

# **Assault occasioning bodily harm**

s 317(1) *Criminal Code*

**From 1 January 2021**

## Glossary:

agg	aggravated
att	attempted
AOBH	assault occasioning bodily harm
burg	burglary
conc	concurrent
cum	cumulative
ct	count
CSIO	conditional suspended imprisonment order
ELP	eligible for parole
GBH	grievous bodily harm
imp	imprisonment
PG	plead guilty
susp	suspended
TES	total effective sentence
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
11.	<p><b><i>Gomboc v The State of Western Australia</i></b></p> <p><b>[2023] WASCA 115</b></p> <p>Delivered 24/07/2023</p>	<p>31-34 yrs at time offending. 38 yrs at time sentencing.</p> <p>Convicted after late PG (cts 2, 4, 6, 8, 10, 11, 12, 13, 15, 19, 22, 23, 26 &amp; 32) (18% discount).</p> <p>Convicted after very late PG (cts 5, 7, 9, 28 &amp; 29) (8% discount).</p> <p>Limited criminal history; previous conviction for common assault involving then fiancé.</p> <p>Only child; good upbringing; family remain supportive.</p> <p>Completed yr 12; experienced verbal abuse and bullying at school.</p> <p>Good work history; 7 yrs of army service; qualified scaffolder.</p> <p>Relationship with victim ended 2018; new romantic relationship commenced 2021; partner remains supportive.</p> <p>Good physical health; significant history of mental health problems; PTSD arising during time in military service.</p>	<p>Cts 2 &amp; 11: Agg AOBH. Cts 4; 10; 12-13; 15; 19; 22: Threat to harm. Ct 5: Act with intent to harm. Cts 6; 9; 23; 28-29 &amp; 32: Threat to kill. Ct 7: Agg unlawful wounding. Ct 8: Wilful and unlawful damage. Ct 26: Armed to cause fear.</p> <p>Gomboc was in a relationship with the victim, which lasted for a number of yrs. They had purchased a house together.</p> <p>During the course of their relationship, Gomboc subjected the victim to regular physical and verbal abuse. He punched and kicked her, strangled her, negligently wounded her with a knife, smothered her with a pillow, threw objects at her, and repeatedly threatened to kill her, and was often armed when he did so.</p> <p>In addition to having taken photographs of several of her injuries, the victim regularly made audio recordings of the offending.</p> <p>The victim was left with severe anxiety and post-traumatic stress disorder, suffered physically, mentally, emotionally and financially</p>	<p>Ct 2: 10 mths imp (cum). Cts 4; 7 &amp; 13: 12 mths imp (conc). Ct 5: 4 yrs 6 mths imp. Cts 6; 9; 23 &amp; 28: 3 yrs imp (conc). Cts 8 &amp; 12: 10 mths imp (conc). Cts 10 &amp; 15: 14 mths imp (conc). Ct 11: 2 yrs 2 mths imp (conc). Ct 19 &amp; 22: 16 mths imp (conc). Ct 26: 18 mths imp (conc). Ct 29: 3 yrs 6 mths imp (cum). Ct 32: 3 yrs imp (cum).</p> <p>TES 11 yrs 10 mths imp. EFP.</p> <p>The sentencing judge found there were a number of serious features of the appellant's offending as a whole; it persisted for three and a half years; there were 19 separate and distinct offences over that period of time and he had time to reflect on his conduct and choose not to do it again, but did not; he deployed a</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence. Individual sentences not challenged.</p> <p>Resentenced:</p> <p>Cts 2; 6; 9; 23; 28 &amp; 32: 3 yrs imp (conc). Cts 4; 7 &amp; 13: 12 mths imp (conc). Ct 5: 4 yrs 6 mths imp (cum). Cts 8 &amp; 12: 10 mths imp (conc). Cts 10 &amp; 15: 14 mths imp (conc). Ct 11: 2 yrs 2 mths imp (conc). Cts 19 &amp; 22: 16 mths imp (conc). Ct 26: 18 mths imp (cum). Ct 29: 3 yrs 6 mths imp (cum).</p> <p>TES 9 yrs 6 mths imp. EFP.</p> <p>At [9] ... it is clear that it was necessary that the appellant be sentenced to a very significant TES. The appellant's offending was</p>

		Heavy alcohol and cannabis use.		<p>number of methods and weapons to clearly communicate to the victim that he could end her life at his hands and very quickly, so as to make her fearful of him; the appellant was physically stronger than the victim, who was vulnerable to his physical violence; the offending was in the context of a domestic relationship; the threats to kill or harm were often accompanied by the presence of weapons and physical violence, which no doubt elevating the fear of harm or death the victim experienced, and the fact that his offending routinely incorporated statements designed to degrade and humiliate the victim.</p> <p>The sentencing judge found the submissions made by the appellant's counsel served to minimise the responsibility for his offending and shifted the responsibility onto the victim; his physical and verbal abuse in a domestic setting was 'very</p>	<p>abhorrent and sickening. Notwithstanding [his] pleas of guilty, his mental health issues and the otherwise high regard in which he was held by others, the persistent, callous and menacing nature of his offending required a long term of imp. The threatened and actual violence used by the appellant must be denounced by the courts in the strongest possible terms. ...</p> <p>At [194] ... Her Honour rightly recognised that the totality of the appellant's offending was extremely serious and called for a very substantial term of imp. It was necessary that a TES be imposed for the appellant's abhorrent and sickening offending that properly punished him and denounced offending like it in the strongest possible terms. ...</p> <p>At [198] ... we cannot avoid the conclusion that the TES imposed on the</p>
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				<p>entrenched behaviour' and he remained at risk of reoffending unless he addressed his attitude and behaviour.</p> <p>Offending profound impact on the victim; continues to require daily medication and ongoing therapy.</p> <p>Limited demonstrated remorse.</p>	<p>appellant did not bear a proper relationship to the overall criminality involved in all of the offences.</p> <p>At [220] In our view, this is truly one of those cases when the metaphor of taking one 'last look at the total, just to see whether it looks wrong' is apt. And when we take a last look at the sentence of almost 12 yrs, in light of the appellant's PGs and such potential for rehabilitation as he has, the sentence looks wrong.</p> <p>At [223] ... Nevertheless, as we have set out at length above, the persistent, callous and menacing nature of his offending required a long term of imp. Offending of this kind must be denounced by severe penalties.</p>
10.	<p><i>The State of Western Australia v Tumata</i></p> <p>[2022] WASCA</p>	<p><u>Tumata</u> 24 yrs at time offending. 28 yrs at time sentencing.</p> <p>Convicted after PG (cts 1, 6, 34 and 35) (10% discount).</p>	<p><u>Tumata</u> 8 x Agg sex pen without consent. 3 x Agg indec assault. 1 x Demanding property with oral threats. 10 x AOBH. 8 x Act with intent to harm.</p>	<p><u>Tumata</u> TES 14 yrs imp.</p> <p><u>Sheppard</u> TES 13 yrs 6 mths imp.</p>	<p>Allowed.</p> <p>Appeal concerned totality principle (individual sentences not challenged).</p>

<p><b>161</b></p> <p>Delivered 06/12/2022</p>	<p>Convicted after trial (cts 2-5; 7-22; 25; 28; 29; 31; 32; 36-38)</p> <p>Lengthy criminal history.</p> <p>Parents separated when aged 4 yrs; raised by mother; sent to live with a relative in NZ aged 12 yrs due to his behaviour; returned to live with his father, now estranged.</p> <p>Limited literacy and numeracy skills.</p> <p>No history of paid employment; other than labouring work about aged 17 yrs.</p> <p>Commenced cannabis and alcohol use aged 12 yrs; regular user of methyl and alcohol excessively.</p> <p><u>Sheppard</u> 23 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after PG (cts 1, 4, 6, 7, 16 and 35) (10% discount). Convicted after trial (cts 2; 3; 5; 8-15; 17-22; 25; 28; 29; 32; 34; 36; 38 and 39).</p> <p>Lengthy criminal history.</p>	<p>2 x Threats to harm.</p> <p><u>Sheppard</u> 8 x Agg sex pen without consent. 3 x Agg indec assault. 1 x Demanding property with oral threats. 11 x AOBH. 7 x Acts with intent to harm. 1 x Threat to harm.</p> <p><u>Woods</u> 8 x Agg sex pen without consent. 1 x Agg indec assault. 1 x Demanding property with oral threats. 4 x AOBH. 4 x Acts with intent to harm. 1 x Threat to harm.</p> <p>The victim, M, was aged 22 yrs. He was remanded in custody and had never been to prison before.</p> <p>Tumata, Sheppard and Woods, who were also prisoners, entered M's cell, alleging he was an informant. Sheppard told M he had to pay a fine, to increase each wk until it was paid. If the fine was not paid M was told he would be killed.</p> <p>After this incident, over a period of 18 days and on an almost daily basis, Tumata, Sheppard and Woods subjected M to violence and brutality of the most extreme kind. This included beating, kicking and indecently assaulting him, choking him to</p>	<p><u>Woods</u> TES 12 yrs imp.</p> <p>The sentencing judge found Tumata and Sheppard the ringleaders and that Woods' acted 'more as a follower' and he was overall less culpable than Tumata and Sheppard; after the initial extortion the three respondents, sometimes as a pair or individually, engaged in a concerted, persistent and ongoing course of conduct against M over an extended period; they subjected M to increasingly violent physical and sexual attacks to enforce their demand for money; Tumata and Sheppard were physically powerful men, M, helpless and defenceless and extremely frightened and scared of the three respondents who terrorised him; the attacks designed to intimidate and frighten; they attacked M's personal dignity and caused him to suffer significant embarrassment; the sexual offences designed to cower,</p>	<p>Resentenced:</p> <p><u>Tumata</u> TES 17 yrs imp. EFP.</p> <p><u>Sheppard</u> TES 16 yrs 6 mths imp. EFP.</p> <p><u>Woods</u> TES 14 yrs 6 mths imp. EFP.</p> <p>At [113] The offending was aptly characterised by the State ... as sadistic, malicious, humiliating and intimidating. The respondents, in concert, deliberately preyed upon a highly vulnerable victim. ... Together, the respondents waged a campaign of terror upon M, which caused him significant physical injury and broke him psychologically. The respondents' acts were merciless. They involved a level of deliberate callousness, cruelty and depravity seldom seen by this court.</p>
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		<p>Left school during yr 10; never had paid employment.</p> <p>Long-term relationship; two children.</p> <p>Introduced to methyl by his father.</p>			<p>was designed to, and did in fact, terrify, degrade and humiliate M as well as cause him physical and psychological harm. ...</p> <p>At [120] The seriousness of the offences of agg sex pen without consent was heightened because they occurred in the context of the ongoing extortion of M, ... All of these offences, when considered together, substantially increased each respondent's overall criminality, ...</p>
9.	<p><b><i>Billett v The State of Western Australia</i></b></p> <p><b>[2022] WASCA 158</b></p> <p>Delivered 01/12/2022</p>	<p><u>Billett</u> 27 yr at time sentencing.</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</p>	<p><u>Billett</u> Ct 1: Agg burg. 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><u>Billett</u> Cts 1 &amp; 4: 18 mths imp (conc). Cts 2 &amp; 5: 12 mths imp (conc). Ct 3: 7 mths imp (conc).  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).  TES 18 mths imp.</p>	<p>Appeal allowed.</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).  TES 4 yrs 3 mths imp. EFP.</p> <p>Cts 1, 2, 3 and 5 conc with</p>

	<p>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 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;</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, 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</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><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>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, 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,</p>
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		<p>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>Numerous jobs; difficulties maintaining employment; attempted to join the army; survived on Centrelink benefits.</p> <p>Number of intimate relationships; son born a short time prior to sentencing.</p> <p>History of alcohol abuse; increasing when he suffered depression.</p>	<p>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 Billet 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>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> <p>At [58] ... offences committee as vigilante action are particularly serious. ... Plainly, Klinger was a willing and active participant in what he believed to be a revenge attack.</p> <p>At [60] The second burglary, that the caravan, was particularly serious because it involved forced entry and the smashing of</p>
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					windows and an assault upon an outnumbered victim on his bed at night. ... The fact that Mr Scerri curled upon his bed in an effort to protect himself is a good indication of the ferocity of the attack.
8.	<p><b><i>Miorada v The State of Western Australia</i></b></p> <p><b>[2022] WASCA 143</b></p> <p>Delivered 27/10/2022</p>	<p>18 yrs at time offending. 20 yrs at time sentencing.</p> <p>Convicted after early PG (20% discount).</p> <p>No significant criminal history; no previous offences of violence.</p> <p>Unremarkable childhood; three siblings; father struggled with alcohol addiction for many yrs, no longer drinking alcohol at time sentencing; supportive family.</p> <p>Completed yr 12; plans to attend university.</p> <p>Good work ethic; some part-time work and experience working various finance companies.</p> <p>Alcohol use from aged 17 yrs; drinking increased to two to</p>	<p>1 x AOBH.</p> <p>During the evening Miorada went to a fast-food restaurant. He was heavily intoxicated. There he met a friend and they began talking to a 15-yr-old-girl.</p> <p>The victim, aged 16 yrs, was also at the restaurant with friends. The victim and one of his friends approached Miorada and his friend and asked what they were doing talking to a 15-yr-old girl. Both men took exception to the comment.</p> <p>When Miorada advanced towards the victim's friend the victim tried to separate the two and told Miorada to 'just chill out'. Miorada continued to act aggressively and was argumentative. A security officer separated Miorada and the victim.</p> <p>A short time later Miorada was seated about 5 m from the victim when he asked him, 'What are you looking at?'. After a brief pause he then stood up, walked up to the victim and punched him with a clenched fist to the side of the face. The victim did</p>	<p>9 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending serious; it occurred late at night in a public place; there was a lack of any real provocation by the victim and the injuries the victim sustained are demonstrative of a significant level of force.</p> <p>The sentencing judge found while the offence was not planned and the victim was not in a position of enhanced vulnerability, in that he was not looking away at the time of the punch, the appellant's reaction was grossly disproportionate to the actions of the victim; the punch carried with it the risk that the victim could</p>	<p>Allowed.</p> <p>Appeal concerned type of sentence.</p> <p>Resentenced:</p> <p>8 mths imp, conditionally susp 14 mths.</p> <p>At [42] ... the offence was a moderately serious offence of its type. The offence was an impulsive act which involved no planning or forethought. The assault was constituted by a single punch; it was not a sustained or persistent attack. The punch was delivered with sufficient force to cause the injury but did not cause the victim to lose consciousness or fall to the ground. The injury inflicted was serious in that</p>

		three nights per week, including bring-drinking spirits upon turning 18 yrs.	<p>not retaliate. After the punch he took a step or two backwards but did not fall to the ground.</p> <p>Miorada then ran off.</p> <p>The victim suffered a fractured jaw and required surgery to insert a metal plate.</p>	<p>fall to the ground, causing a more serious injury.</p> <p>Offending significant impact on victim.</p> <p>Remorseful; accepting of responsibility; good prospects of rehabilitation; low risk of reoffending.</p>	<p>it involved a fracture that caused pain and discomfort and required surgical treatment, but it did not require immediate emergency treatment. The victim was younger than the appellant, but of a similar build and not especially vulnerable at the time of the offence. The appellant's act was essentially unprovoked and likely caused by his state of intoxication.</p> <p>At [45] ... The circumstances of the offence, though serious, were not so serious as to exclude a conditionally susp sentence, ...</p>
7.	<p><b><i>The State of Western Australia v Krakouer</i></b></p> <p><b>[2022] WASCA 118</b></p> <p>Delivered 06/09/2022</p>	<p>32 yrs at time offending. 33 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Very long criminal history; on bail for burglary offences time of offending.</p> <p>Aboriginal; born to young alcoholic mother; methyl-addicted father; raised by</p>	<p>Ct 1: Agg burg. Ct 2: AOBH. Ct 3: Dep lib.</p> <p>Early in the morning Krakouer entered the victim's home. Her partner had just left for work and she and her infant son were still asleep</p> <p>Inside the house Krakouer took poss of a knife, a baseball bat and a pair of scissors. He also put on the victim's hooded dressing gown.</p>	<p>Ct 1: 2 yrs 8 mths (cum). Ct 2: No penalty. Ct 3: 1 yr 2 mths (cum).</p> <p>TES 3 yrs 10 mths imp..</p> <p>EFP.</p> <p>The sentencing judge noted the respondent was a repeat offender for the purposes of s 401(4) of the <i>Criminal Code</i>.</p>	<p>Allowed.</p> <p>Appeal concerned length of individual sentences cts 1 and 3 and totality principle.</p> <p>Resentenced (20% discount):</p> <p>Ct 1: 5 yrs imp (cum). Ct 2: No penalty. Ct 3: 1 yr imp (cum).</p>

		<p>maternal grandmother.</p> <p>Left school year 9.</p> <p>No history of employment or job training.</p> <p>Stable relationship at time of sentencing; five children from prior relationships; no contact with his children.</p> <p>Long history of substance abuse; using drugs daily; no serious or enduring mental illness.</p>	<p>Awoken by her son crying the victim went into the kitchen. Krakouer appeared from behind the bench top and tackled her to the floor, causing her to bang the back of her head. When she screamed he placed a hand across her mouth and told her to stop. Once she stopped screaming he let her attend to her infant son.</p> <p>Krakouer told the victim she was going to drive him around to help him find his partner. She obliged out of fear.</p> <p>Krakouer, the victim and her son got into the victim's vehicle. Before doing so, he removed various items from within the house and placed them into a bag, which he placed in the car.</p> <p>Krakouer then directed the victim to drive him to various locations in the metropolitan area. He eventually got out of the car, apologising to the victim before walking off with the bag of items he had taken from the house.</p>	<p>The sentencing judge found the offending persistent and committed over an extended period of time; the respondent was armed with three weapons; he confronted the victim with his face covered; he assaulted the victim; a child was present and he continued with the offending even after he was aware she was caring for her infant son.</p> <p>Offending severe psychological impact on the victim; diagnosed with PTSD and prescribed medication.</p> <p>Remorseful and accepting of responsibility; completed six-wk rehabilitation program in custody.</p>	<p>TES 6 yrs imp.</p> <p>EFp.</p> <p>At [54] The agg home burglary offence charged in ct 1 was far from the least serious category of offending. The sentence imposed by the sentencing judge ... fails to reflect the position of the respondent's offending in the range between the least serious category of offending and the worst category of offending.</p> <p>At [56] ... the sentence ... for ct 1 is unreasonable or plainly unjust. The sentence failed by a significant measure to reflect the criminality involved in the offending ... the individual sentence imposed for ct 1 was manifestly inadequate ...</p> <p>At [58] ... we would note that the TES ... fails, in our view, to reflect the seriousness of the agg home burglary offence</p>
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					considered alone. ...
6.	<p><b><i>The State of Western Australia v Chungarai</i></b></p> <p><b>[2021] WASCA 147</b></p> <p>Delivered 18/08/2021</p>	<p>38 yrs at time offending. 39 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Lengthy criminal history; prior convictions and sentence of imp for violent offending; including an offence against same victim.</p> <p>Born Derby; raised in regional community; one of eight children; parents separated when young; predominantly raised by his father; aged 17 yrs when mother died.</p> <p>Left school yr 10; basic literacy skills.</p> <p>Employed various roles; plans to return to work on release from custody.</p> <p>Two daughters; aged 5 yrs and aged 1 yr time offending.</p> <p>Long history alcohol abuse; commenced drinking after death of his mother.</p>	<p>Ct 1: Dep lib. Ct 2: Threat to kill. Ct 3: Agg AOBH. Ct 4: Agg unlawful wounding.</p> <p>Chungarai and the victim, aged 36 yrs, were in a domestic relationship and had two children together.</p> <p>At the time of the offending Chungarai was subject to protective bail conditions prohibiting him from contacting the victim. However, he was living with her and their daughters at the time.</p> <p>During the evening Chungarai consumed a substantial volume of alcohol and was in a very intoxicated state. The victim was also drinking alcohol, although nowhere near to the same extent as Chungarai.</p> <p>In the early hrs of the morning, they began arguing. Chungarai took a razor and shaved off most of the victim's hair, causing numerous lacerations to her scalp. This constituted the start of the protracted and agg AOBH the, which continued over the course of five to six hrs.</p> <p>The victim's screams awoke the two daughters. Outside, she made up a bed and lay down with the children. She was breastfeeding, while the other child lay asleep next to her, when Chungarai came</p>	<p>Ct 1: 6 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 2 yrs imp. Ct 4: 18 mths imp (cum).</p> <p>TES 3 yrs 6 mths imp. EFP.</p> <p>The sentencing judge found the offending a very serious example of domestic violence; the sustained nature of the assault was an agg feature; the victim was vulnerable and the assaults brutal, humiliating and degrading to the victim.</p> <p>Offending ongoing psychological and emotional impact on victim and the eldest daughter.</p> <p>Remorseful; understands what he has done; efforts made to rehabilitate himself in custody.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentences cts 1 and 3 and totality principle.</p> <p>Resentenced (10% discount):</p> <p>Ct 1: 18 mths imp (conc). Ct 2: 22 mths imp (conc). Ct 3: 3 yrs 9 mths imp (cum). Ct 4: 2 yrs 3 mths imp (cum).</p> <p>TES 6 yrs imp. EFP.</p> <p>At [56] ... The [agg AOBH] offence was sustained over five to six hrs. It occurred in stages, which gave the respondent the opportunity to calm down and stop. ... The offence involved at least five incidents, all of which involved an assault and some of which could have been charged as a separate offence of AOBH: ... the victim was an intimate partner of the [respondent] and the offending occurred</p>

		<p>outside and started hitting her, punching her twice in the face as she breastfed (ct 3).</p> <p>Chungarai demanded the victim bring their daughters inside. Scared and wanting to avoid being hit further, she complied. Sometime later, the pair resumed arguing. He warned the victim about calling the police. He also smashed an empty bottle and held the broken bottle in his hand while threatening to kill her (ct 2). Chungarai threw the bottle at a wall, smashing it, causing glass chips to land on the victim and their 1-yr-old child.</p> <p>The victim repeatedly asked Chungarai to settle down and for a period he went to sleep. On waking, he smashed a wooden frame and, using the sharp part of the wood, stabbed the victim in her leg and back. She suffered two large cuts (ct 4).</p> <p>Chungarai then pushed the victim, who was bleeding heavily from her injuries, into a wall and punched her. The victim went to the toilet and a substantial amount of her blood went onto the wall and toilet seat. He continued to punch her and told her to clean the blood up as he did so.</p> <p>On two occasions Chungarai used electrical cord to tie the victim's feet together so she could not get away, while telling her that if she left, he would hit her even more (ct 1).</p>	<p>in front of her 5-yr-old child. ... Part of the assault was committed while the victim was breastfeeding ... magnifying the victim's vulnerability and meaning there was a risk of injury to the child. ... The attack was persistent, sustained, controlling and carried out in a way to cause maximum terror and humiliation to the victim. ... The victim's injuries were serious and extensive, ...</p> <p>At [57] ... the respondent's offending as a whole were very serious examples of domestic violence. ...</p> <p>At [61] The respondent's offence of dep lib had many serious elements ...</p> <p>At [65] – [66] ... the sentence for each of cts 1 and 3 was not merely 'lenient' or 'at the lower end of the available range'. In our opinion, the sentence for each of cts 1 and 3 was not commensurate with the</p>
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			<p>While the victim was tied up, Chungarai jumped on her feet. This conduct a continuation of ct 3.</p> <p>At another point in the evening Chungarai threw a butter knife at the victim, hitting her in the face and causing a large split above her eye. This conduct also a continuation of ct 3.</p> <p>Throughout the five to six hr period the victim was too scared to leave, as Chungarai threatened to harm their children if she did so.</p> <p>The victim suffered deep lacerations to various parts of her face, superficial lacerations, bruising, swelling and tenderness. She was hospitalised for two days. One of her wounds developed an infection that required numerous treatments.</p>		<p>seriousness of the offence. ... Each of those sentences was manifestly inadequate. ...</p> <p>At [67] ... Ct 2 had serious elements. The respondent's threat to kill ... came in the midst of, and not at the beginning of, his attack on the complainant. That magnified her vulnerability ...</p> <p>At [68] In our opinion, the TES for cts 1, 2, 3 and 4 fell well short of bearing a proper relationship to the overall criminality involved in all of the respondent's offences, ... In our respectful opinion, the TES was not merely 'lenient' or 'at the lower end of the available range'; it was unreasonable and plainly unjust. ...</p>
5.	<p><b><i>The State of Western Australia v Quartermaine</i></b></p> <p><b>[2021] WASCA 145</b></p>	<p>22 yrs at time offending.</p> <p>Convicted after PG (25% discount).</p> <p>Extensive criminal history; previous terms of imp.</p>	<p>Ct 1: Agg burg. Ct 2: Steal motor vehicle. Ct 3: Agg burg. Ct 4: AOBH. Ct 5: Agg burg. Ct 6: Stealing.</p> <p>Quartermaine was drinking excessively at</p>	<p>Ct 1: 2 yrs imp (conc). Ct 2: 6 mths imp (cum). Ct 3: 2 yrs 6 mths imp (conc). Ct 4: 6 mths imp (cum). Ct 5: 2 yrs imp (cum). Ct 6: No penalty.</p>	<p>Allowed.</p> <p>Appeal concerned length of individual sentences cts 1, 3 and 5 and totality principle.</p> <p>Resentenced (25%</p>

	<p>Delivered 16/08/2021</p>	<p>Difficult up-bringing; raised family environment marred by domestic violence; drug and alcohol abuse.</p> <p>Difficult education; changed schools on a number of occasions; left aged 13 yrs.</p> <p>Relationship at time offending; two children aged 5 yrs and a new born.</p> <p>Substance abuse issues; commenced drinking alcohol aged 14 yrs.</p>	<p>his mother's home and was ejected from the premises at around midnight. Upset and wanting a vehicle to get home he went to a house occupied by a couple who, along with their 2 yr old son, were asleep inside. He entered the house by removing the flyscreen on an open window. Inside he stole the keys a BMW motor vehicle. He then went into the garage and stole a bag containing items valued at about \$400 from a vehicle. Next, he stole the BMW. He abandoned the vehicle after crashing it.</p> <p>Quartermaine was later identified by his fingerprints and DNA. He admitted the offences when interviewed by police (cts 1 &amp; 2).</p> <p>Several hrs later Quartermaine went to another home. The victims, a couple and their 20 yr old daughter, were asleep in the home at the time.</p> <p>Quartermaine entered the home by kicking open the front door. This woke the victims. The male victim got out of bed and was confronted by Quartermaine, who demanded his keys and threatened to kill him. The victim repeatedly told him to leave. A scuffle ensued during which he punched the victim to the face about three times. The victim suffered soreness and a mark on his cheek. Quartermaine then ran from the house.</p>	<p>TES 3 yrs imp.</p> <p>EFP.</p> <p>A 'repeat offender' as a result of offending subject of ct 5.</p> <p>The sentencing judge found the offending very serious.</p> <p>Remorseful; high risk of reoffending; alcohol and drug abuse needs to be addressed.</p>	<p>discount):</p> <p>Ct 1: 12 mths imp (cum). Ct 2: 15 mths imp (conc). Ct 3: 4 yrs imp (cum). Ct 4: 10 mths imp (conc). Ct 5: 3 yrs 6 mths imp (conc). Ct 6: No penalty.</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>At [78] In our opinion, the sentence for each of cts 3 and 5 was not commensurate with the seriousness of the offence. The offending on ct 5 was not the least serious type of agg home burglary and, consequently, a sentence in excess of the statutory min penalty should have been imposed. ... We are satisfied ... that the length of each sentence was unreasonable or plainly unjust.</p> <p>At [80] The sentence for each of cts 3 and 5 was substantially less than the sentence that was open to</p>
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			<p>Quartermaine was captured on CCTV footage and identified by one of the victims on a digiboard. He made no admissions when interviewed by police (cts 3 &amp; 4).</p> <p>Several wks later Quartermaine went to another home in the early hrs of the morning. The victim was asleep inside. After kicking open the front door to gain entry he stole a set of car keys. Awoken by the noise the victim got out of bed and confronted him walking through the house. Quartermaine fled the premises.</p> <p>Quartermaine was identified through a DNA match from blood recovered at the premises. When interviewed he made no admissions (cts 5 &amp; 6).</p>		<p>her Honour on a proper exercise of her discretion. Each sentence was manifestly inadequate.</p> <p>At [83] In our opinion, the TES imposed on the respondent did not bear a proper relationship to the overall criminality involved in all of his offences, viewed together ... The TES imposed ... was unreasonable or plainly unjust. It was not merely 'lenient' or 'at the lower end of the available range'. ...</p>
4.	<p><b><i>Lardi v The State of Western Australia</i></b></p> <p><b>[2021] WASCA 117</b></p> <p>Delivered 07/07/2021</p>	<p>19 yrs at time offending.</p> <p>Convicted after late PG (12.5% discount).</p> <p>No prior criminal history; traffic offences as a juvenile.</p> <p>No offending 22-mth period on bail prior to sentencing.</p> <p>Assisted his mother in bringing up his siblings.</p> <p>Left school yr 9.</p> <p>Employed from time to time;</p>	<p>Ct 1: AOBH. Ct 2: Stealing.</p> <p>Lardi was the driver of a Mercedes sedan. Also in the vehicle were the co-offenders, McDonald and Birdsall. An unknown male sat on the bonnet of the Mercedes and damaged the vehicle's badge. Lardi confronted the male. He returned to the vehicle and drove it a short distance before again alighting. McDonald and Birdsall also got out of the car. The three punched the unknown male. The altercation broadened to include a group of women.</p> <p>Discovering he had lost his gold chain Lardi accused one or more of the women of</p>	<p>Ct 1: 11 mths imp (conc). Ct 2: 3 mths imp (conc).</p> <p>TES 11 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending was not premeditated; however it was unprovoked and gratuitous; the victim was vulnerable and his injuries 'towards the higher end of the range that one might see as bodily harm as opposed to GBH'.</p>	<p>Allowed.</p> <p>Appeal concerned parity principle (ct 1).</p> <p>Resentenced (12.5% discount):</p> <p>Ct 1: 8 mths imp (conc). Ct 2: 2 mths imp (conc).</p> <p>Imp susp, without conditions, 9 mths.</p> <p>At [29] As the respondent correctly conceded, the appellant played a lesser</p>

		<p>plans to re-engage an apprenticeship.</p> <p>Good health; no alcohol or drug issues.</p>	<p>taking it. The confrontation escalated when he grabbed one of the women's handbags and refused to return it.</p> <p>The victim saw the confrontation developing and recorded the scene using his mobile phone. He also took, or attempted to take, a photograph of the Mercedes as it travelled down the street.</p> <p>Seeing the victim using his mobile phone to record them Lardi and the co-offenders stopped and emerged from the Mercedes. They confronted the victim. Both McDonald and Birdsall punched him. The victim's mobile phone fell to the ground and Lardi picked it up and refused to return it.</p> <p>Police arrived a short time later and Lardi and Birdsall were arrested. McDonald had already departed.</p> <p>The victim's mobile phone was recovered intact.</p> <p>The victim was taken to hospital by ambulance. He suffered a fracture to the left maxillary bone of his face. The injury was treated conservatively.</p>	<p>The sentencing judge accepted the offending was not alcohol-fuelled.</p> <p>The sentencing judge found the need for general deterrence 'absolutely pivotal in this case' and the seriousness of the offending outweighed each offender's personal circumstances.</p> <p>No demonstrated remorse by the appellant and his co-offenders.</p>	<p>role in the assault ... He did not instigate the attack ... or strike him. Mr McDonald and Mr Birdsall struck the victim and caused his injuries. They were the principal offenders ...</p> <p>At [30] The appellant's personal circumstances were more favourable than those of Mr McDonald and Mr Birdsall. ...</p> <p>At [33] Having regard to the appellant's lesser role in the commission of ct 1, and his more favourable antecedents ... a lesser sentence should have been imposed upon the appellant. ...</p> <p>At [39] The offending was, ... serious. The injuries suffered by the victim were significant. Street violence, particularly when committed in company and against a vulnerable victim, is to be deterred. The seriousness of the offending was such as to call for nothing less than</p>
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					imp, despite the mitigating factors.
3.	<p><b><i>OLK v The State of Western Australia</i></b></p> <p><b>[2021] WASCA 100</b></p> <p>Delivered 03/06/2021</p>	<p>40 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history; prior assault convictions in 2000 and 2010.</p> <p>Carer for seven children; five continue to live with her.</p> <p>No current drug or alcohol issues.</p>	<p>1 x AOBH.</p> <p>The victim, SY, was 20 months-old and OLK's granddaughter.</p> <p>Family members, including SY and her mother, MA, were having lunch at a home. Also present were a number of other young children.</p> <p>At around the same time YK, the partner of one of the family members, attended the home. He became angry and agitated and was causing a disturbance.</p> <p>MA left the house with SY to avoid the disturbance. She drove around the block in a car and returned a short time later. By the time she had returned the police were at the house.</p> <p>In the meantime, OLK received a message that her son, YK, was running amok and had been injured. She and other members of her family attended the house to punish those whom she considered to be responsible.</p> <p>MA got out of the car and was holding SY in her arms when OLK arrived. OLK immediately targeted MA and yelled at her. She then punched MA, connecting with one or more blows. However, one of the blows</p>	<p>9 mths imp, conditionally susp 12 mths.</p> <p>The trial judge found the offending a 'serious offence'.</p> <p>The trial judge reduced the appellant's risk of reoffending by imposition of a programme requirement to address her treatment needs in terms of emotional regulation, decision making and conflict resolution.</p> <p>No demonstrated remorse and lack of insight into her behaviour; complied with protective bail conditions and satisfactorily completed past community-based dispositions.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned type of sentence (suspension subject to conditions).</p> <p>At [103] It was reasonably open for the trial judge to conclude that a programme requirement was required – and that the sentencing option of susp imp under pt 11 of the [<i>Sentencing Act</i> s 39(2)(f)] was not appropriate – in the circumstances of this particular case. ... The offending itself was consistent with the appellant resorting to violence – the appellant rushed at MA without cause and directed a series of windmill punches towards MA and SY in circumstances where doing so might have escalated an already precarious situation and despite the presence of numerous family members.</p> <p>At [104] ... The trial judge</p>

			<p>made contact with SY's face.</p> <p>SY sustained minor injuries, consisting of a swollen lip and bleeding around her nose and mouth. She did not suffer any permanent injuries and made a full recovery.</p>		<p>considered that a programme requirement was required, and imposed such a requirement as part of a conditionally susp term of imp ... because the appellant's offending and personal circumstances, ...bespoke a need for behavioural change in terms of enhanced conflict and dispute resolution skills to reduce the risk of re-offending. ...</p>
2.	<p><b><i>Davies v The State of Western Australia</i></b></p> <p><b>[2021] WASCA 71</b></p> <p>Delivered 30/04/2021</p>	<p>29 yrs at time offending. 30 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Criminal history.</p> <p>Parents separated when young; minimal contact with his father; otherwise positive childhood; stable and supportive family upbringing.</p> <p>Completed high school.</p> <p>Good work history; mainly in FIFO capacity on mine sites.</p> <p>Long-term on and off relationship since mid-teenage</p>	<p><u>Ind</u> 1 x AOBH.</p> <p><u>Breach</u> 1 x Breach of CSIO.</p> <p><u>Ind</u> Davies was drinking and socialising at the accommodation facilities of a mine site when he became involved in a physical fight with another worker. Two other men, one of whom was the victim B, broke up the fight and held Davies until he calmed down.</p> <p>Later that same night B was seated on a chair when Davies approached him holding two rocks. With one of the rocks he struck B to the side of the head, momentarily knocking him unconscious.</p>	<p><u>Ind</u> 3 yrs imp.</p> <p>EFP.</p> <p><u>Breach</u> Fine \$1,000.</p> <p>The sentencing judge found the offending serious; the appellant approached B; he was armed with two rocks; there was the absence of any threat or provocation from B; B was vulnerable by reason of being seated; the blow was forceful and B suffered serious injury.</p> <p>Appellant demonstrated remorse and victim</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence ct 1.</p> <p>At [83]-[84] ... It is, in our view, ... that the appellant's offending was at the upper end of the scale of seriousness for an offence of this type. ... The appellant's sentence ... for AOBH was undoubtedly high. That is particularly so given the 25% discount for the early PG. In the end, however, we have concluded that the sentence does not reach, although it approaches, a length which could be</p>

		<p>yrs; relationship marred by domestic violence; two children; separated from partner who remains supportive of him.</p> <p>Good physical health; struggles with stress and FIFO lifestyle.</p> <p>Regular user of alcohol; regularly drinks to intoxication; trouble controlling his temper when doing so.</p>	<p>B suffered two skull fractures, swelling and bleeding on the brain and a laceration to the head that required stitches. He was flown to Perth for treatment and was unfit for work for several months.</p> <p><u>Breach</u></p> <p>Intoxicated Davies twice entered an occupied hotel room. On the first occasion he pushed past the occupant, but left on being asked to leave. On the second occasion the occupant awoke to find him in the room. He behaved violently and bizarrely, tossing and kicking furniture and holes in the wall. When forcibly restrained by a hotel manager Davies punched the manager in the face and broke the manager's thumb.</p> <p>In respect of this offending Davies was sentenced in the District Court to 16 mths imp, conditionally susp for 16 mths for burglary and criminal damage. On a PG he was convicted and fined \$800 in the Magistrates Court of AOBH for the assault on the hotel manager.</p> <p>The CSIO was due to expire about one mth after the offending the subject of the ind.</p>	<p>empathy; steps taken towards rehabilitation; including psychological counselling and anger management and to address his excessive drinking.</p> <p>Increased risk of reoffending by losing his temper and becoming involved in violence if appellant continued his reliance on alcohol.</p>	<p>properly characterised as unreasonably or plainly unjust. ...</p> <p>At [85] We have reached this conclusion taking into account ... the facts and circumstances of the offending including the fact that, when he committed the AOBH by striking B to the head with the rock, the appellant was subject to a CSIO. ... The objective seriousness of the offending including both the injuries as suffered by B and the real potential that B might have suffered more serious consequences. ... B's vulnerability. ... the place which the appellant's criminal behaviour occupies on the scale of seriousness for offences of this kind. ... [his] early PG. ... The necessity for personal deterrence as evinced by the appellant's continued violent offending, while intoxicated, despite being the subject to a CSIO which also resulted from</p>
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					violent offending while intoxicated. ... steps towards rehabilitation and demonstrated remorse ... [and] The moderating effect on the severity of the individual 3 yr sentence of the TES and the otherwise lenient outcome in respect of the appellant's breach of the CSIO. ...
1.	<p><b><i>Drage v The State of Western Australia</i></b></p> <p><b>[2021] WASCA 6</b></p> <p>Delivered 12/01/2021</p>	<p>42 and 44 yrs at time offending. 45 yrs at time sentencing.</p> <p>Convicted after early PG (17.5% discount ct 1 and 20% discount ct 2).</p> <p>Long criminal history; terms of imp; no convictions of violence since 2004.</p> <p>Deprived background; regularly assaulted by alcoholic stepfather; left home aged 11 yrs; lived on the streets aged 14-16 yrs.</p> <p>Sporadic employment history; never worked more than 10 mths at a time.</p> <p>Prior 12 yr relationship; marred by domestic violence and substance abuse; four children.</p>	<p>Ct 1: Agg burg. Ct 2: Agg AOBH.</p> <p>The victim was Drage's de facto partner, LM. Their relationship was marred with domestic violence.</p> <p>Drage and LM had both been drinking at home. Drage was verbally abusive and struck LM. LM's 10-yr-old son called the police who attended and served him with a police order, requiring him to stay away from the premises for 24 hrs.</p> <p>The same night Drage returned to the premises and entered the home by breaking a glass door. He went to the bedroom in which LM and her son were located. They braced themselves against the door to prevent him from entering the room, but he overpowered them. He then dragged LM out of the room, pushed her to the ground and kicked her several times. He verbally abused her 10-yr-old son.</p>	<p>Ct 1: 3 yrs 9 mths imp (cum). Ct 2: 3 yrs 9 mths imp (cum).</p> <p>TES 7 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending 'a protracted and cowardly attack of quite unbelievable savagery'; each attack, particularly the assault the subject of ct 2 was prolonged, sustained and repeated; neither was a one-off aberration; ct 2 was towards the higher end of the scale of offences giving rise to bodily harm; the victim was 'especially vulnerable' – a</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality principle and length of sentence ct 2.</p> <p>At [47] The offending the subject of ct 2 was very serious. First, the offending was protracted and sustained over a considerable period of time, was violent, resulted in serious injuries and was particularly degrading and humiliating of LM. Second, the offending involved a weapon and resulted in an open wound to LM's person. Third, the offending occurred whilst [he] was on bail for the offending the subject of ct 1.</p>

		<p>Cannabis use from aged 12 yrs; methyl use from 16 yrs; history of excessive alcohol use; exacerbated substance abuse following death of his teenage son in 2018.</p> <p>History of mental health problems; prescribed medication for depression.</p>	<p>LM sustained bruising, lacerations and a bloody nose.</p> <p>Drage evaded police and was not arrested until some 16 mths later. After some mths remanded in custody he was granted bail, with a condition that he not behave in an intimidatory, offensive or emotionally abusive manner towards LM.</p> <p>Nine days after Drage's release to bail he attacked LM on and off over a two-day period. He punched and kicked her causing bruising and soft tissue injuries. He also ripped out her hair and made her walk around like a dog and punctured her thigh with a small knife.</p> <p>Police attended the premises to conduct a welfare check on LM. Drage was abusive and aggressive towards the officers and told them LM was not at home. The officers heard LM scream and cry for help and located her hiding under a bed, her face swollen and covered in blood.</p> <p>Drage fled from the scene but was later apprehended.</p>	<p>vulnerability that arose from being in a family and domestic relationship with the appellant.</p> <p>The sentencing judge found accumulation of both sentences was required to mark the obvious escalation in the offending and disregard for the law.</p> <p>No remorse or insight into his offending.</p>	<p>At [61] ... the two offences were quite separate in time. ... the offending the subject of ct 2 occurred more than 21 mths later ... The circumstances of the offences did not overlap. ...</p> <p>At [62] The ... agg home burg offence was a serious offence of its type. It involved a violent assault on the appellant's de factor partner, in the presence of LM's 10-yr-old son when, less than half an hr earlier, [he] had been issued with a 24-hr police order. The offending demonstrated disregard for the law and a preparedness to offend despite recent intervention of the police to defuse an earlier altercation that night. ...</p>
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