

Unlawful assault causing death

s 281 Criminal Code

From 1 January 2021

Transitional Sentencing Provisions: Each of the two tables is divided into thirds based on the three relevant periods of Sentencing Provisions:

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

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

| No. | Case | Antecedents | Summary/Facts | Sentence | Appeal |
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| 2. | <p><i>The State of Western Australia v Bolton</i></p> <p>[2024] WASCA 95</p> <p>Delivered 08/08/2024</p> | <p>56 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Extensive criminal history; assault and disorderly conduct.</p> <p>Born in Perth; removed from parents at two days old and declared a ward of the State; placed in foster care.</p> <p>Left school in yr 10; intermittent employment as a gardener and car wash attendant; has not worked in 10 yrs.</p> <p>One significant relationship; 35 yr old son.</p> <p>Alcoholic; daily consumption since 20 yrs old.</p> <p>PTSD symptoms.</p> | <p>1 x Unlawful assault causing death.</p> <p>The respondent and the victim were intoxicated. They had not been drinking together.</p> <p>The victim and the respondent were known to each other and often argued. On the day of offending, an argument occurred, and a brief scuffle ensued.</p> <p>During the scuffle, the respondent pushed the victim, causing him to fall backwards. When the victim fell, his head struck the ground. The victim died in hospital a few days later.</p> | <p>1 yr 10 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found that the respondent's assault comprised of a combination of two acts. First, the respondent brought his arm around his body, towards the victim, causing the victim to raise his arm to defend himself. Second, the respondent pushed the victim away. The sentencing judge found that the assaults which led to the victim's death were minor. Though not at the very lowest end of offending, they were by no means serious.</p> <p>The offending had a profound effect on the victim's brother and close friend; both felt a sense of loss and devastation.</p> <p>The sentencing judge found that the respondent and the victim had a history of ongoing arguments. The pair had been arguing with each other throughout the day.</p> <p>The sentencing judge found that the respondent had received news of a death in his family, and he wanted to grieve in peace; however, the victim did not allow this.</p> <p>The sentencing judge found that the victim fell to the ground in an uncontrolled manner. The victim's legs struck the ground first, causing his head to hit the ground with force.</p> <p>The sentencing judge found that the respondent had shown signs of remorse, evident from his letter of apology to the victim's family.</p> | <p>Appeal allowed.</p> <p>Appeal concerned 25% discount given to appellant's plea of guilty and length of sentence.</p> <p>Resentenced:</p> <p>3 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [182] 'the maximum penalty... is 20 yrs' imprisonment. This is a significant maximum penalty. It reflects the serious view that Parliament has taken of offences where a risk of death materialises from the use of violence where death was neither intended nor foreseen, and it could not reasonably have been foreseen.'</p> <p>At [184] '... while the acts comprising the respondent's assault on [the victim] took place over a very short period, and his conduct clearly did not fall towards the upper end of the scale of seriousness, it could also not be said that it fell right at the lower end of the scale.'</p> <p>At [187] 'in assessing the seriousness of the offence, the circumstances in which the offence was committed must also be taken into account. There was a history of animosity between the respondent and [the victim]. They had been arguing with each other for some time before the assault. They were also both intoxicated.'</p> <p>At [188] 'the actual assault took place over a very short period, and on the spur of the moment. However...the respondent had, but did not take, several opportunities to diffuse the situation by simply walking away.'</p> <p>At [189] 'there was a degree of vulnerability about [the victim]. He was drunk, and generally unstable. This meant that he was susceptible to losing his balance and experiencing an unprotected fall.'</p> <p>At [190] 'the respondent knew [the victim] was drunk. He must also have known that [the victim] was unstable on his feet.'</p> <p>At [192] '... the sentencing judge generously accepted that the respondent was, to some degree, remorseful.'</p> <p>At [194] 'in any event, because an offence contrary to s 281 is likely to be committed in a wide range of circumstances, and by people possessing highly variable personal circumstances, previous cases are only ever likely to be of limited assistance.'</p> <p>At [206] 'the sentence imposed on the respondent had to give effect to</p> |

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| | | | | | <p>the need to deter others from resorting to violence. Although [the victim's] death was not intended, foreseen, or reasonably foreseeable, violence always carries with it the risk of serious unforeseen consequences. Unfortunately, violent behaviour and intoxication tend to travel together. There is legitimate disquiet about the effect that alcohol fuelled violence can have on individuals.'</p> <p>At [207] 'given the respondent's history, and his lack of insight, there was a need for the sentence to give effect to personal deterrence. Further, and importantly, full weight was required to be given to the fact that a human life was lost as a direct consequence of the respondent's actions.</p> <p>At [209] 'ultimately ... we are of the view that the sentence of 1 year and 10 months' imprisonment was unreasonable or plainly unjust.'</p> |
| 1. | <p><i>Lee v The State of Western Australia</i></p> <p>[2022] WASCA 137</p> <p>Delivered 28/10/2022</p> | <p>25 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Long criminal history; on bail at time offence for other alleged violent offending, an assault against his domestic partner.</p> <p>Mother deceased; two siblings; 16 siblings in all; upbringing marked by trauma, family dysfunction, exposure to violence and deprivation and illicit drug and alcohol use.</p> <p>Supportive family.</p> <p>Difficulties with schooling; functionally illiterate and innumerate.</p> <p>Commenced drinking alcohol aged 13 yrs; cannabis at 15 yrs; methyl at 17 yrs.</p> <p>Lifelong health problems; diagnosed Foetal Alcohol Spectrum Disorder (FASD), including heart defect and hearing difficulties; troubled by bouts of depression and history of self-harm; funding and support</p> | <p>1 x Unlawful assault causing death.</p> <p>The victim, aged 44 yrs, was Lee's aunt.</p> <p>Lee and the victim drank together throughout the day. Both were heavily intoxicated.</p> <p>After purchasing more liquor Lee and the victim continued drinking. At some point the victim spoke about Lee's mother, causing Lee to become angry and aggressive. He struck the victim once to the side of her head with his fist. The victim fell to the ground and struck her head on the concrete.</p> <p>Lee checked on the victim and left soon after.</p> <p>The victim suffered swelling and bleeding around her ear, vomiting and was acting in a confused manner. She was taken to hospital by ambulance and soon after became unresponsive. A CT showed extensive skull fractures and a subdural haemorrhage, together with bleeding within the brain, with marked compression of the brain.</p> <p>The victim died a few hrs later.</p> | <p>5 yrs imp.</p> <p>EFP.</p> <p>It was agreed that the fatal injury was caused when the deceased's head hit the ground after she was punched; sentenced on the basis that the appellant did not foresee that she would die from being punched and that it was not reasonably foreseeable by an ordinary person.</p> <p>The sentencing judge found the punch to the deceased's face represented a cowardly act; she was vulnerable, not only because of her lesser size and strength but she was also very intoxicated; she was punched without warning; not given an opportunity to defence herself and she made no threat to the appellant, who did not stay to render her assistance and the deceased was entitled to feel safe in the company of her family.</p> <p>The sentencing judge found as mitigating the fact that the offending was committed while the appellant was grossly intoxicated and very angry; the assault was not the result of a 'clear-eyed, sober decision'; it involved a single punch and was not part of any sustained attack and no weapons were used.</p> | <p>Dismissed (leave refused).</p> <p>Appeal concerned length of sentence and error in sentencing discretion (appellant's history of deprivation and FASD diagnosis).</p> <p>At [72] ... the sentencing did not fail to take the appellant's past deprivation and its ongoing impact into account. ... the sentencing judge explained his approach to the appellant's past deprivation and its ongoing impact, FASD and associated cognitive impairment and disability.</p> <p>At [83] Having regard to the circumstances of the offending and the offender in this case, and acknowledging that the decision in [<i>The State of Western Australia v Smith</i> [2019] WASCA 42] is relevant, we do not think that it can be said that a sentence of 5 yrs' immediate imp is manifestly excessive.</p> |

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Office of the Director of Public Prosecutions