

Possess child exploitation material and child pornography

s220 Criminal Code

s 60(1) Classification (Publications, Films and Computer Games) Enforcement Act

From 1 January 2021

Transitional Sentencing Provisions: Each of the two tables is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period
- Transitional provisions period
- Pre-transitional provisions period

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

agg	aggravated
att	attempted
CEM	child exploitation material
conc	concurrent
cum	cumulative
ct	count
CRO	conditional release order
EFP	eligible for parole
imp	imprisonment
indec	indecent
PCJ	pervert the course of justice
PG	plead guilty
sex pen	sexual penetration without consent
susp	suspended
SOTP	sex offender treatment program
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
7.	<p>OMC v The State of Western Australia</p> <p>[2023] WASCA 86</p> <p>Delivered 30/05/2023</p>	<p>30-31 yrs at time offending. 33 yrs at time sentencing.</p> <p><u>IND X</u> Convicted after trial.</p> <p><u>IND Y</u> Convicted after late PG.</p> <p>Short criminal history; no prior convictions for violence or sexual offending.</p> <p>Aged 12 mths when parents separated; lived with his mother until aged 12 yrs, then resided with his father; prosocial upbringing; suffered adverse psychological effects from parents' conflict.</p> <p>Good family support.</p> <p>Good employment history.</p> <p>Partner miscarried around time offending began; stress of FIFO work impact on his relationship.</p>	<p><u>IND X</u> Cts 1-6 & 8-9: Indec deal child U13 yrs. Ct 7: Att indec deal child U13 yrs.</p> <p><u>IND Y</u> Ct 1: Poss CEM.</p> <p>The victim was aged between 10 and 11 yrs at the time of the offending. She was the daughter of OMC's then partner and he was a father figure to her.</p> <p>The offences were representative of a course of ongoing sexualised conduct towards the victim over a period of 18 mths.</p> <p>The offending occurred in the family home, when OMC was alone with the victim.</p> <p>OMC indec dealt with the victim by rubbing her vagina with his fingers or squeezing her breasts (cts 1-6). He touched her vagina both over and under her clothing.</p> <p>On one occasion OMC pulled the victim onto her bed and att to touch her vagina (ct 7).</p> <p>On another occasion OMC called out to the victim to come into his bedroom. When the victim eventually did so he</p>	<p><u>IND X</u> Cts 1; 2 & 5: 18 mths imp (conc). Ct 3: 2 yrs imp. Ct 4: 2 yrs imp (conc). Ct 5: 18 mths imp (conc). Cts 6 & 9: 2 yrs imp (cum). Ct 7: 12 mths imp (conc). Ct 8: 8 mths imp (conc).</p> <p><u>IND Y</u> Ct 1: 12 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p><u>IND X</u> The sentencing judge characterised the offending against the victim as 'very serious'; it was a gross breach of trust; the victim was aged between 10-11 yrs; a degree of force was used in the offending and it must have been clear to the appellant that the victim was unhappy as she repeatedly asked him to stop and leave her alone; he manipulated her by telling her she could not tell her mother or he would be in trouble and would no</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned totality principle.</p> <p>At [39] ... The appellant took advantage of a vulnerable young child by persistently sexually abusing her over a period of at least 18 mths. The offences were particularly agg by the use of a degree of force and that the appellant frequently persisted when the victim made it clear to him that she did not want him to touch her. The appellant sought to manipulate the victim by telling her that if she complained about his actions he would be out of her life and he would be unable to pay for the things that she liked. ... [he] was undeterred by her protests and attempts to resist this behaviour.</p> <p>At [40] The appellant's actions have had and are likely to have an ongoing adverse effect upon the victim.</p> <p>At [46] In our opinion, having regard to all of the relevant facts and circumstances of the present case and all relevant sentencing factors, the TES ... bears a proper relationship to the overall criminality in all of the offences committed by the appellant.</p>

			<p>was standing, naked, in the doorway (ct 8).</p> <p>The victim would try to prevent what was happening to her and would tell OMC to go away.</p> <p>When arrested OMCs laptop was seized and was found to contain six videos depicting penetrative sex of a female child, including very young children, one of whom looked no more than 3 or 4 yrs old.</p>	<p>longer be in her life and the period of time over which the offending occurred.</p> <p><u>IND Y</u> The sentencing judge found this offence serious and the material 'graphic and revolting'.</p> <p>Offending significant negative impact on the victim.</p> <p>No acceptance of responsibility; continued to deny the offending.</p>	...
6.	<p><i>Guagliardo v The State of Western Australia</i></p> <p>[2023] WASCA 71</p> <p>Delivered 02/05//2023</p>	<p>36-40 yrs at time offending. 44 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No criminal history.</p> <p>Positive childhood; youngest of two children; strong relationship with his mother; family remain supportive.</p> <p>Educated to yr 12; commenced university studies before completing TAFE diploma.</p>	<p><u>IND 1475</u> Cts 3-4; 6-8: Indec deal child U13 yrs. Cts 5; 9-10: Sex pen child U13 yrs.</p> <p><u>IND 2189</u> Cts 1-4: Poss CEM.</p> <p><u>IND 1475</u> The four female victims, P, M, R and S, were all aged 10 yrs or under at the time of the offending.</p> <p>Guagliardo was friends with the victims' parents.</p> <p>P, aged 10 yrs, was travelling as a passenger seated in the front of Guagliardo's car. During the trip he put</p>	<p><u>IND 1475</u> Ct 3: 12 mths imp (conc). Ct 4: 12 mths imp (conc). Ct 5: 3 yrs imp (conc). Ct 6: 6 mths imp (cum). Ct 7: 12 mths imp (conc). Ct 8: 18 mths imp (conc). Ct 9: 4 yrs imp (cum). Ct 10: 4 yrs imp (conc).</p> <p>TES 7 yrs 6 mths imp.</p> <p><u>IND 2189</u> Ct 1: 6 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 2 yrs imp (conc).</p>	<p>Dismissed (on papers).</p> <p>Appeal concerned length of sentence ct 4 (IND 2189) and totality principle.</p> <p>At [60] In the present case the seriousness of the contact sex offences was reflected in the fact that there were four victims and that the offences involved significant breaches of trust. In each case the appellant had access to the children because he was a trusted friend of the family. He obtained access by causing the families to believe that he was providing massages for therapeutic purposes. He used this</p>

	<p>Employed computing field a number of yrs; past 19 yrs worked as a labourer, delivery driver and storeman; sole financial provider; struggles financially.</p> <p>Married 22 yrs; wife remains supportive; two young children.</p> <p>Diagnosed and medicated for ADHD from aged 12 yrs; suffers chronic fatigue; gall bladder issues; abdominal pain; migraines; anxiety and depression.</p> <p>No issues with alcohol or illicit substance use.</p>	<p>his hands on her inner thigh. He then touched and rubbed her vagina over her clothing (ct 3).</p> <p>Sometime later Guagliardo was with M. While she was sitting on the armrest of a couch he told her he would massage her. During the massage he placed his hand under her underwear and around her genital area, without touching it. He then touched her just above the clitoris. M asked him to stop, but he continued. (ct 4).</p> <p>M got up and returned a short time later. Guagliardo again placed his hand under her underwear. She asked him to stop, but he did not do so. While his hands were inside her underwear he penetrated her labia with his fingers (ct 5).</p> <p>R, aged between 7 and 9 yrs of age, was on her bed. Guagliardo offered to give her a massage and she agreed. He commenced massaging her, groping her breasts above her shirt. He stopped when R's mother came into the room (ct 6).</p> <p>On another occasion, R, aged 9-10 yrs of age, was sitting next to Guagliardo. She agreed to a massage. When he commenced doing so she told him to stop, but he continued. He grabbed R's breasts under her shirt (ct 7) then moved down towards her hips. She again told</p>	<p>TES 2 imp (cum with IND 1475).</p> <p>TES 9 yrs 6 mths imp.</p> <p>EFP.</p> <p>The trial judge found the offending very serious and not at the lowest or lower end of the scale; the quantity of the CEM was significant; some of the material was classified in the worst category, including material that displayed a significant level of perversion or debauchery; the appellant committed the offending over a lengthy period, being a three-yr-period of consistent interaction with CEM files; the material was downloaded on numerous occasions and he copied it across other devices, indicative of a person with a real and significant interest in CEM; the children involved were vulnerable and he preyed on that vulnerability in order to take possession of the CEM; the offending ended only when the CEM was seized, it was not a case</p>	<p>access, and the opportunity to touch the children without arousing suspicion, to satisfy his own perverted sexual desires. Whilst no physical or verbal coercion was involved, none was needed. On three occasions the touching advanced to actual sex pen. The victims were vulnerable having regard to their age. S was particularly vulnerable due to her autism.</p> <p>At [67] Having regard to the max penalties for the offences, the seriousness of the offending conduct (including the number of offences and the number of victims), the personal circumstances of the appellant and the sentences imposed in broadly comparable cases, it is not reasonably arguable that the TES ... imposed on IND 1475 was plainly unreasonable or unjust.</p> <p>At [69] In respect of the CEM offences committed by the appellant the seriousness is reflected in the very large number of images and videos, the period of time over which the material was collected and the nature of that material. It included numerous images and videos in the most serious categories. Whilst there was no evidence that [he] had engaged in this activity for</p>
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			<p>him to stop but he continued. Guagliardo then put his hands in her pants and started rubbing her vaginal area (ct 8).</p> <p>S, aged 7 yrs, has autism. She suffered from stomach pains. In consultation with her mother Guagliardo would sometimes massage her stomach to relieve her pain. On one occasion he was massaging her he put his fingers inside her vagina, causing her pain (ct 9). On another occasion he kissed and licked her vulva (ct 10).</p> <p><u>IND 2189</u> On the investigation of Guagliardo in relation to allegations of sexual offending, his mobile telephone, and a number of his computer devices were seized. His mobile phone and three of the devices were found to contain CEM at Cat 1, 2, 3, 4 and 5. The material depicted children in the 8-13 yr age category engaging in sexual activity. The total number of images was 35,435 and 323 videos.</p> <p>When spoken to by police Guagliardo denied the offending.</p>	<p>of him voluntarily desisting.</p> <p>Offending profound emotional and psychological effects on the victims; all required counselling to cope with the effects of the offending.</p> <p>Appellant continued to deny the offending; no demonstrated remorse; real risk of reoffending; guarded prospects of rehabilitation.</p>	<p>commercial reward, the factors referred to place this into a serious category of offending of this type.</p> <p>At [75] Having regard to the max penalty for the offence of poss of CEM, the seriousness of the offending conduct in this case (including the number of images and the nature of those images), the personal circumstances of the appellant and sentences imposed in broadly comparable cases, it is not reasonably arguable that the sentence ... on ct 4 on IND 2189 was manifestly excessive.</p> <p>At [76] As to whether the overall TES of 9 yrs and 6 mths imp infringed the first limb of the totality principle, the offending on both indictments occurred within the same time period but involved separate and distinct conduct. In the circumstances cum sentences were appropriate, ...</p>
5.	<p><i>NSA v The State of Western Australia</i></p> <p>[2023] WASCA 53</p>	<p>49-55 yrs at time offending. 57 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p>	<p>Ct 1: Persistently engaged in sexual conduct child U16 yrs. Ct 2: Sex pen child U13 yrs (digital). Ct 3: Poss CEM. Ct 4: Att PCJ.</p>	<p>Ct 1: 5 yrs imp (cum). Ct 2: 1 yr imp (cum). Ct 3: 4 mths imp (cum). Ct 4: 8 mths imp (cum).</p>	<p>Allowed.</p> <p>Appeal concerned error in law (cum of sentence of ct 2 with ct 1). Individual sentences not challenged.</p>

Delivered 06/04/2023	<p>Short and minor criminal history.</p> <p>Good childhood; supportive parents and younger siblings.</p> <p>Victim of sexual abuse aged 10 yrs.</p> <p>Dyslexic; left school yr 10.</p> <p>Regular employment history; worked variety of jobs.</p> <p>Two adult children in addition to S and T; at time of sentencing with current partner four yrs.</p> <p>Reasonable physical health.</p>	<p>The victims, S and T, are brother and sister and NSA's children. T has a cognitive impairment.</p> <p>By reason of a Family Court order S was placed in the care of her father. Over a period of five yrs, from the time she was 11 or 12 yrs old, NSA engaged in varying kinds of sexual conduct with S (ct 1).</p> <p>When S was 12 yrs old NSA penetrated her vagina with his finger (ct 2).</p> <p>In addition to the conduct the subject of cts 1 and 2 NSA would engage in other inappropriate conduct towards S.</p> <p>NSA's mobile phone was found to contain three photographs of T, aged about 12 years old, posing in women's lingerie and high-heeled shoes. The photographs were classified at Cat 1 (ct 3).</p> <p>In custody, NSA used intermediaries to suborn S to not cooperate in the prosecution against him (ct 4).</p>	<p>Ct 2 reduced from 3 yrs imp for totality and Ct 4 reduced from 18 mths imp for totality.</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending against S was prolonged and insidious having regard to the pretexts created by the appellant in order to cover his offending and his ongoing sexualisation of S; S was particularly vulnerable and T a very vulnerable young person by reason of his cognitive impairment.</p> <p>The sentencing judge found the att to PCJ serious; he enlisted the assistance of others close to his daughter to guilt her into withdrawing her assertions.</p> <p>Demonstrated lack of victim empathy and insight into consequences of his behaviour.</p>	<p>Resentenced (20% discount):</p> <p>Ct 1: 5 yrs imp (cum). Ct 2: 3 yr imp (conc). Ct 3: 4 mths imp (cum). Ct 4: 11 mths imp (cum).</p> <p>Ct 4 reduced from 18 mths for totality.</p> <p>TES 6 yrs 3 mths imp.</p> <p>EFP.</p> <p>At [49] ... s 321A(13) precluded the sentencing judge from ordering the sentence she imposed on ct 2 to be served cum upon the term imposed on ct 1. ... it was not open to the sentencing judge to order the accumulation of the sentence on ct 2 with the sentence on ct 1. ...</p> <p>At [75] ... the sexual acts the subject of ct 1, ... did not include the offending the subject of ct 2.</p> <p>At [120] ... the appellant's offending the subject of ct 1 had a number of serious elements. The appellant's offending involved an egregious breach of the position of trust occupied by the parent of a child. As the appellant's daughter, S was, ...</p>
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					‘particularly vulnerable’. The offending was extremely prolonged, occurring over a period spanning five yrs. The appellant engaged in a series of pretexts to facilitate his carrying out of the various sexual acts. Further, ... the offending has had a profound adverse effect upon S.
4.	<p><i>De Mouilpied v The State of Western Australia</i></p> <p>[2023] WASCA 22</p> <p>Delivered 07/02//2023</p>	<p>50 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p> <p>Supportive parents.</p> <p>Bachelor of Nursing.</p> <p>Good employment history; police officer aged 19-26 yrs; paediatric nurse time of arrest.</p> <p>Married 16 yrs; separated; two further relationships; single at time sentencing.</p> <p>Suffered stroke aged 26 yrs; heart condition, not causing any significant long-term health issues; experienced number of traumatic events, including episodes of violence and</p>	<p>Ct 1: Producing CEM.</p> <p>Ct 2-10 & 12: Indec deal child 13-16 yrs.</p> <p>Ct 11 & 13: Indec act.</p> <p>Ct 14: Poss CEM.</p> <p>The three female victims, all aged 15 yrs, would walk past De Mouilpied’s home on the way to school. De Mouilpied would stand at his window facing the street and masturbate. His behaviour was seen by the victims (cts 2-13).</p> <p>During a search of De Mouilpied’s home his mobile phone was located. Sixty-two video clips of CEM were found on the device. These recordings were made when he would interact over webcam with female children under 16 yrs of age on an internet chat site and he would invite the children to ‘play’, that is engage in sexual activity.</p> <p>On at least eight occasions the child or children complied with De Mouilpied’s requests. On other occasions, the child</p>	<p>Ct 1: 2 yrs 10 mths imp.</p> <p>Ct 2-10 & 12: 5 mths imp (conc, cum ct 1).</p> <p>Ct 11 & 13: 2 mths imp (conc, cum ct 1).</p> <p>Ct 14: 15 mths imp (conc).</p> <p>TES 3 yrs 5 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending the subject of ct 1 ‘a very serious offence and is not offending at the lower or lowest level end of the scale of offending of this kind’.</p> <p>The sentencing judge found the appellant’s offending serious; he procured or encouraged children to engage in sexual behaviour, one child as young as four yrs of age; by this conduct he exploited, humiliated and</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned error (characterisation of seriousness of offending subject of ct 1); length of sentence on ct 1 and totality principle.</p> <p>At [52] It cannot reasonably be said that the offending the subject of ct 1 was at the lower or lowest end of the scale of offending of its kind. Over an extended period of time, the appellant produced 62 video clips in which he filmed himself masturbating while a significant number of young children watched. The appellant’s behaviour had the capacity to disturb, shock and corrupt his young victims. Moreover, eight of the video clips involved the appellant enticing children, who were very young, to engage in sexual behaviour. The worst instance was the video clip the appellant produced that showed a very young child being sex pen twice by an adult.</p>

		<p>suicide as police officer and nurse; antidepressants at time sentencing.</p>	<p>or children did not engage in sexual activities but were present and watched De Mouilpied masturbate (cts 1 & 14).</p> <p>Eight of the video clips were classified at Cat 1; 2 and Cat 4. The Cat 4 video clip depicted a child of about 4 yrs of age engaging in sexual acts with an adult male.</p> <p>Also located on De Mouilpied's mobile phone were video clips of him masturbating to school children walking past his window. These videos were not the subject of any of the charges dealt with.</p>	<p>corrupted the children; he also deliberately masturbated and exposed children to that sexual behaviour; he recorded the conduct on his mobile phone to do with it as he saw fit; continually re-victimising the children involved every time he viewed the footage.</p> <p>Remorseful; developed insight into his offending on undertaking psychological treatment.</p>	<p>At [53] Although the appellant was not in the same room as his child victims, nor did he touch them, the use of video chat rooms to remotely entice victims to engage in sexual behaviour or to watch an adult engage in sexual behaviour involves serious and substantial criminality. ...</p> <p>At [54] It is clear ... the appellant produced the CEM for his sexual gratification and for the thrill it provided. While there is nothing to suggest [he] intended to distribute the CEM he produced, had [he] intended to distribute the CEM, whether or not for profit, his offending would have been worse. The absence of these circumstances does not mean that his actions did not constitute serious, or very serious, offending.</p> <p>At [64] ... it is clear that the sentence imposed on ct 1 properly reflected the seriousness of the appellant's offending. ... The sentence is not manifestly excessive.</p> <p>At [67] The offending the subject of cts 2 – 13 involved deliberate, persistent and highly offensive behaviour towards three separate victims over the course of eight days.</p>
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					<p>The victims were vulnerable children walking to school, as the appellant well knew and relied upon. ... Given its separate and distinct nature, the offending required additional overall punishment to the offending the subject of ct 1.</p> <p>At [68] In our opinion, the TES ... was a proper reflection of the appellant's overall criminality involved in all of the offences, viewed in their entirety, having regard to the circumstances of the case, ...</p>
3.	<p><i>Newton v The State of Western Australia</i></p> <p>[2023] WASCA 7</p> <p>Delivered 17/01/2023</p>	<p>31-34 yrs at time offending. 36 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>No prior criminal history.</p> <p>Only child from parents' union; three older half-siblings; parents profoundly deaf; mother suffering cancer time of sentencing.</p> <p>Left school yr 11; TAFE studies; university degree.</p> <p>Employed various roles; most recent work ceased following charges.</p>	<p>Ct 1; 28; 30; 33; 35; 37 & 39: Indec deal child U13 yrs. Cts 2-6; 9; 10; 14; 16; 20; 22; 24 & 26: Sex pen child U13 yrs. Cts 7; 8, 11-13; 15; 17-19; 21; 23; 25; 27; 29; 31; 32; 34; 36; 38 & 40: Indec recording child U13 yrs. Cts 41 & 42: Poss CEM. Ct 43: Fail to obey data access order.</p> <p>Newton was a close friend of the victim's mother and her stepfather. Over a period of about four and a half yrs Newton repeatedly sexually abused the victim from when she was eight yrs old.</p> <p>The sexual activity occurred in a caravan occupied by Newton and at another address at which he resided.</p>	<p>Cts 1; 28; 30; 33; 37 & 39: 18 mths imp (conc). Ct 2: 5 yrs imp. Cts 3; 4 & 20: 5 yrs imp (conc). Ct 5: 4 yrs imp (cum). Cts 6; 7; 9; 11-13; 15; 17-19; 21; 23; 25; 27; 29; 31; 32; 34; 36; 38; 40 & 42: 12 mths imp (conc). Cts 8 & 35: 12 mths imp (cum). Cts 10; 14; 16; 26; 22 & 24: 4 yrs imp (conc). Ct 41: 15 mths imp (conc). Ct 43: 3 mths imp (cum).</p> <p>TES 12 yrs 6 mths imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (individual sentences not challenged).</p> <p>At [7] While we accept that the TES imposed on the appellant was certainly high, and at the upper end of the range of sentences customarily imposed following pleas of guilty for offending of this type, we are not satisfied that the TES was so high as to manifest error. The sexual offending ... involved a high degree of criminality and the fact that he recorded the offending, for his own gratification, distinguished his offending from a number of the previous cases relied upon by</p>

		<p>Number of short-term relationships; no significant unions since aged 20 yrs.</p> <p>History of cannabis and alcohol use.</p>	<p>The offences involved the penetration of the victim's vagina with his penis. He also penetrated her mouth and vagina with his penis and took photographs of the offending.</p> <p>On other occasions Newton took photographs standing naked over the victim, while her legs were in the air and his penis was pointed toward her vagina and while the victim was kneeling in front of his erect penis.</p> <p>On the execution of a SW at Newton's address, a computer and hard drive were located, which later revealed 11,009 images or videos of CEM material.</p> <p>Six comic books depicting children engaged in sexual poses or activities were also found.</p> <p>Also located was Newton's tablet device, for which he refused to provide the passcode.</p>	<p>The sentencing judge found the offending serious; the victim was very young; the significant age disparity between her and the appellant; the gross breach of trust; the persistence of the offending and the fact the appellant recorded much of it.</p> <p>The sentencing judge found the CEM material in the appellant's poss included material in the more serious category of CEM.</p> <p>Accepting of responsibility; evidence of remorse; average risk of reoffending.</p>	<p>him. The offending, as a whole, called for a very substantial term of imp and we are not satisfied that the learned sentencing judge erred in imposing the sentence that she did.</p> <p>At [63] ... The sentence was certainly severe. It nevertheless fits broadly within the range of sentences imposed for offending of this type, and the present case had a number of particular features not present in many of the authorities.</p> <p>At [64] ... the offending itself was very serious. In particular it involved four distinct categories of offending, the presence of which called for accumulation of terms of imp, thus increasing the TES. The presence of these additional categories serves to distinguish the present case from many of the cases on which the appellant relied.</p> <p>At [65] ... the sexual offending against the victim was itself very serious, given the victim's young age, the significant age disparity between the appellant and the victim, the gross breach of trust for his own sexual gratification and the significant period over which and numerous (18) occasions on which the offending occurred. The seriously</p>
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					<p>damaging effects on the victim the appellant persistently and callously treated the victim as a sexual plaything for his sexual gratification.</p> <p>At [66] ... the ... offending included recording and retaining photographs of his offending on the victim. That conduct contributed substantially to [his] overall criminality. [He] recorded his abuse of the victim for his own sexual gratification, in essence to extend and prolong his gratification from abusing the victim into the future. In this way, the victim could be said to have been re-victimised each time [he] viewed, and used, those images for his sexual gratification.</p> <p>At [67] ... the very significant quantity of CEM in the appellant's poss called for a further increase in the TES.</p> <p>At [68] ... As this Court has recognised, a cum sentence will often be appropriate for failure to comply with a data access order.</p>
2.	<p><i>Oreo v The State of Western Australia</i></p> <p>[2022] WASCA 62</p>	<p>48-49 yrs at time offending. 50 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p>	<p>Cts 1-2; 6-8: Indec deal child 13-16 yrs. Cts 3-5; 9: Sex pen child 13-16 yrs. Ct 10: Procured a child U13 yrs to do indec act. Ct 11: Poss CEM.</p>	<p>Cts 1 & 2: 4 mths imp (conc). Cts 3 & 4: 18 mths imp (conc). Ct 5: 3 yrs imp (cum).</p>	<p>Allowed.</p> <p>Appeal concerned miscarriage of justice (erroneous understanding conduct in relation to J was criminal</p>

Delivered 03/06/2022	<p>Minor prior criminal history.</p> <p>Two siblings; loving and caring parents; not subjected to abuse; father alcohol-dependent; witnessed his father assault his mother.</p> <p>Parents deceased; supportive sister.</p> <p>Homosexual; came out 3 yrs prior to sentencing; difficulties dealing with his sexuality.</p> <p>Completed yr 10 high school.</p> <p>Sound work history; employed at time of offending.</p> <p>History of amphetamine and methyl abuse.</p>	<p>The offending involved two separate victims, J and T, both 14-yr old boys, and three separate incidents.</p> <p>The first victim, J, met Oreo on an online dating application. On the site J indicated he was about 20 yrs old. When Oreo questioned J as to his age he told Oreo he was 16 yrs old.</p> <p>Oreo met J at a public toilet. J was wearing his school uniform. Inside a toilet stall they kissed and engaged in a number of sexual acts (cts 1-6).</p> <p>Oreo and J continued to communicate with each other about meeting for sex.</p> <p>A few days later they again arranged to meet. Oreo picked J up in his car before he went to school. J was again wearing his school uniform. After parking the car Oreo kissed J on the mouth, touched his penis and performed oral sex on him, before dropping J near his school (cts 7-9).</p> <p>After this incident J's mother found text messages on her son's phone about meeting men for sex and contacted the police. When interviewed J disclosed the offending and identified Oreo from a digiboard.</p>	<p>Cts 6 & 7: 4 mths imp (conc). Cts 8 & 10: 12 mths imp (conc). Ct 9: 18 mths imp (cum). Ct 11: 12 mths imp (cum).</p> <p>TES 5 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found there was a significant likelihood the appellant was aware J was under the age of 16 yrs and that he was aware T was 14-yrs old.</p> <p>The sentencing judge found the offending aggravated by the fact it involved two different 14-yr-old males; the offending and surrounding text messages indicated a sexual interest in underage males and his willingness to act on that interest; it was premediated; involved unprotected pen sexual activity; there was a significant age disparity; he sent messages and intended to distribute the image of T's penis in an att to enlist other adult males to engage in</p>	<p>in that J was U18 yrs and any belief J was at least 16 yrs not mitigating).</p> <p>Sent back to District Court for re-sentencing.</p> <p>At [48] ... it was an admitted fact that J had told the appellant he was 16 yrs old. While we accept that the appellant may have faced some challenges in proving an honest belief, we cannot conclude that he had no reasonable prospect of doing so. The fact that counsel's misapprehension effectively deprived the appellant of the opportunity to att to prove that fact constitutes a miscarriage of justice in these circumstances.</p> <p>At [52] ... we are satisfied that the misunderstanding of defence counsel gave rise to a miscarriage of justice in all the circumstances of this case.</p>
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1.	<p><i>CDL v The State of Western Australia</i></p> <p>[2022] WASCA 18</p> <p>Delivered 18/02/2022</p>	<p>53-57 yrs at time offending. 60 yrs at time sentencing.</p> <p>Convicted after trial (cts 1-6 & 8).</p> <p>Convicted after very late PG (ct 9) (5% discount).</p> <p>No prior criminal history.</p> <p>Born and raised in WA; good childhood; siblings with whom he still</p>	<p>Cts 1-3: Persistently engaged in sexual conduct child U16 yrs.</p> <p>Cts 4-6 & 8: Produced CEM.</p> <p>Ct 9: Poss CEM.</p> <p>CDL maintained contact with his ex-wife who had re-married and given birth to triplets. He would often look after the triplets and, on occasions, he took them on outings. CDL offended against two of the triplets, E and C, over a period of yrs.</p>	<p>Ct 1: 4 yrs imp (conc).</p> <p>Ct 2: 4 yrs imp (cum).</p> <p>Ct 3: 3 yrs imp (cum).</p> <p>Ct 4: 3 yrs 6 mths imp (conc).</p> <p>Ct 5: 3 yrs 6 mths imp (conc).</p> <p>Ct 6: 2 yrs 4 mths imp (conc).</p> <p>Ct 8: 6 mths imp (cum).</p> <p>Ct 9: 12 mths imp (cum).</p> <p>TES 12 yrs 6 mths imp.</p>	<p>Dismissed (leave refused) – on papers.</p> <p>Appeal concerned totality principle.</p> <p>At [74] ... Without question, the offending was very serious. The appellant committed offences in respect of four victims, all of whom were very young and highly vulnerable. B was a toddler. E and C were each young girls, ... The appellant took advantage of the</p>

		<p>maintains contact.</p> <p>Educated to yr 12; did well at school.</p> <p>Employed variety of occupations.</p> <p>Divorced; son from union.</p> <p>Involved in children's sport.</p> <p>Diabetic; experiences sciatic back pain following work injury.</p> <p>No issues with alcohol or illicit drugs.</p>	<p>Later CDL met and befriended B and M's mother. He would babysit the children.</p> <p>The victim, E, was aged between 6 and 8 yrs of age; the victim, C, was aged between 6 and 10 yrs of age; the victim, M, was aged 11 or 12 yrs of age and the victim B, was a toddler, aged 22 mths.</p> <p>CDL indec dealt with E, C, B and M. He made video recordings of E on 80 separate occasions; C on 71 separate occasions and B on 30 separate occasions.</p> <p>The charges in respect of E, C and B are representative of the appellant's offending behaviour.</p> <p>CDL video recorded some of the offences he committed against E, C, B and M. The CEM he produced was classified at Cat 1 to 3.</p> <p>A number of computer devices were seized from CDL's home. They contained 26,425 videos and images of children aged under 1 yr to approx 10 yrs of age. Cat 1: 893 videos and 21,260 images; Cat 2: 109 videos and 204 images; Cat 3: 111 videos and 1,237 images; Cat 4: 731 videos and 1,418 and in Cat 5: 178 videos and 328 images.</p>	<p>EFP.</p> <p>The trial judge found the offending against E, C and B demonstrated a high degree of perversion or deviance on the appellant's part; E, C and B were very young and could not have been more vulnerable; the offending was brazen; there was 'a considerable age difference' between the appellant and each of the victims; he was in a position of trust and authority and the offending involved a significant abuse of trust; he repeatedly used the opportunity to look after the children to sexually abuse them; the offending was repetitious and, in the case of E and C, occurred on many occasions over a period of yrs; the offending against B was limited to four occasions, in the space of a matter of wks.</p> <p>No expressions of remorse and no effort made towards rehabilitation.</p>	<p>relationships that he had with their mothers to sexually abuse the victims. The offending against E and C occurred over about a yr in the case of E and over a period of yrs in the case of C. While the offending in relation to B occurred over a much shorter period and was less physically invasive, having regard to B's age and all the circumstances of the offending, it involved a high degree of criminality.</p> <p>At [75] Not only did the appellant commit the offences the subject of cts 1, 2 and 3, he recorded what he had done ... The only reasonable inference that can be drawn from the appellant's recording of the material is that he wished to watch it in the future for his sexual gratification. In addition, the appellant committed the offence against M ... and was found in poss of a very substantial amount of CEM ... Some accumulation was required having regard to the number of victims and offences committed by the appellant, to the seriousness of the offences and to her Honour's reduction of the individual sentences for cts 1, 2, 3, 8 and 9 in applying the totality principle. ...</p>
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