

# **Unlawful Wounding Offences**

s 301 *Criminal Code* – excluding ‘glassing’ offences

**From 1 January 2021**

## Glossary:

agg	aggravated
att	attempted
AOBH	assault occasioning bodily harm
conc	concurrent
cum	cumulative
ct	count
dep lib	deprivation of liberty
EFP	eligible for parole
imp	imprisonment
PG	plead guilty
susp	suspended
TES	total effective sentence
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
3.	<p><b>Gomboc v The State of Western Australia</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 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</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 abhorrent and sickening. Notwithstanding [his] pleas of guilty, his mental health issues and the otherwise high regard</p>

		Heavy alcohol and cannabis use.		<p>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 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>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 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</p>
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					<p>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>
2.	<p><b><i>Fernie v The State of Western Australia</i></b></p> <p><b>[2022] WASCA 20</b></p> <p>Delivered 18/02/2022</p>	<p>23 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Substantial criminal history.</p> <p>Highly dysfunctional upbringing; left home aged 14 yrs; homeless a number of yrs.</p> <p>Left school yr 9.</p> <p>Some labouring work.</p> <p>Relationship at time of sentencing.</p>	<p>Ct 1: Agg burglary. Ct 2: Unlawful wounding. Ct 3: GBH.</p> <p>Late at night Fernie, and two co-offenders, armed with a machete and crowbar, went to the home of the victims, CMK and his son, CDK. The three men were disguised. They kicked in the front door and prising open the screen door with the crowbar.</p> <p>Inside the home Fernie and the co-offenders made threats of violence towards the victims. CMK's young daughter was sleeping in a nearby bedroom.</p>	<p>Ct 1: 4 yrs imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: 8 yrs 2 mths imp (conc).</p> <p>TES 8 yrs 2 mths imp.</p> <p>EFP.</p> <p>The trial judge found the appellant criminally responsible for cts 2 and 3 on the basis that he knowingly aided another person to commit the offences (s 7(c) <i>Criminal Code</i>) and, alternatively, the offences were a probable consequence of the common intention formed by him and the co-offenders to</p>	<p>Dismissed - leave refused - on papers.</p> <p>Appeal concerned length of individual sentences and totality principle.</p> <p>At [33] Ct 3 could not reasonably be described as being in the least serious category of case, having regard to the circumstances in which it was committed; ... including the nature of the injuries sustained by CDK; ...</p> <p>At [34] ... it is not reasonably arguable that the sentence</p>

		Commenced cannabis use in his youth; methyl from aged 19 yrs.	<p>Fernie participated in an assault upon CMK. To defend his father CDK stabbed Fernie in the arm. Fernie was hospitalised as a result.</p> <p>During the course of the burglary both victims were struck with the machete. CMK sustained a laceration to his forearm while defending himself from the ongoing assault.</p> <p>CDK sustained serious injuries to his fingers after being struck by the machete. One of his index fingers required surgery.</p>	<p>prosecute an unlawful purpose of agg burglary (s 8 <i>Criminal Code</i>).</p> <p>The trial judge found the appellant's offending agg by the fact he was in company with other disguised offenders who were also armed; the offences were committed at a family residence late at night; the victim of ct 3 sustained serious injuries and at the time the appellant was the subject of a CBO and a CSIO.</p> <p>No demonstrated remorse or acceptance of responsibility for the offending.</p>	imposed on ct 3 was manifestly excessive. ... the appellant's claim that the individual sentences on cts 1 and 2 were manifestly excessive has no merit. Taken separately, each of those offences was a serious example of its type and the sentences that were imposed were well within the discretionary range ...
1.	<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</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>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.</p> <p>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</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]</p>

		<p>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>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 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,</p>	<p>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>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 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</p>
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			<p>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>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</p>	<p>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 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</p>
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			<p>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>		unjust. ...