kicked in the front door and prising open the screen door with the crowbar.</p> <p>Inside the home Fernie and the co-offenders made threats of violence towards the victims. CMK's young daughter was sleeping in a nearby bedroom.</p> <p>Fernie participated in an assault upon CMK. To defend his father CDK stabbed Fernie in the arm. Fernie was hospitalised as a result.</p>	<p>Ct 1: 4 yrs imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: 8 yrs 2 mths imp (conc).</p> <p>TES 8 yrs 2 mths imp.</p> <p>EFP.</p> <p>The trial judge found the appellant criminally responsible for cts 2 and 3 on the basis that he knowingly aided another person to commit the offences (s 7(c) <i>Criminal Code</i>) and, alternatively, the offences were a probable consequence of the common intention formed by him and the co-offenders to prosecute an unlawful purpose of agg burglary (s 8 <i>Criminal Code</i>).</p>	<p>Dismissed (leave refused - on papers).</p> <p>Appeal concerned length of individual sentences and totality principle.</p> <p>At [33] Ct 3 could not reasonably be described as being in the least serious category of case, having regard to the circumstances in which it was committed; ... including the nature of the injuries sustained by CDK; ...</p> <p>At [34] ... it is not reasonably arguable that the sentence imposed on ct 3 was manifestly excessive. ... the appellant's claim that the individual sentences on cts 1 and 2 were manifestly excessive has no</p>

			<p>During the course of the burglary both victims were struck with the machete. CMK sustained a laceration to his forearm while defending himself from the ongoing assault.</p> <p>CDK sustained serious injuries to his fingers after being struck by the machete. One of his index fingers required surgery.</p>	<p>The trial judge found the appellant's offending agg by the fact he was in company with other disguised offenders who were also armed; the offences were committed at a family residence late at night; the victim of ct 3 sustained serious injuries and at the time the appellant was the subject of a CBO and a CSIO.</p> <p>No demonstrated remorse or acceptance of responsibility for the offending.</p>	<p>merit. Taken separately, each of those offences was a serious example of its type and the sentences that were imposed were well within the discretionary range ...</p>
2.	<p><i>Hornell v The State of Western Australia</i></p> <p>[2021] WASCA 137</p> <p>Delivered 30/07/2021</p>	<p>31 yrs at time offending. 34 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Short criminal history; two prior convictions of common assault; otherwise no prior offences involving violence.</p> <p>Lived various parts of WA.</p> <p>Educated to year 11.</p> <p>Fairly good employment history.</p>	<p>1 x GBH.</p> <p>Hornell and three others, Ms Hill, Ms Devereux and a male known as Tama, went to a home occupied by Ms Elliott-Garwood. The victim was visiting the premises at the time.</p> <p>Hornell and his group entered the house. Ms Hill and Ms Elliott-Garwood went into a room to discuss a methyl transaction.</p> <p>A short time later Ms Devereux joined Ms Hill and Ms Elliott-Garwood in the room. Ms Devereux then went into an en suite and began mixing up a shot of</p>	<p>2 yrs 6 mths imp.</p> <p>EFP.</p> <p>Accepted that the victims' injury was caused by the single punch delivered by the appellant.</p> <p>Conceded there was a 'huge disparity of size' between the appellant, estimated to weigh at least 100 kg, and the victim, who was about 45 kg.</p> <p>The sentencing judge found the appellant punched the</p>	<p>Dismissed.</p> <p>Appeal concerned type and length of sentence and errors in law (failing to consider susp imp and hardship caused by imp).</p> <p>At [37] ... there was no evidence that, upon the appellant's incarceration, his son would suffer exceptional hardship or that he would be deprived of parental care. The expression 'parental care' should be understood broadly to include relatives or persons who are able to undertake parental</p>

		<p>Formed a relationship after the offending; son born to this union; ceased drinking and using drugs after the birth; sole carer of his son; made positive changes in his life; at time of sentencing son in the care of his mother and brother.</p>	<p>methyl.</p> <p>Eventually, all the occupants, including Hornell and the victim, ended up in the room, for the purpose of trying some of the methyl.</p> <p>Ms Hill became agitated and expressed the view that the mixing up of the methyl was taking too long. Ms Devereux punched the victim in the face with a clenched fist. The victim fell from the edge of the bed onto the floor, where Ms Devereux and Ms Hill continued to punch her. The victim, who was holding a methyl pipe, yelled and screamed at Ms Devereux and Ms Hill.</p> <p>Ms Devereux then turned to Hornell and told him to knock the victim out. With a clenched fist, he stepped forward and forcibly struck the victim to the side of her face, near her jaw. The victim felt instant pain.</p> <p>Hornell and his group then left the house.</p> <p>Later that same day police attended Ms Elliott-Garwood's house. The victim was distressed, in pain and had a noticeably swollen jaw. She was taken</p>	<p>victim with significant force and the injury suffered by the victim was not 'at or towards the lower end of the scale'.</p> <p>The sentencing judge was satisfied beyond a reasonable doubt that Ms Devereux was the instigator of the violence; she directed the appellant to knock out the victim and the appellant punched the victim in response to that direction, as well as out of concern that the victim was attempting to stab Ms Devereux with the methyl pipe she held; but it was a powerful punch thrown without warning to a vulnerable victim, albeit with some provocation but the appellant's actions were grossly disproportionate.</p> <p>Offending significant impact on the victim, affect on her eating; experienced ear infections; some fear of going out and she suffered financial stress.</p> <p>No demonstrated remorse.</p>	<p>duties towards a child. ... There was no sufficient basis to enable his Honour to find that the appellant's son would not be properly cared for by the appellant's mother and brother while he was incarcerated, or that the child would suffer exceptional hardship as a result of the appellant's imp.</p> <p>At [49] The appellant is a large man, who is more than twice the weight of the victim. While it is true that he did not use a weapon on the victim or hit her multiple times, his punch was ... powerful. [He] punched the victim without warning while she was on the floor, at Ms Devereux's behest, who asked him to 'knock [the victim] out'. The victim had no opportunity to defend herself. She was plainly vulnerable. Her vulnerability was compounded by the fact that she was outnumbered. While his Honour found that there was 'some provocation', this factor cannot significantly diminish the appellant's criminality when one</p>
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			to hospital where she had surgery to repair her broken jaw. She was discharged the following day.		<p>considers that his conduct was ‘grossly disproportionate’ to the victim’s actions.</p> <p>At [50] ... A powerful blow to the head, of the kind inflicted by the appellant, had the potential to cause greater injury than that actually suffered by the victim.</p> <p>At [53] The offence committed by the appellant, while not the most serious of its type, had the serious features which were referred to at [49] and [50] above. We do not regard the facts of the present case as having the kind of unusual circumstances that would justify a susp term of imp. ... We do not regard the length of the term that was imposed as unreasonable or plainly unjust.</p> <p>...</p>
1.	<p><i>Jetter v The State of Western Australia</i></p> <p>[2021] WASCA 80</p> <p>Delivered</p>	<p>44 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>Criminal history; no prior sexual offending; history of violence.</p>	<p>Cts 1 & 2: Sex pen child 13-16 yrs. Ct 3: GBH.</p> <p>Jetter and the victim did not know each other. The victim was aged 15 yrs, 11 mths and 1 wk.</p> <p>The victim told Jetter she was 18 yrs</p>	<p>Ct 1: 2 yrs 6 mths imp (cum). Ct 2: 2 yrs 6 mths imp (conc). Ct 3: 3 yrs imp (cum).</p> <p>TES 5 yrs 6 mths imp.</p> <p>EFP.</p>	<p>Appeal allowed.</p> <p>Appeal concerned length of sentence cts 1 and 2 and totality principle.</p> <p>Resentenced (25% discount):</p>

07/05/2021	<p>Born to very young parents; adopted by an aunt; raised in loving environment; three younger sisters; maintained contact with biological parents and their other children.</p> <p>Sexually assaulted as a child; in his 20s when adoptive mother died.</p> <p>Left school yr 11; excelled at sport; bullied by other children; disciplined by teachers when he retaliated.</p> <p>Worked on a station before leaving school; undertook traineeships and completed certificate in civil construction and engineering; unemployed since leaving school.</p> <p>Two children; aged 18 yrs and 9 yrs; limited contact with them.</p> <p>Attempts at self-harm and suicidal ideations in his 20s; methyl use from aged 22; never undertaken programs or rehabilitation to address his substance abuse.</p>	<p>old.</p> <p>The victim approached Jetter and suggested they consume drugs together. In the stairwell of a carpark they had sexual intercourse. The victim was a willing participant (ct 1).</p> <p>Later that same day the victim and Jetter travelled to the house at which Jetter was staying with his aunt. The victim stayed at the house a few nights, during which she and Jetter had sexual intercourse. The victim was a willing participant (ct 2).</p> <p>On her third day at the house Jetter and his aunt spoke to the victim about a recent death of a family member. When the victim laughed the aunt slapped her in the face. Jetter then swung a baseball bat at the victim, the second swing hitting her in the arm (ct 3).</p> <p>The victim ran from the house. A neighbour intercepted the victim and called the police. A short time later he was arrested.</p> <p>The victim suffered a fractured arm and underwent surgery, involving the open reduction and internal fixation of the</p>	<p>The sentencing judge found the appellant's moral culpability was decreased; by the victim telling him she was aged 18 yrs; she was not coerced into the offending and willingly participated in the acts of sexual intercourse.</p> <p>The sentencing judge found the gravamen of the sexual offending was that having only just met the victim and not knowing anything about her, he did not do more to ascertain her age before embarking in sexual activity with her.</p> <p>The sentencing judge characterised the sexual offending as falling at the lower end of the scale of seriousness for offending of this type.</p> <p>Seriousness of the offence of GBH increased by the appellant's use of a weapon; the victim's young age; her vulnerability and that she suffered a serious injury, requiring surgery.</p>	<p>Ct 1: 3 mths imp (cum). Ct 2: 6 mths imp (conc). Ct 3: 2 yrs 9 mths imp (cum).</p> <p>TES 3 yrs imp.</p> <p>EFP.</p> <p>At [12] The State conceded that the sentence of 2 yrs 6 mths imp for each of cts 1 and 2 was manifestly excessive as to length (but not as to type). ...</p> <p>At [63] ... the appellant's culpability in relation to the sexual offending was ameliorated by ... [his] honest belief that the complainant was aged 18 and the absence of any reason for him to doubt that the complainant was of that age; ... the complainant was very close to the legal age of consent, namely 16 yrs; ... [and] the complainant was a willing participant in the acts of sexual intercourse; ...</p> <p>At [64] However, on the other hand, there was a very substantial age disparity</p>
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			<p>humerus and the application of a brace.</p> <p>Jetter admitted having consensual intercourse with the victim, believing she was aged over 18 yrs. He also admitted striking her with the bat and breaking her arm.</p>	<p>No sexual interest in children; not especially troubled by having struck the victim with a bat, regarded this violence as a normal response.</p> <p>Cooperative; remorseful and disgusted by the fact he engaged in sexual intercourse with a 15 yr old; high risk of future offending involving violence; an average risk of future sexual offending due to his impulsivity and unaddressed drug abuse.</p>	<p>between the appellant and the complainant. The complainant was especially vulnerable because, like the appellant, she was indigent, homeless and a drug abuser. In those circumstances, the public interest which underpins the offence in question required that the appellant obtain some reliable confirmation (apart from the complainant's assertion) as to her age before engaging in sexual intercourse with her.</p>
<p><i>Maximum penalty increased from 7 yrs to 10 yrs – effective 3/08/1998</i></p>					