

Murder, Attempted Murder **and Attempt to Procure Another to Murder**

ss 279, 283 and 556 *Criminal Code and repealed murder provisions*

From 1 January 2021

Transitional Sentencing Provisions: The table is divided into two relevant periods of Sentencing Provisions:

- Post homicide amendments (post 1/08/08)
- Pre homicide amendments (pre 1/08/08)

Glossary:

AOBH	assault occasioning bodily harm
conc	concurrent
cum	cumulative
ct	count
dep lib	deprivation of liberty
EFP	eligible for parole
imp	imprisonment
min	minimum
PG	plea of guilty
TES	total effective sentence
TOI	trial of issues
VRO	violence restraining order

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
1.	<p><i>The State of Western Australia v Phillips</i></p> <p>[2023] WASCA 104</p> <p>Delivered 05/07/2023</p>	<p><u>Phillips</u> 41 yrs at time of sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Significant criminal history; convictions for offences of violence; serving a sentence of 8 yrs 3 mths at time of offending.</p> <p>Parents separated when 2 yrs old; raised by his father; very limited contact with his mother; estranged from his sister; supportive father.</p> <p>Sexually abused aged 10 yrs.</p> <p>Initially bullied at school, later intimidated others; left in yr 8.</p> <p>Employed various jobs until most recent term of imp.</p> <p>Four children to three different partners; contact with two children from first partner; no contact with most recent partners and children.</p> <p><u>Martin</u> 42 yrs at time sentencing.</p>	<p>1 x Att murder.</p> <p>Phillips and Martin were both sentenced prisoners. The victim, 65 yrs old, was also serving a sentence in the same prison.</p> <p>Knowing the victim's offending history, Phillips and Martin planned to attack him.</p> <p>Martin fashioned two improvised knife-like weapons from materials he found within the prison. He hid the weapons and later informed Phillips where they could be located, knowing Phillips would use one or more of the weapons to attack the victim in the near future.</p> <p>On a number of occasions Martin told the victim he had permission to kill him and of Phillips intention to assault him.</p> <p>One afternoon Phillips approached the victim, who was standing near a garden in the prison block. Using the two weapons, he repeatedly stabbed the victim in the head and neck. He threw the victim to the ground and continued stabbing him repeatedly. He also kicked the victim on the chin, causing him to fall backwards. Phillips pushed the victim to the ground several times,</p>	<p><u>Phillips</u> 9 yrs imp.</p> <p>EFP.</p> <p><u>Martin</u> 9 yrs imp.</p> <p>EFP.</p> <p><u>Phillips</u> The sentencing judge found the respondent's offending serious and aggravated by the fact it was committed while he was serving a term of imp for violent offending; the victim was targeted because he believed he was a paedophile, thereby engaging in vigilante behaviour; the attack was planned and premediated; weapons were used to inflict serious injuries on the victim.</p> <p>No remorse or victim empathy; very high risk of future violent offending; does not have good prospects for rehabilitation.</p> <p><u>Martin</u></p>	<p>Allowed.</p> <p>Appeal concerned length of sentence.</p> <p>Resentenced:</p> <p><u>Phillips</u> 12 yrs imp. EFP.</p> <p><u>Martin</u> 11 yrs imp. EFP.</p> <p><u>Phillips</u> At [103] Mr Phillips' offence had a number of features that made it, objectively, a very serious example of the offence of att murder.</p> <p>At [104] First, the attack was premediated, being planned over a period of mths. Given the centrality of intention to the offence of att murder, the lengthy duration of Mr Phillips' intention to attack the victim is itself a seriously aggravating feature of his offence.</p>

		<p>Convicted after trial.</p> <p>Significant criminal history; serving a sentence of 5 yrs imp at time of offending.</p> <p>Two younger sisters; raised by mother and stepfather who had substance abuse issues; transient upbringing; biological father sentenced to a lengthy term of imp when young; no relationship with him; involved with DCP from aged 14 yrs.</p> <p>Family supportive.</p> <p>Attended several different schools; left school yr 8.</p> <p>Employed various jobs.</p> <p>Two serious long-term relationships; three children.</p> <p>History of illicit substance use; prescription drugs, cannabis and methyl; introduced to heroin by his parents aged 13 yrs; addicted to opioids until aged 20 yrs.</p> <p>No significant physical health issues; diagnosed with and</p>	<p>continuing to stab him in the neck, back, stomach and kidney area. When the victim managed to stand and stagger away Phillips gripped him by the neck and sliced his neck and throat.</p> <p>After walking away, Phillips again approached the victim and again stabbed him repeatedly in the lower stomach.</p> <p>Phillips faced prison guards with the knives visible. He then stabbed the victim three more times before walking away and being detained.</p> <p>When searched a three-page handwritten note saying he intended to murder a paedophile was found in Phillips pocket.</p> <p>During the attack Martin, who was standing at the fence line in a different block, watched from nearby.</p> <p>The victim suffered a total of 47 wounds. He was not expected to survive, although, ultimately, he did. He has ongoing medical conditions from the injuries he received.</p>	<p>The sentencing judge characterised the respondent's offending as serious and aggravated by the fact it was committed while he was serving a term of imp; the victim was targeted on the belief he was a paedophile, thereby engaging in vigilante behaviour; it was planned and premeditated; he facilitated the offence by making two improvised weapons and then secreted them for Phillips to collect and use; the offending resulted in serious injury to the victim; although not the principal offender, his role was pivotal.</p> <p>Extensive admissions made prior to trial; accepted responsibility, but not remorseful and no victim empathy.</p>	<p>At [105] Secondly, Mr Phillips used weapons in attacking the victim.</p> <p>At [106] Thirdly, Mr Phillips' attack was persistent and remorseless. ... pursuing the victim and continuing to stab him while the victim tried to get away. [He] persisted in the attack even when guards approached.</p> <p>At [107] Fourthly, Mr Phillips stabbed the victim in areas – namely the neck, back and stomach – which, by their nature, were liable to cause fatal injury. ... [He] did everything he could to kill the victim.</p> <p>At [108] Fifthly, Mr Phillips caused very serious injury to the victim. ...</p> <p>At [109] Sixthly, Mr Phillips committed his offence while serving a term of imp for violent offending. ... The victim was also vulnerable by reason of his age; he was 65 yrs old.</p>
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		requires ongoing treatment for paranoid schizophrenia; borderline personality disorder and PTSD; history of non-compliance with antipsychotic medications; lack of insight into his schizophrenia and polysubstance abuse.			<p>At [110] Seventhly, the offending was motivated by vigilantism ...</p> <p>At [111] Any offence that had the first five of these features ... would thereby be a very serious example of the offence of att murder, regardless of where the offence occurred and regardless of the motivation for it. The last two features in combination further elevate, to a substantial degree, the seriousness of Mr Phillips' offence and reinforce the need to give weight to deterrence and denunciation.</p> <p>At [118] In applying totality to moderate a sentence to be imposed for a serious offence committed by a person in the prison environment, it is important not to create any impression that, when a person is already in prison, the punishment for any offence they commit will be substantially discounted. ...</p> <p><u>Martin</u> At [141] Mr Martin's offence had a number of very serious</p>
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					<p>features.</p> <p>At [142] First, together with Mr Phillips, Mr Martin planned the attack over a period of mths. He chose the victim of the attack. ... [He] crafted the weapons to be used in the attack, hid them for a period and then moved them to a location to enable Mr Phillips to obtain them.</p> <p>At [143] Secondly, Mr Martin thereby enabled Mr Phillips to use weapons in attacking the victim.</p> <p>At [144] Thirdly, as a result of the offending, serious injury was inflicted on the victim.</p> <p>At [145] Fourthly, Mr Martin planned and committed his offence in the prison environment</p> <p>At [146] Fifthly, Mr Martin chose the victim because he believed that the victim was a paedophile.</p> <p>At [147] Thus, what is said in [109] - [110] above applies</p>
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					<p>equally here. As with Mr Phillips, these features of Mr Martin's offending elevate, to a substantial degree, the seriousness of his offence and reinforce the need to give weight to deterrence and denunciation.</p> <p>At [153] ... having regard to all the circumstances of the case and the matters to which we have referred, the sentence imposed on Mr Martin was manifestly inadequate. ...</p>
2008 Homicide Amendments – effective 1 August 2008					