

Persistent Family Violence

s 300 *Criminal Code*

From 1 January 2021

Glossary:

agg	aggravated
att	attempted
conc	concurrent
cum	cumulative
ct	count
PO	prescribed offence
EFP	eligible for parole
imp	imprisonment
PG	plead guilty
PNG	plead not guilty
susp	suspended
TES	total effective sentence

Office of the Director of Public Prosecutions

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
2.	<p><i>Wilson v The State of Western Australia</i></p> <p>[2025] WASCA 8</p> <p>Delivered 15/01/2025</p>	<p>47 yrs at time sentencing.</p> <p>Convicted after PG (15% discount for ct 1; 5% discount for cts 2 and 4; 10% discount for cts 3 and 7; 25% discount for cts 5 and 6).</p> <p>Criminal history; DDOD and DDOGBH; other lesser driving offences.</p> <p>Born in WA and grew up on the family farm.</p> <p>Completed a degree in accounting; worked for a period as a graduate; later returned to farming.</p> <p>Two significant relationships; two children from first relationship; second relationship was with the victim.</p>	<p>Ct 1: Persistent family violence. Cts 2 and 3: Agg AOBH. Cts 4, 5 and 7: Act which life, health or safety was endangered. Ct 6: Armed likely to cause fear.</p> <p>The relationship between the appellant and the victim commenced in 2014. The victim had two young children from a previous relationship. The victim moved with her children to the appellant's farm.</p> <p><u>Ct 1:</u></p> <p>Ct 1 related to six incidents of family violence over a period of five years. Over that period, the appellant assaulted the victim numerous times, using punches and kitchen instruments on her.</p> <p><u>Cts 2 and 3:</u></p> <p>Count 2 related to an incident where the appellant took a power drill and used it on the victim's upper body. The drill left a red burn on the victim's back.</p> <p>Ct 3 related to an incident where the appellant elbowed the victim to her face. The assault resulted in swelling and a bruised eye.</p> <p><u>Cts 4, 5 and 7:</u></p> <p>Ct 4 related to an incident where the appellant choked the victim, requiring her 13-year-old daughter to pull him off of her mother.</p> <p>Ct 5 related to an incident where the appellant threw a glass tumbler at the victim's face. The glass tumbler caused numerous cuts to the victim's face.</p> <p>Ct 7 occurred on the same day as ct 6. The appellant pushed the victim over, sat on her back, and slammed her head</p>	<p>Ct 1: 2 yrs 6 mths imp (cum). Ct 2: 12 mths imp (cum). Ct 3: 4 mths imp (coc). Ct 4: 2 yrs imp (cum). Ct 5: 12 mths imp (conc). Ct 6: 18 mths imp (cum). Ct 7: 12 mths imp (conc).</p> <p>TES: 7 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found that the complainant was vulnerable in that she was smaller than the appellant and had no real chance of defending herself. A number of the offences involved the use of weapons.</p> <p>The sentencing judge found that a number of the offences occurred in the presence of children.</p> <p>The appellant provided a letter to the sentencing judge expressing his deepest regret and apologies for his behaviour. The sentencing judge found that personal deterrence was required, as the appellant's remorse was not of the highest degree.</p> <p>The victim described the profound impact of the offending; she often feared she would die; described the relationship as 'going through hell'.</p>	<p>Appeal dismissed (leave refused).</p> <p>Appeal concerned the discount given pursuant to s 9AA and the first limb of the totality principle.</p> <p>At [195] '... offences of this nature generally involve an abuse of trust and a victim who is vulnerable to the offender. Victims often have difficulty extricating themselves from an abusive relationship. ... Domestic violence is a scourge on society.'</p> <p>At [196] '... the commission of violence offences in the presence of a child exposes the child to the risk that the cycle of violence may extend to another generation. Children may be distressed and suffer long-term trauma as a result of being exposed to violence. Violence may become normalised over time.'</p> <p>At [197] '... in the present case, the appellant physically, psychologically and emotionally abused the complainant. The appellant's offending included behaviour that was calculated to terrorise, intimidate, coerce and control the complainant. Denunciation of the appellant's criminal conduct, in addition to personal and general deterrence, was an important sentencing consideration.'</p> <p>At [199] 'the circumstances of the offending in this case were very serious. The appellant engaged in a series of violent offences against the complainant over a period of give years. The offences involved assaults by punching, pushing, shaking and grabbing by the throat and strangling the complainant. Some of the assaults occurred in the presence of the complainant's young children. The appellant threatened the complainant with weapons. He verbally abused and denigrated her. The complainant was vulnerable, lived in fear and the effects on her were significant. As the sentencing judge noted, the complainant suffered both physical and psychological harm.'</p> <p>At [200] 'as regards the appellant's personal circumstances, he had no prior record of violence and had taken some steps towards rehabilitation ... he did not have the benefit of youth and his expressions of remorse were offset by the initial minimisation of his conduct and his late pleas of guilty ... The character references had to be viewed in light of the obvious fact that the way in which the appellant presented to others was not consistent with his behaviour when alone with the complainant.'</p> <p>At [206] 'having regard to the maximum penalties, the circumstances of the offences, the appellant's personal circumstances and the limited assistance of comparable cases, it is not reasonably arguable that the total effective sentence in this case was unreasonable or plainly unjust.'</p>

			<p>into the ground.</p> <p><u>Ct 6:</u></p> <p>After an argument between the appellant and the victim, the appellant picked up an unloaded shotgun and cocked it. The appellant then dry-fired the gun pointing it away from the victim.</p>		
1.	<p><i>The State of Western Australia v Winch</i></p> <p>[2024] WASCA 79</p> <p>Delivered 03/07/2024</p>	<p>40–48 yrs at time offending. 52 yrs at time sentencing.</p> <p>Convicted after PG (12% discount).</p> <p>Criminal history; AOBH against current victim; numerous breaches of VRO; common assault and breach of VRO against another woman from a previous relationship.</p> <p>Uneventful upbringing; supportive family.</p> <p>Left school after yr 11 and began working as an electrician; stable employment history.</p> <p>One child from previous relationship.</p> <p>Diagnosed ADHD; alcohol dependent; diagnosed depression; previous suicide attempts.</p>	<p>1 x Persistent family violence.</p> <p>The respondent and the victim were married. The respondent is 10 yrs older than the victim. Following the increase in the respondent’s alcohol consumption, the respondent became verbally and physically abusive towards the victim. Most of the POs happened at night when the respondent was drunk.</p> <p><u>PO 1: Assault</u></p> <p>The respondent threw a meat pie at the victim, which struck her in the face.</p> <p><u>PO 2: Threat to kill</u></p> <p>Whilst in the kitchen, the respondent became angry and verbally abused the victim. The respondent took a knife and put it to the victim’s throat and threatened to kill her.</p> <p><u>PO 3: Threat to harm and crim damage</u></p> <p>The respondent and the victim were in their lounge room. The respondent verbally abused the victim and spat in her face, then smashed some photographs and ornaments. He then retrieved an axe from the shed. The respondent threatened to cut the victim’s foot off and, before moving outside, smashed the victim’s phone.</p> <p><u>PO 4: Threat to kill</u></p> <p>After the respondent became enraged,</p>	<p>2 yrs 3 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the respondent had taken no real steps to change his behaviour over the 8 yrs of offending.</p> <p>The violence used by the respondent was found to be ‘towards the lower end of the scale in terms of physical violence and physical outcomes for the victim.’</p> <p>The offending had negatively impacted the victim’s life; the respondent’s behaviour had eroded her trust in others; experienced feelings of guilt; continues to live in fear of the respondent.</p> <p>The sentencing judge found there was a degree of remorse from the respondent, and he had made some efforts to deal with his alcohol abuse.</p> <p>The sentencing judge found the respondent’s time in custody would be more onerous on account of his detoxification from alcohol than if he had been in the community.</p>	<p>Appeal allowed.</p> <p>Appeal concerned length of sentence.</p> <p>Resentenced:</p> <p>5 yrs 8 mths imp.</p> <p>EFP.</p> <p>At [88] ‘having regard to the terms of s 300 and its relevant context, the following (non-exhaustive) matters emerge that, depending on the facts and circumstances of each individual case, will ordinarily be relevant in assessing the seriousness of an offence of persistently engaging in family violence.’</p> <p>At [89] firstly, the nature of the charge means that the victim ‘is likely to have reposed a level of trust in the offender. Further, the victim is also likely to be emotionally or financially dependent’ on the offender.</p> <p>At [90] ‘secondly, because the “acts of family violence” that are required for a person to have persistently engaged in family violence are those acts that would otherwise constitute a “prescribed offence”, it is necessary to observe that such offences do not include more serious offences of violence that can only be dealt with on indictment ... Further ... not all of the prescribed offences referred to in s 299(1) are [acts of personal violence].’</p> <p>At [92] ‘this means that the gravity of an offence contrary to s 300 will not necessarily depend on and may not be informed to any significant extent by, the seriousness of any physical injuries suffered by the victim...Further, in assessing the seriousness of an offence contrary to s 300 of the Code, it must be appreciated that the gravity of any physical injuries is not the only litmus test; it will often be very important to also play close attention to any psychological injury and emotional trauma suffered.’</p> <p>At [93] ‘thirdly, as is the case with offences contrary to s 321A of the Code, an offender is to be sentenced and punished for the whole course</p>

		<p>he retrieved a speargun from the shed and pointed it at the victim as she lay in the bed. The respondent said he would kill the victim then himself.</p> <p><u>PO 5: AOBH</u></p> <p>After the respondent became enraged, the respondent grabbed the victim by her right arm, which resulted in bruising.</p> <p><u>PO 6: Act likely to endanger and assault</u></p> <p>Once again, the respondent was drunk and angry. He told the victim if she ever left him, there would be murders. The respondent put both his hands arounds the victim’s throat and shook her for about five seconds. The respondent again threatened to kill the victim, then poked her eye with his finger.</p> <p><u>PO 7: Act likely to endanger and assault</u></p> <p>The respondent struck the victim on the arm with a sandal, then shook her violently.</p>	<p>of criminal conduct ... this does not mean that an appropriate sentence for the purpose of an offence contrary to s 300 falls to be determined by reference to any individual or total effective sentences that might otherwise have been imposed had the various “acts of family violence” been the subject of individual charges.’</p> <p>At [94] ‘fourthly ... each case must be determined according to its particular facts and circumstances, and by having regard to all relevant sentencing factors.’</p> <p>At [95] ‘fifthly, the maximum penalty ... reflects the serious view that Parliament has taken of such conduct.’</p> <p>At [96] ‘sixthly, the following matters will often be relevant to the court’s assessment of the seriousness of the offence’: the period of time which the offending took place; the frequency of the offending; the nature of the offending; the psychological impact of the offending; the physical impacts; the degree of dependence of the victim upon the offender; and the extent to which the offending trapped the victim in the relationship. The ‘above list is not intended to be exhaustive ...’</p> <p>At [98] ‘... as the sentencing judge appeared to accept, the many specific instances [of offending] ...were just representative of a “much broader picture and relationship that involved abuse, and physical and verbal violence, and threat, and aggression”.’</p> <p>At [105] ‘in this case, the victim impact statement very clearly illustrates the pernicious effect of sustained domestic violence in general and, more specifically, the enduring and deleterious effect the respondent’s behaviour had had on the [victim].</p> <p>At [116] ‘in our view ... the sentence was so inadequate such that it must be inferred that the sentencing judge made a material error in the exercise of her sentencing discretion. A significantly higher sentence should have been imposed.’</p>
--	--	--	---