

Sexual Assaults – Home Invasions

ss 325 and 326 *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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
PG	plead guilty
agg	aggravated
burg	burglary
sex pen	sexual penetration without consent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
ct	count
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
2..	<p><i>Ugle v The State of Western Australia</i></p> <p>[2022] WASCA 135</p> <p>Delivered 21/10/2022</p> <p>Co-offender:</p> <p><i>Herz v The State of Western Australia</i></p> <p>[2022] WASCA 73</p> <p>Delivered 27/06/2022</p>	<p>44 yrs at time offending. 46 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Significant prior criminal history; subject to a CBO at time of offending.</p> <p>Chaotic, deprived and traumatic upbringing; absent father; predominantly raised by grandparents; childhood marred by alcohol abuse and domestic violence; sexually abused by relative from aged 8.</p> <p>Two sisters; mother in a nursing home at time sentencing.</p> <p>Completed yr 12 high school.</p> <p>Employed various roles; voluntary community work.</p> <p>Single; 11 children from three former partners.</p> <p>History methyl use; commenced using drugs aged 21 yrs.</p>	<p>Ct 1: Agg burg. Cts 2 & 3: Dep lib. Ct 4: Agg robbery. Cts 5; 6; 8-11; 13 & 14: Agg sex pen. Ct 7: Threats with intent to compel.</p> <p>The victims were Ms S and her friend, Ms P.</p> <p>Ugle had met Ms S on one occasion, to purchase drugs from her. He believed she kept a large quantity of cash at her home. With the intention of stealing the cash Ugle and the co-offender Herz and two unidentified males drove to her home.</p> <p>Ugle and Herz and one of the unidentified males approached the home. Ugle knocked on the door. When the door was partially opened they forced it open and Ugle and Herz entered the house. The other male remained outside acting as lookout. Ugle was carrying a tomahawk and covered his hands in socks.</p> <p>The victims were separated. Ugle, armed with the tomahawk, kept Ms S in one room and Herz stood over Ms P in another. Ms S was directed to hand over all mobile phones and the house and car keys.</p> <p>Ugle demanded cash from Ms S. When she told him she did not have any he demanded \$4,000 and stated if he did not get this sum he would steal her car and everything in her house.</p> <p>Ugle trashed the home looking for cash or items to steal. While this occurred Herz guarded the victims. Ugle loaded stolen items of property into the boot of Ms S's BMW.</p> <p>Both victims were terrified and helpless and feared being seriously harmed.</p>	<p>Ct 1: 5 yrs imp (cum). Cts 2 & 3: 3 yrs imp (conc). Ct 4: 4 yrs imp (conc). Cts 5; 8 & 13: 17 yrs imp (conc). Cts 6 & 9: 17 yrs 6 mths imp (conc). Ct 7: 2 yrs imp (conc). Ct 10: 18 yrs imp (conc). Ct 11: 16 yrs 10 mths imp (conc). Ct 14: 18 yrs 6 mths imp (cum).</p> <p>TES 23 yrs 6 mths imp.</p> <p>EFP.</p> <p>The trial judge found the appellant's offending agg by his use of the tomahawk axe, which he used to intimidate, threaten and coerce S into complying with his demands; he gained entry to the home by fraudulent means (identifying himself as a neighbour) and physical force; he was in company; it was premeditated, planned and could not be seen as opportunistic offending and it was not fleeting in nature; the offending destroyed the sanctuary and safety S ought to have felt within the confines of her home and he made multiple threats to harm and kill, adding an element of terror.</p> <p>The trial judge found the sex offending deplorable violations that destroyed, not only the sanctity of S's body, but the sanctuary of her home; the sex penetrations were violent and forceful in nature; while the offending constituted one course of conduct, it nevertheless was persistent, ongoing, repetitive and brutal; the appellant sex penetrated S persistently over the course of three to four hrs; collectively this offending included every conceivable type of penetration to the victim and he recorded the offences; he did not wear a condom; when the victim cried and pleaded with him to stop, it did nothing to deter him from continuing to violate her and he berated S for not acting like she was enjoying the abuse.</p> <p>Offending traumatic and ongoing impact on S and P; trauma to S, devastating and</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [95] In our view, it was reasonably open to the trial judge in the present case to regard some degree of accumulation of individual sentences to be called for to reflect the overall seriousness of all the appellant's offending. ...</p> <p>At [96] In assessing the overall criminality involved in the offending considered as a whole it is relevant to take account of the fact that the offences were all committed over a single period of about eight hrs. However, it is also relevant ... the sex offences against S extended over a period of hrs and involved a series of very traumatising sex pen without consent, which themselves justify individual sentences ... The agg home burglary offence was itself a serious example of that offence, involving a home invasion in company while armed ... which was used to threaten the victims. ... The agg robbery offence committed against a separate complainant, P, was itself an egregious offence. ... Forcing S to inject herself with methyl, after she had already done so earlier in the evening at the appellant's direction, represented a separate violation of S's personal autonomy and carried the risk of harmful effects. ...</p> <p>At [97] ... a TES of 23 yrs 6 mths' imp was within the discretionary range properly open to the trial judge. The TES ... did not infringe the first limb of the totality principle. It was not unreasonable or plainly unjust. ...</p>

		<p>On realising the home had CCTV cameras Ugle demanded the footage be deleted. Ms S was unable to do so, so he pulled out the CCTV recorder and hard drive and bundled them into the boot of Ms S's car.</p> <p>Ugle became agitated about the absence of cash so Ms P offered to withdraw money from her account. It was agreed Herz would escort her to an ATM. Ugle held the tomahawk above Ms S's head and threatened to kill her and Ms P's family if she called the police or failed to return. Ms P withdrew \$1,000 from an ATM. This money was given to Ugle, who then demanded she withdraw \$1,000 each day, over the next three days. He told Ms P he would keep Ms S hostage until the full amount was paid. He made further threats to kill her and her family if she did not comply with his demands.</p> <p>Ms P was eventually allowed to leave. Ugle then told Herz he could leave and he did so.</p> <p>After Herz left Ugle, still holding the tomahawk, started touching Ms S's leg. She became extremely upset and told him she did not want to do anything with him. Angered by her response and ignoring her refusals he pulled down her leggings and recorded her with her underwear down. He asked for sex and she complied out of fear. He forced his finger deep inside Ms S, causing her pain. He then forced his erect penis inside her mouth and exposed and touched her vagina, while recording her.</p> <p>Earlier Ms S offered methyl to Ugle and Herz, in the hope of de-escalating the situation. Concerned there might be something wrong with the drugs Ugle told Ms P to inject some of it. Instead, Ms S allowed Ugle to inject her.</p> <p>Later Ugle arranged for Herz to return</p>	<p>widespread; att suicide.</p> <p>No demonstrated remorse or victim empathy.</p>	
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1.	<p><i>Harris v The State of Western Australia</i></p> <p>[2022] WASCA 84</p> <p>Delivered 15/07/2022</p>	<p>22 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after trial; on pre-sentence order at time offending.</p> <p>Lengthy criminal history.</p> <p>Aboriginal; traumatic childhood; dysfunctional upbringing; profound childhood deprivation; born while mother incarcerated; father frequently in prison; raised by grandmother and sister; exposed to alcohol abuse and family violence.</p> <p>Death of grandmother aged 13 yrs had significant impact on him; time in care of DCP.</p> <p>Left home aged 18 yrs; resided with cousin who took own life; blamed for death.</p> <p>Attended school to yr 10; some further education and training.</p> <p>Never employed.</p> <p>Good physical health; experienced depression, suicidal thoughts; acts of self-harm.</p> <p>History of alcohol and illicit drug use; escalated following cousin's death.</p>	<p>Ct 1: Agg burg. Ct 2: Agg sex pen without consent.</p> <p>In the early hrs of the morning Harris unlocked a security screen and gained entry to a house, occupied by L, and his partner, E.</p> <p>L was asleep, naked, on the couch. E was asleep in a bedroom.</p> <p>Harris knelt next to the couch on which L was sleeping. He took L's penis and performed fellatio on him. L presumed it was his partner.</p> <p>When L opened his eyes and saw Harris he punched him in the face. Harris said sorry, then ran for the door. L wrestled with Harris and tried to detain him. Harris picked up a torch and struck L in the head, causing a small laceration which bled. After a short scuffle Harris left the premises.</p> <p>Harris returned a few minutes later and requested the return of his thongs.</p> <p>At the time of the offending Harris was under the influence of alcohol, drugs and solvents.</p>	<p>Ct 1: 4 yrs imp (conc). Ct 2: 16 yrs imp (conc).</p> <p>TES 16 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the offending spontaneous or opportunistic behaviour that took place over a short period of time.</p> <p>The trial judge found the offending as 'towards the lower end of the scale for agg sex pen without consent', but not at the lowest level having regard to the agg factors.</p> <p>Genuinely remorseful; high risk of future sex reoffending.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of sentence ct 2.</p> <p>At [39] We do not accept the submission that, when the nature of the offence and the circumstances of the appellant are considered, ct 2 was a case in the least serious category.</p> <p>At [40] ... Adding to the seriousness of the offending was the vulnerability of L, who was naked and asleep in his own home. While the act of penetration was relatively brief in time, it could not be said to be fleeting and resulted in L ejaculating. The offence caused humiliation for L. The appellant, in an attempt to thwart his apprehension, struck L in the head with the ... torch causing a minor injury. Compared to other offences of its type, the objective facts and circumstances of the offending could not reasonably be said to be at the lowest end of the scale of seriousness.</p> <p>At [42] ... In our opinion it is not reasonably arguable that the sentence of 16 yrs' imp was manifestly excessive.</p>
<i>Transitional Provisions Repealed (14/01/2009)</i>					

Transitional Provisions Enacted (31/08/2003)					

Office of the Director of Public Prosecutions