

Threats

ss 338A and 338B *Criminal Code*

From 1 January 2021

Glossary:

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| agg | aggravated |
| att | attempted |
| AOBH | assault occasioning bodily harm |
| conc | concurrent |
| cum | cumulative |
| ct | count |
| dep lib | deprivation of liberty |
| EFP | eligible for parole |
| imp | imprisonment |
| PCJ | pervert the course of justice |
| PG | plead guilty |
| susp | suspended |
| TES | total effective sentence |
| VRO | violence restraining order |

| No. | Case | Antecedents | Summary/Facts | Sentence | Appeal |
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| 12. | <p><i>Narkle v The State of Western Australia</i></p> <p>[2024] WASCA 90</p> <p>Delivered 01/08/2024</p> | <p>41 yrs at time offending.</p> <p>Convicted after PG (25% discount).</p> <p>Extensive criminal history; numerous burg and home burg offences; driving offences (subject to 12 revocations of licence); violent offences; breach of bail offences.</p> <p>Good upbringing; sixth of seven children.</p> <p>Five children from previous relationships; ages ranged from 10 yrs to 24 yrs old; remained in relationship with B at time sentencing.</p> <p>Never worked; always relied on government allowances.</p> <p>Alcohol abuse.</p> <p>In good health.</p> | <p>Ct 1: Att agg home burg. Ct 2: Agg threat to kill. BU 254: Breach of bail. BU 255: Assault. BU 256: Agg assault. BU 257: Unlawful damage. BU 258: No authority to drive. BU 4674: Breach of FVRO.</p> <p>At the time of the offending, the appellant resided with his mother, M and his girlfriend, B. B was 27 weeks pregnant. There were protective bail conditions which prevented the appellant from acting in an aggressive, threatening or offensive manner towards B.</p> <p>After returning from a crabbing trip, the appellant, got into B's car — whilst intoxicated — and drove off (BU 258).</p> <p>While the appellant was away, B and M went to their neighbour's unit. The unit belonged to A and C. When the appellant returned, he went to the unit and asked for his house keys from B. He told B he had smashed the car.</p> <p>B went outside and saw damage to her vehicle. She then returned to A and C's unit. The appellant asked B to come outside, but B refused as she feared for her safety due to the appellant's intoxicated state.</p> <p>The appellant initially left, then later returned and attempted to enter through the screen door. He then threatened to kill B and the group (ct 2).</p> <p>The appellant then picked up a chair from outside and smashed the windows to A and C's unit (BU 257). He unsuccessfully attempted to climb through the window (ct 1).</p> <p>A went outside to confront the appellant. The appellant hit A on the</p> | <p>Ct 1: 2 yrs imp (HS). Ct 2: 6 mths imp (cum). BU 254: 12 mths imp (conc). BU 255: 6 mths imp (cum). BU 256: 10 mths imp (cum). BU 257: 5 mths imp (cum). BU 258: 3 mths imp (cum). BU 4674: 4 mths imp (conc).</p> <p>TES: 4 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found that the offending was serious, and specific deterrence was a significant matter in sentencing the appellant.</p> <p>The sentencing judge found there was a significant risk of the appellant reoffending; the appellant had taken no steps to change his behaviour.</p> <p>The sentencing judge found all of the victims were vulnerable and the appellant preyed on their vulnerability.</p> <p>The sentencing judge found the appellant's chronic alcohol use and lack of employment as factors impacting on his offending.</p> | <p>Appeal dismissed (leave refused).</p> <p>Appeal concerned first limb of totality principle.</p> <p>At [38] 'the overall criminality involved in all of the offending was, as the sentencing judge correctly recognised, high. It involved the appellant engaging in a prolonged unprovoked violent behaviour late at night at the victims' homes. Four victims were the subject of the offending, and a significant degree of accumulation was required to recognise the impact of the offences on each victim ... The appellant's behaviour ... was not aberrant or out of character. While it was not an aggravating factor, the appellant's past offending elevated the significance of personal deterrence and community protection in the present case.</p> <p>At [39] 'having regard to [all relevant factors] the total effective sentence of 4 yrs 6 mths immediate imprisonment imposed on the appellant was not arguably unreasonable or plainly unjust. The ground has no reasonable prospect of succeeding.'</p> |

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| | | | <p>check, causing him to fall to the ground (BU 256). C then went outside, and the appellant punched her to the cheek (BU 255).</p> <p>The appellant's aggressive behaviour towards B constituted the breach of bail conditions (BU 254).</p> <p>Whilst in custody, the appellant was served a FVRO. The appellant breached the FVRO by communicating with B over 500 times (BU 4674).</p> | | |
| 11. | <p><i>Purmah v The State of Western Australia</i></p> <p>[2024] WASCA 88</p> <p>Delivered 31/07/2024</p> | <p>27 yrs at time offending. 33 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No criminal history.</p> <p>Born in Mauritius; moved to Canada then Australia to study; one sister in WA; parents in Mauritius.</p> <p>Completed schooling in Mauritius; completed nursing qualifications; started Bachelor of Business at time offending.</p> <p>Worked part-time at a pharmacy; full-time at time sentencing.</p> <p>No issues of physical or mental health.</p> | <p>3 x Threats to compel.</p> <p>The appellant and the victim commenced a long-distance relationship over the internet. The complainant later provided nude photographs to the appellant. The relationship later began to breakdown. Whenever the couple would argue, the appellant would threaten to send the nude photographs to the victim's friends and family.</p> <p><u>Ct 1</u></p> <p>Soon after, the victim told the appellant the relationship was at an end. In response, the appellant told the victim she had to write a letter agreeing to three things: (1) she would complete all of his university assignments; (2) she would give him money from her employment; and (3) she would never bring legal action against him. The appellant told the victim that if she did not provide the letter, he would release the nude images of her.</p> <p><u>Ct 2</u></p> <p>Communication between the appellant and the victim continued. When it later dwindled, the appellant sent a threat on WhatsApp stating that he would post the nude images unless she replied to him.</p> | <p>Ct 1: 18 mths imp (conc). Ct 2: 18 mths imp (conc). Ct 3: 18 mths imp (conc).</p> <p>TES: 18 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found that the offending was a form of domestic violence, and was persistent, premeditated and calculated.</p> <p>The offending had a significant impact on the victim; experienced feelings of hopelessness and depression; felt as if she had to comply for cultural reasons; experienced suicidal thoughts.</p> <p>The sentencing judge did not accept that the appellant was remorseful. The sentencing judge found that the appellant still appeared to believe he was the victim.</p> | <p>Appeal dismissed (leave refused).</p> <p>Appeal concerned length and type of sentence.</p> <p>At [41] 'it was plainly open to the sentencing judge to come to the conclusion that notwithstanding the appellant's expression of remorse in the letter, he was not genuinely remorseful.'</p> <p>At [47] 'the offending in this case was serious because it involved the making of threats to effectively destroy the reputation of the complainant if she did not do things that the appellant wanted her to do.'</p> <p>At [48] 'whilst the appellant was to be sentenced on the basis that he did not actually distribute the messages, he plainly wanted the complainant to believe that he would and, in fact, that he had done so ... Further, he knew that his threats to publish caused the complainant distress and he urged her to commit suicide.'</p> <p>At [49] 'this was not the case of an isolated offence, but a course of conduct which may be properly characterised as an abusive relationship.'</p> <p>At [50] 'there was nothing in the personal history of the appellant that mitigated the offending.'</p> <p>At [61] 'in the present case, it was plainly open to the sentencing judge to be positively satisfied that suspended or conditionally suspended imprisonment was not an appropriate sentencing option.'</p> |

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| | | | <p><u>Ct 3</u></p> <p>The appellant continued to make threats to the victim. Later, the appellant sent her an email stating he would place the nude photographs on a public website.</p> | | |
| 10. | <p><i>SYO v The State of Western Australia</i></p> <p>[2024] WASCA 31</p> <p>Delivered 28/03/2024</p> | <p>38 yrs at time sentencing.</p> <p>Convicted after PG (25% for cts 1–3, 10% for ct 4).</p> <p>Minor criminal history; unlawful damage; breach of restraining order; agg burg; minor drug related offences; breach of violence restraining order.</p> <p>Raised by his mother; minimal involvement with his father; mother was physically abusive at times; often left home alone for days as a child; lived with grandmother from 13 yrs; unstable home; frequently saw violence perpetrated by uncles and aunts.</p> <p>Left high school at start of yr 9; completed TAFE course at 15 yrs.</p> <p>Worked in mining and construction since 14 yrs; FIFO work until voluntary separation in 2012.</p> <p>Several relationships of significance; one young daughter; most relationships marred by violence and drug use.</p> <p>No major history of illness or injury; testing indicated presence of antisocial personality traits.</p> <p>Used alcohol to excess from teenage yrs; cannabis use from 13 yrs; developed a methyl habit from late 20s; drug use escalated after losing his job.</p> | <p>Ct 1: Agg burg. Ct 2: With intent to harm, did an act which life health or safety of a person was likely to be endangered. Ct 3: Threat with intent to compel. Ct 4: Agg indecent assault. Ct 5: Stealing.</p> <p><u>Ct 1</u></p> <p>The appellant forced his way into the home of DB, a former partner. Once inside, the appellant walked into a bedroom which DB and PC were sleeping.</p> <p><u>Ct 2</u></p> <p>The appellant hit PC several times with a metal bar. The strikes were to PC's head, body, face, arms and legs. The appellant then ordered PC out of the bed and told him to move into the corner of the bedroom.</p> <p><u>Ct 3</u></p> <p>The appellant then demanded DB take off her pants. The appellant said he wanted to inspect DB's vagina to find out whether she had engaged in sexual intercourse with PC. When DB refused, the appellant slapped her and raised the bar above his head as if to hit her with it.</p> <p><u>Ct 4</u></p> <p>Fearing for her life, DB complied with the appellant's demands. The appellant used one of his hands to touch DB's vagina, moving her labia majora for a short time before removing his hand.</p> | <p>Ct 1: 3 yrs 6 mths imp (conc). Ct 2: 3 yrs 6 mths imp (cum). Ct 3: 10 mths imp (conc). Ct 4: 5 yrs 6 mths imp (HS). Ct 5: No penalty.</p> <p>TES: 9 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant had accepted responsibility for his offending, had shown some insight into its impact on his victims, and had taken positive steps to rehabilitation.</p> <p>Offending had severe impact on DB; anxiety, panic attacks, depression and PTSD; sleeplessness; felt angry, helpless, degraded and fearful from appellant's conduct.</p> <p>The sentencing judge found the offending was principally related to the appellant's illicit drug use.</p> <p>The sentencing judge found that the appellant had suffered from some dysfunction and disadvantages during childhood; however such experienced were not to be characterised as profound childhood deprivation.</p> | <p>Appeal dismissed (leave refused on grounds 2 and 3).</p> <p>Appeal concerned <i>Bugmy</i> principles, insufficient weight given to delay, and totality of sentence.</p> <p>At [66]–[72] discussion of <i>Bugmy</i> principles.</p> <p>At [70] 'it may be appropriate to distinguish between two different classes of case. The first is where profound childhood deprivation has in some way impaired the capacity of an offender to behave lawfully...The second class of case is where the offender retains full capacity to make choices about unlawful behaviour, although the poor choices which the offender makes may be influenced by childhood experience.'</p> <p>At [105] 'having reviewed the material before the sentencing judge, we agree with his Honour's conclusion that the material did not establish, on the balance of probabilities, that any relevant capacity of the appellant was impaired by profound childhood deprivation which reduced his moral culpability for the offending or diminished the significance of personal and general deterrence as sentencing considerations.'</p> <p>At [106] 'the procedural history of this matter shows the appellant experienced some delay before he was finally sentenced.'</p> <p>At [125] 'there is nothing to suggest that his Honour...did anything other than sentence the appellant according to the rules of reason and justice...and within those limits which an honest person competent to discharge the duties of his office ought to confine himself. When that is appreciated, all that is left of the appellant's submission is a contention that the sentencing judge should have given more weight to the mitigatory effect of delay. It follows that the appellant's submissions cannot be accepted.'</p> <p>At [139] 'the offences committed by the appellant were extremely serious. The appellant entered his former partner's home without her consent, and in the very early hours of the morning, when she was asleep...The offence charged in ct 2 was particularly serious. In what was a completely unprovoked attack by a physically powerful man, the appellant used a metal bar to repeatedly strike the much younger PC, who was initially asleep and defenceless.'</p> |

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| | | Positive personal references. | <p>The appellant again accused DB of having sex with PC and raised the bar in a threatening manner. The appellant again touched her labia majora with his hand.</p> <p><u>Ct 5</u></p> <p>The appellant demanded DB's phone so that he could check her text messages. Before he left, the appellant took her phone with him.</p> | | <p>At [143] 'in relation to ct 1, it was necessary for the sentencing judge to give effect to the need for general deterrence in relation to offences of home burglaries, particularly those that involve the use of violence...It is also equally necessary to ensure that the sentences imposed for cts 2,3 and 4 reflect the importance of general deterrence in sentencing for offences involving violence, and in relation to cts 1,3 and 4, the use of violence by men on women with whom they are, or have been, in a domestic relationships.'</p> <p>At [151] [in considering the relevant factors] 'we are of the view that it is not reasonably arguable that the total effective sentence was unreasonable or plainly unjust.'</p> |
| 9. | <p><i>Momand v The State of Western Australia</i></p> <p>[2024] WASCA 14</p> <p>Delivered 07/02/2024</p> | <p>42 yrs at time offending. 46 yrs at time sentencing.</p> <p>Convicted after PG (5% for ct 1 and 10% for cts 2 & 3)</p> <p>Subject of 12-mth intensive supervision order at time offending.</p> <p>Significant criminal history: assault; breach of restraining orders; poss of unlicensed firearm; steal motor vehicle; AOBH; poss a controlled weapon; being armed in a way to cause fear.</p> <p>Living with mother at time offending; several siblings.</p> <p>Suffers from undiagnosed depression; acknowledged he was 'out of control' and did not understand the consequences of what he was doing.</p> <p>Previous drug use.</p> | <p>Ct 1: Crim damage. Ct 2: Assault with intent to rob. Ct 3: Making a threat to unlawfully harm another.</p> <p><u>Ct 1</u></p> <p>The appellant drove his vehicle into the car park of a shopping centre. He drove out, then returned two minutes later. The appellant then drove his vehicle in a straight line directly into a parked vehicle. The appellant got out of his vehicle and walked into the shopping centre.</p> <p><u>Ct 2</u></p> <p>The appellant walked into a store and collected several items. He took those items to the checkout and placed them on the counter. When asked for payment, the appellant stated Kensington Police would pay and attempted to walk away with the items. The shop assistant came to the front of the count and tried to retrieve the items. There was a scuffle in which both the appellant and shop assistant were both holding the plastic bag.</p> <p>The appellant then punched the shop assistant to the face. There was a further</p> | <p>Ct 1: 6 mths imp (cum). Ct 2: 18 mths imp (cum). Ct 3: 12 mths imp (conc).</p> <p>TES: 2 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge noted that the appellant had originally been charged with attempted robbery and following negotiations, the charge had been replaced by cts 2 and 3 on the indictment.</p> <p>The sentencing judge found that the criminal damage offence was plainly deliberate.</p> <p>The sentencing judge found that the appellant had used violence, when an attempt was made to stop the appellant from stealing the items.</p> <p>The sentencing judge found that the appellant had threatened to stab the attendant and then made a show of trying to pull the retractable knife from his pocket.</p> <p>The sentencing judge noted that the offending occurred in the early hours of the morning, and the people who work during these periods are vulnerable.</p> | <p>Appeal dismissed (leave refused).</p> <p>Appeal concerned length of sentence for ct 1 and the discount imposed for cts 2 & 3.</p> <p>At [36] 'offences of criminal damage can occur in a wide variety of circumstances. The nature of the act that caused the damage and the value of the damage caused are relevant considerations. In this case, the appellant drove his car deliberately into another car in a car park. The act occurred in an area to which the public have access...It was simply a random act of destruction carried out without any apparent concern for the consequences.'</p> <p>At [38] 'there was nothing in the appellant's personal history that mitigated the offending.'</p> <p>At [41] '... the sentence of 6 mths imprisonment imposed on ct 1 was plainly open to the sentencing judge.'</p> |

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| | | | <p>scuffle and both men fell to the floor, wrestling.</p> <p><u>Ct 3</u></p> <p>The appellant then threatened to stab the shop assistant with whom he was wrestling and tried to pull a retractable knife from his trouser pocket. On seeing the knife, the assistant moved away.</p> | | |
| 8. | <p><i>The State of Western Australia v Riley</i></p> <p>[2024] WASCA 11</p> <p>Delivered 02/02/2024</p> | <p>24 yrs at time offending. 25 yrs at sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Lengthy criminal history; number of offences against AB: agg home burglary; two counts of agg common assault; 16 breaches of restraining orders; offences of trespass and assault; declared a serial family violence offender.</p> <p>Significant dysfunction and disruption during childhood; parent's misused drugs.</p> <p>Longstanding substance abuse issues (methylamphetamine); affected by alcohol at time of offending; limited protective factors in the community; negative peer and family associations.</p> <p>Previously in a relationship with AB; have three children aged 6,4, and 3 at time of offending.</p> <p>Had a new partner; a job available in Northam; accommodation with maternal grandmother.</p> | <p>Ct 1: Agg threat to kill Ct 2: Agg AOBH Ct 3: Agg dep lib.</p> <p><u>Cts 1 & 2</u></p> <p>AB received text messages from the respondent's siter, Ms M, asking if the respondent could come to AB's house to see their children. AB replied 'no'. That evening, AB heard a knock at the window and heard the voice of Ms M. Ms M then came to AB's bedroom and began talking about allowing the respondent to see the children.</p> <p>AB decided to go to her sister's bedroom (in the same house) to talk to her. While there she heard the respondent's voice inside the house. AB came out of the room and saw the respondent talking to their children. The respondent asked to talk to AB and she said 'no'. The respondent then asked for AB to come to his house. She refused.</p> <p>AB had arranged with her family that if the respondent came to her house, they were to immediately call the police. She went outside to allow this to occur. Her children and some other family members followed her to the front. The respondent continued to ask AB to come to his family home and became angry when she refused.</p> <p>The respondent then went inside the house and returned holding a 20cm bladed knife. He walked over to AB, and said 'I'm going to kill you if you</p> | <p>Ct 1: 14 mths imp (conc) Ct 2: 6 mths imp (cum) Ct 3: 20 mths imp (cum)</p> <p>TES: 2 yrs 2 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found that whilst the respondent's criminal record, including many prior offences against AB, was not an aggravating factor, it underscored the need for personal deterrence.</p> <p>The sentencing judge found no evidence of remorse. The sentencing judge referred to the paramount importance of general and personal deterrence for offending of this nature.</p> <p>The sentencing judge found that the respondent offended whilst subject to a restraining order; while on bail; as a declared serial family violence offender; and while on parole.</p> <p>The sentencing judge concluded that the sentences must also reflect the appropriate degree of public denunciation of this kind of prevalent, abhorrent offending that exists in the community.</p> | <p>Appeal allowed.</p> <p>Appeal concerned length of individual sentences and totality.</p> <p>Resentenced:</p> <p>Ct 1: 18 mths imp (cum). Ct 2: 12 mths imp (conc). Ct 3: 3 yrs imp (cum).</p> <p>TES: 4 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [53] '... the sentencing judge accurately identified the many aggravating factors that accompanied this offending. Significant factors included that these offences involved breaches of a restraining order, that they were committed in the presence of young children and that they were committed in the context of a family relationship.'</p> <p>At [54] 'the threat to kill was made while the respondent was intoxicated, agitated and armed with a knife. The references to his employment [and AB's parents] ... added a chilling and very personal edge to the threat. The threat was made with the purpose of getting AB to comply with his demand ... The threat was a serious example of this type of offence.'</p> <p>At [55] '[the striking of AB with the knife] conveyed to AB the ability and willingness of the respondent to stab her if he wanted to do so ... the assault occurred whilst the respondent was demanding that AB go with him. The use of violence to reinforce such a demand places it into its proper context. The assault was at least a moderately serious example of its type.'</p> <p>At [56] 'the deprivation of liberty continued for about one and a half hours. During most of this time AB was essentially trapped...AB's vulnerability was increased by the fact that her young children were also in the car. She had no realistic opportunity to escape and had to rely on the hope the family had contacted the police.'</p> |

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| | | | <p>don't get in the car'. The respondent then raised the knife and hit AB once to her upper forearm with it. The respondent then grabbed AB's forearms with his hands, causing her cigarette to fall from her mouth and onto her chest causing a small burn. AB suffered bruising on her forearms and a small burn from the cigarette.</p> <p>As this occurred, the respondent yelled at AB, 'get in the car, I'll stab you like your dad did your mum' and 'I'm a butcher now and I slit animals' throats while they are alive'. All of this occurred in the presence of their children.</p> <p><u>Ct 3</u></p> <p>AB believed the only thing she could do to keep herself and the children safe was to comply with the respondent's demands. AB got into the back seat of the car with her children, the respondent sat in the passenger seat and Ms M drove the car. They stopped at a bottle shop, and drove around whilst the respondent purchased alcohol. The respondent returned, and Ms M drove the car to the respondent's home. On arrival, police arrested the respondent.</p> | | <p>At [66] 'this case clearly required that significant weight be given to personal deterrence. The respondent has a deplorable history of offending against AB. He has shown disregard, if not frank contempt, for court orders put in place to protect AB.'</p> <p>At [66] 'general deterrence also looms large...domestic violence is a scourge on society ... Persistent violence and intimidation in the context of family relationship must be strongly discouraged by appropriate sentences.'</p> <p>At [69] 'in this case the sentencing judge correctly identified the aggravating and mitigating factors ... However, the sentences imposed by her Honour did not properly reflect those factors.'</p> <p>At [75] 'notwithstanding that the offending all occurred as part of the same incident, each offence was a separate act, and some degree of accumulation was required to reflect the total criminality.'</p> |
| 7. | <p><i>The State of Western Australia v LSM</i></p> <p>[2023] WASCA 132</p> <p>Delivered 01/09/2023</p> | <p>27 yrs at time offending. 28 yrs at time sentencing.</p> <p>Convicted after late PG (25% discount).</p> <p>No prior criminal history.</p> <p>Eldest of two children; parents separated when young; four half-siblings; close and supportive family.</p> <p>Dyslexic; struggled at school; completed yr 11 and trade apprenticeship.</p> <p>Hard working; consistent</p> | <p>Ct 1: Dep lib. Ct 2: Threat to kill. Cts 3-5: Agg sex pen without consent. Ct 6: Att PCJ.</p> <p>LSM subjected his wife, F, to a prolonged episode of physical and sexual violence.</p> <p>Whilst out celebrating F's birthday LSM became jealous and accused F of being unfaithful. On leaving to go home they argued, so F said she would order an Uber. At this point LSM grabbed the back of her neck and forced her to walk to their car. He then drove dangerously at speed and repeatedly told her he was going to crash the car with her in it.</p> | <p>Ct 1: 9 mths imp (cum) Ct 2: 18 mths imp (conc). Ct 3: 18 mths imp (conc). Ct 4: 3 yrs imp (conc). Ct 5: 4 yrs imp (conc). Ct 6: 4 yrs imp (cum). Ct 7: 9 mths imp (cum).</p> <p>TES 5 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the respondent's offending 'incredibly serious'; the dep lib 'involved significant levels of ... control', including forcing F into the car and driving in a manner that caused 'very real danger'; the offending took place over a period of about</p> | <p>Allowed.</p> <p>Appeal concerned length of sentence.</p> <p>Resentence (15% discount cts 1, 2, 3, 4 5 & 7 and 20% discount ct 6):</p> <p>Ct 1: 2 yrs imp (cum) Ct 2: 2 yrs imp (conc). Ct 3: 5 yrs imp (conc). Ct 4: 6 yrs imp (cum). Ct 5: 6 yrs imp (conc). Ct 6: 5 yrs 9 mths imp (conc). Ct 7: 18 mths imp (cum).</p> <p>TES 9 yrs 6 mths imp.</p> <p>EFP.</p> |

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| | | <p>employment history; own business.</p> <p>Good physical health; history of alcohol and illicit drug use; struggled with alcohol and methyl use aged 19 – 25 yrs; relapsed into methyl use; coming down from methyl and significantly intoxicated with alcohol at time of offending.</p> | <p>When F attempted to get out of the car several times, LSM prevented her from doing so by grabbing her arm or hair and pulling her back into the car. She repeatedly asked SLM to pull over or slow down, but he continued to drive dangerously.</p> <p>On two occasions SLM stopped the car. F was able to get out of the vehicle and call triple zero. However, on both occasions he forced her back into the car. F put her mobile phone under her seat, with the triple zero operator still on the line. The recording captured parts of the offending the subject of cts 3 - 6.</p> <p>Over the course of about 2 hrs SLM deprived F of her liberty, during which time he also committed cts 2-6.</p> <p>On arriving home SLM pushed F into the house, stripped her naked and forcefully penetrated her vagina with his fingers. This incident was captured by the triple zero recording and F could be heard pleading with SLM to stop and his reply, 'I'll rape you if I want'.</p> <p>SLM then forced F to perform fellatio, causing her to choke. He forced his penis into her mouth a second time, squeezing her throat with his hands while she did so, causing her to choke and experience difficulty breathing. The triple zero recording captured this incident.</p> <p>SLM then had sexual intercourse with F. This was again heard on the triple zero recording in which F is heard crying, exclaiming in pain, and repeatedly begging him to stop.</p> <p>A short time later F was able to run partially clothed from the house. SLM was arrested and was remanded in custody.</p> | <p>two hrs.</p> <p>The sentencing judge found the sex offending occurred in the context that the respondent had already put F in danger; in circumstances where she was entitled to look to him for protection, as her husband; he was physically much bigger than F, who was not able to resist him and the offending took place in the family home, where she was entitled to feel safe.</p> <p>The sentencing judge found the respondent continued his violent behaviour towards F, who was calling out in pain and distress; the telephone calls constituting the att to PCJ, demonstrated the exercise of coercion over her; the whole of the offending has to be seen in the context of the family relationship.</p> <p>Respondent remorseful; offending out of character.</p> | <p>At [4] It is clear that the respondent's sexual violence against his wife was a grotesque form of 'punishment' ... His sexual offences were calculated to demean his wife and assert his dominance over her. He was callously indifferent to her cries of pain and her pleas for him to stop. ...</p> <p>At [24]-[27] ... there were, in essence, three distinct categories of offending, each of which was inherently serious. All of the offences, ... had the underlying feature that they all involved the coercive control by the respondent of his wife. ...</p> <p>At [59] Another very serious feature of the respondent's offending ... was the nature and quality of the violence he inflicted on F. Domestic and sexual violence can involve physical injury, sexual assault, psychological injury and emotional trauma. Domestic and sexual violence is a major concern in Australia. ... The respondent's offending included behaviour that was calculated to intimidate, coerce and control F. Denunciation of the respondent's criminal conduct and personal and general deterrence were important sentencing considerations.</p> <p>At [71] A very serious feature of the respondent's offending on cts 1, 2 and 7 (which also permeated his offending on cts 3, 4, 5 and 6) was the pattern of abuse that characterise his interaction with F. ... All of those cts manifested behaviour by the respondent that was calculated to intimidate, coerce and control F.</p> <p>At [127] Because the respondent did not enter his PG on counts 1 – 5 and ct 7 at the first reasonable opportunity, her Honour did not have the statutory power to reduce the head sentences she would otherwise have imposed for these offences by 25%. ... her Honour erred in law in doing so. ... In respect of cts 1, 5 and ct 7, this error, regardless of grounds 2 and 3, would have enlivened this court's power to resentence the respondent.</p> <p>At [147] ... While the respondent's personal circumstances were not to be ignored, they could not, when weighed against the 'incredibly serious nature of the respondent's offending, give rise to what, on any analysis, were unduly lenient individual sentences for cts 3 - 6 and an unduly lenient TES.</p> |
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| | | | While in custody SLM's telephone calls were monitored and on a number of occasions, during conversations with F, he sought to suborn her into dropping the charges brought against him. | | |
| 6. | <p><i>Gomboc v The State of Western Australia</i></p> <p>[2023] WASCA 115</p> <p>Delivered 24/07/2023</p> | <p>31-34 yrs at time offending. 38 yrs at time sentencing.</p> <p>Convicted after late PG (cts 2, 4, 6, 8, 10, 11, 12, 13, 15, 19, 22, 23, 26 & 32) (18% discount).</p> <p>Convicted after very late PG (cts 5, 7, 9, 28 & 29) (8% discount).</p> <p>Limited criminal history; previous conviction for common assault involving then fiancé.</p> <p>Only child; good upbringing; family remain supportive.</p> <p>Completed yr 12; experienced verbal abuse and bullying at school.</p> <p>Good work history; 7 yrs of army service; qualified scaffolder.</p> <p>Relationship with victim ended 2018; new romantic relationship commenced 2021; partner remains supportive.</p> <p>Good physical health; significant history of mental health problems; PTSD arising during time in military service.</p> <p>Heavy alcohol and cannabis use.</p> | <p>Cts 2 & 11: Agg AOBH. Cts 4; 10; 12-13; 15; 19; 22: Threat to harm. Ct 5: Act with intent to harm. Cts 6; 9; 23; 28-29 & 32: Threat to kill. Ct 7: Agg unlawful wounding. Ct 8: Wilful and unlawful damage. Ct 26: Armed to cause fear.</p> <p>Gomboc was in a relationship with the victim, which lasted for a number of yrs. They had purchased a house together.</p> <p>During the course of their relationship, Gomboc subjected the victim to regular physical and verbal abuse. He punched and kicked her, strangled her, negligently wounded her with a knife, smothered her with a pillow, threw objects at her, and repeatedly threatened to kill her, and was often armed when he did so.</p> <p>In addition to having taken photographs of several of her injuries, the victim regularly made audio recordings of the offending.</p> <p>The victim was left with severe anxiety and post-traumatic stress disorder, suffered physically, mentally, emotionally and financially</p> | <p>Ct 2: 10 mths imp (cum). Cts 4; 7 & 13: 12 mths imp (conc). Ct 5: 4 yrs 6 mths imp. Cts 6; 9; 23 & 28: 3 yrs imp (conc). Cts 8 & 12: 10 mths imp (conc). Cts 10 & 15: 14 mths imp (conc). Ct 11: 2 yrs 2 mths imp (conc). Ct 19 & 22: 16 mths imp (conc). Ct 26: 18 mths imp (conc). Ct 29: 3 yrs 6 mths imp (cum). Ct 32: 3 yrs imp (cum).</p> <p>TES 11 yrs 10 mths imp. EFP.</p> <p>The sentencing judge found there were a number of serious features of the appellant's offending as a whole; it persisted for three and a half years; there were 19 separate and distinct offences over that period of time and he had time to reflect on his conduct and choose not to do it again, but did not; he deployed a number of methods and weapons to clearly communicate to the victim that he could end her life at his hands and very quickly, so as to make her fearful of him; the appellant was physically stronger than the victim, who was vulnerable to his physical violence; the offending was in the context of a domestic relationship; the threats to kill or harm were often accompanied by the presence of weapons and physical violence, which no doubt elevating the fear of harm or death the victim experienced, and the fact that his offending routinely incorporated statements designed to degrade and humiliate the victim.</p> <p>The sentencing judge found the submissions made by the appellant's counsel served to minimise the responsibility for his offending and shifted the responsibility onto the victim; his physical and verbal abuse in a domestic setting was 'very entrenched behaviour' and he remained at risk of reoffending unless he addressed his attitude and behaviour.</p> | <p>Allowed.</p> <p>Appeal concerned length of sentence. Individual sentences not challenged.</p> <p>Resentenced:</p> <p>Cts 2; 6; 9; 23; 28 & 32: 3 yrs imp (conc). Cts 4; 7 & 13: 12 mths imp (conc). Ct 5: 4 yrs 6 mths imp (cum). Cts 8 & 12: 10 mths imp (conc). Cts 10 & 15: 14 mths imp (conc). Ct 11: 2 yrs 2 mths imp (conc). Cts 19 & 22: 16 mths imp (conc). Ct 26: 18 mths imp (cum). Ct 29: 3 yrs 6 mths imp (cum).</p> <p>TES 9 yrs 6 mths imp. EFP.</p> <p>At [9] ... it is clear that it was necessary that the appellant be sentenced to a very significant TES. The appellant's offending was abhorrent and sickening. Notwithstanding [his] pleas of guilty, his mental health issues and the otherwise high regard in which he was held by others, the persistent, callous and menacing nature of his offending required a long term of imp. The threatened and actual violence used by the appellant must be denounced by the courts in the strongest possible terms. ...</p> <p>At [194] ... Her Honour rightly recognised that the totality of the appellant's offending was extremely serious and called for a very substantial term of imp. It was necessary that a TES be imposed for the appellant's abhorrent and sickening offending that properly punished him and denounced offending like it in the strongest possible terms. ...</p> <p>At [198] ... we cannot avoid the conclusion that the TES imposed on the appellant did not bear a proper relationship to the overall criminality involved in all of the offences.</p> <p>At [220] In our view, this is truly one of those cases when the metaphor of taking one 'last look at the total, just to see whether it looks wrong' is apt. And when we take a last look at the sentence of almost 12 yrs, in light of the appellant's PGs and such potential for rehabilitation as he has, the sentence looks wrong.</p> |

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| | | | | <p>Offending profound impact on the victim; continues to require daily medication and ongoing therapy.</p> <p>Limited demonstrated remorse.</p> | <p>At [223] ... Nevertheless, as we have set out at length above, the persistent, callous and menacing nature of his offending required a long term of imp. Offending of this kind must be denounced by severe penalties.</p> |
| <p>5.</p> | <p><i>The State of Western Australia v Tumata</i></p> <p>[2022] WASCA 161</p> <p>Delivered 06/12/2022</p> | <p><u>Tumata</u> 24 yrs at time offending. 28 yrs at time sentencing.</p> <p>Convicted after PG (cts 1, 6, 34 and 35) (10% discount). Convicted after trial (cts 2-5; 7-22; 25; 28; 29; 31; 32; 36-38</p> <p>Lengthy criminal history.</p> <p>Parents separated when aged 4 yrs; raised by mother; sent to live with a relative in NZ aged 12 yrs due to his behaviour; returned to live with his father, now estranged.</p> <p>Limited literacy and numeracy skills.</p> <p>No history of paid employment; other than labouring work about aged 17 yrs.</p> <p>Commenced cannabis and alcohol use aged 12 yrs; regular user of methyl and alcohol excessively.</p> <p><u>Sheppard</u> 23 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after PG (ts 1, 4, 6, 7, 16 and 35) (10% discount). Convicted after trial (cts 2; 3; 5; 8-15; 17-22; 25; 28; 29; 32; 34; 36; 38 and 39.</p> <p>Lengthy criminal history.</p> <p>Positive, stable and prosocial upbringing until the deaths of his</p> | <p><u>Tumata</u> 8 x Agg sex pen without consent. 3 x Agg indec assault. 1 x Demanding property with oral threats. 10 x AOBH. 8 x Act with intent to harm. 2 x Threats to harm.</p> <p><u>Sheppard</u> 8 x Agg sex pen without consent. 3 x Agg indec assault. 1 x Demanding property with oral threats. 11 x AOBH. 7 x Acts with intent to harm. 1 x Threat to harm.</p> <p><u>Woods</u> 8 x Agg sex pen without consent. 1 x Agg indec assault. 1 x Demanding property with oral threats. 4 x AOBH. 4 x Acts with intent to harm. 1 x Threat to harm.</p> <p>The victim, M, was aged 22 yrs. He was remanded in custody and had never been to prison before.</p> <p>Tumata, Sheppard and Woods, who were also prisoners, entered M's cell, alleging he was an informant. Sheppard told M he had to pay a fine, to increase each wk until it was paid. If the fine was not paid M was told he would be killed.</p> <p>After this incident, over a period of 18 days and on an almost daily basis, Tumata, Sheppard and Woods subjected M to violence and brutality of the most</p> | <p><u>Tumata</u> TES 14 yrs imp.</p> <p><u>Sheppard</u> TES 13 yrs 6 mths imp.</p> <p><u>Woods</u> TES 12 yrs imp.</p> <p>The sentencing judge found Tumata and Sheppard the ringleaders and that Woods' acted 'more as a follower' and he was overall less culpable than Tumata and Sheppard; after the initial extortion the three respondents, sometimes as a pair or individually, engaged in a concerted, persistent and ongoing course of conduct against M over an extended period; they subjected M to increasingly violent physical and sexual attacks to enforce their demand for money; Tumata and Sheppard were physically powerful men, M, helpless and defenceless and extremely frightened and scared of the three respondents who terrorised him; the attacks designed to intimidate and frighten; they attacked M's personal dignity and caused him to suffer significant embarrassment; the sexual offences designed to cower, humiliate and demean for the purpose of forcing him to pay money when there was no legitimate basis for the demand; the respondents' domination and control over M extended to his communications with his family and the attacks generally occurred inside a prison cell away from the sight of prison guards and other prisoners, with one of the respondents acting as a lookout.</p> <p>No demonstrated insight into the consequences of their offending; no exhibited remorse, apart from the PGs entered by Tumata and Sheppard.</p> | <p>Allowed.</p> <p>Appeal concerned totality principle (individual sentences not challenged).</p> <p>Resentenced:</p> <p><u>Tumata</u> TES 17 yrs imp. EFP.</p> <p><u>Sheppard</u> TES 16 yrs 6 mths imp. EFP.</p> <p><u>Woods</u> TES 14 yrs 6 mths imp. EFP.</p> <p>At [113] The offending was aptly characterised by the State ... as sadistic, malicious, humiliating and intimidating. The respondents, in concert, deliberately preyed upon a highly vulnerable victim. ... Together, the respondents waged a campaign of terror upon M, which caused him significant physical injury and broke him psychologically. The respondents' acts were merciless. They involved a level of deliberate callousness, cruelty and depravity seldom seen by this court.</p> <p>At [114] An especially serious feature of the offending was that it was committed in a prison by inmates upon another inmate. ... Prisoners, particularly those who, like M, are young, alone and have never been incarcerated before, may be highly vulnerable to the threats and intimidation of more experienced prisoners such as, in this case, the respondents. ... [The victim's] vulnerability would have been apparent to the respondents, who immediately proceeded to take advantage of it. ...</p> <p>At [118] ... the eight offences of agg sex pen involved a high level of criminality. The respondents together committed each of these offences over three separate and distinct incidents on different days, either as a principal or an aider. ... Each offence was committed in company and was designed to, and did in fact, terrify, degrade and humiliate M as well as cause him physical and psychological harm. ...</p> |

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| | | <p>mother and grandmother aged 15-16 yrs; struggled to deal with the grief; became homeless and associated with negative family members.</p> <p>Completed yr 10; no real work history.</p> <p>Methyl use from aged 15-16 yrs.</p> <p><u>Woods</u> 26 yrs at time offending. 30 yrs at time sentencing.</p> <p>Convicted after trial (cts 1; 2; 4; 5; 7-14; 18-22; 28 and 29.</p> <p>Significant prior criminal history.</p> <p>Parents separated aged 2 yrs; lived with mother and siblings; positive home life; eventually lived with father, exposing him to domestic violence and substance abuse.</p> <p>At time sentencing father and four brothers serving terms of imp.</p> <p>Left school during yr 10; never had paid employment.</p> <p>Long-term relationship; two children.</p> <p>Introduced to methyl by his father.</p> | <p>extreme kind. This included beating, kicking and indecently assaulting him, choking him to the point he lost consciousness, burning him with boiling water and repeatedly sexually penetrating him with their bodies, a broom handle and a pencil.</p> <p>Tumata, Sheppard and Woods also threatened to rape his partner.</p> | <p>Offending profound effect on the victim.</p> | <p>At [120] The seriousness of the offences of agg sex pen without consent was heightened because they occurred in the context of the ongoing extortion of M, ... All of these offences, when considered together, substantially increased each respondent's overall criminality, ...</p> |
| 4. | <p><i>Billett v The State of Western Australia</i></p> <p>[2022] WASCA 158</p> <p>Delivered 01/12/2022</p> | <p><u>Billett</u> 27 yr at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history; prior conviction for violent offending.</p> <p>Parents separated aged 18 yrs; close relationship with mother and sister; little contact with alcoholic</p> | <p><u>Billett</u> Ct 1: Agg burg. Ct 2: Threat to harm. Ct 3: Unlawful damage. Ct 4: Agg burg. Ct 5: Act with intent to harm.</p> <p><u>Klinger</u> Ct 1: Agg burg. Ct 3: Unlawful damage. Ct 4: Agg burg. Ct 6: AOBH.</p> | <p><u>Billett</u> Cts 1 & 4: 18 mths imp (conc). Cts 2 & 5: 12 mths imp (conc). Ct 3: 7 mths imp (conc).</p> <p>TES 18 mths imp.</p> <p><u>Klinger</u> Cts 1 & 4: 18 mths imp (conc). Ct 3: 7 mths imp (conc). Cts 6 & 7: 12 mths imp (conc).</p> | <p>Appeal allowed.</p> <p>Appeal concerned length of sentences cts 1, 4 and 5 and totality principle.</p> <p>Resentenced cts 1 and 4:</p> <p><u>Billett</u> Ct 1: 3 yrs imp (conc). Ct 4: 4 yrs 3 mths imp (conc).</p> <p>TES 4 yrs 3 mths imp.</p> |

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| | <p>father, now in care suffering dementia.</p> <p>Struggled at school; left yr 10; recently completed a Certificate in community services; aspires to do youth work.</p> <p>Worked intermittently; unemployed past five yrs; undertaking volunteer work.</p> <p>Two significant relationships; three children, youngest aged 12 mths at time sentencing; current partner positive and stable influence..</p> <p>Long-term history of alcohol and substance abuse; allowed access to alcohol and firearms as a child; commenced binge drinking whilst at school.</p> <p>Diagnosed with ADHD aged 8 yrs; medicated until aged 12 yrs; diagnosed and medicated with depression at 15 yrs; suffers sleep apnoea; use of cannabis to assist sleep.</p> <p><u>Klinger</u> 29 yrs time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history.</p> <p>Third child of four children; father 'a big drinker'; both father and mother frequently physical and emotionally abusive; parents separated when young child; lived with his mother until moving to live with his father aged 11 yrs.</p> <p>Attended high school until yr 9; educated special school leaving yr 10.</p> | <p>Ct 7: Threat to harm.</p> <p>Billett, Klinger and another man were socializing at a tavern.</p> <p>During the evening Billett obtained an address for a Mr Scerri. Some wks earlier there had been an incident involving him and Mr Scerri. So Billett harboured a grievance against him.</p> <p>After Billett told TL and Klinger about the incident all three decided to go together to attend the address and confront Mr Scerri.</p> <p>After driving to the address all three got out of the vehicle. Billett had with him a machete, Klinger a 15-inch tyre wall tester and TL a tomahawk.</p> <p>The house was occupied by a Mr Sorell, who was house-sitting for the owner. Mr Scerri was living in a caravan parked at the front of the premises. Billett and Klinger entered the house through an unlocked door and to a bedroom occupied by Mr Sorrell. TL remained outside, acting as a lookout.</p> <p>Billett approach Mr Sorrell, pointing the machete at him and asked for the whereabouts of Mr Scerri. Mr Sorrell told him he was in the caravan. Billett told Mr Sorrell not to move and that he was a dead man, whilst pointing the machete at him. Mr Sorrell was in fear for his life. When Billett and Klinger left the room he ran from the house, jumped a fence and hid.</p> <p>Meanwhile, Billett and Klinger ran to the caravan. They smashed windows of the caravan then forced open the caravan door.</p> <p>Mr Scerri crawled onto his bed and curled into a ball to protect himself. He felt a couple of blows and then something harder all over his body. He</p> | <p>TES 18 mths imp.</p> <p>The sentencing judge found the home burglaries serious, particularly as they involved forcible entry into premises known or suspect to be occupied and accompanied by threatened or actual violence.</p> <p>The sentencing judge found the offending the subject of cts 1 and 4 agg by the fact the respondents were in company with each, that they knew or ought to have known the premises were occupied, they were both armed and both made threats and did harm.</p> <p><u>Billett</u> Accepting of responsibility; understanding of seriousness of offending; steps taken to change his lifestyle; maintaining abstinence from alcohol and illicit substances.</p> <p><u>Klinger</u> Significant remorse and insight into his offending.</p> | <p>EFP.</p> <p>Cts 1, 2, 3 and 5 conc with the sentence imposed ct 4.</p> <p><u>Klinger</u> Ct 1: 3 yrs imp (conc). Ct 4: 4 yrs 3 mths imp (conc).</p> <p>Cts 1, 3 6 and 7 conc with the sentence imposed ct 4.</p> <p>TES 4 yrs 3 mths imp. EFP.</p> <p>At [57] ... the seriousness of the offending was self-evident ... There were a significant number of aggravating features: ... this was not opportunistic offending, but, rather, planned conduct with the respondents agreeing to attend at the premises and arming themselves with weapons before arriving; ... the offences were committed in company and at night; ... the offences were at residential premises where it was likely, and indeed the respondents fully expected, residents to be present; ... the purpose of the burglary offences was to enter and, at least, intimidate the occupant by threatening him with weapons; ... the burglary on the house involved threats to Mr Sorrell, and threatening behaviour with weapons; ... the burglary on the caravan involved forcible entry and the breaking of windows; ... threats to Mr Scerri and a serious assault upon him; ... Mr Scerri was outnumbered and tramped, and thus vulnerable to the attack upon him; and ... the offences were, in essence, a revenge or vigilante attack ...</p> <p>At [58] ... offences committee as vigilante action are particularly serious. ... Plainly, Klinger was a willing and active participant in what he believed to be a revenge attack.</p> <p>At [60] The second burglary, that the caravan, was particularly serious because it involved forced entry and the smashing of windows and an assault upon an outnumbered victim on his bed at night. ... The fact that Mr Scerri curled upon his bed in an effort to protect himself is a good indication of the ferocity of the attack.</p> |
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| | | <p>Numerous jobs; difficulties maintaining employment; attempted to join the army; survived on Centrelink benefits.</p> <p>Number of intimate relationships; son born a short time prior to sentencing.</p> <p>History of alcohol abuse; increasing when he suffered depression.</p> | <p>recognised the voice of Billet telling him to stay away from his house and kids. Klinger then screamed words to the effect ‘Do you want to die?’.</p> <p>Mr Scerri att to get up to defend himself. He believed he saw three men, one he recognised as Billett. Mr Scerri could see one of the men had a tomahawk. Mr Scerri was able to chase the men from the caravan.</p> <p>Police arrived at the house to find Mr Scerri bleeding from a large cut to his ankle and numerous cuts to his body. He was taken to hospital by ambulance and treated for various injuries. The most serious a 5 cm laceration and fracture to his ankle that required surgery.</p> | | |
| 3. | <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>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>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</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</p> |

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| | | <p>History methyl use; commenced using drugs aged 21 yrs.</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>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>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 widespread; att suicide.</p> <p>No demonstrated remorse or victim empathy.</p> | <p>unjust. ...</p> |
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| | | | <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 to Ms S's home with more methyl. Ugle injected himself with some of the drug and then directed Ms S to inject herself too. She refused. Angry, he threatened that if she did not do so he would make her take all of the drug. Compelled by Ugle's threats, and despite being fearful of an overdose, she injected herself.</p> <p>Ugle then directed Ms S into the bedroom. He tried to kiss Ms S, then removed her clothes. Ms S was crying and extremely upset. He filmed himself performing cunnilingus on M S. He then forced her to perform fellatio on him, ignoring her pleas when she told him she did not want to. Ugle then again inserted his penis into her vagina.</p> <p>Due to the aggressive manner in which Ugle was penetrating her Ms S began to bleed. He told her to take a shower. Inserting his finger into her anus before she did so. While Ms S showered he entered the ensuite and unsuccessfully att to insert his penis into her vagina from behind.</p> | | |
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| | | | <p>Out of the shower Ugle again performed cunnilingus on Ms S. He then forcefully had intercourse with her. The tomahawk still next to him. Ms S was crying and clearly distressed. Ugle responded with fits of anger and told her to stop crying and to start acting like she was enjoying it.</p> <p>The sexual offending lasted three to four hrs. At the conclusion of the sexual assaults Ms S suggested to Ugle that they drive to her mother's home, where she could get the money he wanted. Ugle agreed. At Ms S's mother house he told her to collect the cash and to immediately return to the vehicle, while he waited in the car. Inside the house Ms S's mother saw her in a highly distressed state, crying and shaking. She told her mother she had been raped and she immediately called the police.</p> <p>Concerned Ms S was taking much longer than anticipated Ugle concealed the tomahawk in the car, left the vehicle and started to walk away. On hearing sirens he began to run. He was pursued by police, who apprehended and arrest him.</p> | | |
| 2. | <p><i>The State of Western Australia v Chungarai</i></p> <p>[2021] WASCA 147</p> <p>Delivered 18/08/2021</p> | <p>38 yrs at time offending. 39 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Lengthy criminal history; prior convictions and sentence of imp for violent offending; including an offence against same victim.</p> <p>Born Derby; raised in regional community; one of eight children; parents separated when young; predominantly raised by his father; aged 17 yrs when mother died.</p> <p>Left school yr 10; basic literacy skills.</p> | <p>Ct 1: Dep lib. Ct 2: Threat to kill. Ct 3: Agg AOBH. Ct 4: Agg unlawful wounding.</p> <p>Chungarai and the victim, aged 36 yrs, were in a domestic relationship and had two children together.</p> <p>At the time of the offending Chungarai was subject to protective bail conditions prohibiting him from contacting the victim. However, he was living with her and their daughters at the time.</p> <p>During the evening Chungarai consumed a substantial volume of alcohol and was in a very intoxicated state. The victim was also drinking alcohol, although nowhere near to the</p> | <p>Ct 1: 6 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 2 yrs imp. Ct 4: 18 mths imp (cum).</p> <p>TES 3 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending a very serious example of domestic violence; the sustained nature of the assault was an agg feature; the victim was vulnerable and the assaults brutal, humiliating and degrading to the victim.</p> <p>Offending ongoing psychological and emotional impact on victim and the eldest daughter.</p> | <p>Allowed.</p> <p>Appeal concerned length of sentences cts 1 and 3 and totality principle.</p> <p>Resentenced (10% discount):</p> <p>Ct 1: 18 mths imp (conc). Ct 2: 22 mths imp (conc). Ct 3: 3 yrs 9 mths imp (cum). Ct 4: 2 yrs 3 mths imp (cum).</p> <p>TES 6 yrs imp. EFP.</p> <p>At [56] ... The [agg AOBH] offence was sustained over five to six hrs. It occurred in stages, which gave the respondent the opportunity to calm down and stop. ... The offence involved at least five incidents, all of which involved an assault and some of which could have been charged as a separate offence of AOBH: ... the victim was an intimate partner of the [respondent] and the offending occurred in front of her 5-yr-old child.</p> |

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| | | <p>Employed various roles; plans to return to work on release from custody.</p> <p>Two daughters; aged 5 yrs and aged 1 yr time offending.</p> <p>Long history alcohol abuse; commenced drinking after death of his mother.</p> | <p>same extent as Chungarai.</p> <p>In the early hrs of the morning, they began arguing. Chungarai took a razor and shaved off most of the victim's hair, causing numerous lacerations to her scalp. This constituted the start of the protracted and agg AOBH the, which continued over the course of five to six hrs.</p> <p>The victim's screams awoke the two daughters. Outside, she made up a bed and lay down with the children. She was breastfeeding, while the other child lay asleep next to her, when Chungarai came outside and started hitting her, punching her twice in the face as she breastfed (ct 3).</p> <p>Chungarai demanded the victim bring their daughters inside. Scared and wanting to avoid being hit further, she complied. Sometime later, the pair resumed arguing. He warned the victim about calling the police. He also smashed an empty bottle and held the broken bottle in his hand while threatening to kill her (ct 2). Chungarai threw the bottle at a wall, smashing it, causing glass chips to land on the victim and their 1-yr-old child.</p> <p>The victim repeatedly asked Chungarai to settle down and for a period he went to sleep. On waking, he smashed a wooden frame and, using the sharp part of the wood, stabbed the victim in her leg and back. She suffered two large cuts (ct 4).</p> <p>Chungarai then pushed the victim, who was bleeding heavily from her injuries, into a wall and punched her. The victim went to the toilet and a substantial amount of her blood went onto the wall and toilet seat. He continued to punch her and told her to clean the blood up as he did so.</p> | <p>Remorseful; understands what he has done; efforts made to rehabilitate himself in custody.</p> | <p>... Part of the assault was committed while the victim was breastfeeding ... magnifying the victim's vulnerability and meaning there was a risk of injury to the child. ... The attack was persistent, sustained, controlling and carried out in a way to cause maximum terror and humiliation to the victim. ... The victim's injuries were serious and extensive, ...</p> <p>At [57] ... the respondent's offending as a whole were very serious examples of domestic violence. ...</p> <p>At [61] The respondent's offence of dep lib had many serious elements ...</p> <p>At [65] – [66] ... the sentence for each of cts 1 and 3 was not merely 'lenient' or 'at the lower end of the available range'. In our opinion, the sentence for each of cts 1 and 3 was not commensurate with the seriousness of the offence. ... Each of those sentences was manifestly inadequate. ...</p> <p>At [67] ... Ct 2 had serious elements. The respondent's threat to kill ... came in the midst of, and not at the beginning of, his attack on the complainant. That magnified her vulnerability ...</p> <p>At [68] In our opinion, the TES for cts 1, 2, 3 and 4 fell well short of bearing a proper relationship to the overall criminality involved in all of the respondent's offences, ... In our respectful opinion, the TES was not merely 'lenient' or 'at the lower end of the available range'; it was unreasonable and plainly unjust. ...</p> |
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| | | | <p>On two occasions Chungarai used electrical cord to tie the victim's feet together so she could not get away, while telling her that if she left, he would hit her even more (ct 1).</p> <p>While the victim was tied up, Chungarai jumped on her feet. This conduct a continuation of ct 3.</p> <p>At another point in the evening Chungarai threw a butter knife at the victim, hitting her in the face and causing a large split above her eye. This conduct also a continuation of ct 3.</p> <p>Throughout the five to six hr period the victim was too scared to leave, as Chungarai threatened to harm their children if she did so.</p> <p>The victim suffered deep lacerations to various parts of her face, superficial lacerations, bruising, swelling and tenderness. She was hospitalised for two days. One of her wounds developed an infection that required numerous treatments.</p> | | |
| 1. | <p><i>Lepoidevin v The State of Western Australia</i></p> <p>[No 2] [2021]</p> <p>WASCA 19</p> <p>Delivered 09/02/2021</p> | <p>34 yrs at time offending. 35 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Prior criminal history; convictions for assaulting and obstructing a public officer.</p> <p>Breach of VRO and bail conditions eight days after offending subject of this appeal.</p> <p>Unremarkable upbringing; raised in a happy household; positive relationship with parents and siblings.</p> <p>Two children (twins aged 7 yrs) and stepson (aged 14 yrs) from wife's previous relationship.</p> | <p>Ct 1: Threats with intent to compel. Cts 2 & 3: Wilful damage.</p> <p>Lepoidevin and his wife were separated, but he remained living in the family home with the three children.</p> <p>Over a period of about 6 ½ hrs Lepoidevin consumed about a third of a bottle of vodka. He was affected by alcohol.</p> <p>Lepoidevin was watching television when he became upset the children were being disruptive. When he began shouting and acting in a manner that caused Mrs Lepoidevin to be concerned for her and the children's welfare, she took the children to her parents' home.</p> <p>On realising his wife and children had left Lepoidevin telephoned his father-</p> | <p>Ct 1: 18 mths imp (cum). Ct 2: 6 mths imp (cum). Ct 3: 6 mths imp (conc).</p> <p>TES 2 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's conduct was calculated, deliberate and sustained; the offending was a serious example of domestic violence.</p> <p>The sentencing judge found the appellant had PTSD at the time of the offending, but found there was no evidence this was a causative factor for his conduct and while a mitigating factor, he did not accept the proposition the PTSD displaced or diminished the importance of general or personal deterrence.</p> <p>The sentencing judge found that having</p> | <p>Dismissed.</p> <p>Appellant challenged findings of fact and law (error PTSD not causative of the offending and PTSD did not reduce the importance of general and personal deterrence).</p> <p>At [61] It is clear ... that his Honour accepted that at the time of the offending, the appellant had PTSD ...</p> <p>At [66] In our opinion, ... his Honour was correct to find that the evidence before him was insufficient for him to be satisfied that the appellant's PTSD was causative of the appellant's offending.</p> <p>At [75] ... as there was no evidence about the nature, effect and severity of the appellant's PTSD, and how it may have operated on the appellant's ability to appreciate the gravity of his actions, there was no proper basis to find that general deterrence was moderated.</p> |

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| | | <p>Completed high school.</p> <p>Good employment history.</p> <p>Long term heavy alcohol use; suffers significant cirrhosis of the liver.</p> <p>Diagnosed after offending with PTSD; resulting from prior paramedic work and attendance at multiple motor vehicle accidents, including one where young child traumatically killed; substance use disorder (alcohol and Zopiclone).</p> | <p>in-law, who confirmed the children were at his home.</p> <p>Lepoidevin sent a threatening text message to his wife, telling her ‘I promise to take everything you love in this world ...’, ‘You’ll never get them back ...’ and ‘I’ll destroy everything that you know to be existence. ... you will lose life itself’.</p> <p>Enraged, Lepoidevin drove to his father-in-law’s home. On arrival he sounded the vehicle’s horn. Getting no response he walked up to the house. Seeing his father-in-law inside he threatened and made gestures for him to come outside. When his father-in-law refused he deliberately drove his vehicle into the roller door of the garage.</p> <p>Lepoidevin was aware there were people, including his children, inside the residence. Using a brick he smashed a window of the home. While carrying out these actions he shouted out threats to his father-in-law that he was going to kill him. He continued with his efforts to break into the house and with the threats to kill his father-in-law, while calling out to his wife and children.</p> <p>His father-in-law was able to spray Lepoidevin with pepper spray.</p> <p>Police arrived a short time later and Lepoidevin was arrested.</p> | <p>regard to the seriousness of the offending, its sustained nature, the nature of the threats, the terror the appellant caused the victim and the need for general deterrence, it was not appropriate to impose a susp term of imp.</p> <p>Appellant some degree of remorse; but sentencing judge not satisfied his remorse was ‘entire or complete’.</p> | |
| Transitional Provisions Repealed (14/01/2009) | | | | | |
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| Transitional Provisions Enacted (31/08/2003) | | | | | |
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