Grievous Bodily Harm

s 297 *Criminal Code*.

From 1 January 2021

Transitional Sentencing Provisions: This table is divided into thirds based on the three relevant periods of Sentencing Provisions:

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

Glossary:

agg	aggravated
att	attempted
conc	concurrent
cum	cumulative
ct	count
CRO	conditional release order
CSI	conditionally suspended imprisonment
dep lib	deprivation of liberty
EFP	eligible for parole
GBH	grievous bodily harm
imp	imprisonment
ISO	intensive supervision order
methyl	methylamphetamine
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
14	***Purcell v The State of Western Australia*** **[2025] WASCA 86** Delivered 15/05/2025	49 yrs at time offending. 50 yrs at time sentencing. Convicted after PG (25% discount). Criminal history; disorderly behaviour; failing to obey police orders; obstructing police; traffic offences. Born in NSW; youngest of four children; separated parents; grew up in a supportive home. Left school after year 10; professional bodyboarder for 15 years; employed in the oil and gas industry at time of offending. Good physical and mental health. Issues with alcohol.	1 x GBH. The victim of the offence, MH, is a homeless 25 yr old man with significant mental health issues. On the evening in question, the appellant and a co-accused, C, were sitting on the ground eating food in the CBD. C offered the victim some food, which was declined. C then became involved in a verbal altercation with the victim. The appellant was intoxicated to the extent that he could not walk straight. He approached the victim, and threw food at his head. The appellant then kicked the victim to the head. C then approached the victim and kicked him in the head with significant force. The second kick caused the victim's head to hit the roller shutter immediately behind him and render him unconscious. C then walked away. As a result of the offending, the victim suffered a bilateral fracture to his jaw. The appellant remained at the scene and tried to rouse the victim. He then walked to a convenience store nearby. Five hours later, the appellant was too intoxicated to participate in an EROI with police. It was alleged that the appellant and C had formed a common intention to the assault the victim, which included kicking him to the head whilst he was sitting on the ground. The grievous bodily harm was said to be a probable consequence of the prosecution of that unlawful purpose.	Ct 1: 20 mths imp. EFP. The sentencing judge described the offending as an example of gratuitous and senseless violence. The sentencing judge found that the attack was unprovoked, and that there was a degree of persistence to the attack. The sentencing judge found that the victim had suffered ongoing medical issues as a consequence of the broken jaw. The sentencing judge found that it was not entirely clear whether the appellant appreciated the extent of his alcohol problem. It was found that the appellant's previous offending was consistent with his problem with alcohol; however, the current offending was an escalation. The sentencing judge took into account the fact that the appellant had been willing to participate in offender-victim mediation and had written an apology letter to the victim.	Appeal dismissed (leave refused). Appealed alleged that the type and sentence imposed was manifestly excessive. At [133] 'offences of this nature are ordinarily dealt with by imposing sentences of immediate imprisonment. As a matter of fact, suspended sentences are rare and usually imposed where there are unusual mitigating factors'. At [136] 'as to the seriousness of the present offence, it involved alcohol fuelled violence in a public place. There was an element of persistence in the attack, in that both offenders approached and struck the victim. The victim was vulnerable in that he was sitting on the ground throughout the attack and had little means of defending himself or escaping. He was also outnumbered by his assailants. In addition, the victim was homeless and suffering mental health issues. There was no meaningful provocation for the conduct. It was a senseless act of violence.' At [137] 'the injury suffered by the victim was not life-threatening, though it was plainly serious. He required hospitalisation and has suffered ongoing medical issues, though he did decline the recommended surgery. The offence was in the lower mid-range for offences of this type.' At [138] 'as to the appellant's personal factors, the most significant mitigating factor was his plea of guilty, which was entered at the earliest reasonable opportunity. The appellant did remain for a short time at the scene and made some perfunctory attempts to rouse the victim. However, he then walked away without rendering any assistance or seeking to call for medical assistance for the victim. He expressed remorse in handwritten letters and the sentencing judge accepted that these expressions were genuine. He has a minor criminal record. He has a good work history. These personal factors have to be weighed against the importance of personal and general deterrence in sentencing for offences of this nature.' At [139] 'in our view it was reasonably open to the sentencing judge to be positively satisfied that a suspended or conditionally suspended term of imprisonment was not an appropriate sentencing option, having regard to the facts and circumstances of the particular case and all relevant sentencing factors and principles.' At [140] 'as to the length of sentence, it is unnecessary to refer to the facts of all the comparable cases. It is sufficient to note that a term of 20 months' imprisonment to be served immediately is consistent with sentences imposed in other cases of this kind. Whilst the appellant had good antecedents, reasonable prospects of rehabilitation if he

					addressed his alcohol problem, and was less culpable because he was liable on the basis of a common intention under s 8 of the Code, the sentence imposed properly reflected those factors. It is not reasonably arguable that the sentence was unreasonable or plainly unjust.
13.	***The State of Western Australia v Edwins*** **[2025] WASCA 73** Delivered 19/05/2025	23 yrs at time offending. 24 yrs at time sentencing. Convicted after PG (15% discount). Criminal history; convictions for violence and domestic violence. Indigenous man; exposed to violence as a child; parents suffer from mental health issues. Left school in yr 11; previously employed as a tradesman and gardener. Methyl use from 18 yrs; heavy methyl use at time of offending.	Ct 1: Agg AOBH Ct 2: Agg GBH At the time of the offending, the respondent and the victim SW were in a family relationship. The respondent and SW share a daughter, AE. <u>Ct 1:</u> At the time of the offending the respondent was subject to a CBO for assaulting a public officer. The respondent was at home in the lounge room with AE. When he awoke he noticed his water had been taken. The respondent began yelling at SW, and threw her mobile phone at her. The phone struck her on the left elbow, causing pain and swelling. As SW left the house, the respondent again threw the mobile towards her, missing and hitting a fence. As a result of this offending the respondent was released on bail. <u>Ct 2:</u> Five months later, the respondent and SW were at home with AE. An argument ensued, and SW left with AE. The respondent entered the house in which SW was staying and picked up AE. He then kicked SW as she was lying on the bed. The respondent kicked SW to the face, head and neck. As a result of the kicking, SW suffered a splenic laceration and internal bleeding.	Ct 1: 6 mths imp (cum). Ct 2: 2 yrs imp (cum). TES: 2 yrs 6 mths imp. EFP. The sentencing judge found that the respondent was genuinely remorseful. The sentencing judge erroneously characterised SW's injuries, without medical intervention, as one which would cause permanent injury to her health. The sentencing judge found that the respondent was severely affected by alcohol when he committed ct 1 and under the influence of methyl when he committed ct 2.	Appeal allowed. Appealed concerned length of sentence imposed on ct 2 and first limb of totality principle. Resentenced: Ct 1: 6 mths imp (cum). Ct 2: 4 yrs imp (cum). TES: 4 yrs 6 mths imp. EFP after 2 yrs 6 mths. At [62] 'in the present case, the respondent's offending on count 2 was very serious. The gravity of his offending is obvious from our account of the relevant facts and circumstances. It was a significant aggravating factor that, when he committed count 2, the respondent was on bail for count 1 and that the bail included conditions for SW's protection.' At [63] 'there was some mitigation. The principal mitigating factor was the respondent's plea of guilty. The primary judge allowed a discount of 15% for the plea. The respondent was aged 23, and therefore youthful, at the time of the offending. His Honour accepted that the respondent was genuinely remorseful.' At [64] 'the respondent has been away from his country … while he has been a remand prisoner and during that time he has had no contact with AE.' At [65] 'the respondent has a prior criminal record … The previous convictions underscore the importance of personal deterrence.' At [66] 'denunciation of the respondent's criminal conduct and personal and general deterrence were significant sentencing considerations.' At [67] 'in our opinion, the sentence of 2 years' immediate imprisonment for count 2 was not commensurate with the seriousness of the respondent's offending. We are satisfied, having regard to all relevant facts and circumstances and all relevant sentencing factors … that the length of the sentence was manifestly inadequate.' At [73] '… in the context of ground 1, the individual sentence for count 2 was manifestly inadequate. Significant weight had to be given, in deciding upon the total effective sentence, to the denunciation of the

					respondent's criminal conduct and personal and general deterrence. The objective facts and circumstances of the respondent's offending, viewed as a whole, were very serious. The total effective sentence was unreasonable or plainly unjust. It was not merely "lenient" of "at the lower end of the available range". The total effective sentence was substantially less than the total effective sentence that was open to the primary judge on a proper exercise of the sentencing discretion.'
12.	***Kathiramalai v The State of Western Australia*** **[2025] WASCA 16** Delivered 29/01/2025	38 yrs at time offending. 41 yrs at time sentencing. Convicted after trial. Limited criminal history; one prior conviction for domestic violence. Born in Sri Lanka to a large family; father misused alcohol and abused the appellant and his mother; father took his own life when the appellant was quite young. The appellant finished year 12 in Sri Lanka; worked as a Chef in Australia as well as running his own business. Left Sri Lanka following conflict during the civil war; was subjected to detention and torture; detained on Christmas Island before being granted a visa. Divorced; two children in late teens; amicable relationship with ex-wife. Suffers from poorly controlled diabetes.	Ct 1: Unlawful wounding. Ct 2: GBH. Ct 3: AOBH. At the relevant time, the appellant was operating a second-hand furniture and money remission business. MA and two of his friends attended the appellant's business. Words were exchanged between the appellant and MA and a scuffle ensued. After the pair was separated, MA left in a car with his friends. Later, the appellant arranged for his brother (TK) and some friends to visit MA's house. At 21:00 that evening, a group bf 8–10 men gathered in the street outside MA's house. Inside MA's house was SS, FS, PM, and LM. <u>Ct 1</u> MA and SS went outside and picked up a piece of wood. The appellant pulled out a hammer and struck MA with it above his right eye, splitting the skin above his eye. MA fell to the ground and was further assaulted by the appellant's group. <u>Ct 2</u> SS was then hit on the head with a large rock by an unknown person in the appellant's group. SS fell unconscious to the ground. Members of the group further assaulted SS while he was unconscious. SS suffered a depressed fracture to his skull. <u>Ct 3</u>	Ct 1: 2 yrs 6 mths (cum). Ct 2: 4 yrs 6 mths (HS). Ct 3: 2 yrs 8 mths (conc). TES: 7 yrs imp. EFP. The trial judge found the appellant was the principal offender for ct 1. The appellant was responsible for cts 2 and 3 pursuant to s 8. The trial judge found that: MA had ongoing issues with his eye, affecting his capacity to work; SS had been unable to work due to his injuries; and FS was unable to replace the broken tooth due to the high cost. The trial judge accepted that the offending was out of character. The trial judge found that the appellant did not fulsomely accept responsibility for his actions; however there was not a significant risk of reoffending. <u>Co-offender (TK)</u> Convicted after PG of one count of unlawful wounding and two counts of AOBH. The sentencing judge found TK criminally liable for the wounding to MA, and AOBH to SS pursuant to s 8 liability. Liability for the AOBH of FS was on the basis he either committed the assault or aided another to do so. Ct 1: Wounding — 16 mths (conc). Ct 2: AOBH of SS — 2 yrs 3 mths (HS). Ct 3: AOBh of FS — 12 mths (cum). TES: 3 yrs 3 mths (suspended for 2 yrs).	Appeal dismissed (leave refused). Appeal concerned the trial judge's finding that the offending was pre-meditated, the parity principle and the first limb of the totality principle. At [51] '… nothing in the appellant's grounds or submissions provides any proper basis for doubting the correctness of [the conclusion that the offending was premeditated].' At [54] '… the only charge for which the trial judge regarded the responsibility of the appellant and his brother to be comparable was count 3. The trial judge imposed a sentence of 2 years 8 months' imprisonment for that offence, for which TK would have received a 2-year sentence before reduction for totality. The difference between the sentences for count 3 is broadly explicable by the application of the totality principle and the 25% discount which TK received for his plea of guilty.' At [55] 'the difference between the appellant's sentence for count 1 of 2 years 6 months' imprisonment and TK's sentence of 16 months' imprisonment for count 1 is explained by the appellant's greater level of culpability for that offence.' At [58] 'the most significant difference between the sentences imposed was between the suspended sentence imposed on TK and the sentence of immediate imprisonment imposed on the appellant. The length of the appellant's total effective sentence mean that suspension was not available. Further, the principal factor in Barone DCJ's decision to suspend the sentences of imprisonment imposed on TK was the time he had spent in immigration detention as a result of the charges.' At [59] 'In all the circumstances … There has been no arguable infringement of the parity principle.' At [62] 'the nature of the harm suffered by SS was very serious. Despite medical treatment, the effects of the injury were ongoing at the time of sentencing over three and a half years after the commission of the offence. It had prevented SS from returning to work. The striking of SS was unprovoked – he was not involved in the earlier altercation at the appellant's shop. The individual sentence imposed for this offence was within the range of sentences commonly imposed for an offence of this kind.'

			FS saw what happened and ran forward with a stick in his hand. FS was set upon by members of the group and suffered a broken tooth when he was punched to the face.		At [64] 'in the present case, the appellant struck MA on the head with a hammer, which was an act highly likely to cause serious injury. While the unlawful wounding in this case was far from the most serious kind which may be the subject of the charge, it was still having an ongoing effect at the time of sentence.' At [66] 'the bodily harm caused in this case was of a moderately serious type, involving a broken tooth which required a permanent tooth replacement, which the victim had been unable to afford, what was causing ongoing issues for the victim.' At [67] 'the circumstances of each offence involved a large group of armed men attending at the address where MA and SS lived. The striking of SS on the head with a rock was highly likely to cause grievous bodily harm and was a probable consequence of the common purpose of attending the premises to do violence to MA … There were few mitigating circumstances, and the appellant did not have the benefit of a plea of guilty to the offences.' At [68] '… in the circumstances of the present case which involved significant injuries to multiple victims, some degree of accumulation was required in order to reflect the overall criminality involved in all of the offending. It is not reasonably arguable that the total effective sentence of 7 years' imprisonment imposed in the present case infringes the first limb of the totality principle.'
11.	***Luckman v The State of Western Australia*** **[2024] WASCA 140** Delivered 12/11/2024	37 yrs at time offending. 39 yrs at time sentencing. Convicted after trial. Convicted after late PG (ct 1 22% discount; PG to alternative offence on ct 2 first day of trial). Minor criminal history; mostly traffic offences. Parents separated at 5 yrs old; raised by mother; supportive family. Left school at yr 11; no formal qualifications. Gainful employment throughout most of adult life. Five children; four with first wife and one with second wife; second wife was pregnant at time	Ct 1: Agg burg. Ct 2: GBH. On two previous occasions, the appellant and the victim, L, got into a physical altercation. On each occasion the appellant punched L to the head. A VRO was served on the appellant, which prevented him from entering L's suburb. Two weeks later, the appellant broke into L's property carrying a machete. The appellant struck L repeatedly with the machete while he was asleep, inflicting multiple lacerations and open fractures to L's ankle and shoulder. Other occupants of the house disarmed the appellant. Ct 2 was charged as GBH with intent, the appellant was found guilty of the alternative offence at trial.	Ct 1: 1 yr 6 mths imp (cum). Ct 2: 7 yrs 6 mths imp. TES: 9 yrs imp. EFP. The sentencing judge found that without medical treatment, L would have likely suffered permanent injuries to one of the bones in his ankle and permanent muscle weakness. Offending had significant impact on L and the other occupants of the residence; L was still to recover from his injuries, had difficulty sleeping, and unable to return to work; L's partner experiences continuing adverse psychological, economic, and social impact. The sentencing judge found that there was a causal link between the offending and the appellant's mental health at the time of the offences.	Appeal allowed. Appeal concerned double punishment and first limb of totality principle. Resentenced: Ct 1: 5 yrs imp (conc). Ct 2: 7 yrs 6 mths imp. TES: 7 yrs 6 mths imp. EFP. At [57] 'the proposition that underpins ground 1 is that one of the elements of the alternative offence is that the unlawful grievous bodily harm was committed in the course of an aggravated home burglary. We do not accept the correctness of this proposition.' At [68] '…the application of the totality principle operated such that, unless there was some additional criminality involved in count 1, the common law principle against double punishment required that the sentence for that count be wholly concurrent with the sentence for count 2.'

		offending. Good physical health; borderline personality disorder; major depression with anxiety.		The sentencing judge found that the appellant was remorseful for his offending. The sentencing judge noted that the appellant had offered to plead guilty to the alternative offence for ct 2 more than a year before the trial.	At [69] 'we accept that the sentence of 7 yrs 6 mths imprisonment on the alternative to count 2 was not in error and properly reflected all relevant sentencing considerations.' At [70] 'in that regard, there can be no doubt that the objective seriousness of the appellant's conduct was very serious.' At [71] 'there were, however, a number of mitigating factors in the present case.' At [72] 'the question which then arises is whether count 1 involved any additional criminality, such as to justify any accumulation of the sentences.' At [73] 'in that regard, it is unnecessary to conduct a detailed analysis of the facts and circumstances of the two offences. It is clear that there was a very substantial, if not complete, factual overlap between them.' At [74] '…in our view, by imposing a cumulative sentence on count 1, the total effective sentence failed to reflect the overall criminality and thereby infringed the first limb of the totality principle.'
10.	***Greenup v The State of Western Australia*** **[2024] WASCA 91** Delivered 01/08/2024	52 yrs at time sentencing. Convicted after trial. Criminal history; carrying a weapon likely to cause fear; common assaults; threats to kill; assault a public officer; and breach of VRO. Born in NSW; youngest of ten children; lived in various boys' homes from 6 mths old to 12 yrs old; lived with parents from 12 yrs; childhood marred by neglect and violence. Previously engaged with the Church of Latter-day Saints; wished to reconnect with the church. Continually employed throughout life.	1 x GBH. After a day of drinking at a pub, the victim caught a taxi with two strangers. The appellant was the taxi driver who picked up the group. The victim sat in the front seat of the taxi. After arriving at the passengers' destination, all members exited the vehicle. The victim re-entered the vehicle, under the impression that the taxi would continue to his residence. After a short argument, the appellant grabbed a machete from the side compartment of his door and swung it at the victim. The machete struck the victim on the neck, lacerating his internal jugular vein. After being struck the victim stumbled half out of the vehicle. The appellant then reversed the taxi, dragging the victim along with the vehicle. When the appellant put the vehicle into drive, the victim was thrown out of the vehicle. The appellant then drove away.	6 yrs imp. The sentencing judge found that the injuries sustained by the victim were a laceration to his internal jugular vein, a fracture to his nasal bones, and abrasions to both knees. The laceration to the victim's vein was of such a nature as to endanger or to be likely to endanger life. The offending had a significant impact on the victim; cannot conduct strenuous physical activity for fear of bursting the blood vessel; had a large amount of time off from work; difficulties sleeping and with anxiety; placed strain on his relationships. The sentencing judge found that the act of brandishing the machete and moving it towards the victim's neck was reckless as to the victim's safety. Accordingly, the appellant did not intend to cause GBH; rather, he did something that was dangerous without caring about whether he might cause a serious injury. The sentencing judge concluded that the attack was unprovoked.	Appeal dismissed (leave granted). Appeal concerned length of sentence. At [64] 'common sense dictates that the injury the appellant inflicted on the [the victim] was extremely serious… As the sentencing judge found, the consequences for [the victim] could easily have been far worse had he not had the presence of mind to stem the blood flow, nor had he been the beneficiary of a nearby neighbour's willingness to assist him.' At [66] 'in any event, the fact that [the victim] may not have suffered from a permanent injury to his health is not a mitigating factor for the purposes of s 8 of the *Sentencing Act 1995* (WA).' At [67] 'it has long been established that the question of whether a person has suffered from an injury that amounts to GBH is to be determined by reference to the nature of the injury before any medical intervention.' At [68] 'similarly, when assessing an offender's level of criminality for an offence of unlawfully doing GBH, it is the nature of the injury, considered in light of the actual and potential consequences of that injury to the life and health of a victim without medical intervention, that is significant.' At [69] 'the fact that a victim has actually suffered a permanent or long-term injury to their health will ordinarily amount to an

			The victim managed to find assistance and called emergency services.	The sentencing judge did not make any findings of remorse.	aggravating factor.' At [70] 'in an unprovoked act of violence, and in an entirely disproportionate response to a mild disagreement with [the victim], the appellant suddenly, and without warning, produced a large and sharp machete. He then swung the machete [at the victim].' At [73] 'immediately after he struck [the victim] with the machete … the appellant reversed out of the driveway while [the victim] was still only partly in the front passenger seat of the taxi, dragging him along the road for a short distance.' At [76] 'the appellant's culpability was also increased when he left the scene without rendering any assistance, in circumstances in which he knew that [the victim] was badly injured … the appellant showed a "callous disregard" for [the victim's] welfare.' At [77] 'the only mitigating factor of any significance was the fact that, as the sentencing judge found, the appellant had suffered from significant childhood disadvantages.' At [106] 'in our view, the sentence imposed on the appellant is broadly consistent with the sentences imposed in reasonably comparable cases. At [119] 'what the appellant did was highly blameworthy. In an unprovoked attack he used a dangerous weapon to inflict a life-threatening injury on a defenceless man, not caring whether he was endangering his safety.' At [120] 'what the appellant did was deserving of condign punishment.' At [121] 'while the sentence imposed was undoubtedly high, after taking into account [all relevant factors] we are not driven to conclude that a sentence of 6 years' imprisonment is unreasonable or plainly unjust.'
9.	***Sheffield v The State of Western Australia*** **[2023] WASCA 157** Delivered 06/11/2023	61 yrs at time of offending. 62 yrs at time of sentencing. Convicted after late PG (12% discount). Criminal history; 2 prior offences of common assault and 1 of poss controlled weapon. Educated to yr 10; left school in yr 11 to join the army; after 8 yrs in the army, worked with motorcycles for 3 yrs.	1 x GBH A friend of the victim introduced him to the offender at a hotel. The three of them drank together at the hotel before going back to the offender's home to continue drinking. As the victim and his friend when to leave the offender's house, the offender said he wanted to show them his 'new toys'. The offender then retrieved some collectable knives from his vehicle.	2 yrs imp. EFP. Sentencing judge found that the offence committed was serious: the offending involved the use of a weapon which the appellant was not using for any legitimate purpose. Sentencing was conducted on the basis that the appellant had been criminally negligent in his handling of the knife.	Appeal allowed. Appeal concerned length and type of sentence. Resentenced: 9 months' imp susp for 12 months. At [38] '… the fact that the sentence imposed on the appellant falls within the range of sentences commonly imposed for offences against s 297(1) of the Code does not preclude the conclusion that the sentence imposed is manifestly excessive. Even though a term of immediate imprisonment is generally, as a matter of fact, the appropriate penalty for a kind of offence, a sentencing judge is required to consider

		Suffered a workplace accident in 1994, resulting in receipt of disability pension since the accident. Suffered depression; medicated.	The offender approached the victim whilst holding one of the knives and took the victim's hand before motioning as if to cut him. The victim pulled his hand away, but the offender took his hand and struck down with the knife, cutting off the top part of the victim's right thumb. The victim was taken to a hospital and subsequently flown to Perth for surgery. Doctors in Perth were able to re-attach the severed portion of his thumb. The offender messaged his friend asking how the victim was. When questioned by police, the offender stated he could not remember what he was doing the night of the incident as he had been taking Valium.	Sentencing judge found that the appellant had cooperated with police, to the extent he had participated in a EROI, and that he was remorseful. Offending had significant impact on the victim; enduring pain and deformity in his thumb; embarrassment; interfered with his work as a landscaper; preventing playing of social sport. Sentencing judge found a suspended sentence was inappropriate as the offending was so serious, involving the use of a knife and resulting in GBH.	whether, in all the circumstances of the particular case and having regard to all relevant sentencing factors, the generally appropriate type of sentence is required. The unusual features of the present case, including the absence of any intended violence directed towards the victim, distinguish the present case from those…where sentences of immediate imprisonment were imposed.' At [41] '… the only basis on which the medical evidence on the prosecution brief indicated the victim suffered grievous bodily harm was that, without medical intervention, the injury to the thumb was likely to lead to infection or disfigurement of the thumb. There was no suggestion that the injury in any way endangered the victim's life.' At [46] 'while we agree generally with counsel for the appellant's characterisation of the appellant's conduct as "skylarking", and we note that the sentencing judge found that the appellant did not intend to harm the victim and made no findings that the appellant deliberately risked harming the victim, the appellant's conduct was extremely negligent.' At [47] 'although it could not be said that the appellant had led a blameless life, he had never been to prison before and there was nothing to suggest that he was at risk of behaving in this way again in the future.' At [48] '… having regard to all the relevant sentencing factors, in particular the very unusual circumstances in which the offence was committed, including the fact that the appellant was not motivated by any animosity towards the victim and did not intend to cause him any harm, we were persuaded that it was unreasonable or plainly unjust to sentence the appellant to immediate imprisonment for a period of 2 years. We also concluded that it was not reasonable open to conclude that it was inappropriate to make an order that the term of imprisonment be suspended, whether conditionally or otherwise.' At [57] 'in our view, a sentence of 9 months' imprisonment was commensurate with the seriousness of the offence.' At [58] 'after again taking into account all relevant sentencing factors … we were positively satisfied that it was appropriate that an order be made that the 9-month term of imprisonment be suspended for a period of 12 months.'
8.	***The State of Western Australia v Maxton*** **[2023] WASCA 174** Delivered	23 yrs at time offending. 24 yrs at time sentencing. Convicted after PG (20% discount). Significant criminal history; trespass; gain benefit from fraud;	Ct 1: GBH. Ct 2: Driver Failing to stop after incident occasioning GBH. Immediately prior to the offending, there was an altercation between two groups. The first group comprised of the respondent and five others. The second	Ct 1: 3 yrs 2 mths imp. Ct 2: 12 mths imp (conc). TES: 3 yrs 2 mths imp. EFP. MDL disq 2 yrs 6 mths.	Appeal allowed. Appeal concerned length of sentence imposed on ct 1; first limb of totality principle; and error in finding of fact by the sentencing judge. Resentenced: Ct 1: 4 yrs 8 mths imp.

	31/08/2023	poss prohibited drugs; three offences of agg robbery; poss controlled weapon; breach of bail. Raised in a good family. Limited work history. Symptoms of anxiety and depression.	group comprised of the victim and two others. The genesis of the altercation was a feud that occurred several hours previously at a party. After the party, the groups drove to a designated location in anticipation of a fight. The respondent did not actively participate in the fight; however, he drove his group to the location. As the fight broke out, both groups were armed. The victim was struck by a member of the respondent's group with a machete. The victim later gained possession of the machete. The victim struck a member of the respondent's group (Mr H) with the machete, then chased him. The victim struck Mr H with the machete causing him to fall to the ground. Two others continued to assault Mr H was he was on the ground. The respondent got into the driver's seat of the vehicle and three others entered as passengers. The respondent then drove the vehicle towards the altercation. Within 27 m of the collision, the respondent accelerated slightly, before deliberately moving his vehicle from left to right with the intention of frightening the Victim's group. As the respondent swerved, the victim lurched into the direction of the car. The respondent's vehicle struck the victim, who then made contact with the bonnet and windscreen. The vehicle was travelling at about 56 or 61 km an hour when it struck the victim. The respondent knew his vehicle struck the victim; however, he drove off. The victim suffered a traumatic brain injury, a base of skull fracture, a right	The sentencing judge found that it was never the respondent's intention to strike the victim with his car. Rather, it was 'just a terribly tragic combination of circumstances.' The sentencing judge made numerous findings of fact, including: the respondent was aware that 'some kind of physical fight was going to break out'; that a physical fight was a likely consequence of driving the group to the location; the respondent was not encouraging what was happening during the fight before he got into the vehicle; and the respondent had a genuine fear that Mr H may have been hurt even worse if he did not intervene. The sentencing judge concluded that the respondent's conduct fell 'somewhere in the middle of a range'. The sentencing judge found that the respondent's restraint from becoming involved in the altercation was 'extenuating'. The sentencing judge found that the respondent's pleas of guilty showed genuine remorse. Offending had a calamitous effect upon the victim's family.	Ct 2: 4 mths imp (cum). TES: 5 yrs imp. EFP. MDL disq 2 yrs 6 mths. At [88] 'in the present case, the primary judge found that: (a) the respondent "actually refrained from any involvement at all" in the fighting between the two groups before he left the scene of the fighting and got into the Honda Civic vehicle; and (b) the respondent "would have kept right out of" the fighting had he "not panicked that [his] cousin was at risk of something very bad happening to him", the respondent "having already seen him assaulted". At [92] 'in our opinion, when the primary judge's findings…are evaluated … it is apparent that the findings … did not mitigate (let alone) substantially mitigate) the respondent's offending conduct in unlawfully doing grievous bodily harm to [the victim].' At [94] 'if the respondent had participated physically in the fighting, that would have aggravated his offending conduct. If the respondent had attempted by lawful means to intervene for the purpose of stopping the fighting, that may have mitigated his offending conduct. However, the finding set out at [88] above were not extenuating and did not mitigate the respondent's offending conduct. It was not reasonably open to her Honour to conclude that the findings set out at [88] above "substantially mitigate[d] [the respondent's offending] conduct" and consequentially should result in the imposition of a lesser sentence.' At [106] 'the objective seriousness of the respondent's offending in relation to count 1 must be assessed having regard to all of the relevant facts and circumstances, including': (a) the respondent's deliberate and aggressive use of the vehicle; (b) the respondent swerving the vehicle at a speed of 5 to 61 km an hour; (c) the respondent serving the vehicle in a main street close to the victim's group; (d) the vulnerability of the victim and his group; (e) the obvious risk that the victim's group would unpredictably move in an effort to evade the vehicle; (f) the obvious risk of serious harm; (g) the shocking injuries suffered by the victim; and (h) the devastating impact of the victim's injuries on his family. At [107] 'the respondent's offending was aggravated by his having been on parole for earlier offending when he committed the offence in question.' At [111] '… the respondent's statements [made to family members while in custody] … indicate that at that stage the respondent was not genuinely remorseful and had not fully accepted responsibility for his

			zygomatic arch fracture, a right leg fracture, and head lacerations. The victim is now in a minimally conscious state. He is non-verbal.		actions.' At [116] 'the sentence for count 1 was not merely "lenient" or "at the lower end of the available range". It was significantly less than the sentence that was open to the primary judge on a proper exercise of her discretion.' At [121] '… having regard to all relevant facts and circumstances and all relevant sentencing factors, properly marking the seriousness of the respondent's overall offending required that part of the sentence for count 2 be served cumulatively upon the sentence for count 1.'
7.	***O'Dea v The State of Western Australia*** **[2023] WASCA 70** Delivered 05/05/2023	44 yrs at time offending. Convicted after late PG (10% discount). Criminal history; prior offence of AOBH and poss controlled weapon. Parents separated when aged 6 yrs; resided with his mother; father often absent; both parents now deceased; estranged from his brother; supportive sister. Educated to yr 10; average academic achievements; better at sport; expelled for fighting. Commenced working aged 16 yrs; qualified heavy machinery driver and employed as plant operator until loss of his MDL in 2018. Four children from long term relationship; now separated; maintains contact with his adult children; in a relationship at time sentencing. Commenced drinking alcohol aged 15 yrs; methyl used aged 18 yrs; patterns of heavy drinking; loss of employment on three occasions due to positive alcohol tests; reports he has now ceased drinking.	1 x GBH. In the early hrs of the morning the victim disturbed a woman, Ms Dimer, committing a burglary. When she fled the premises the victim followed in pursuit yelling 'Thief, thief. Ms Dimer ran towards a house, screaming loudly and yelling for help. O'Dea and the co-offender Webb were in the house and on hearing the screams walked outside. O'Dea armed with a hockey stick. The victim and Ms Dimer engaged in a struggle. Ms Dimer approached O'Dea and Webb and told them something. O'Dea then walked towards the victim and swung the hockey stick at him, knocking him to the ground. As the victim lay on the ground he was kicked and punched by both O'Dea and Webb. The victim sat up and was kicked in the face by O'Dea, causing him to fall back down. O'Dea swung and hit the victim with the hockey stick, before dropping the stick and punching the victim at least 10 times to the face and head with a clenched fist, whilst Webb held the victim down. O'Dea slammed the victim's head to ground by pushing his chest, before punching him in the head twice. The second punch caused the victim's head to bounce on the ground.	5 yrs 2 mths imp. EFP. Co-offender Webb convicted of alternative offence of GBH (simpliciter). Sentenced to 3 yrs 2 mths imp. Appellant sentenced on the basis that the offence of GBH was a probable consequence of an unlawful purpose, namely to assault the victim with a significant level of violence, including the use of a weapon. The sentencing judge found the appellant's culpability was significantly greater than that of Webb; the appellant was the initiator of the violence; was the one who used a weapon, was the one who inflicted most of the violence on the victim and the violence that he used involved multiple blows, both with the hockey stick, his fists and his feet. The sentencing judge found the offending fell towards the upper end of the scale of seriousness; the harm suffered by the victim was severe and there were a number of aggravating features; the victim was outnumbered; he was defenceless after he had fallen to the ground; he was struck multiple times; the attack was unprovoked and unnecessary and a weapon was used. Offending significant impact on victim; required ongoing support; suffered a relationship breakdown and ability to work; loss of his business and ability to provide financially for himself and his family.	Dismissed (leave refused). Appeal concerned length of sentence; parity principle and error (plea discount). At [66] … the harm caused to [the victim] was properly characterised by the sentencing judge as severe. [The victim] sustained a serious and enduring disability which impacted significantly upon every aspect of his life, including his independence and ability to care for himself. At [67] … In the present case, the appellant was armed with a weapon, the hockey stick, which he repeatedly used to strike the victim throughout a sustained assault. The appellant also used his fists and feet, inflicting repeated blows to [the victim's] head. The number of blows, the degree of force used, the use of a weapon, the concentration of the blows to the vulnerable area of the head and the persistent nature of the attack, place this into a very serious category of offending. At [68] … The use of violence as an act of vigilantism is particularly serious and deserving of denunciation by the courts. At [69] The fact that the appellant may have originally armed himself and gone to the door in circumstances where he honestly believed that a woman was being attacked provides some explanation for how he came to be involved, but affords little mitigation for what he did thereafter. … the appellant made no enquiry of [the victim] or Ms Dimer before launching into an attack on [the victim] with his hockey stick. None of the subsequent violence was aimed at restraining [the victim]. The appellant persisted in a brutal assault on [the victim] using the hockey stick, his fists and kicks, despite [the victim] plainly being seriously injured and outnumbered. [The victim] was clearly vulnerable and defenceless during the attack, having been struck to the ground repeatedly and then attacked whilst on the ground. The extreme vigilante-type violence … placed the offence at the higher end of the scale of seriousness. At [75] In this case, having regard to the degree of violence, the use of a weapon, the persistence of the violence and the severe injuries inflicted, the appellant's conduct fell at the more serious end of the

			When the victim managed to sit up Webb grabbed him from behind and dragged him with force onto a concrete driveway. He then slammed the victim to the ground, causing his head to hit the driveway with force. Both Webb and O'Dea circled the victim as he sat on the ground. When the victim att to stand O'Dea struck him to the ankle with the hockey stick with force, causing him to fall to the ground. The victim eventually stood up and was able to walk away. O'Dea and Mr Webb followed him. When police attended the victim was being held by O'Dea and Webb. The victim was unable to speak due to his injuries and was taken to hospital by ambulance. When questioned by police O'Dea claimed he had stopped Mr K from attacking a girl and suggested Mr K had received his injuries from falling down. Mr K suffered a traumatic brain injury, skull and facial fractures and a fractured ankle. He required comprehensive rehabilitation, nursing and medical oversight.	Remorseful; undertaken educational opportunities while in custody; gained full-time employment whilst on bail.	spectrum of offences of this nature. … the sentence … that was imposed was clearly within the discretionary range available … That sentence is not unreasonable or plainly unjust and does not manifest error. At [88] … The 10% discount was, having regard to all of the relevant factual circumstances, a proper reflection of the timing of the plea, the strength of the prosecution case and the benefits flowing from that plea. At [97] Having regard to all relevant factors, the degree of difference between the appellant's sentence and that imposed on Mr Webb was entirely justified by the differences in their degree of culpability, … The parity principle has not been infringed.
6.	***Jones v The State of Western Australia*** **[2023] WASCA 30** Delivered 17/02/2023	33 yrs at time sentencing. Convicted after trial. Prior criminal history. Three siblings; experience trauma aged 6 when taken from his mother; otherwise raised in a positive and supportive family environment; reconnected to his biological mother and a sister. Positive family relationships to assist on release.	1 x GBH. Jones and an acquaintance were at a service station. The victim, who was intoxicated and unsteady on his feet, accidently bumped into Jones and his acquaintance. A short time later CCTV footage showed Jones standing behind the victim, while the victim spoke with the acquaintance. When the acquaintance left to walk around the victim, the victim blocked his path and continued to talk to the acquaintance. The victim's hands were by his side or in front of	5 yrs imp. The trial judge found the appellant's offending serious; the victim was struck without warning, when he was unprepared and not expecting to be hit; the victim was vulnerable and defenceless; with the cast on his arm he struck the victim with a forceful blow, immediately knocking the victim unconscious, causing him to fall heavily to the ground; the victim suffered a significant and serious injury and it was fortunate it was not far more serious, as there is always the risk of brain injury to a person knocked unconscious and who falls to a hard surface.	Dismissed (leave refused). Appeal concerned length of sentence. At [49] … the offence involved a forceful unprovoked surprise attack on a vulnerable victim which resulted in an injury having significant effects on the victim and carried the real risk of causing even greater harm. There were limited mitigating factors and, in particular, the appellant did not have the benefit of a PG to the offence. At [52] … we are not persuaded that a sentence of 5 yrs imp is unreasonable or plainly unjust in accordance with the principles in ***House v The King***. In this regard, the following matters seem to us to be of most particular significance … the appellant did not have the mitigation that a PG would have brought. … The unprovoked nature of the attack. … The forceful nature of the attack, and its apparently

		Educated to yr 10; trade qualifications. Consistent work history; employed since leaving school; own business; strong work ethic. Long-term relationship; four children; one of whom suffers a neurological condition, is wheelchair bound and requires daily medical care.	him and he did not offer any threat. Without warning and whilst standing behind the victim, Jones struck the victim to the back of his head with his arm, which was encased in a cast. The victim immediately became unconscious and fell forward onto the pavement. His face and forehead struck the pavement, violently forcing his head backwards. A lifeguard assisted the victim, placing him in the recovery position. Jones and his acquaintance simply walked away. The victim suffered a significant neck injury, along with concussion, chipped teeth and bruising. He underwent surgery for a fractured vertebra and ruptured disc and required a neck brace for a period of time.	Offending significant impact on victim; unfit for work six mths; frequently in pain and likely to suffer a permanent lifelong restriction in neck movement. The trial judge acknowledged appellant's separation from his children difficult and stressful for the mother caring for their special needs child. No demonstrated remorse; some insight into his offending.	calculated nature … inflicted on a defenceless and vulnerable victim. … The appellant's indifference to the consequences of the assault, marked by his 'simply [having] walked away'. … The seriousness of the injuries, … The potential for the assault to have caused more serious injury, including brain damage. … The likelihood of permanent injury in the form of restricted neck movement. … The limited remorse shown by the appellant. … the appellant's prior criminal record including, most relevantly, his prior conviction for an offence of being armed, or pretending to be armed, in a way that may cause fear, underscored the importance of personal deterrence.
5.	***Littlely v The State of Western Australia*** **[2022] WASCA 102** Delivered 08/08/2022	30 yrs at time offending. 31 yrs at time sentencing. Convicted after trial. No prior criminal history. Good relationship with family and friends; family supportive. Completed yr 12; qualified heavy-duty mechanic. Good work ethic; employed mining industry. 5-yr-old son with former partner; close relationship; shares in child's care since separation. Suffers ADHD; anxiety; depression after marriage breakdown. No entrenched substance abuse problems.	1 x GBH. Littlely and his wife had separated. Ms Littlely was, at that time of the offence, in a relationship with Mr Free, the victim. Mr Free, Ms Littlely and some friends were at a hotel. Littlely was also at the premises. Mr Free did not know that Littlely was also at the hotel that night. During the evening Mr Free and a friend went to the toilet area of the hotel. As they were returning to their friends Mr Free was punched to the side of his face. He did not see who had punched him. Mr Free's friend saw Littlely had thrown the punch. The incident was also captured on CCTV cameras.	18 mths imp. EFP. The trial judge found the offending was unprovoked and an unexpected attack with considerable force, which caused a considerable injury. The trial judge found the offence not the most serious offence of its kind; it did not involve the use of a weapon and involved one punch only. Victim permanent residual disability; ongoing pain; nerve damage and loss of lip sensation. Very low risk of reoffending.	Dismissed (leave refused - on papers). Appeal concerned errors (previous sentencing decisions and force of punch) and length of sentence. At [27] … It is plain from the observation that her Honour had regard to relevant previous sentencing decisions of this court. At [37] … evidence combined with the fracture of Mr Free's jaw in two places was adequate to sustain her Honour's findings that the appellant had delivered a forceful punch or a strong blow. At [60] … we are satisfied that it was reasonably open to the trial judge to conclude that it was inappropriate to susp or conditionally susp (wholly or partly) the sentence of imp. … At [61] We are also satisfied that the length of the sentence … was not manifestly excessive having regard the max penalty, the facts and circumstances of the offending. The standards of sentencing customarily observed, the place which the appellant's offending occupies on the relevant scale of seriousness, the appellant's personal circumstances and antecedents and all other mitigating factors.

			As a result of the punch Mr Free's jaw was broken in two places. He required surgery for the fractures and plates, screws and arch bars were inserted.		
4.	***The State of Western Australia v Babakarkhil*** **[2022] WASCA 59** Delivered 03/06/2022	25 yrs at time offending. 29 yrs at time sentencing. Convicted after trial. Prior criminal history; conviction for violent offence. One of eight children born to Afghanistan refugees. Struggled at school. Mixed involvement in employment up to time of offending. Binge drinking and consuming drugs at time offending; self-medicating after witnessing a murder and the killing of a close friend.	1 x GBH. Babakarkhil was jointly charged with four co-offenders, Kakar, Saleh, E Assaad and I Assaad. The offending was captured on CCTV footage. In the early hours of the morning the victim, his brother Rhys and some friends were outside a nightclub. They were intoxicated. Another group of men, including Babakarkhil and the co-offenders, were also on the footpath outside the club. There was some antagonism between the two groups The victim and Rhys stepped backwards on the footpath as the group approached. Kakar shaped up to the two brothers, with his hands in a fighting stance. Babakarkhil tried to prevent the situation escalating and immediately intervened. In doing so he threw a punch towards the victim's body **(Act A)**. It is not clear whether or not this punch connected. Within moments the victim and Rhys had their backs to the railing, facing Babakarkhil and Kakar, both of whom were 'shaping up' to the victim and Rhys **(Act B)**. Babakarkhil and Kakar were joined by E Assaad, who invited the victim and Rhys to engage in a fight. At that point, the co-offender Saleh ran at speed at the victim, delivering a forceful blow to his head. This blow was quickly followed by blows from E Assaad and Kakar to the victim's upper body.	12 mths imp, CSI 12 mths; supervision and programme requirement. The trial judge sentenced the respondent on the basis he was criminally responsible for aiding his co-accused to commit the offence; seriousness of the offending was primarily the harm done to the victim and that the offending occurred in a public street; seriousness of offending was such that imp the only appropriate sentence. Offending significant impact on victim; unable to work for a yr; required significant treatment for mental health issues; continues to suffer numbness to his cheek. Low-risk of reoffending; ceased alcohol and drug use; engaged in counselling.	Allowed (Mazza J dissenting). Appeal concerned error of finding (aid provided by the respondent limited to Acts D and E) and length and type of sentence. Resentenced to 21 mths imp. EFP. At [63] … The respondent's presence, and his joining in the assault …, must have been intended to assist his co-accused in an assault. That is, the proper inference to be drawn from the CCTV footage is that the respondent must have intended all his acts from the point when he first threw a punch at [the victim] (Act A) until and including the last blow he delivered to [the victim] (Act E) to assist his co-offenders in their assault of [the victim]. At [64] Further, in our view, all of Acts A – D actually had the effect of assisting the respondent's co-offenders in assaulting [the victim]. … At [81] … The criminality involved in the respondent's offending may be regarded as less than that of Mr Saleh and Ebraheem Assaad, as the physical assaults performed by the respondent himself were less violent and less damaging than the blows struck by Mr Saleh and Ebraheem Assaad. However, the respondent threw the first and last punches that were directed by the group against [the victim],and was an active participant throughout the assault. At [83] It was the respondent's participation in the assault which helped ensure that [the victim] was outnumbered and facilitated the assault which caused the GBH …. At [85] … in our view the seriousness of the offence committed by the respondent is such as to make a sentence of susp or conditionally susp imp inappropriate. …

			At virtually the same time Babakarkhil threw a punch towards Rhys (**Act C**). Rhys was able to turn away and fend him off. Babakarkhil retreated, then returned and delivered a punch to the front of the victim (**Act D**). Babakarkhil also delivered a forceful blow to the victim's upper body (**Act E**). This blow was delivered at a time when the victim was not offering a threat to anybody. The trial judge was not satisfied that this blow made contact with the victim's head. The victim suffered fractures to his face requiring surgery.		
3.	***Fernie v The State of Western Australia*** **[2022] WASCA 20** Delivered 18/02/2022	23 yrs at time offending. 25 yrs at time sentencing. Convicted after trial. Substantial criminal history. Highly dysfunctional upbringing; left home aged 14 yrs; homeless a number of yrs. Left school yr 9. Some labouring work. Relationship at time of sentencing. Commenced cannabis use in his youth; methyl from aged 19 yrs.	Ct 1: Agg burglary. Ct 2: Unlawful wounding. Ct 3: GBH. 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. 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. Fernie participated in an assault upon CMK. To defend his father CDK stabbed Fernie in the arm. Fernie was hospitalised as a result. 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. CDK sustained serious injuries to his fingers after being struck by the machete. One of his index fingers required surgery.	Ct 1: 4 yrs imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: 8 yrs 2 mths imp (conc). TES 8 yrs 2 mths imp. EFP. 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) *Criminal Code*) and, alternatively, the offences were a probable consequence of the common intention formed by him and the co-offenders to prosecute an unlawful purpose of agg burglary (s 8 *Criminal Code*). 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. No demonstrated remorse or acceptance of responsibility for the offending.	Dismissed (leave refused - on papers). Appeal concerned length of individual sentences and totality principle. 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; … At [34] … it is not reasonably arguable that the sentence 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 …

2.	***Hornell v The State of Western Australia*** **[2021] WASCA 137** Delivered 30/07/2021	31 yrs at time offending. 34 yrs at time sentencing. Convicted after late PG (10% discount). Short criminal history; two prior convictions of common assault; otherwise no prior offences involving violence. Lived various parts of WA. Educated to year 11. Fairly good employment history. Formed a relationship after the offending; son born to this union; ceased drinking and using drugs after the birth; sole carer of his son; made positive changes in his life; at time of sentencing son in the care of his mother and brother.	1 x GBH. Hornell and three others, Ms Hill, Ms Devereux and a male known as Tama, went to a home occupied by Ms Elliott-Garwood. The victim was visiting the premises at the time. Hornell and his group entered the house. Ms Hill and Ms Elliott-Garwood went into a room to discuss a methyl transaction. A short time later Ms Devereux joined Ms Hill and Ms Elliott-Garwood in the room. Ms Devereux then went into an en suite and began mixing up a shot of methyl. Eventually, all the occupants, including Hornell and the victim, ended up in the room, for the purpose of trying some of the methyl. Ms Hill became agitated and expressed the view that the mixing up of the methyl was taking too long. Ms Devereux punched the victim in the face with a clenched fist. The victim fell from the edge of the bed onto the floor, where Ms Devereux and Ms Hill continued to punch her. The victim, who was holding a methyl pipe, yelled and screamed at Ms Devereux and Ms Hill. Ms Devereux then turned to Hornell and told him to knock the victim out. With a clenched fist, he stepped forward and forcibly struck the victim to the side of her face, near her jaw. The victim felt instant pain. Hornell and his group then left the house. Later that same day police attended Ms Elliott-Garwood's house. The victim	2 yrs 6 mths imp. EFP. Accepted that the victims' injury was caused by the single punch delivered by the appellant. Conceded there was a 'huge disparity of size' between the appellant, estimated to weigh at least 100 kg, and the victim, who was about 45 kg. The sentencing judge found the appellant punched the victim with significant force and the injury suffered by the victim was not 'at or towards the lower end of the scale'. The sentencing judge was satisfied beyond a reasonable doubt that Ms Devereux was the instigator of the violence; she directed the appellant to knock out the victim and the appellant punched the victim in response to that direction, as well as out of concern that the victim was attempting to stab Ms Devereux with the methyl pipe she held; but it was a powerful punch thrown without warning to a vulnerable victim, albeit with some provocation but the appellant's actions were grossly disproportionate. Offending significant impact on the victim, affect on her eating; experienced ear infections; some fear of going out and she suffered financial stress. No demonstrated remorse.	Dismissed. Appeal concerned type and length of sentence and errors in law (failing to consider susp imp and hardship caused by imp). At [37] … there was no evidence that, upon the appellant's incarceration, his son would suffer exceptional hardship or that he would be deprived of parental care. The expression 'parental care' should be understood broadly to include relatives or persons who are able to undertake parental duties towards a child. … There was no sufficient basis to enable his Honour to find that the appellant's son would not be properly cared for by the appellant's mother and brother while he was incarcerated, or that the child would suffer exceptional hardship as a result of the appellant's imp. At [49] The appellant is a large man, who is more than twice the weight of the victim. While it is true that he did not use a weapon on the victim or hit her multiple times, his punch was … powerful. [He] punched the victim without warning while she was on the floor, at Ms Devereux's behest, who asked him to 'knock [the victim] out'. The victim had no opportunity to defend herself. She was plainly vulnerable. Her vulnerability was compounded by the fact that she was outnumbered. While his Honour found that there was 'some provocation', this factor cannot significantly diminish the appellant's criminality when one considers that his conduct was 'grossly disproportionate' to the victim's actions. At [50] … A powerful blow to the head, of the kind inflicted by the appellant, had the potential to cause greater injury than that actually suffered by the victim. At [53] The offence committed by the appellant, while not the most serious of its type, had the serious features which were referred to at [49] and [50] above. We do not regard the facts of the present case as having the kind of unusual circumstances that would justify a susp term of imp. … We do not regard the length of the term that was imposed as unreasonable or plainly unjust. …

			was distressed, in pain and had a noticeably swollen jaw. She was taken to hospital where she had surgery to repair her broken jaw. She was discharged the following day.		
1.	***Jetter v The State of Western Australia*** **[2021] WASCA 80** Delivered 07/05/2021	44 yrs at time offending. Convicted after early PG (25% discount). Criminal history; no prior sexual offending; history of violence. Born to very young parents; adopted by an aunt; raised in loving environment; three younger sisters; maintained contact with biological parents and their other children. Sexually assaulted as a child; in his 20s when adoptive mother died. Left school yr 11; excelled at sport; bullied by other children; disciplined by teachers when he retaliated. Worked on a station before leaving school; undertook traineeships and completed certificate in civil construction and engineering; unemployed since leaving school. Two children; aged 18 yrs and 9 yrs; limited contact with them. Attempts at self-harm and suicidal ideations in his 20s; methyl use from aged 22; never undertaken programs or rehabilitation to address his substance abuse.	Cts 1 & 2: Sex pen child 13-16 yrs. Ct 3: GBH. Jetter and the victim did not know each other. The victim was aged 15 yrs, 11 mths and 1 wk. The victim told Jetter she was 18 yrs old. The victim approached Jetter and suggested they consume drugs together. In the stairwell of a carpark they had sexual intercourse. The victim was a willing participant (ct 1). Later that same day the victim and Jetter travelled to the house at which Jetter was staying with his aunt. The victim stayed at the house a few nights, during which she and Jetter had sexual intercourse. The victim was a willing participant (ct 2). On her third day at the house Jetter and his aunt spoke to the victim about a recent death of a family member. When the victim laughed the aunt slapped her in the face. Jetter then swung a baseball bat at the victim, the second swing hitting her in the arm (ct 3). The victim ran from the house. A neighbour intercepted the victim and called the police. A short time later he was arrested. The victim suffered a fractured arm and underwent surgery, involving the open reduction and internal fixation of the humerus and the application of a brace. Jetter admitted having consensual intercourse with the victim, believing she was aged over 18 yrs. He also	Ct 1: 2 yrs 6 mths imp (cum). Ct 2: 2 yrs 6 mths imp (conc). Ct 3: 3 yrs imp (cum). TES 5 yrs 6 mths imp. EFP. The sentencing judge found the appellant's moral culpability was decreased; by the victim telling him she was aged 18 yrs; she was not coerced into the offending and willingly participated in the acts of sexual intercourse. The sentencing judge found the gravemen of the sexual offending was that having only just met the victim and not knowing anything about her, he did not do more to ascertain her age before embarking in sexual activity with her. The sentencing judge characterised the sexual offending as falling at the lower end of the scale of seriousness for offending of this type. Seriousness of the offence of GBH increased by the appellant's use of a weapon; the victim's young age; her vulnerability and that she suffered a serious injury, requiring surgery. No sexual interest in children; not especially troubled by having struck the victim with a bat, regarded this violence as a normal response. Cooperative; remorseful and disgusted by the fact he engaged in sexual intercourse with a 15 yr old; high risk of future offending involving violence; an average risk of future sexual offending due to his impulsivity and unaddressed drug abuse.	Appeal allowed. Appeal concerned length of sentence cts 1 and 2 and totality principle. Resentenced (25% discount): Ct 1: 3 mths imp (cum). Ct 2: 6 mths imp (conc). Ct 3: 2 yrs 9 mths imp (cum). TES 3 yrs imp. EFP. At [12] The State conceded that the sentence of 2 yrs 6 mths imp for each of cts 1 and 2 was manifestly excessive as to length (but not as to type). … At [63] … the appellant's culpability in relation to the sexual offending was ameliorated by … [his] honest belief that the complainant was aged 18 and the absence of any reason for him to doubt that the complainant was of that age; … the complainant was very close to the legal age of consent, namely 16 yrs; … [and] the complainant was a willing participant in the acts of sexual intercourse; … At [64] However, on the other hand, there was a very substantial age disparity between the appellant and the complainant. The complainant was especially vulnerable because, like the appellant, she was indigent, homeless and a drug abuser. In those circumstances, the public interest which underpins the offence in question required that the appellant obtain some reliable confirmation (apart from the complainant's assertion) as to her age before engaging in sexual intercourse with her.

			admitted striking her with the bat and breaking her arm.		
Maximum penalty increased from 7 yrs to 10 yrs – effective 3/08/1998					