

# **Unlawful assault causing death**

s 281 *Criminal Code*

**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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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	attempted
circ	circumstances
conc	concurrent
cum	cumulative
ct	count
disq	disqualification
EFP	eligible for parole
imp	imprisonment
PG	plea guilty
PSR	pre-sentence report
susp	suspended
TES	total effective sentence

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
1.	<p><b><i>Lee v The State of Western Australia</i></b></p> <p><b>[2022] WASCA 137</b></p> <p>Delivered 28/10/2022</p>	<p>25 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Long criminal history; on bail at time offence for other alleged violent offending, an assault against his domestic partner.</p> <p>Mother deceased; two siblings; 16 siblings in all; upbringing marked by trauma, family dysfunction, exposure to violence and deprivation and illicit drug and alcohol use.</p> <p>Supportive family.</p> <p>Difficulties with schooling; functionally illiterate and innumerate.</p> <p>Commenced drinking alcohol aged 13 yrs; cannabis at 15 yrs; methyl at 17 yrs.</p> <p>Lifelong health problems; diagnosed Foetal Alcohol Spectrum Disorder (FASD), including heart defect and</p>	<p>1 x Unlawful assault causing death.</p> <p>The victim, aged 44 yrs, was Lee's aunt.</p> <p>Lee and the victim drank together throughout the day. Both were heavily intoxicated.</p> <p>After purchasing more liquor Lee and the victim continued drinking. At some point the victim spoke about Lee's mother, causing Lee to become angry and aggressive. He struck the victim once to the side of her head with his fist. The victim fell to the ground and struck her head on the concrete.</p> <p>Lee checked on the victim and left soon after.</p> <p>The victim suffered swelling and bleeding around her ear, vomiting and was acting in a confused manner. She was taken to hospital by ambulance and soon after became unresponsive. A CT showed extensive skull fractures and a subdural haemorrhage, together with bleeding within the brain, with marked compression of the brain.</p> <p>The victim died a few hrs later.</p>	<p>5 yrs imp.</p> <p>EFP.</p> <p>It was agreed that the fatal injury was caused when the deceased's head hit the ground after she was punched; sentenced on the basis that the appellant did not foresee that she would die from being punched and that it was not reasonably foreseeable by an ordinary person.</p> <p>The sentencing judge found the punch to the deceased's face represented a cowardly act; she was vulnerable, not only because of her lesser size and strength but she was also very intoxicated; she was punched without warning; not given an opportunity to defence herself and she made nor posed no threat to the appellant, who did not stay to render her</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of sentence and error in sentencing discretion (appellant's history of deprivation and FASD diagnosis).</p> <p>At [72] ... the sentencing did not fail to take the appellant's past deprivation and its ongoing impact into account. ... the sentencing judge explained his approach to the appellant's past deprivation and its ongoing impact, FASD and associated cognitive impairment and disability.</p> <p>At [83] Having regard to the circumstances of the offending and the offender in this case, and acknowledging that the decision in [<i>The State of Western Australia v Smith</i> [2019] WASCA 42] is relevant, we do not think that it can be said that a sentence of 5 yrs' immediate imp is manifestly excessive.</p>

		<p>hearing difficulties; troubled by bouts of depression and history of self-harm; funding and support through the National Disability Insurance Scheme.</p>		<p>assistance and the deceased was entitled to feel safe in the company of her family.</p> <p>The sentencing judge found as mitigating the fact that the offending was committed while the appellant was grossly intoxicated and very angry; the assault was not the result of a 'clear-eyed, sober decision'; it involved a single punch and was not part of any sustained attack and no weapons were used.</p>	
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