

Stealing

ss 371A and 378(7) *Criminal Code*

From 1 January 2021

Glossary:

agg	aggravated
att	attempted
CBO	community based order
conc	concurrent
cum	cumulative
ct	count
EFP	eligible for parole
imp	imprisonment
MV	motor vehicle
PG	plea guilty
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
8.	Thornley v The State of Western Australia [2023] WASCA 107 Delivered 13/07/2023	32-33 yrs at time offending. 34 yrs at time sentencing. Convicted after PG. Short criminal history; prior drug offending, including poss of a trafficable quantity of methyl wiss. Parents still together; family supportive. Regular employment history; small business operator. Long-time user of methyl; using approx 1 g of methyl a day; spending \$3,000 a wk on the drug; significant daily use of methyl coincided with significant escalation in seriousness of his offending.	Ct 1: Agg burg. Ct 2: Stealing. Ct 4: Receiving. The complainant and his wife owned a high-value dwelling. They lived overseas so employed caretakers to pack the furniture and the contents of the property prior to the home's renovation. Some antique furniture was placed in one of the main rooms of the home. From time to time the caretakers would check the premises, which were secured, including by locked gates. In the early hrs of the morning Thornley and his co-offender Beynon entered the home without the consent of the owners. They removed from the property numerous items, including furniture, household effects and wine. A short time later Thornley and Beynon were seen by police driving in separate vehicles. The vehicles were stopped and searched and a number of items were observed in each vehicle. Both were allowed to continue on their way. About one mth later, Beynon att to sell a chest on Gumtree. The chest had been stolen from the property and was of significant	Ct 1: 18 mths imp (cum). Ct 2: No penalty. Ct 4: 10 mths 16 days imp (cum). TES 2 yrs 4 mths 16 days imp. Cum with sentence of 4 yrs 6 mths imp already serving. TES 6 yrs 10 mths 16 days imp. EFP. Co-offender Beynon sentenced to a TES 3 yrs imp. The sentencing judge found the offending 'a serious premediated and sophisticated course of conduct'. Steps undertaken to address drug addiction while in custody.	Dismissed (leave refused). Appeal concerned parity and totality principle. At [48] We are satisfied that the disparity between the appellant's sentence and that imposed on Mr Beynon did not infringe the parity principle or the principle of equal justice. The disparity was objectively a sufficient, even generous, reflection of their different circumstances. ... At [56] ... The appellant, while on bail and in company with Mr Beynon, took advantage of the fact that the complainant's home was unoccupied and committed a premediated and well-organised burglary on the house, which resulted in the theft of a substantial amount of valuable property. ... Offences of the kind committed by the appellant and Mr Beynon are prevalent. This court has stated many times that

			<p>value.</p> <p>Thornley was captured a number of times on CCTV at his home address unloading property from his vehicle. The property was stolen from the complainant's house.</p> <p>The burglary at the complainant's home was not discovered for some wks. Fingerprints, identified as belonging to Thornley and Beynon, were found inside the house.</p> <p>A search of Thornley's home located a number of items, including several large items of furniture, that had been stolen from the complainant's house.</p> <p>The following day a search of Beynon's home recovered further items belonging to the complainant, including crockery and linen.</p>		<p>sentences for this kind of offending must be firmed up. ... The TES imposed upon the appellant ... for the offences ... was, on any view, modest.</p> <p>At [58] The appellant has fallen a long way short of demonstrating that the overall TES ultimately imposed upon him infringed the first limb of the totality principle. ...</p>
7.	<p><i>Houlahan v The State of Western Australia</i></p> <p>[2022] WASCA 85</p> <p>Delivered 19/07/2022</p>	<p>21 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after very late PG (cts 1 & 2) (10% discount). Convicted after trial (cts 7-9).</p> <p>Very lengthy unenviable criminal history; frequently in detention or imprisoned since aged 14 yrs.</p> <p>Dysfunctional upbringing;</p>	<p>Ct 1: Steal MV. Ct 2: Fraud. Ct 7: Agg burg. Ct 8: Steal MV. Ct 9: Reckless driving.</p> <p>All offences committed over a period of 15 days.</p> <p>During a burglary, the victim's motor vehicle was stolen. It was not alleged Houlahan had taken part in the burglary. However, he drove the vehicle and put fuel in the vehicle, paying using the victim's debit card. The vehicle</p>	<p>Ct 1: 12 mths imp (cum). Ct 2: 6 mths imp (conc). Ct 7: 2 yrs 6 mths imp (cum). Ct 8: 15 mths imp (conc). Ct 9: 18 mths imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>MDL disq for life.</p> <p>The sentencing judge found</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of individual sentences cts 1, 2 & 9 and totality principle.</p> <p>At [35] As to the sentence imposed on ct 2, having regard to all of the relevant circumstances, including the appellant's PG, ... and the modest amount [he] defrauded, the sentence of ... imp was not manifestly</p>

		<p>parents separated aged 7 yrs; raised by mother; tumultuous relationship with father; exposed to alcohol and illicit drugs young age; antisocial behaviours and associations.</p> <p>Mother and sister supportive.</p> <p>Educated to yr 9.</p> <p>Introduced to methyl aged 13 yrs.</p>	<p>was later found damaged. A forensic examination located Houlahan's DNA on the steering wheel. The cost to repair the vehicle was \$2,310.</p> <p>In the early hrs of the morning the victim and his family were asleep in their home. Houlahan broke into the house through a window. He used a pair of socks as gloves. Inside the home he stole items of property, including the keys to a motor vehicle. He then drove the vehicle from the premises.</p> <p>That same morning Houlahan sped past an unmarked police car, who activated the car's lights to pull him over. He did not stop. When police activated both lights and sirens, he accelerated away from the pursuing police car. He drove in excess of 45 km p/hr over the speed limit in order to evade the police. At certain points he reached speeds of between 155 km p/h and 160 km p/hr. He also drove through a number of major intersections at high speed and on the incorrect side of the road. Police deployed a stinger device, which Houlahan deliberately evaded.</p> <p>At one point Houlahan stopped to let a passenger out of the vehicle.</p> <p>Eventually the vehicle came to rest against a tree. Houlahan ran from the vehicle and hid. He was eventually located by police.</p>	<p>the appellant's offending 'very serious'; he drove on suburban streets, often at extreme speeds, posing a very real danger to others and showing a total disregard for other road users; the agg home burglary was particularly serious, it occurred at night when people were in the house.</p> <p>The sentencing judge found the appellant had a continuing and entrenched disobedience of the law in very serious ways; nothing to indicate on the path to rehabilitation.</p> <p>Financial loss and great inconvenience caused to victims.</p>	<p>excessive, bearing in mind that [he] used the petrol he obtained by fraud to enable him to continue driving the stolen vehicle.</p> <p>At [36] As to the sentence imposed on ct 9, the submissions of the appellant substantially understate the seriousness of the offence. While the offence lasted between six and 10 min, it involved a very determined and sustained att to evade arrest. He was driving a stolen car and at one point had a passenger in the vehicle. In doing so [he] drove with extreme speed on a major highway and suburban streets in a manner which put the lives and safety of other road users in jeopardy. The driving involved a selfish disregard for the safety of others. ...</p> <p>At [44] In the present case, her Honour was correct to accumulate some of the sentences to properly reflect the appellant's overall criminality which encompassed five distinct</p>
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					offences in two separate incidents committed over a 15-day period. ... The TES was an appropriate reflection of the appellant's overall criminality, ...
6.	<p><i>The State of Western Australia v O'Driscoll</i></p> <p>[2022] WASCA 65</p> <p>Delivered 09/06/2022</p>	<p>36 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Long criminal history.</p> <p>Older brother and identical twin brother; 12 yrs of age when father disappeared; suffered significantly at the loss of his father' victim of sexual abuse.</p> <p>Left school yr 11; engaged in destructive behaviours.</p> <p>Struggled to hold down a job.</p> <p>Three significant personal relationships; daughter aged 17 yrs; current partner of eight yrs supportive.</p> <p>History of substance abuse; commenced using alcohol and cannabis aged 14 yrs; methyl at aged 17 yrs; methyl use persisted over time.</p>	<p>Ct 1: Agg armed robbery. Ct 2: Steal MV.</p> <p>The victim, Mr W, left a friend's house to drive home. As he walked up the driveway to his vehicle he was confronted by O'Driscoll, holding a firearm, possibly a sawn-off shotgun.</p> <p>O'Driscoll was aggressive and demanded Mr W hand over his car keys, threatening to shoot him if he did not do so.</p> <p>In shock Mr W did not immediately comply. O'Driscoll grabbed him and tried to drag him towards the road, all the while keeping the gun pointed in his face.</p> <p>O'Driscoll struck Mr W to the side of his ear with the firearm. As Mr W was bent over with his jacket over his head O'Driscoll struck him with an object (probably the firearm) on the back of his head.</p> <p>Still holding the firearm, O'Driscoll took a tomahawk from Mr W's vehicle and brandished it, again demanding Mr W's car keys and threatening to shoot him.</p>	<p>Ct 1: 2 yrs 6 mths imp (conc). Ct 2: 12 mths imp (conc).</p> <p>TES 2 yrs 6 mths imp.</p> <p>Cum with sentence already serving (3 yrs 6 mths imp).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending involved a degree of premeditation having regard to the fact he was already holding the firearm at the time he first engaged Mr W; he also armed himself with a tomahawk; the offending conduct was persistent and lasted 7 or 8 minutes; he used actual violence against Mr W, injuring him; he left the scene without, in any way, assisting Mr W; Mr W was vulnerable and suffered</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence ct 1 and totality principle.</p> <p>Resentenced:</p> <p>Ct 1: 5 yrs imp (conc). Ct 2: 18 mths imp (conc).</p> <p>Cum with sentence already serving.</p> <p>TES 8 yrs 6 mths imp. EFP.</p> <p>At [48] ... Having regard to all of the circumstances of the case, the sentence of 5 yrs' imp her Honour would have imposed but for the totality principle was, at least, lenient. But to reduce that sentence by 50% for totality was too great a discount for this purpose and has resulted in the imposition of a manifestly inadequate</p>

			<p>Mr W put his keys on the bonnet of his vehicle. Using the keys O'Driscoll started the vehicle and drove from the area. The vehicle was located the following day, crashed into a tree.</p> <p>Mr W suffered a laceration to the back of his head which required staples. He also suffered bruising and abrasions.</p>	<p>serious psychological harm.</p> <p>Ongoing psychological trauma suffered by the victim; lost his job as a result of the offending.</p> <p>Appellant not remorseful and no acceptance of responsibility for his offending.</p>	<p>sentence for the offence. ...</p> <p>At [52] ... the agg armed robbery offence was a particularly serious example of its type. The sentence imposed by her Honour was, ... manifestly inadequate. When this offence is considered, along with all of the respondent's other offending, the TES ... does not bear a proper relationship to the overall criminality involved in all of the offences, ...</p>
5.	<p>Jabbie v The State of Western Australia</p> <p>[2022] WASCA 10</p> <p>Delivered 09/02/2022</p>	<p>22-23 yrs at time offending. 24 yrs at time sentencing.</p> <p><u>IND 2405</u> Convicted after late PG – cts 4, 7-9 and 11-16 (18% discount). Convicted after very late PG – cts 5 and 10 (15% discount). <u>IND 1443</u> Convicted after early PG (25% discount).</p> <p>Extensive criminal history; including offences of violence and dishonesty.</p> <p>Disadvantaged and difficult</p>	<p><u>IND 2405</u> Cts 4; 7 & 12: Agg robbery. Cts 5 & 11: Agg armed robbery. Cts 8 & 10: Agg burglary. Cts 9; 14-15: Stealing. Ct 13: Steal MV. Ct 16: Att agg burglary.</p> <p><u>IND 1443</u> Ct 1: Wilful damage by fire.</p> <p><u>IND 2405</u> <u>Ct 4</u> Jabbie approached the victim walking down the street. Without warning he hit the victim around the head, causing him to fall to the ground. He further assaulted the victim. Jabbie stole the victim's mobile phone, headphones and wallet.</p>	<p><u>IND 2405</u> Ct 4: 2 yrs 3 mths imp (conc). Ct 5: 4 yrs imp (head). Ct 7: 3 yrs 6 mths imp (cum). Ct 8: 2 yrs 2 mths imp (conc). Ct 9: 1 yr 8 mths imp (conc). Ct 10: 2 yrs imp (conc). Ct 11: 3 yrs 4 mths imp (conc). Ct 12: 3 yrs imp (conc). Ct 13: 1 yr 6 mths imp (conc). Ct 14: 2 yrs 6 mths imp (conc). Ct 15: No further</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned lengths of individual sentences cts 5 and 7; totality principle and error in sentencing commencement date.</p> <p>At [73]-[74] Ct 5 involved a violent attack on a rideshare driver, using a weapon, while the appellant was in company. The appellant sprayed the victim in the face while the victim was driving, thereby endangering the victim and members of the public. The victim was providing a service to the</p>

	<p>upbringing; born Liberia; only child; parents separated when young; largely raised by grandparents.</p> <p>Came to Australia to live with his father; arriving via refugee camp; troubled relationship with stepmother; offended against his stepsister; removed from the family home by Department of Communities until aged 17 yrs.</p> <p>Poorly educated; limited employment opportunities; some salesperson and gardening work.</p> <p>Two young sons from former relationship; relationship marred by violence; no contact with his children for over two yrs.</p> <p>Diagnosed with depression aged 19 yrs.</p> <p>Commenced alcohol and cannabis use aged 13 yrs; methyl aged 17 yrs.</p>	<p><u>Ct 5</u> Two days later, the victim, an Uber driver, agreed to drive Jabbie and three other males. Jabbie was in the front seat when he sprayed the victim in the face with an unknown substance as he was driving. The victim, in pain, stopped his vehicle, got out and ran away, before falling. Jabbie went up to the victim, searched his pockets and took his wallet and a sum of money. Jabbie then tried to leave in the victim's vehicle, but he could not start it. The victim required treatment for his injuries.</p> <p><u>Ct 7</u> About nine days later the victim, aged 65 yrs, collected Jabbie and a female in his taxi. When he was unable to pay the fare at the end of the journey the victim told him he would return them to where he had picked them up. Jabbie became aggressive and punched the victim. He instructed the victim to stop the car. When he did so Jabbie continued kicking and punching him. The victim lost balance and was rendered unconscious.</p> <p>Jabbie then removed \$2,700 in cash from the victim's pocket. The victim was hospitalised due to his injuries.</p> <p><u>Ct 8</u> Several days later Jabbie and a co-offender entered a house and stole a number of items</p>	<p>punishment. Ct 16: 1 yr's imp (conc).</p> <p><u>IND 1443</u> Ct 1: 1 yr's imp (cum).</p> <p>TES 8 yrs 6 mths imp. EFP.</p> <p>The sentencing judge found the appellant's overall offending 'very serious; given the number of victims, some of whom were elderly, and the ongoing consequences for the victims.</p> <p>The sentencing judge found the offending the subject of IND 1332 was serious because of the risk of harm to others at the prison. The risk of serious injury or death caused by fire was considerably increased within the confines of the prison due to the significantly delayed ability to escape the area's security mechanisms.</p> <p>Appellant remorseful; some insight into his offending;</p>	<p>public. He was vulnerable to an unexpected attack while he was driving. The offending has had profound and enduring effects on the victim, who has suffered PTSD and suicidal depression. ... the sentence of 4 yrs imp on ct 5 is comfortably within the range of sentences available on a proper exercise of the sentencing discretion. ...</p> <p>At [75]-[76] Ct 7 involved a violent attack on a 65-yr-old taxi driver. The appellant punched and kicked the victim, rendering him unconscious. Again, the victim was providing a service to the public. The appellant stole a large sum of money ... from the victim. The appellant's offending has had significant medical, psychological and financial consequences on the victim, ... the sentence of 3 yrs 6 mths on ct 7 is well within the range of sentences available on a proper exercise of the sentencing discretion. ...</p>
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			<p>valued at \$1,170. While inside the house the victim and her daughter returned. Jabbie tried to hide before fleeing.</p> <p><u>Ct 9</u> After fleeing the home the subject of ct 8 Jabbie jumped a fence into the backyard of the neighbouring home. He stole two cans of soft drink from a fridge in a side room. He fled when the occupants returned home.</p> <p><u>Cts 10 and 11</u> That same day Jabbie entered the garage of the victim, aged 77 yrs, with the intention of stealing his car. The victim went to investigate the noise and was confronted by Jabbie, who sprayed him with a fire extinguisher. Jabbie then tried to enter the house to find the car keys, however the victim pushed him back and closed the door. Jabbie then fled.</p> <p><u>Cts 12 and 13</u> The next day Jabbie approached the victim's vehicle. The victim, aged 64 yrs, had just finished work and gotten into his car. Jabbie elbowed the driver's window, smashing it completely. The victim sustained a large cut to his arm. Jabbie took the keys to the vehicle. The victim got out of the car and an altercation ensued. After the fighting stopped Jabbie took the car keys and demanded property from the victim. The victim said he did not have anything and asked for his keys back. Jabbie refused and</p>	<p>high risk of reoffending.</p>	<p>At [80] The appellant's offending caused serious harm to a number of different victims. He violently attacked the victims of cts 4, 5, 7, 11 and 12, many of whom continue to suffer significant adverse effects from the attack. ...</p> <p>At [81] Given the substantial number of serious offences the subject of [IND 2405], accumulation, to some substantial degree, was necessary to reflect the seriousness of the offending. ... Accumulation of the sentence on the offence the subject of [IND 1443] was necessary and appropriate, given that the offence was serious and was committed while the appellant was a sentenced prisoner.</p> <p>At [82] In our view, the TES ... was well within the proper exercise of the sentencing judge's discretion.</p>
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			<p>left on foot, taking the car keys with him.</p> <p>The victim walked to his place of work. Jabbie then went inside and confronted him again. This time demanding his watch. After a brief altercation he stole the victim's watch. The victim's employer intervened and asked Jabbie to return the victim's belongings, but he refused and left in the victim's vehicle.</p> <p><u>Cts 14 and 15</u> Later that same day Jabbie smashed a window of the victim's residential unit. He stole jewellery, including family heirlooms of sentimental value, with a value estimated at about \$30,000. Some of the jewellery was recovered, but a large amount remains outstanding.</p> <p><u>Ct 16</u> The following day Jabbie attempted to gain access to the victim's house by kicking in the door. The victim heard the noise and saw Jabbie on a CCTV camera and called the police. Jabbie left and did not gain access to the house.</p> <p><u>IND 1443</u> While incarcerated Jabbie put a sheet over a device he had set up through an electrical socket in his cell. The sheet ignited and the fire spread to the mattress before being extinguished. The fire caused around \$2,000 of damage.</p>		
4.	<i>Fleay v The State</i>	38-41 yrs at time offending.	11 x Stealing.	Ct 1: 4 yrs imp (cum).	Dismissed.

<p><i>of Western Australia</i></p> <p>[2021] WASCA 214</p> <p>Delivered 16/12/2021</p>	<p>52 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Educated; Bachelor of Business degree.</p> <p>Married; loving and supportive father to two children; family suffered economically and emotionally as a result of the offending; supportive unwavering devotion of his family.</p> <p>Well regarded in the community; served as a councillor and actively involved with his children's school.</p> <p>Good physical and mental health.</p>	<p>1 x Stealing as a director (ct 20).</p> <p>Fleay worked as a senior accountant and then director at an accounting firm. He was the accountant for Mr and Mrs Jabado and was involved in almost all aspects of their business and personal finances.</p> <p>Over a period of just under three yrs Fleay stole a total of \$4,662,825.79 from the Jabados' and their family company.</p> <p>Fleay used the stolen money to purchase or assist in the purchase of expensive homes; meet various tax liabilities and for his general personal expenditure.</p> <p>In the hope that his offending would not be discovered Fleay began repaying the money he had stolen. However, Mr Jabado eventually became suspicious.</p> <p>Fleay repaid all monies. In total he repaid \$6,857,862 to the Jabados', plus interest.</p>	<p>Cts 2-3 & 5: 18 mths imp (conc).</p> <p>Ct 7: 4 yrs imp (partly conc – commences 2 yrs after beginning ct 1).</p> <p>Ct 10: 14 mths imp (conc).</p> <p>Ct 11: 22 mths imp (conc).</p> <p>Cts 14; 22 & 24: 12 mths imp (conc).</p> <p>Ct 19: 2 yrs 3 mths imp (conc).</p> <p>Ct 20: 20 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending serious; given the total value of the money stolen; the period of time over which it was stolen and the gross breach of trust involved.</p> <p>The sentencing judge found a degree of sophistication in the offending, it involved the filing of inaccurate tax returns and misleading, if not inaccurate, entries on a cheque butt; he successfully avoided detection to the extent that he was able to offend for a period of</p>	<p>Appeal concerned totality principle.</p> <p>At [46] The offences committed by the appellant are self-evidently serious and involved a very high degree of criminality. There were three aggravating circumstances of particular importance. First, the thefts involved a very large sum of money, ... Second, the funds were stolen over a long period of time, ... Third, the victims reposed their total trust in the appellant, which he betrayed. Not only was the appellant their accountant, but he was also their friend. A consequence of the victims' total trust in the appellant was that they did not examine in detail their own financial records. This made them vulnerable to the appellant's predations; a situation he exploited.</p> <p>At [66] ... The seriousness of the appellant's offending and the need for general deterrence required the imposition of a substantial</p>
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				<p>nearly three yrs.</p> <p>Not remorseful.</p> <p>Low risk of reoffending.</p>	<p>TES. ... we have not been persuaded that the TES ... infringed the first limb of the totality principle. ... It has not been demonstrated that a substantial wrong has occurred. ...</p>
3.	<p><i>Brooks v The State of Western Australia</i></p> <p>[2021] WASCA 156</p> <p>Delivered 03/09/2021</p>	<p>39 yrs at time sentencing.</p> <p><u>Indictment -Supreme</u> Convicted after trial.</p> <p><u>Magistrates Court</u> Convicted after PG (20% discount).</p> <p><u>Indictment - District</u> Convicted after late PG (15% discount).</p> <p>Lengthy criminal history; including interstate offending.</p> <p>Traumatic childhood; experienced death of older sister when he was aged 6 yrs; mother a yr later.</p> <p>Lived with physically violent grandmother; subsequently lived with his father who was physically and emotionally abusive.</p>	<p><u>Indictment -Supreme</u> Ct 1: Agg armed robbery. Ct 2: Armed so as to cause terror.</p> <p><u>Magistrate Court</u> Offending comprised 19 offences on various dates, including breaches of bail, unlicensed possession of a firearm, no authority to drive, trespass, burglary and stealing.</p> <p>Magistrate Court appeal commenced in Supreme Court referred to Court of Appeal.</p> <p><u>Indictment – District</u> Cts 1 & 3: Criminal damage. Cts 2 & 4: Stealing. Cts 5-6: Poss stolen or unlawfully obtained property. Ct 7: Escaping lawful custody. Cts 8 & 12: Robbery. Ct 9: Aiding a person to escape lawful custody. Ct 10: Assault public officer. Ct 11: Assault with intent to rob. Ct 13: Burg. Ct 14: Agg burg. Ct 15: Steal MV.</p>	<p><u>Indictment - Supreme</u> Ct 1: 4 yrs 4 mths imp (cum). Ct 2: 9 mths imp (cum).</p> <p>TES 5 yrs 1 mth imp (cum on sentence imposed by Supreme Court). EFP.</p> <p><u>Magistrate Court</u> TES 1 yr 3 mths imp. EFP.</p> <p><u>Indictment - District</u> Ct 1: 6 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 15 mths imp (conc). Ct 4: 15 mths imp (conc). Ct 5: 6 mths imp (conc). Ct 6: 12 mths imp (conc). Ct 7: 12 mths imp (conc) (no EFP). Ct 8: 14 mths imp (cum on Supreme Court and Magistrates Court sentences). Ct 9: 6 mths imp (conc).</p>	<p>Dismissed (leave refused) – on papers.</p> <p><u>Indictment - Supreme</u> Appeal concerned length of sentence and totality principle.</p> <p><u>Magistrate Court</u> Appeal concerned totality principles and error (allowing summary charges to not be dealt with by superior court).</p> <p><u>Indictment - District</u> Appeal concern error in cum sentences; totality principle (crushing effect of accumulated sentences from different jurisdictions) and error (plea discount).</p> <p>At [54] The Supreme Court judge was called upon to sentence the appellant only for two offences: ... It was well open to her Honour to</p>

	<p>Left school aged 13 yrs; commenced using drugs.</p> <p>Left home aged 15 yrs; reconciled with his family aged 28 yrs.</p> <p>Inconsistent early employment history; trade work late twenties; self-employed roof plumber early thirties.</p> <p>2 yr relationship at time offending; young son together; partner history of substance abuse and offending behaviour, reported to have made significant positive changes in her lifestyle; partner and her parents supportive.</p> <p>Severe symptoms of anxiety, depression and stress; diagnosed with PTSD.</p> <p>Entrenched drug use.</p>	<p><u>Indictment – Supreme Court</u> Brooks and a co-offender decided to rob a newsagency. With their faces covered and each carrying a knife they rushed into the newsagency.</p> <p>The co-offender shouted at the woman working behind the counter to give him money. When the co-offender went behind the counter the woman picked up a cricket bat, so he pushed the woman with force, causing her to fall on the floor. He put the knife near her neck and repeated his demand for money.</p> <p>The woman's daughter heard her mother's screams and began to telephone the police. Brooks screamed at her to put the phone away and pointed his knife at her, telling her that he would stab her.</p> <p>The co-offender grabbed the till drawer and took about \$450 in cash before running. Brooks pushed the daughter off balance and followed.</p> <p>When Brooks was chased by two men, he stopped and threatened one of them with his knife.</p> <p>Brooks hid some items of clothing in an att to avoid being caught. He was arrested some wks later. He denied any involvement in the offence.</p>	<p>Ct 10: 3 mths imp (conc). Ct 11: 3 mths imp (cum). Ct 12: 21 mths imp (cum). Ct 13: 15 mths imp (conc). Ct 14: 2 yrs imp (conc). Ct 15: 9 mths imp (conc).</p> <p>Sentenced in the Supreme Court, District Court and the Magistrates Court for a total of 36 offences. The most serious offences, were committed in a period of about three wks. The result of the three sentencing exercises:</p> <p>TES 9 yrs 6 mths imp. EFP.</p> <p><u>Indictment - Supreme</u> The trial judge found the armed robbery objectively very serious; the offence was planned; both offenders were armed and disguised; they chose a vulnerable target and threatened two vulnerable women, both shouting and screaming.</p> <p>The trial judge took into account time spent by the appellant on remand for the murder charge and time</p>	<p>order a degree of accumulation between [the] two offences, bearing in mind that they involved distinct criminality and had different victims.</p> <p>At [56] What occurred in the District Court, mths after the Supreme Court judge imposed sentence, does not (and cannot) provide any basis to allege an infringement of either limb of the totality principle by the Supreme Court judge's sentence. ...</p> <p>At [83] ... we are satisfied that there is no reason to suppose that, had the summary offences, and the indictable offences all been dealt with together, the overall disposition would have been any more favourable from the appellant's perspective. ... the sentencing judge in the District Court was acutely aware of, and carefully weighed, the sentences that had already been imposed ... in determining what sentences should be imposed</p>
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			<p><u>Indictment – District Court</u></p> <p>Brooks drove a stolen truck up to the double gates of a business. After trying to break the padlock to the gates with bolt cutters, he att to smash through them with the truck. The gates and the linked chain fence were extensively damaged (ct 1).</p> <p>Brooks drove a stolen truck to the entry of a business. After cutting the lock to a gate he drove to a parked caravan valued at \$45,000 and hitched the caravan to the back of his vehicle. As he drove away the chain snapped, so he left, leaving the caravan behind (ct 2).</p> <p>At a car wash Brooks, driving the same stolen truck, reversed at speed into two industrial vacuum units causing \$29,358.20 in damage. He and his male passenger then att unsuccessfully to take one of the units. They left and returned a short time later with a chisel and hammer, which they used to separate one of the units from its base. They then carried it to the truck and left (cts 3 and 4).</p> <p>During a burglary, a dinghy, boat trailer, boat engine and a fuel jerry can were stolen.</p> <p>Brooks arranged to store a boat at a rural property. The owner agreed and a short time later he attended the property with a boat, a boat motor and fuel jerry can.</p> <p>Some wks later a stealing offence occurred.</p>	<p>already spent in protective custody, and would in the future serve, for the current offending.</p> <p>Letter of apology tendered; otherwise no demonstrated genuine remorse; not at a low risk of reoffending; reasonable prospects of rehabilitation; steps taken to become a better father while on remand.</p> <p><u>Indictment – District</u></p> <p>The sentencing judge found the appellant’s offending the subject of cts 1-4 serious and premediated acts of dishonesty; it would have been a terrifying experience for the victims of cts 11 and 12, were ordinary members of the community going about their daily business; the offending necessitated a sentence that sufficiently denounced the appellant’s conduct and provided appropriate personal and general deterrence.</p>	<p>for the offences dealt with in the District Court.</p> <p>At [87]-[88] In our view, the appellant’s offending conduct that was the subject of his sentence in the Magistrates Court was of a nature and extent that demanded a sentence that was cum on the sentence in the Supreme Court to a not insubstantial extent. ... Not is it reasonably arguable that the sentences imposed by the Chief Magistrate produced a result that was, in the relevant sense, crushing, so as to infringe the second limb of the totality principle. ...</p> <p>At [117]-[119] The appellant was sentenced in the District Court for 15 offences. Several of them involved appalling offending that would have terrified or endangered members of the public. Further, [he] used violence to escape from legal custody. ... the appellant’s offending the subject of cts 7 – 12 of itself would ordinarily have justified and required a TES substantially</p>
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			<p>The stolen items included a bobcat and trailer. The bobcat was fitted with a GPS tracking device. The same day Brooks attended the same rural property with the stolen bobcat to store it at the property. The bobcat was tracked to its location and police were alerted. A search of the property located the stolen bobcat (cts 5 and 6).</p> <p>Brooks was apprehended in connection with an armed robbery (the Supreme Court offence). He was conveyed to a police station and detained. His partner was also held in the same detention area. The two shouted at each other and became increasingly agitated. When an officer opened his cell door he grabbed the officer and during a struggle took the officer's swipe card. After freeing his partner he ran away (cts 7-10).</p> <p>After fleeing custody Brooks ran in front of a vehicle, opened the driver's door, grabbed hold of the driver and tried to forcibly remove her from the car. Fearing for herself and her passenger she accelerated away (ct 11).</p> <p>Brooks then got in the passenger seat of a stationary vehicle. He shouted at the driver to go and, fearing for his safety, he complied. He ignored the driver's request to get out and became more agitated. At a red light he told the driver to get out, which he did. Brooks threatened the driver if he called the police. The vehicle was later found extensively</p>	<p>higher than the TES ... imposed ... in the District Court. As the judge observed, cts 11 and 12 were each very serious offences in which the appellant used violence towards entirely innocent members of the public in an att to steal their cars, the second att of which was successful. ... Other elements of the appellant's offending were also serious. ... the two home burglaries, ... were both serious offences warranting substantial terms of imp.</p> <p>At [126] ... the [District Court] judge did not err in failing to award a 25% discount for the appellant's PG. Indeed, it was not open to the judge to have done so.</p>
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			<p>damaged (ct 12).</p> <p>Brooks gained entry to a home by smashing a sliding door. He cut the phone line and searched a bedroom. He left the premises by forcing open a rear window. No items were stolen (ct 13).</p> <p>On the same day Brooks broke into a different residence. The occupants were home at the time. Manipulating a locked door he entered the premises and stole an iPhone, a laptop and the keys to a vehicle. Using the car keys he stole the occupants vehicle. He was later seen by police driving the vehicle and failed to stop when requested to do so, leading to a police pursuit (cts 14-15).</p>		
2.	<p><i>Beynon v The State of Western Australia</i></p> <p>[2021] WASCA 153</p> <p>Delivered 31/08/2021</p>	<p>32 yrs at time offending. 33 yrs at time sentencing.</p> <p><u>Ind 1237</u> Convicted after early PG (25% discount ct 1).</p> <p><u>Ind 2149</u> Convicted after PG (20% discount).</p> <p>Criminal history; dishonesty offences; numerous outstanding charges in New Zealand.</p> <p>Raised in New Zealand; mother multiple male</p>	<p><u>Ind 1237</u> Ct 1: Agg burg. Ct 2: Stealing.</p> <p><u>Ind 2149</u> Ct 1: Stealing. Ct 2: Agg burg.</p> <p><u>Ind 2149</u> Shortly after midnight Beynon went to the victim's home. From a vehicle parked in the driveway he stole a number of items, including the remote control to the home's garage roller door.</p> <p>Using the stolen remote control Beynon gained access to the garage. Once inside he placed a trolley underneath the roller door to</p>	<p><u>Ind 1237</u> Ct 1: 12 mths imp (cum ct 2 Ind 2149). Ct 2: No punishment.</p> <p><u>Ind 2149</u> Ct 1: 3 mths imp (conc). Ct 2: 16 mths imp (conc).</p> <p>TES 2 yrs 4 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the two agg home burg offences 'particularly serious'.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned totality principle.</p> <p>At [40] While the commission of each offence did not involve the agg features sometimes seen in offending of this kind, such as the use of weapons, direct confrontations with the occupiers of the house, or the theft of more valuable property, the offences were not without serious features. Each offence was committed at night when the occupant</p>

		<p>partners with whom he did not get along.</p> <p>Left school aged 15-16 yrs.</p> <p>Worked a number of roles; joined New Zealand army; 3 yrs active service, including East Timor.</p> <p>Mother and younger brother killed motor vehicle accident.</p> <p>Struggled following sudden loss of mother and brother; experienced anxiety, nightmares and flashbacks on return from East Time.</p> <p>Commenced using ecstasy and methyl aged 21 yrs; regular user of methyl; some periods of abstinence; increased use of alcohol when not using methyl.</p>	<p>prevent it closing. He then stole a mountain bike valued at about \$1,000. He left with all the stolen items.</p> <p>In the meantime, the victim, awoken by her dog barking, noticed the security light on. She also saw her vehicle was open. From inside the house she tried unsuccessfully to close the garage roller door. Afraid, she called her husband, who was overseas, and while on the telephone with him she investigated and discovered someone had broken into the garage and stolen the bike.</p> <p><u>Ind 1237</u> About a week and a half later Beynon and a co-offender were driving a stolen motor vehicle searching for open garages from which to steal property. In the early hrs of the morning, they stopped at the victim's home. Beynon entered the property through the garage door, while the co-offender waited in the vehicle as a lookout and getaway driver.</p> <p>Inside the victim's premises Beynon stole a number of items, including a purse, bank card, cash, sunglasses and some jewellery.</p>	<p>The sentencing judge accepted that in relation to the agg burg offences, no violence was used; there was no evidence the appellant was armed with any weapon and there was minimal damage to the properties.</p> <p>The sentencing judge found that some accumulation of the sentences was appropriate; the appellant engaged in two separate and distinct episodes of offending on different days and involving different victims.</p>	<p>was at home and asleep. The appellant then proceeded to steal valuable property. In respect of the offence [the subject of Ind 2149], the mode of entry and the manner in which the appellant prevented the garage door from closing had a degree of ingenuity. It also instilled fear into the occupant of the house. The offence [the subject of Ind 1237] was premeditated and involved the use of a co-offender as a look-out and getaway driver.</p> <p>At [44] The appellant committed two serious agg home burglaries in the space of 10 days. Accumulation of the sentences was appropriate to properly reflect the total criminality of the offending. ... The allegation that the TES infringed the first limb of the totality principle is without merit and must fail.</p>
1.	<i>The State of Western Australia v Quartermaine</i>	<p>22 yrs at time offending.</p> <p>Convicted after PG (25% discount).</p>	<p>Ct 1: Agg burg. Ct 2: Steal MV. Ct 3: Agg burg. Ct 4: AOBH. Ct 5: Agg burg.</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).</p>	<p>Allowed.</p> <p>Appeal concerned length of individual sentences cts 1, 3 and 5 and totality principle.</p>

<p>[2021] WASCA 145</p> <p>Delivered 16/08/2021</p>	<p>Extensive criminal history; previous terms of imp.</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>Ct 6: Stealing.</p> <p>Quartermaine was drinking excessively at his mother's home. Upset at being ejected from the premises 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 through an open window and stole the keys to a BMW motor vehicle. From a vehicle he stole a bag containing items valued at about \$400. He then then stole the BMW, later abandoning it after crashing it.</p> <p>Quartermaine was later identified by his fingerprints and DNA. He admitted the offences when interviewed (cts 1 & 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. During a scuffle ensued he punched the victim in the face about three times. The victim suffered soreness and a mark on his cheek. Quartermaine then ran from the house.</p> <p>Quartermaine was captured on CCTV and</p>	<p>Ct 5: 2 yrs imp (cum). Ct 6: No penalty.</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>Resentenced (25% 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 her Honour on a proper exercise</p>
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			<p>identified by one of the victims. He made no admissions when interviewed (cts 3 & 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 & 6).</p>		<p>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>
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