

# **Aggravated Burglary – Home Invasions**

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
AOBH	assault occasioning bodily harm
burg	burglary
CBO	community based order
CSIO	conditional suspended imprisonment order
conc	concurrent
cum	cumulative
ct	count
EFP	eligible for parole
imp	imprisonment
PG	plead guilty
TES	total effective sentence
VRO/RO	violence restraining order/restraining order
wiss	with intent to sell or supply
YCRO	Youth Conditional Release Order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
8.	<p><b><i>Hewins v The State of Western Australia</i></b></p> <p><b>[2023] WASCA 2</b></p> <p>Delivered 05/01/2023</p>	<p>20 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after late PG - cts 1-3 (3% discount). Convicted after trial (ct 4).</p> <p>Minor criminal history.</p> <p>Born UK; raised loving and supportive family.</p> <p>Educated to yr 10.</p> <p>Worked number of occupations.</p> <p>Birth of child while on bail.</p> <p>History of substance use; at time of offending under the influence of ecstasy and alcohol.</p>	<p>Cts 1 &amp; 4: Agg burg. Ct 2: With intent to harm did an act resulting in bodily harm. Ct 3: Criminal damage.</p> <p>Mr Gornall and Mr Smith shared a house. Hewins and his brothers, Thomas, Samuel and Jacob, had visited the house.</p> <p>Hewins, his brothers, Mr Gornall and a Ms Barlett were at a nightclub. Hewins was pursuing a romantic relationship with Ms Bartlett and he became angry when he perceived that Mr Gornall and Ms Bartlett were flirting with each other. When Hewins confronted Mr Gornall and head-butting him he was evicted from the premises.</p> <p>That same evening Mr Smith was at home. He went to bed at about 11.30pm, but some hrs later he awoke to find four men his bedroom. Three of the men physically assaulted him. Two of them punched him repeatedly while the third struck him with a baseball bat. A fourth man stood near the door of his room, pointing a gun at him. After the assault the man with the gun told him that if he said anything they would be back. The four men then left the scene in a vehicle.</p> <p>The house and some of its contents had been extensively damaged. The damage caused to the house cost \$20,342.84 to repair. This did not</p>	<p>Ct 1: 5 yrs 2 mths imp (cum). Ct 2: 3 yrs imp (conc). Ct 3: 2 yrs imp (conc). Ct 4: 3 yrs imp (cum).</p> <p>TES 8 yrs 2 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offences 'very serious'; the appellant instigated both agg burglaries; they were premediated and he went to the house with his brothers as 'back up', taking weapons and intending to inflict harm; he personally used violence in the first burglary in circ where he was part of a group attack upon an innocent third party and it involved the use of a weapon and in circ where a gun was pointed.</p> <p>The sentencing judge found the seriousness of the appellant's conduct was not reduced by the fact he was not personally armed in</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of sentence and totality principle.</p> <p>At [57] When all of the relevant facts and circumstances are considered in respect of c 1, including all of those which are favourable to the appellant, and bearing in mind the max penalty, it cannot reasonably be contended that the sentence imposed was manifestly excessive. It was not unreasonable or plainly unjust. Implied error has not arguably been established.</p> <p>At [59] There can be no doubt that the appellant's overall criminality, having regard to the facts and circumstances of all of the offences, was very high. Having ... committed cts 1, 2 and 3, [he] and two of his brothers returned to the house later that day ... and</p>

			<p>include the value of the furnishing that were damaged and not replaced.</p> <p>Mr Smith suffered bleeding and swelling to his nose, face and chest. He experienced difficulty breathing through his nose for a number of wks and migraine headaches and issues with his balance for a period of time after the incident.</p> <p>Later that afternoon Mr Gornall and Mr Smith returned home. A group of people came to help clean up. The group were sitting in the house when they heard yelling and screaming outside. Hewins and his brothers Thomas and Jacob had returned looking for Mr Gornall. They had brought with them a taser and a firearm.</p> <p>The three men entered the house through an open door. Jacob pointed a gun and told everyone if they recorded the event they would be shot. Jacob used the taser on two men. Mr Gornall and another ran from the house. Hewins pursued them. Mr Smith ran into a garage where he was further assaulted by one of Hewins' brothers.</p> <p>When interviewed by police Hewins denied going to the house and any wrongdoing.</p>	<p>either agg burglary; he knew of the existence of the weapons carried by others and that they would be used; the appellant's criminal culpability for both agg burglaries was 'extremely high'.</p> <p>The sentencing judge found that despite the appellant having had the opportunity after the first agg burglary to reflect on his behaviour and conduct he went ahead and committed the second agg burglary.</p> <p>Lacked insight and victim empathy.</p>	<p>committed another violent home burglary, terrorising Mr Gornall and those who had come to clean up after the earlier offences.</p> <p>At [60] Again, the offending was premeditated, violent and terrifying. Her Honour was correct to note that the offending the subject of ct 4 was a second separate instance of serious offending that justified some degree of accumulation.</p> <p>At [63] Having regard to the extremely serious nature of the offending, the sentence properly reflected the overall criminality of all of the offences after taking into account all relevant sentencing principles and factors, including the mitigating factors. The TES was not unreasonable or plainly unjust. Implied error has not arguably been established.</p>
7.	<b><i>Billett v The State of Western</i></b>	<u>Billett</u> 27 yr at time sentencing.	<u>Billett</u> Ct 1: Agg burg.	<u>Billett</u> Cts 1 & 4: 18 mths imp	Appeal allowed.

<p><b>Australia</b></p> <p><b>[2022] WASCA 158</b></p> <p>Delivered 01/12/2022</p>	<p>Convicted after early PG (25% discount).</p> <p>Prior criminal history; prior conviction for violent offending.</p> <p>Parents separated aged 18 yrs; close relationship with mother and sister; little contact with alcoholic father, now in care suffering dementia.</p> <p>Struggled at school; left yr 10; recently completed a Certificate in community services; aspires to do youth work.</p> <p>Worked intermittently; unemployed past five yrs; undertaking volunteer work.</p> <p>Two significant relationships; three children, youngest aged 12 mths at time sentencing; current partner positive and stable influence..</p> <p>Long-term history of alcohol and substance</p>	<p>Ct 2: Threat to harm. Ct 3: Unlawful damage. Ct 4: Agg burg. Ct 5: Act with intent to harm.</p> <p><u>Klinger</u> Ct 1: Agg burg. Ct 3: Unlawful damage. Ct 4: Agg burg. Ct 6: AOBH. Ct 7: Threat to harm.</p> <p>Billett, Klinger and another man were socializing at a tavern.</p> <p>During the evening Billett obtained an address for a Mr Scerri. Some wks earlier there had been an incident involving him and Mr Scerri. So Billett harboured a grievance against him.</p> <p>After Billett told TL and Klinger about the incident all three decided to go together to attend the address and confront Mr Scerri.</p> <p>After driving to the address all three got out of the vehicle. Billett had with him a machete, Klinger a 15-inch tyre wall tester and TL a tomahawk.</p> <p>The house was occupied by a Mr Sorell, who was house-sitting for the owner. Mr Scerri was living in a caravan parked at the front of the premises. Billett and Klinger entered the house through an unlocked door and to a bedroom occupied by Mr Sorrell. TL remained outside,</p>	<p>(conc). Cts 2 &amp; 5: 12 mths imp (conc). Ct 3: 7 mths imp (conc).</p> <p>TES 18 mths imp.</p> <p><u>Klinger</u> Cts 1 &amp; 4: 18 mths imp (conc). Ct 3: 7 mths imp (conc). Cts 6 &amp; 7: 12 mths imp (conc).</p> <p>TES 18 mths imp.</p> <p>The sentencing judge found the home burglaries serious, particularly as they involved forcible entry into premises known or suspect to be occupied and accompanied by threatened or actual violence.</p> <p>The sentencing judge found the offending the subject of cts 1 and 4 agg by the fact the respondents were in company with each, that they knew or ought to have known the premises were occupied, they were both armed and both made threats and did harm.</p>	<p>Appeal concerned length of sentences cts 1, 4 and 5 and totality principle.</p> <p>Resentenced cts 1 and 4:</p> <p><u>Billett</u> Ct 1: 3 yrs imp (conc). Ct 4: 4 yrs 3 mths imp (conc).</p> <p>TES 4 yrs 3 mths imp. EFP.</p> <p>Cts 1, 2, 3 and 5 conc with the sentence imposed ct 4.</p> <p><u>Klinger</u> Ct 1: 3 yrs imp (conc). Ct 4: 4 yrs 3 mths imp (conc).</p> <p>Cts 1, 3 6 and 7 conc with the sentence imposed ct 4.</p> <p>TES 4 yrs 3 mths imp. EFP.</p> <p>At [57] ... the seriousness of the offending was self-evident ... There were a significant number of aggravating features: ... this was not opportunistic offending, but, rather,</p>
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	<p>abuse; allowed access to alcohol and firearms as a child; commenced binge drinking whilst at school.</p> <p>Diagnosed with ADHD aged 8 yrs; medicated until aged 12 yrs; diagnosed and medicated with depression at 15 yrs; suffers sleep apnoea; use of cannabis to assist sleep.</p> <p><u>Klinger</u> 29 yrs time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history.</p> <p>Third child of four children; father 'a big drinker'; both father and mother frequently physical and emotionally abusive; parents separated when young child; lived with his mother until moving to live with his father aged 11 yrs.</p> <p>Attended high school until yr 9; educated special school leaving yr 10.</p>	<p>acting as a lookout.</p> <p>Billett approach Mr Sorrell, pointing the machete at him and asked for the whereabouts of Mr Scerri. Mr Sorrell told him he was in the caravan. Billett told Mr Sorrell not to move and that he was a dead man, whilst pointing the machete at him. Mr Sorrell was in fear for his life. When Billett and Klinger left the room he ran from the house, jumped a fence and hid.</p> <p>Meanwhile, Billett and Klinger ran to the caravan. They smashed windows of the caravan then forced open the caravan door.</p> <p>Mr Scerri crawled onto his bed and curled into a ball to protect himself. He felt a couple of blows and then something harder all over his body. He recognised the voice of Billett telling him to stay away from his house and kids. Klinger then screamed words to the effect 'Do you want to die?'.</p> <p>Mr Scerri att to get up to defend himself. He believed he saw three men, one he recognised as Billett. Mr Scerri could see one of the men had a tomahawk. Mr Scerri was able to chase the men from the caravan.</p> <p>Police arrived at the house to find Mr Scerri bleeding from a large cut to his ankle and numerous cuts to his body. He was taken to hospital by ambulance and treated for various injuries. The most serious a 5 cm laceration and fracture to his ankle that required surgery.</p>	<p><u>Billett</u> Accepting of responsibility; understanding of seriousness of offending; steps taken to change his lifestyle; maintaining abstinence from alcohol and illicit substances.</p> <p><u>Klinger</u> Significant remorse and insight into his offending.</p>	<p>planned conduct with the respondents agreeing to attend at the premises and arming themselves with weapons before arriving; ... the offences were committed in company and at night; ... the offences were at residential premises where it was likely, and indeed the respondents fully expected, residents to be present; ... the purpose of the burglary offences was to enter and, at least, intimidate the occupant by threatening him with weapons; ... the burglary on the house involved threats to Mr Sorrell, and threatening behaviour with weapons; ... the burglary on the caravan involved forcible entry and the breaking of windows; ... threats to Mr Scerri and a serious assault upon him; ... Mr Scerri was outnumbered and trapped, and thus vulnerable to the attack upon him; and ... the offences were, in essence, a revenge or vigilante attack ...</p>
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6.	<p><b><i>Ugle v The State of Western Australia</i></b></p> <p><b>[2022] WASCA 135</b></p> <p>Delivered 21/10/2022</p>	<p>44 yrs at time offending. 46 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Significant prior criminal history; subject to a CBO at time of offending.</p> <p>Chaotic, deprived and traumatic upbringing; absent father;</p>	<p>Ct 1: Agg burg. Cts 2 &amp; 3: Dep lib. Ct 4: Agg robbery. Cts 5; 6; 8-11; 13 &amp; 14: Agg sex pen. Ct 7: Threats with intent to compel.</p> <p>The victims were Ms S and her friend, Ms P.</p> <p>Ugle had met Ms S on one occasion, to purchase drugs from her. He believed she kept a large quantity of cash at her home. With the intention of stealing the cash Ugle and the co-offender</p>	<p>Ct 1: 5 yrs imp (cum). Cts 2 &amp; 3: 3 yrs imp (conc). Ct 4: 4 yrs imp (conc). Cts 5; 8 &amp; 13: 17 yrs imp (conc). Cts 6 &amp; 9: 17 yrs 6 mths imp (conc). Ct 7: 2 yrs imp (conc). Ct 10: 18 yrs imp (conc). Ct 11: 16 yrs 10 mths imp (conc). Ct 14: 18 yrs 6 mths imp</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [95] In our view, it was reasonably open to the trial judge in the present case to regard some degree of accumulation of individual sentences to be called for to reflect the overall</p>

<p>Co-offender:</p> <p><b><i>Herz v The State of Western Australia</i></b></p> <p><b>[2022] WASCA 73</b></p> <p>Delivered 27/06/2022</p>	<p>predominantly raised by grandparents; childhood marred by alcohol abuse and domestic violence; sexually abused by relative from aged 8.</p> <p>Two sisters; mother in a nursing home at time sentencing.</p> <p>Completed yr 12 high school.</p> <p>Employed various roles; voluntary community work.</p> <p>Single; 11 children from three former partners.</p> <p>History methyl use; commenced using drugs aged 21 yrs.</p>	<p>Herz and two unidentified males drove to her home.</p> <p>Ugle and Herz and one of the unidentified males approached the home. Ugle knocked on the door. When the door was partially opened they forced it open and Ugle and Herz entered the house. The other male remained outside acting as lookout. Ugle was carrying a tomahawk and covered his hands in socks.</p> <p>The victims were separated. Ugle, armed with the tomahawk, kept Ms S in one room and Herz stood over Ms P in another. Ms S was directed to hand over all mobile phones and the house and car keys.</p> <p>Ugle demanded cash from Ms S. When she told him she did not have any he demanded \$4,000 and stated if he did not get this sum he would steal her car and everything in her house.</p> <p>Ugle trashed the home looking for cash or items to steal. While this occurred Herz guarded the victims. Ugle loaded stolen items of property into the boot of Ms S's BMW.</p> <p>Both victims were terrified and helpless and feared being seriously harmed.</p> <p>On realising the home had CCTV cameras Ugle demanded the footage be deleted. Ms S was unable to do so, so he pulled out the CCTV recorder and hard drive and bundled them into the boot of Ms S's car.</p>	<p>(cum).</p> <p>TES 23 yrs 6 mths imp.</p> <p>EFP.</p> <p>The trial judge found the appellant's offending agg by his use of the tomahawk axe, which he used to intimidate, threaten and coerce S into complying with his demands; he gained entry to the home by fraudulent means (identifying himself as a neighbour) and physical force; he was in company; it was premeditated, planned and could not be seen as opportunistic offending and it was not fleeting in nature; the offending destroyed the sanctuary and safety S ought to have felt within the confines of her home and he made multiple threats to harm and kill, adding an element of terror.</p> <p>The trial judge found the sex offending deplorable violations that destroyed, not only the sanctity of S's</p>	<p>seriousness of all the appellant's offending. ...</p> <p>At [96] In assessing the overall criminality involved in the offending considered as a whole it is relevant to take account of the fact that the offences were all committed over a single period of about eight hrs. However, it is also relevant ... the sex offences against S extended over a period of hrs and involved a series of very traumatising sex pen without consent, which themselves justify individual sentences ... The agg home burglary offence was itself a serious example of that offence, involving a home invasion in company while armed ... which was used to threaten the victims. ... The agg robbery offence committed against a separate complainant, P, was itself an egregious offence. ... Forcing S to inject herself with methyl, after she had already done so earlier in the evening at</p>
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			<p>Ugle became agitated about the absence of cash so Ms P offered to withdraw money from her account. It was agreed Herz would escort her to an ATM. Ugle held the tomahawk above Ms S's head and threatened to kill her and Ms P's family if she called the police or failed to return. Ms P withdrew \$1,000 from an ATM. This money was given to Ugle, who then demanded she withdraw \$1,000 each day, over the next three days. He told Ms P he would keep Ms S hostage until the full amount was paid. He made further threats to kill her and her family if she did not comply with his demands.</p> <p>Ms P was eventually allowed to leave. Ugle then told Herz he could leave and he did so.</p> <p>After Herz left Ugle, still holding the tomahawk, started touching Ms S's leg. She became extremely upset and told him she did not want to do anything with him. Angered by her response and ignoring her refusals he pulled down her leggings and recorded her with her underwear down. He asked for sex and she complied out of fear. He forced his finger deep inside Ms S, causing her pain. He then forced his erect penis inside her mouth and exposed and touched her vagina, while recording her.</p> <p>Earlier Ms S offered methyl to Ugle and Herz, in the hope of de-escalating the situation. Concerned there might be something wrong with the drugs Ugle told Ms P to inject some of it. Instead, Ms S allowed Ugle to inject her.</p>	<p>body, but the sanctuary of her home; the sex penetrations were violent and forceful in nature; while the offending constituted one course of conduct, it nevertheless was persistent, ongoing, repetitive and brutal; the appellant sex penetrated S persistently over the course of three to four hrs; collectively this offending included every conceivable type of penetration to the victim and he recorded the offences; he did not wear a condom; when the victim cried and pleaded with him to stop, it did nothing to deter him from continuing to violate her and he berated S for not acting like she was enjoying the abuse.</p> <p>Offending traumatic and ongoing impact on S and P; trauma to S, devastating and widespread; att suicide.</p> <p>No demonstrated remorse or victim empathy.</p>	<p>the appellant's direction, represented a separate violation of S's personal autonomy and carried the risk of harmful effects. ...</p> <p>At [97] ... a TES of 23 yrs 6 mths' imp was within the discretionary range properly open to the trial judge. The TES ... did not infringe the first limb of the totality principle. It was not unreasonable or plainly unjust. ...</p>
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			<p>Later Ugle arranged for Herz to return to Ms S's home with more methyl. Ugle injected himself with some of the drug and then directed Ms S to inject herself too. She refused. Angry, he threatened that if she did not do so he would make her take all of the drug. Compelled by Ugle's threats, and despite being fearful of an overdose, she injected herself.</p> <p>Ugle then directed Ms S into the bedroom. He tried to kiss Ms S, then removed her clothes. Ms S was crying and extremely upset. He filmed himself performing cunnilingus on M S. He then forced her to perform fellatio on him, ignoring her pleas when she told him she did not want to. Ugle then again inserted his penis into her vagina.</p> <p>Due to the aggressive manner in which Ugle was penetrating her Ms S began to bleed. He told her to take a shower. Inserting his finger into her anus before she did so. While Ms S showered he entered the ensuite and unsuccessfully att to insert his penis into her vagina from behind.</p> <p>Out of the shower Ugle again performed cunnilingus on Ms S. He then forcefully had intercourse with her. The tomahawk still next to him. Ms S was crying and clearly distressed. Ugle responded with fits of anger and told her to stop crying and to start acting like she was enjoying it.</p> <p>The sexual offending lasted three to four hrs. At</p>		
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			<p>the conclusion of the sexual assaults Ms S suggested to Ugle that they drive to her mother's home, where she could get the money he wanted. Ugle agreed. At Ms S's mother house he told her to collect the cash and to immediately return to the vehicle, while he waited in the car. Inside the house Ms S's mother saw her in a highly distressed state, crying and shaking. She told her mother she had been raped and she immediately called the police.</p> <p>Concerned Ms S was taking much longer than anticipated Ugle concealed the tomahawk in the car, left the vehicle and started to walk away. On hearing sirens he began to run. He was pursued by police, who apprehended and arrest him.</p>		
5.	<p><b><i>Creusot v The State of Western Australia</i></b></p> <p><b>[2022] WASCA 117</b></p> <p>Delivered 06/09/2022</p>	<p><u>Creusot</u> 56 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Substantial criminal history.</p> <p>Parents separated while young; primarily raised by grandmother; irregular contact with father; ongoing and supportive relationship with mother and sisters.</p> <p>Completed yr 10.</p>	<p>Ct 1: Agg burg. Ct 2: Agg armed robbery.</p> <p>Creusot and Howell broke into a home unit, smashing a window to gain entry. One was armed with a handgun. They were both wearing hooded jumpers pulled tightly over their faces.</p> <p>The victim, on hearing a noise, called out and armed himself with a torch and can of pepper spray. When he discovered Creusot and Howell attempting to get in he attempted to fend them off by brandishing the torch.</p> <p>The handgun was pointed at the victim. Creusot and Howell then took turns searching for money, while the other held the gun at the victim and demanded money.</p>	<p><u>Creusot</u> Ct 1: 3 yrs 4 mths imp (cum). Ct 2: 4 yrs 6 mths imp (cum).  TES 7 yrs 10 mths imp.</p> <p>EFP.</p> <p><u>Howell</u> Ct 1: 3 yrs 4 mths imp (cum). Ct 2: 4 yrs 6 mths imp (cum). Conc with sentence already serving.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of sentence (totality and double punishment). Individual sentences not challenged.</p> <p>At [191] ... ct 2 was, as the trial judge observed, a very serious example of agg armed robbery. The appellants disguised themselves and brought with them a loaded handgun. They used the gun in demanding money from the complainant.</p>

	<p>Employed truck driver 25 yrs, until loss of his MDL.</p> <p>16 yr relationship; two children; history of domestic violence.</p> <p>Entrenched history of alcohol, cannabis and methyl use; willingness to engage in substance abuse counselling.</p> <p><u>Howell</u> 40 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Substantial criminal history. Repeat offender.</p> <p>One of four children; good relationship with mother and sisters; father mostly absent; witnessed violence and substance abuse.</p> <p>Attended school until yr 7.</p> <p>Never employed.</p> <p>22 yr relationship; acts of domestic violence against his partner; three children.</p>	<p>They repeatedly asked the victim to identify the location of his money. He denied having any.</p> <p>In an effort to extract information from the victim, the gun was fired into a wardrobe, near to where the victim was sitting.</p> <p>Before leaving the unit, the victim was threatened he would be killed if he went to the police.</p> <p>Creusot and Howell were later identified by DNA from blood inside the house. They denied ever being at the unit.</p>	<p>TES 7 yrs 10 mths imp. EFP.</p> <p>The trial judge found the appellants' offending at the high end of seriousness for offences of this kind; it was premeditated; involved the use of a disguise and the bringing of a handgun; the use of violence in physically assaulting the victim was gratuitous, given the absence of resistance; the victim was vulnerable and the appellants were armed and the use of the gun was particularly serious as it was not only brandished, but it was fired.</p> <p>The trial judge found only a term of imp the only appropriate sentence given the seriousness of the offending.</p> <p><u>Creusot</u> Offending agg by fact one month before offending placed on CSIO.</p> <p><u>Howell</u></p>	<p>Further, one of the appellants deliberately discharged the gun.</p> <p>At [195] ... if ct 2 were viewed in isolation from ct 1, the sentence imposed ... would be so low as to invite the question – why is the sentence so low? ... far from revealing the trial judge's failure to have regard to the need to avoid double punishment, the individual sentences imposed on ct 2 positively point to the conclusion that her Honour properly did so.</p> <p>At [192] These agg features of the appellants' offending distinguished it from the vast majority of agg armed robbery offences, underlining the seriousness of the appellants' offending.</p> <p>At [208] The appellants' offence by ct 1 was in the more serious category of a violent home invasion.</p> <p>At [222] ... it cannot</p>
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		Solvent and cannabis use from aged 12 yrs; methyl use; sustained from drugs in custody.		High risk of reoffending if unable to abstain from drug use.	reasonably be argued that the TES ... infringed the first limb of the totality principle. That total sentence bears a proper relationship to the overall criminality of each of the appellants' offending ...
4.	<p><b><i>The State of Western Australia v McDonagh</i></b></p> <p><b>[2022] WASCA 108</b></p> <p>Delivered 22/08/2022</p>	<p>35 yrs at time offending. 37 yrs at time sentencing.</p> <p>Convicted after late PG (25% discount).</p> <p>Significant prior criminal history.</p> <p>503 days spent in custody prior to sentencing.</p> <p>Dysfunctional deprived upbringing; violent father; parents separated when an infant; lived with mother; limited contact with his father; felt neglected, rejected and abandoned by his father.</p> <p>Mother's new partner verbally, emotionally, physically and sexually abusive; this relationship ended when aged about 5 yrs.</p>	<p>Ct 1: Agg burg. Ct 2: Agg armed robbery.</p> <p>McDonagh and four co-offenders travelled to the home unit of the victims, Mr H and Ms G. McDonagh was carrying a large spanner, hidden up his sleeve.</p> <p>At the unit Ms G, partially opened the front door. As she did so, one of the co-offenders pulled her out of the doorway by her hair. She was wearing only a towel. She ran and hid between some cars.</p> <p>McDonagh and the co-offenders then entered the unit. Mr H was inside and retreated to a bedroom where he tried unsuccessfully to escape through a window. He then shut the door and barricaded it. Outside McDonagh yelled out to Mr H words to the effect that he was going to kill him as he owed them money.</p> <p>McDonagh then kicked the door multiple times and struck it with the spanner, damaging it and causing a large hole. He then struck Mr H on the arm with the spanner through the hole he had created.</p>	<p>Ct 1: 3 yrs imp (conc). Ct 2: 3 yrs imp (conc).</p> <p>TES 3 yrs imp. CSIO 18 mths.</p> <p>Genuinely remorseful; insight into his offending; acceptance of responsibility; cooperative with law enforcement.</p> <p>Abstained from alcohol and illicit substances; complied with all conditions and directions of home detention bail.</p> <p>Offending profound psychological impact on victim Mr H.</p>	<p>Allowed.</p> <p>Appeal concerned plea discount; error in finding (cooperation provided) and length and type of sentence.</p> <p>Resentenced to (10% discount):</p> <p>Ct 1: 6 mths imp (cum). Ct 2: 5 yrs imp (cum).</p> <p>TES 5 yrs 6 mths imp. EFP.</p> <p>At [57] The respondent's offending on ct 1 and ct 2 was egregious. The offending involved some planning and premeditation. The respondent acted in company. The circumstances of the commission of the offence</p>

		<p>Another of mother's relationships lasted about seven yrs; this man was charged, convicted and imp for sex abuse of his eldest half-sister.</p> <p>Alternated living between his parents until aged about 19 yrs.</p> <p>Three significant relationships; young autistic son.</p> <p>Current partner and mother remain very supportive.</p> <p>Bullied at school; antisocial peer group; expelled yr 9.</p> <p>Completed yr 10 at TAFE; number of employment courses.</p> <p>Employed various labouring roles; number of periods of unemployment.</p> <p>Diagnosed with ADHD; medicated since aged 13 yrs; diagnosed and medicated for depression, anxiety and PTSD.</p>	<p>McDonagh and one of the co-offenders then forced the door open and ran into the bedroom. McDonagh and two co-offenders surrounded Mr H and demanded property and money from him. McDonagh also struck Mr H several times with the spanner to the head and body. A co-offender then grabbed Mr H's wallet containing \$470 in cash, a gold necklace and a mobile telephone.</p> <p>After taking these items McDonagh and the co-offenders left the unit together.</p> <p>Ms G suffered soreness to her back and neck. Mr H suffered bruising, a significant muscle tear in his arm and a cut requiring sutures.</p>	<p>would have been frightening to the victims. The respondent seriously assaulted [Mr H] with the spanner. The victims' home was damaged. Property was stolen. ... The respondent's PGs were mitigating, but were indicated and entered at a late stage of the proceedings. ... the respondent is at a high risk of future violent offending unless he continues to address the problems referred to [in the psychological report]. ...</p> <p>At [64] In the present case, after evaluating the sentence ... for ct 1 ... we are satisfied that it was not reasonably open to the sentencing judge to fail to be satisfied that it was inappropriate to suspend or conditionally suspend (wholly or partly) the sentence of imp. ...</p> <p>At [70] In the present case, after evaluating the sentence ... imposed by her Honour for ct 2 ... we</p>
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		History of illicit drug use; under influence of alcohol, cannabis and methyl at time offending.			<p>are of the opinion that the sentence was manifestly inadequate as to type.</p> <p>At [84] We have further reduced each sentence that we would otherwise have imposed for each offence to recognise the respondent's compliance with the conditionally suspended sentences imposed by the sentencing judge ...</p> <p>At [87] ... we have reduced the sentence we would otherwise have imposed for ct 1 from 3 yrs immediate imp ... for the purpose of totality and to avoid punishing the respondent twice ... In particular, the respondent has been punished for his violence and his AOBH in the resentencing for ct 2, but not in the resentencing for ct 1.</p>
3.	<b><i>Herz v The State of Western Australia</i></b>  <b>[2022] WASCA 73</b>	54 yrs at time offending. 56 yrs at time sentencing.  Convicted after trial.  Criminal history; no prior sentences of imp.	Ct 1: Agg burg. Cts 2 & 3: Dep lib. Ct 4: Agg armed robbery.  The victims were Ms S and her friend, Ms P.  The co-offender Ugle had sold drugs to Ms S	Ct 1: 4 yrs imp (cum). Ct 2: 2 yrs imp (conc) Ct 3: 2 yrs imp (conc). Ct 4: 3 yrs 3 mths imp (cum).  TES 7 yrs 3 mths.	Dismissed (leave refused).  Appeal concerned error in sentencing (double punishment cts 1 and 4) and parity principle.

Delivered 27/06/2022	<p>Raised loving and supportive family environment.</p> <p>Educated to yr 11.</p> <p>Employed number of positions; owned and ran successful business.</p> <p>Previous long-term relationship; two adult children.</p> <p>Suffers back pain from degenerative spine; depression; 2008 suicide attempt.</p> <p>Cannabis use aged 16 yrs; commenced using methyl aged 39 yrs; abstinent from methyl eight yrs; recommenced using 2017; continued methyl use on bail in breach of bail condition.</p>	<p>and he believed she kept a large quantity of cash at her home. With the intention of stealing the cash Ugle and Herz drove to Ms S's home. Herz and Ugle were accompanied by two unidentified males.</p> <p>Herz, Ugle and one of the unidentified males approached the home. Ugle knocked on the door. When the door was partially opened he and Herz forced it open and entered the house. The other male remained outside acting as lookout.</p> <p>Ugle was carrying a tomahawk and covered his hands in socks.</p> <p>The victims were separated. Herz stood over Ms P in one room and Ugle, still armed with the tomahawk, kept Ms P in another. Ms S was directed to hand over all mobile phones and the house and car keys to prevent the victims from leaving.</p> <p>Ugle demanded cash from Ms S. When she told him she did not have any he demanded \$4,000 and stated if he did not get this sum he would steal her car and everything in her house. Ms S, scared and in shock began to cry.</p> <p>Ugle then trashed the home looking for cash or valuable items to steal. While this occurred Herz guarded the victims. Eventually Ugle loaded stolen items of property into the boot of Ms S's BMW.</p>	<p>EFP.</p> <p>Appellant sentenced on basis he was not the principle offender.</p> <p>The sentencing judge described the offending as 'serious criminal behaviour' and characterised the severity of the offending as being 'at the very least mid-range'.</p> <p>The sentencing judge found the appellant and Ugle committed the offences in company and armed with an offensive weapon and the victims' vulnerable women who were subjected to threats to kill.</p> <p>Victims severely and adversely traumatised.</p> <p>No finding of genuine remorse or victim empathy.</p>	<p>At [42] ... Each offence (cts 1 and 4) had some significantly different circumstances. Notably, each theft involved a different victim. Each offence also involved some significantly different legal and factual elements. Although the offences occurred in the course of one overall series of criminal actions, there is nothing in the sentencing remarks to indicate that her Honour infringed the principle against double punishment. Each individual sentence for cts 1 and 4 was towards the lower end of the range open ... on a proper exercise of her discretion.</p> <p>At [46] ... While the appellant's involvement in the offending was less than that of Mr Ugle, it was significant. He actively assisted Mr Ugle to forcibly enter (Ms S's) house. He offered support, encouragement and muscle in subduing the victims, both of whom were</p>
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			<p>At some point Herz picked up the tomahawk.</p> <p>Both victims were terrified and helpless and feared being seriously harmed.</p> <p>When Ms P questioned whether they would be killed Herz told her if she did not do as she was told she would be.</p> <p>On realising the home had CCTV cameras Ugle demanded the footage be deleted. When Ms S was unable to do so he pulled out the CCTV recorder and hard drive and bundled them into the boot of Ms S's car.</p> <p>Ugle became agitated about the absence of cash so Ms P offered to withdraw money from her bank account. Herz escorted her to an ATM. Prior to their leaving Ugle held the tomahawk above Ms S's head and threatened to kill her and Ms P's family if she called the police or failed to return with the cash.</p> <p>Ms P withdrew \$1,000 from an ATM and gave the money to Herz, who gave the cash to Ugle on his return to the house. Ugle then demanded that she withdraw \$1,000 each day, over the next three days. He told her he would keep Ms S hostage until the full amount was paid. Ugle made further threats to kill Ms S, Ms P and her family if she did not comply with his demands.</p> <p>Ms P was eventually allowed to leave, but not before Herz asked for, and received, the PIN to her account.</p>		<p>vulnerable, and terrifying them into submission. The appellant stood watch over [Ms S] and [Ms P] while Mr Ugle searched the house and stole various items. The appellant accompanied [Ms P] to the ATM to ensure she withdrew \$1,000 in cash and obtained from her the PIN to her ATM card, which Mr Ugle intended to use to withdraw, ... another \$3,000. ... The sentencing judge characterised the appellant's role with respect to ct 2 and 3 as 'crucial'. This characterisation is correct.</p> <p>At [48] Despite the fact that the offences were part of one criminal transaction, they were multi-faceted. Some accumulation was required in order to appropriately reflect the appellant's overall criminality.</p>
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<p>2.</p>	<p><b><i>Miller v The State of Western Australia</i></b></p> <p><b>[2022] WASCA 50</b></p> <p>Delivered 06/05/2022</p>	<p>22 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after early PG (20% discount).</p> <p>Prior criminal history.</p> <p>Diagnosed with ADHD as a child; medicated.</p> <p>Struggled at school; left school yr 10.</p> <p>Consistent employment since leaving school; held in high regard by his employer.</p> <p>Supportive partner; assists with care of his partner's three children; partner employed and does not use illicit drugs.</p> <p>History of illicit substance use; abstained from using drugs about a yr before sentencing.</p> <p>Prescribed anti-anxiety medication aged 18 yrs; ceased this medication two wks before offending.</p>	<p>Ct 1: Agg burg. Cts 2-6: Criminal damage.</p> <p>Miller was in company with a 17-yr-old co-offender, his younger half-brother MJ.</p> <p>In the early hrs of the morning Miller and MJ went to a residential premises looking for a young man who had allegedly participated in an assault on MJ earlier that day. Miller was heavily intoxicated. They entered the property through a closed gate.</p> <p>Miller and MJ were both armed with weapons. MJ took with him a hockey stick and Miller picked up a rake which he found at the premises. They began by smashing the home's windows. They then gained entry to the house by forcing open a flyscreen door and smashing the glass door. Inside the house Miller broke a washing machine, caused damage to a door and smashed internal glass windows.</p> <p>The victims awoke and walked into the hallway.</p> <p>The man Miller and MJ were trying to locate was not present.</p> <p>While at the property Miller and MJ also used the weapons to smash the windcreens and side windows of four vehicles parked at the premises.</p> <p>Miller and MJ then got into a motor vehicle and left.</p>	<p>Ct 1: 3 yrs imp (cum). Ct 2: No penalty. Ct 3: 6 mths imp (cum). Ct 4-6: 6 mths imp each ct (conc).</p> <p>TES 3 yrs 6 mths imp. EFP.</p> <p>Co-offender sentenced in Children's Court to 12 mths ISO and 100 hrs community service.</p> <p>The sentencing judge found the offending involved the persistent and gratuitous destruction of property for no obvious purpose; they both had weapons meaning 'there was a danger that matters could have escalated, and people could have been seriously injured'; the appellant and MJ were equally responsible for the acts of the other.</p> <p>The sentencing judge found the offences of such seriousness that sentences of immediate imp were required.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of sentence ct 1; totality and parity principle.</p> <p>At [54] ... the facts and circumstances of the appellant's offending on ct 1 were very serious. ...</p> <p>At [58] ... the appellant offended jointly, as a matter of law and fact, with his younger co-offender.</p> <p>At [59] ... we do not accept, that the offending was not 'pre-planned'. ... There appears to have been some premeditation in relation to the agg home burglary.</p> <p>At [60] It is true that no physical harm was caused to the complainants, but that merely demonstrates that the offending could have been worse. The absence of an agg factor does not diminish the seriousness of what the appellant and his co-</p>
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				Appellant remorseful.	<p>offender actually did.</p> <p>At [61] In our opinion, the sentence for ct 1 was commensurate with the seriousness of the offence. ... It was not appropriate, in view of the objective seriousness of the offending, to suspend or conditionally suspend any of the term of imp for ct 1.</p> <p>At [66] The appellant and his co-offender deliberately and wantonly damaged each vehicle the subject of cts 3, 4, 5 and 6. The vandalism was unprovoked. ... The objective seriousness of the offending on each of those cts, having regard to the facts and circumstances of the offending as a whole and all relevant sentencing factors, required the imposition of a term of imp for each of cts 3, 4, 5 and 6. ...</p> <p>At [70] In our opinion, the TES ... did not infringe the first limb of the totality principle. A custodial term</p>
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					<p>of that length was required in order properly to mark the very serious character of the appellant's offending as a whole ...</p> <p>At [80] ... we are satisfied that the sentencing outcome for the appellant, compared to the sentencing outcome for MJ, does not reveal an unjustifiable disparity adverse to the appellant and favourable to MJ.</p>
1.	<p><b><i>Fernie v The State of Western Australia</i></b></p> <p><b>[2022] WASCA 20</b></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>Ct 1: Agg burg. 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</p>	<p>Dismissed – on papers (leave refused).</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</p>

		<p>Commenced cannabis use in his youth; methyl from aged 19 yrs.</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>formed by him and the co-offenders to prosecute an unlawful purpose of agg burglary (s 8 <i>Criminal Code</i>).</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>3 was manifestly excessive. ... the appellant's claim that the individual sentences on cts 1 and 2 were manifestly excessive has no 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>
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