

Manslaughter

s 280 Criminal Code

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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

att	attempted
agg	aggravated
circ	circumstances
conc	concurrent
cum	cumulative
ct	count
disq	disqualification
EFP	eligible for parole
imp	imprisonment
PG	plea guilty
PSR	pre-sentence report
susp	suspended
TES	total effective sentence

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
6.	<p><i>Taylor v The State of Western Australia</i></p> <p>[2023] WASCA 127</p> <p>Delivered 29/08/2023</p>	<p>33 yrs at time offending. 35 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history.</p> <p>Positive childhood; three siblings; close and positive family relationships.</p> <p>Married; two children, both with medical conditions requiring treatment; experienced the loss of a child at birth.</p> <p>Left school yr 9.</p> <p>Employed for a time until loss of his child and his illicit drug use; completed mature age apprenticeship; working at time offending; positive work reference.</p> <p>History of methyl use; commenced using illicit substance at time of loss of his child to cope with his grief.</p>	<p>Ct 1: Manslaughter. Ct 2: Driver failing to report incident occasioning death.</p> <p>Just before midnight Taylor drove to an ATM. The deceased, Mr F, who had been drinking at a nearby tavern was talking to some men in the car park.</p> <p>After using the ATM Taylor drove towards the car park exit. Mr F, was standing in the middle of the road with his back to the car, blocking his exit. He slowed down and stopped a short distance from Mr F, before driving forward and stopping a few cm from him.</p> <p>Mr F sat on the bonnet of Taylor's car. Taylor lowered his window and shouted at Mr F in an aggressive manner.</p> <p>Within seconds Taylor accelerated heavily, causing Mr F, who was still sitting on his vehicle, to fall backwards onto the bonnet. He then travelled a significant distance (at least 10 car parking bays). The incident was captured on CCTV and footage estimated he reached a speed of between 41-56 km p/h. He continued to accelerate until Mr F fell from the bonnet. Taylor's brake lights become visible at the moment of the fall.</p> <p>Mr F's head struck the bitumen causing a severe head injury, with extensive fractures to the skull and bleeding and bruising of the brain. He died a short time later.</p>	<p>Ct 1: 9 yrs imp (cum). Ct 2: 1 yrs imp (cum).</p> <p>TES 10 yrs imp.</p> <p>The sentencing judge found that whilst not the most serious case of manslaughter involving a motor vehicle, in that it did not include aggravating factors such as driving under the influence of drugs or alcohol, it was nonetheless at the high end of offences for manslaughter involving the use of a motor vehicle and described the appellant's criminality as high.</p> <p>The sentencing judge rejected the appellant's evidence he was acting in self-defence; Mr F made no threats either verbally or physically prior to his actions; Mr F's actions in sitting on the bonnet were not a threat, he had his back to the appellant and his arms folded; nothing Mr F did in the presence of the appellant gave him any cause for fear and the appellant's behaviour at the time was inconsistent with any suggestion that he was fearful of Mr F; the appellant was the aggressor and not Mr F; the appellant was in a car and could easily have driven away without having to drive in the highly dangerous way that he did.</p> <p>The sentencing judge found the appellant's failure to report the incident was an offence at the higher end of the scale of seriousness; the failure to report was distinct offending and therefore some accumulation in the sentence should be imposed.</p> <p>Disingenuous expressions of regret and remorse; failed to acknowledge the reality of his actions or to accept responsibility for them; low risk of reoffending.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of sentence.</p> <p>At [51] 'the circumstances of this case were serious for several reasons. The offence did not merely involve a reckless disregard of other road users, but rather a deliberate and dangerous act that exposed a particular person to a high risk of harm. The appellant's decision to accelerate while Mr F was sitting on his bonnet was a deliberate choice. ... The risk of serious injury was obvious. The appellant failed to give any regard to the very real prospect that Mr F would be seriously injured or killed. He acted out of anger. He failed to report the incident despite the clear possibility that Mr F had been seriously injured.'</p> <p>At [59] 'taking into account the max penalty, the seriousness of the offence, the appellant's personal circumstances and any comparable cases, it is not reasonably arguable that the sentence ... was unreasonable or plainly unjust ...'</p> <p>At [60] '... it could not be reasonably argued that the ... sentence of imp imposed for [the failure to report] offence ... was an excessive sentence ... That offence related to distinct and separate criminal conduct and a cum sentence was entirely appropriate ...'</p>
5.	<p><i>Wark v The State of Western Australia</i></p> <p>[2023] WASCA 66</p> <p>Delivered</p>	<p>43 yrs at time offence. 65 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; convicted serious sexual offences in QLD.</p>	<p>1 x Manslaughter.</p> <p>In 1999 the victim, Ms D, aged 17 yrs, was travelling in regional WA with a friend.</p> <p>From Dongara Ms D hitchhiked alone</p>	<p>18 yrs imp.</p> <p>EFP.</p> <p>2007 QLD District Court convicted sexual offences against victim Ms M. TES 13 yrs imp. Offending against Ms M admitted at</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence; totality principle and error in finding (use of 'violence for the purpose of furthering a sexual objective').</p> <p>At [593] In our opinion, ... the trial judge was entitled to find beyond</p>

	02/05/2023	<p>Violent home life; parents drank alcohol to excess; two siblings; estranged from sister; stable relationship with brother.</p> <p>Educated to yr 10; studies undertaken in custody; Bachelor of Business and a Master of Professional Accounting.</p> <p>Good work history.</p> <p>Single; number of past relationships; married for a short duration; no children or dependants.</p> <p>In reasonable health.</p> <p>Long term alcoholic; user of cannabis.</p>	<p>to a friend's family farm. Later that day she was seen walking alone along a country road towards the farm.</p> <p>As Ms D was walking along the road Wark encountered her, stopped and offered her a lift.</p> <p>At some point after picking Ms D up in his vehicle, he killed her and disposed of her body.</p> <p>The exact cause of Ms D's death and the precise circumstances of her death are unknown. Her body has never been located.</p> <p>In 2015 Wark was charged with Ms D's wilful murder.</p>	<p>trial as propensity evidence.</p> <p>TES 30 yrs imp.</p> <p>The trial judge found the unlawful killing of Ms D occurred in the context of sexual offending against her or preventing her escape from a sexual attack; the appellant disposed of Ms D's body with the intention of concealing her death and his involvement in it.</p> <p>The trial judge found the appellant was the type of person who would be inclined or predisposed to pick up a lone female hitchhiker in his motor vehicle in an isolated location and violently and seriously assault her for the purpose of overpowering her so that he could sexually assault her.</p> <p>The trial judge found the appellant's offending was aggravated by the gross differences in his and Ms D's physical size; Ms D was walking alone on a country road in an area with which she was not familiar; she was obviously vulnerable and he used Ms D's vulnerability to his advantage; although he could not have anticipated his encounter with her, he readily took advantage of the opportunity to pick her up 'with the purpose of sexually assaulting her'; he then physically attacked Ms D with sufficient force to kill her; attacking her very shortly after picking her up; he made no effort to obtain medical assistance for her or to report her death and he disposed of her body in such a way as to ensure she would never be found and he maintained secrecy for more than 21 yrs; magnifying the anguish and distress of Ms D's family.</p> <p>No victim empathy; unremorseful; not accepting of any responsibility.</p>	<p>reasonable doubt that ... the appellant had used 'violence for the purpose of further a sexual objective'; ... 'the unlawful killing occurred in the context of sexual offending against [Ms D] or preventing her escape from a sexual attack'; and ... the appellant 'readily took advantage of an opportunity to pick [Ms D] up with the purpose of sexually assaulting her' and the appellant's 'motivation was to achieve [his] own sexual gratification without regard to the wishes or wellbeing of [Ms D]' ... notwithstanding that the exact cause of [Ms D's] death was unknown and the precise circumstances leading up to her death were unknown.</p> <p>At [624] ... the appellant's offending was not merely a grave instance of the offence of manslaughter. It was within the 'worst category' of the offence. The appellant's offending warranted the imposition of the max penalty of 20 yrs' imp, subject to reductions on account of the mitigating factors.</p> <p>At [626] ... the sentence was commensurate with the seriousness of the offence. The length of the sentence was not unreasonable or plainly unjust. Error by his Honour in the exercise of his discretion cannot be inferred from the sentencing outcome.</p> <p>At [644]-[646] There is no doubt that the offences which the appellant committed against Ms M and the offence of unlawfully killing [Ms D] were extremely serious. ... The appellant's offending in respect of [Ms D] was separate and distinct from his offending against Ms M. ... The trial judge made unchallenged findings that the appellant's attitude did not provide any positive indication of rehabilitation and that it had not been demonstrated that the appellant had been rehabilitated in respect of his unlawfully killing of [Ms D].</p> <p>At [648] The facts and circumstances of the appellant's overall offending are not truly comparable with the facts and circumstances of offending in any prior cases.</p> <p>At [650] In our opinion the overall TES of 30 yrs' imp does not infringe the first limb of the totality principle. A custodial term of that length was required in order properly to reflect the extremely serious nature of the appellant's offending as a whole in respect of Ms M and [Ms D] The overall TES bears a proper relationship to the criminality involved in all of the appellant's offences, viewed together, and having regard to all relevant facts and circumstances and all relevant sentencing factors, including the extremely serious character of the overall offending, the vulnerability of Ms M and [Ms D], the standards of sentencing customarily observed, the agg factors and the limited mitigation.</p> <p>At [651] Further, in our opinion, the overall TES ... does not infringe the second limb of the totality principle. Unfortunately, from the appellant's perspective, the extremely serious nature of his offending,</p>
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					considered as a whole, and the necessity for appropriate punishment, denunciation of his criminal conduct and the demands of general deterrence, significantly reduced the extent to which humanitarian considerations could be accommodated in the overall sentencing disposition. Notwithstanding that it is possible that the appellant may die in custody or that upon release he may not have any prospect of a useful life, a more lenient overall TES was not appropriate.
4.	<p><i>Taylor v The State of Western Australia</i></p> <p>[2022] WASCA 174</p> <p>Delivered 22/12/2022</p>	<p><u>Taylor</u> 25 yrs at time sentencing.</p> <p>Prior criminal history.</p> <p>Convicted after trial (alternative offence of murder).</p> <p>Second youngest of six children and two older half-siblings to mother's previous relationship; normal childhood without any violence or abuse; parents strict but enjoyed a loving and supportive relationship with his family.</p> <p>Family supportive.</p> <p>Educated to yr 9.</p> <p>Never held employment; engaged in intermittent jobs in prison.</p> <p>No significant relationships; no dependants.</p> <p>Generally in good health; no history of self-harm or suicidal ideation; suffers with depression whilst in custody.</p> <p><u>Penny</u> 26 yrs at time sentencing.</p> <p>Significant criminal history.</p> <p>Convicted after trial (alternative offence of murder).</p> <p>One of two children to parents' union who separated early in his childhood; five half-siblings from</p>	<p>1 x Manslaughter.</p> <p>The deceased was 46 yrs old and an inmate at Hakea Prison.</p> <p>Taylor and Penny and three co-offenders, Kapene, Clay and B, were also inmates at the prison.</p> <p>One afternoon Taylor and Clay entered a cell. Taylor told Kapene and B words to the effect that there was a rapist in the prison who needed to earn his spot in the wing. He later returned to the cell and gave Kapene and B a pair of prison gloves.</p> <p>A plan was formed to attack the deceased.</p> <p>The deceased was alone when Taylor, Penny, Kapene, Clay and B entered his cell and inflicted a violent attack on him.</p> <p>Taylor hit the deceased twice in the face with his fists. Clay, wearing a balaclava, hit the deceased about five times to his face. Penny, who had also entered the cell with his face covered, commenced hitting the deceased about two or three times. B also hit the deceased twice with his fist and Kapene, once in the chest.</p> <p>The deceased was also thrown to the ground and kicked, with maximum force, to the side of his face. The kicking was a sustained attack, which went on for some time, as he lay injured and incapacitated on the ground.</p> <p>Taylor tried to stop the continuing</p>	<p>Taylor 17 yrs imp.</p> <p>EFP.</p> <p>Penny 17 yrs imp. Partly conc with term of imp already serving.</p> <p>EFP.</p> <p>The trial judge found the offending agg by the fact the deceased was attacked by five men, who inflicted a violent attack on a defenceless man, who was older and weaker than each of the fit, strong, young men who attacked him; the offending was premeditated rather than a spontaneous act; the offenders each joined together to the cell where they knew the deceased was vulnerable and that they each knew the purpose of entering the cell was to inflict an attack on the deceased; they were each present whilst the attack occurred; they each then inflicted blows to the deceased and assisted others to assault the deceased by their presence; they fled the scene and did not render first aid to the deceased or seek any immediate assistance; it was a senseless attack, committed for no reason other than the offenders accepted a rumour concerning the deceased's antecedents; the level of violence escalated when the deceased was pushed to the ground, after which the appellants and Clay continued the brutal attack.</p> <p>The trial judge found that one or more acts in a series of acts done by the appellants and Clay, either alone or in combination with the acts of their co-offenders, was a significant or substantial cause of the death; the acts done by each of the appellants and Clay made a significant or substantial contribution to the deceased's death; in any event, each offender</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [97] ... in our view, the offending by the appellants was very much in the upper range of the scale of criminality of manslaughter offences and warranted a penalty towards the upper end of the available range of sentences.</p> <p>At [98] Although no weapons were used, the degree of violence involved in the offending was sustained and extreme. Objectively, the repeated blows with feet and fists to the deceased's head were highly likely to result in his death. ... the high level of the violence and the probable consequence of that level of violence was a significant agg feature of the offending.</p> <p>At [100] ... this was a planned attack on a vulnerable person by a large group of fit, strong, young men. The victim offered no provocation for what was done. The deceased had no opportunity to resist or avoid the offenders. The offenders continued to kick and stomp on the deceased's head as he lay helpless on the ground.</p> <p>At [101] The appellants both played an important role in the offending. Each delivered blows to the deceased's head which was a significant or substantial cause of the death. ... There was no evidence that either of the appellants were anything other than a willing participant, and no challenge to the trial judge's finding that each of the appellants were willing and active participants in the sustained violence attack on the deceased.</p> <p>At [108] A very significant agg feature of the offending is that it occurred in a custodial setting. ...</p>

		<p>parents other relationships; grandmother primary carer.</p> <p>Father a lengthy history of offending behaviour and drug dependence; absent due to lengthy terms of incarceration.</p> <p>Mother significant problems with alcohol and methyl use; unpredictable and abusive to her children.</p> <p>Sexually victimised aged 6; left home aged 14; lived a transient lifestyle living with various relatives; drug use and violence normalised.</p> <p>Early school yrs interrupted by family relocation and lack of basic supplies; oppositional behaviour issues due to lack of structures at home; below average achievements due to poor attendance.</p> <p>No vocational skills; no employment history.</p> <p>Two significant relationships; unstable due to substance abuse issues.</p> <p>Sound physical health; history of self-harm and depression; reported episodes of sleep paralysis and auditory hallucinations a consequence of drug abuse.</p> <p>Commenced drug use aged 11 yrs; progressed to other illicit substances, including methyl, heroin, hallucinogens and prescription medication.</p>	<p>double stomping.</p> <p>They then left the cell, leaving the deceased in a pool of blood, which was seeping out of the cell and into the corridor.</p> <p>Penny visited Kapene and B and told them to keep their mouths shut.</p> <p>The deceased sustained a significant head injury, with an ultimately fatal injury to his brain.</p>	<p>was criminally responsible under s. 7(b) and s. 7(c) of the <i>Criminal Code</i> by their physical presence and their physical acts.</p> <p>The trial judge found Taylor a very willing and active participant; he participated in the assault by punching the deceased and then forcing him on the ground and delivering kicks to the deceased's head with close to maximum force.</p> <p>The trial judge found Penny a willing and active participant in the violent attack; he aided the offending by his physical presence and inflicted violent blows and further kicked the deceased to the face during the attack; he was also trusted to send the message to the two offenders who participated through threats that they should keep quiet.</p> <p>Taylor accepted he was involved in the attack; had insight into his actions, but limited remorse; no sound prospects for rehabilitation.</p> <p>Penny demonstrated no real remorse; denied the offending; showed no victim empathy; no sound prospects for rehabilitation.</p>	
3.	<i>The State of Western Australia v Dimer</i>	26 yrs at time offending and sentencing.	<p>1 x Manslaughter.</p> <p>Dimer had been drinking alcohol for a</p>	<p>7 yrs 6 mths imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p>

	<p>[2022] WASCA 148</p> <p>Delivered 11/11/2022</p>	<p>Convicted after PG (25% discount).</p> <p>Significant criminal history.</p> <p>Seven siblings; childhood marred by frequent violence and substance abuse; father killed aged 11 yrs; mother struggled to cope; often left to fend for himself; death of older brother by suicide 2013.</p> <p>Education marred by truancy, fighting and alcohol abuse; failed to finish yr 11 due to term of detention; unsuccessful att to complete yr 12 on release.</p> <p>Limited employment history; completed some work-related training; two weeks FIFO work before offending.</p> <p>Daughter from 18 mth relationship.</p> <p>Long history of alcohol abuse; began drinking aged 14 or 15 yrs; binge drinking to become intoxicated by aged 16 yrs.</p>	<p>significant part of the previous day and night.</p> <p>Dimer and his nephew attended a club. After leaving the venue he and his nephew approached a group of men outside. The group comprised the victim, aged 40 yrs, his cousin and a friend.</p> <p>Dimer's nephew approached the group and a verbal altercation occurred. The nephew threw a punch at the victim's friend, which did not make contact, before trying to engage in a fight.</p> <p>The victim did not participate in any violence.</p> <p>Dimer approached the victim from behind and delivered a single blow with a clenched fist to the back of his head. The victim walked away and sat down. Shortly afterwards he lost consciousness and stopped breathing.</p> <p>The victim was conveyed to hospital by ambulance. He sustained an internal head injury and remained unconscious in ICU. He did not respond to treatment and was declared brain dead. His life support system was disconnected the following day.</p> <p>The cause of the victim's death was an acquired brain injury, with swelling and bleeding around his brain and a laceration to a vertebral artery.</p>	<p>The sentencing judge found the offence was not planned, it occurred impulsively and without any thought for the possible consequences; it was not a sustained assault; there was no provocation on the part of the victim; the victim was struck from behind and had no opportunity to defend himself in what was a cowardly and unsuspecting attack; no weapon was used and the appellant did not stay or render any assistance.</p> <p>Offending profound and devastating impact on victim's wife and other family members.</p> <p>Co-operative; lack of insight into negative influence of alcohol; high-risk of future violent offending unless alcohol abuse and antisocial behaviour addressed.</p>	<p>At [57] In the present case, the respondent's offending was undoubtedly serious. He attacked [the victim] by inflicting a single blow with a clenched fist. It was a cowardly act of intentional violence in a public place. [The victim] was vulnerable because he was struck from behind without warning. [The victim] was unknown to the respondent. The respondent was not in any sense provoked. After his random and gratuitous attack, the respondent left the scene without any concern for [the victim's] welfare.</p> <p>At [58] The seriousness of the respondent's criminality is not reduced by the absence of some agg factors which have occurred in other cases. ...</p> <p>At [65] The sentence imposed was reasonable open to his Honour on a proper exercise of his discretion. ... The sentence was not manifestly inadequate.</p>
2.	<p>Hutton v The State of Western Australia</p> <p>[2022] WASCA 133</p> <p>Delivered 14/10/2022</p>	<p>38 yrs at time offending. 40 yrs at time sentence.</p> <p>Convicted after PG (20% discount).</p> <p>Prior criminal history; no previous sentences of imp. or violent offending.</p> <p>Parents separated when a baby; never met his biological father;</p>	<p>Ct 1: Arson. Ct 2: Manslaughter.</p> <p>Hutton believed the victim had sexually assaulted his daughter. He drove from Perth to Geraldton to confront him.</p> <p>Hutton went to the victim's home armed with a knife. During a confrontation he assault the victim, inflicting two, non-life threatening, knife wounds.</p>	<p>Ct 1: 18 mths imp (cum). Ct 2: 7 yrs 6 mths (cum).</p> <p>TES 9 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's actions premediated and well planned and those of a vigilante and he did not provide or obtain medical assistance for the victim either in relation to the knife wounds or after he had</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence ct 2 and totality principle.</p> <p>At [55] In our opinion, the appellant's contention that the sentence of ... imp for ct 2 was manifestly excessive does not have a reasonable prospect of success. That is the only conclusion reasonably open ...</p> <p>At [63] ... the appellant's offending on ct 1 and ct 2 occurred within a short period. However, we are satisfied that it was necessary in order properly to mark the seriousness of the appellant's overall offending, having regard to all relevant facts and circumstances and all relevant</p>

		<p>mother physically and verbally abusive towards him; loving and carrying stepfather from aged 7 yrs who endeavoured to protect him from his mother's abusive behaviour.</p> <p>Supportive family and friends.</p> <p>Educated to yr 11; bullied; behavioural problems at school.</p> <p>Good work history; employed variety of occupations.</p> <p>Long-term relationship from aged 21 yrs; married; three children; separated.</p> <p>Mental issues on disintegration of his marriage; prescribed antidepressant medication.</p> <p>Cannabis use ages 15-22 yrs and after marriage breakdown; using cannabis at time offending.</p>	<p>Hutton then doused the victim's home with petrol and lit a fire inside the house by unknown means. He then left the premises, despite knowing the victim was injured.</p> <p>Firefighters attended and located the victim's body.</p> <p>The cause of the victim's death was determined to be the 'combined effects of fire and multiple injuries in a man with atherosclerotic heart disease'.</p>	<p>ignited the fire.</p> <p>The sentencing judge found the offence of arson was serious; an accelerant was used; he targeted a house in a residential neighbourhood, where there was a significant risk of the fire spreading to adjoining properties or land and he put at great risk members of the fire and emergency services.</p> <p>Remorseful and accepting of responsibility; very sound prospects of rehabilitation; low risk of future violent offending.</p>	<p>sentencing factors, to order some accumulation of the appropriate sentence for ct 1 and the appropriate sentence for ct 2. ... We consider that a sentence of 3 yrs 3 mths imp for ct 1 (before considering totality) was lenient.</p> <p>At [64] In our opinion, the appellant's contention that the TES ... was unreasonable or plainly unjust does not have a reasonable prospect of success. A custodial term of that length was required in order properly to reflect the very serious character of the appellant's overall offending. The TES bears a proper relationship to the criminality involved in both of the offences, viewed together, and having regard to all relevant facts and circumstances and all relevant sentencing factors, including the seriousness of the overall offending, [the victim's] vulnerability [and] the short period within which the offending occurred, ...</p>
1.	<p><i>Byrne v The State of Western Australia</i></p> <p>[2022] WASCA 64</p> <p>Delivered 07/06/2022</p>	<p>22 yrs at time offending.</p> <p>Convicted after PG (20% discount).</p> <p>Irrelevant criminal history.</p> <p>One of five children; parents' marriage not a happy one; found their separation at aged 15 yrs hard to deal with; exposed to deceased's excessive drinking; but well cared for by his parents.</p> <p>Very close relationship with the deceased; close relationship with his mother and siblings who remain supportive.</p> <p>Educated to yr 10 high school; completed a TAFE diploma.</p>	<p>1 x Manslaughter (vehicle manslaughter).</p> <p>The deceased, aged 52 yrs, was Byrne's father.</p> <p>On the day of the offence it was sunny and the road was dry.</p> <p>The deceased was with friends at a hotel. He asked Byrne to join him. Before driving to the hotel Byrne drank some beer and smoked some cannabis. At the hotel he, and the deceased, drank alcohol. Both had too much to drink.</p> <p>At some point, Byrne and the deceased got into an argument, during which Byrne behaved aggressively towards the deceased.</p> <p>At about 2.30pm, Byrne and the</p>	<p>6 yrs 8 mths imp.</p> <p>MDL disqu 5 yrs.</p> <p>EFP.</p> <p>The sentencing judge found the appellant had no imperative to drive home in an intoxicated state; his level of intoxication was likely to have contributed to his bad decision to drive, but this did not reduce the seriousness of his conduct.</p> <p>The sentencing judge the offending aggravated by the fact the appellant drove under the influence of alcohol and drugs to such an extent that he was incapable of properly controlling his vehicle; he knew that he was intoxicated and should not have driven and that, by doing so, he exposed himself and others to risk of injury; he drove for a period of approx three minutes over a distance of</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of sentence.</p> <p>At [43] ... having regard to the aggravating features identified by the sentencing judge, there can be no doubt that the offence involved a high degree of criminality. The appellant deliberately drove his vehicle knowing that he was intoxicated by alcohol and cannabis. He drove in suburban streets in broad daylight at excessive speed and on the wrong side of the road on several occasions. At one point, on the wrong side of the road at the crest of a hill. Had there been any oncoming traffic, the opportunity to avoid a collision would have been very limited. As the sentencing judge found, the appellant's loss of control of the vehicle was, given the manner of driving, almost inevitable and it is extremely fortunate that no-one else, apart from the deceased, was injured. The potential for further injury and death was great.</p> <p>At [44] ... the tragic consequences of the appellant's driving, including the death of his father, while tending to moderate the sentence on the basis that the appellant will suffer the guilt associated with his actions for the rest of his life, cannot override the necessity to ensure that the sentence imposed properly reflects the criminality of his offending,</p>

		<p>Single; no children.</p> <p>Self-employed; successful concrete business; employed his sister and brother; deceased involved in the business.</p> <p>Cannabis use from age 17 yrs; used cannabis daily for a number of yrs; heavy drinker from aged 28 yrs until time offending; regular binge drinker; often drank with the deceased.</p> <p>Denied methyl use; attributed small level found in his system at time offending to smoking cannabis, unknown to him, laced with methyl.</p>	<p>deceased left the hotel. Byrne was angry, upset and crying. The deceased was calm. The decision was made that Byrne would drive, as he was less intoxicated. The deceased got into the rear passenger seat of Byrne's vehicle, but did not put on his seatbelt.</p> <p>Byrne's vehicle was recorded by CCTV cameras at various locations and on another vehicle's dashcam.</p> <p>Byrne drove from the carpark. He drove erratically and at speed, the tyres of his vehicle squealing. As he made a left hand turn his vehicle ran wide and encroached onto the wrong side of the road and into the path of an oncoming vehicle. He made a sharp turn back to the correct side of the road to avoid a collision but overcorrected. His vehicle to mount the kerb before returning to the road.</p> <p>Byrne continued on driving and on making a further turn drove partly over a traffic island. He continued driving, turning onto a road with a 50 km p/hr speed limit and bordered, on either side, by residential properties.</p> <p>A home CCTV camera captured Byrne driving on the correct side of the road, but at excessive speed. However, as he drove at high speed his vehicle crossed onto the wrong side of the road. The road at this point rose to a crest before sloping down. A vehicle travelling in the opposite direction would not have been able to see his vehicle until they reached the rest of the hill.</p> <p>Byrne continued driving, past a further CCTV camera. His vehicle was captured on the wrong side of the road, driving towards two oncoming vehicles at a speed estimated to be 115 km p/hr. As he approached the first of the two oncoming vehicles he steered hard towards the correct side of the road but</p>	<p>approx 1.4 km at excessive speed and in a reckless manner; the speed at which he drove, given the speed limit and the residential nature of the road, was grossly excessive; the manner in which he drove made it 'almost inevitable that he would eventually lose control of the vehicle and crash it.</p> <p>Low risk of reoffending; suffered immense grief, depression, anxiety and PTSD since the crash; steps taken to address his substance abuse problem.</p>	<p>having regard to all of the relevant facts and circumstances. ...</p>
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			<p>did not slow down. His vehicle slid across the driveways and grass verges of several properties. He lost control of his vehicle and it tipped and rolled several times before coming to rest on its roof in the middle of the intersection.</p> <p>The deceased was thrown out of a window of the vehicle and onto the road.</p> <p>Police arrived at the scene a short time later. The deceased was badly injured. Byrne identified himself to police. He said to his father, ‘I love you it’s my fucking fault man’.</p> <p>A blood sample taken from Byrne revealed he had a blood alcohol reading of 0.142%, an amphetamine level of 0.02 mg/l and a tetrahydrocannabinol level of 7.9 ug/l.</p> <p>The deceased was taken by ambulance to RPH. He suffered serious head and chest injuries and later died as a result of his injuries.</p> <p>A vehicle examination did not reveal any defects that would have contributed to Byrne’s loss of control of the vehicle.</p>		
Maximum penalty increased to life imprisonment (17/03/2012)					