

Possess heroin with intent to sell or supply

s 6(1)(a) *Misuse of Drugs Act*

Prior to 1 January 2014

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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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| methyl | methylamphetamine |
| MDMA | 3,4-Methylenedioxy-n, Alpha Dimethylphenylethylamine (Ecstasy) |
| wiss | with intent to sell or supply |
| imp | imprisonment |
| susp | suspended |
| conc | concurrent |
| cum | cumulative |
| PG | plead guilty |
| ct | count |
| TES | total effective sentence |
| att | attempt |

Weight of Heroin: Above 65 grams

| No. | Case | Antecedents | Summary/Facts | Sentence | Appeal |
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| 31. | <p><i>Halmi v The State of Western Australia</i></p> <p>[2013] WASCA 229</p> <p>Delivered 02/10/2013</p> | <p>44 yrs at time offending. 46 yrs at time sentencing.</p> <p>Convicted after late PG.</p> <p>Extensive prior record in NSW; previously served a lengthy term of imp for drug dealing; present offences occurred about 12 mths after completion of sentence for the NSW drug offence.</p> <p>Born in Romania; married for more than 24 yrs; 2 children aged 22 and 19; wife and children reside in eastern states.</p> <p>Poor health; type 2 diabetes and chronic back condition.</p> <p>Drug and alcohol addiction; long standing gambling addiction.</p> | <p>Ct 1: Sold heroin 3.5 g at 27% and .045g. Ct 2: Poss heroin wiss 8.68 g (bulk at 21% - 24% purity). Ct 3: Poss heroin wiss 664.3 g ranging from 19% - 77% purity.</p> <p>In June 2011, police commenced Operation Quake. The operation involved physical surveillance and the lawful use of telephone intercepts. The appellant was the target. The operation culminated with the appellant's arrest on 24 August 2011.</p> <p><u>Ct 1:</u> Police observed the appellant take something from the rear of Ms Bosnjak's trousers while Ms Bosnjak took something from the appellant's left hand. It was a small white envelope wrapped in elastic bands which contained two quantities of heroin.</p> <p><u>Ct 2:</u> After his arrest police searched the appellant and found cash, two mobile phones and a set of keys. A search of the vehicle found a vitamin bottle containing 6 small packages of heroin wrapped in plastic.</p> | <p>Ct 1: 2 yrs imp. Ct 2: 2 yrs imp (conc). Ct 3: 10 yrs 6 mths imp (conc).</p> <p>TES 10 yrs 6 mths imp.</p> <p>EFP.</p> <p>Total value if sold as it was packaged, \$425,000. If it had been diluted and sold at street level \$960,000.</p> <p>Although using heroin at the time, clearly involved an element of commercial gain.</p> <p>Moral and legal culpability was at the higher end.</p> <p>Was 'significantly' involved in the</p> | <p>Dismissed.</p> |

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| | | | Ct 3: A search of the appellant's flat located a large quantity of heroin in the kitchen and master bedroom. Police also located numerous items commonly associated with drug dealing, including 4 mobile phones, large quantity of different sized bags, electronic scales, 2 kg of MSM, cash, a number of money clips, two coffee grinders, glucose powder, bicarbonate of soda and icing sugar and telephone calls and SMS messages containing drug dealing. | criminal organisation responsible for the acquisition and distribution of the drugs; significantly involved in the carrying on of what was 'clearly a business' of drug dealing. | |
| 30. | <p><i>Lai v The State of Western Australia</i></p> <p>[2012] WASCA 181</p> <p>Delivered 19/09/12</p> <p>Co-offender of <i>Pham v The State of Western Australia</i> [2011] WASCA 244</p> | <p>55 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Minor prior criminal record – no drug offences.</p> <p>Gambling addiction – sentencing judge unable to determine whether drug dealing was to alleviate gambling debts or whether gambling funded drugs that were sold.</p> | <p>Ct 1: Poss methyl wiss 498.7g at 47-52%.</p> <p>Ct 2: Poss heroin wiss 167g at 64-66%.</p> <p>Ct 3: Conspire poss prohibited drug wiss.</p> <p>Ct 10: Offer sell/supply heroin/methyl 1ounce.</p> <p>Ct 11: Offer sell/supply heroin/methyl 7g.</p> <p>Ct 12: Offer sell/supply heroin 1 ounce.</p> <p>Ct 13: Offer sell/supply heroin 1g and methyl 7g.</p> <p>Appellant classed as high level drug dealer for commercial purposes in the mid-upper chain of distribution and close to the source of the drugs.</p> <p>Appellant procured co-offender to travel to Sydney and purchase methyl and heroin for her to sell in Perth. Co-offender was arrested at Perth airport carrying methyl and heroin in cts 1 and 2.</p> | <p>Ct 1: 9 yrs imp.</p> <p>Ct 2: 4 yrs imp.</p> <p>Ct 3: 4 yrs imp.</p> <p>Ct 10: 3 yrs imp.</p> <p>Ct 11: 4 yrs imp.</p> <p>Ct 12: 4 yrs 6 mths imp.</p> <p>Ct 13: 4 yrs imp.</p> <p>TES 13 yrs imp.</p> <p>EFP.</p> <p>No remorse.</p> | <p>Dismissed.</p> <p>At [47] Sentence of 9 yrs imp on ct 1 justified and a sound exercise of sentencing discretion.</p> <p>At [52] TES 13 yrs imp long sentence but a proper reflection of the overall criminality.</p> |

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| | | | Ct 3 was based on an arrangement between the appellant and a Sydney drug dealer whereby the appellant would purchase either heroin and/or methyl to sell in Perth. Cts 10-13 arose from telephone and text intercepts on four separate dates. | | |
| 29. | <p><i>Huynh v The State of Western Australia</i> [2012] WASCA 8</p> <p>Delivered 16/1/2012</p> | <p>45 yrs at time offending.</p> <p>Convicted after late PG – a few days before trial.</p> <p>Offending breached SIO - poss methyl wiss (28g).</p> <p>Offending for Cts 3 – 10 breached bail for Cts 1 – 2.</p> <p>Vietnamese refugee.</p> <p>Depression; gambling problem.</p> | <p>Ct 1: Poss methyl wiss 40.57g at 2-26%.</p> <p>Ct 2: Poss heroin wiss 4.42g at 55%.</p> <p>Ct 3: Sold heroin 55.7g.</p> <p>Ct 4: Sold heroin 27.9g at 53%.</p> <p>Ct 5: Sold heroin 56.8g at 54%.</p> <p>Ct 6: Sold methyl 27.5g at 63%.</p> <p>Ct 7: Poss heroin wiss 100.57g at 45-51%.</p> <p>Ct 8: Poss methyl wiss 18.35g at 45-55%</p> <p>Ct 9: Poss of unlicensed firearm</p> <p>Ct 10: Poss of unlicensed firearm</p> <p>Offending at high end of scale of seriousness. Appellant close to top of distribution hierarchy - sentenced on basis that weights and purity of drugs indicated close to source of production or importation. Firearms used for protection during drug trades. Offending period approx 7 mths.</p> <p>Cts 1 and 2 resulted from police search of appellant's home. Remaining cts result of sale of drugs to UCO and subsequent police raid on appellant's home.</p> | <p>TES 10 yrs imp.</p> | <p>Dismissed – leave to appeal refused on papers.</p> <p>Only sentences for firearms offences challenged.</p> <p>Sentence on firearm offences not manifestly excessive.</p> <p>At [19] No prospect of establishing a different TES should have been imposed.</p> <p>At [21] No reasonable prospect of establishing that the sentencing judge erred in the exercise of his discretion in relation discount for PG.</p> <p>Appellant's claims of remorse and scope for rehabilitation at odds with breach of SIO and offending on bail.</p> |

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| 28. | <p>Pham v The State of Western Australia [2011] WASCA 244 Delivered 4/11/2011 Co-offender of <i>Lai v The State of Western Australia</i> [2012] WASCA 181</p> | <p>52 yrs at time sentencing. Convicted after fast-track PG. No prior criminal record. Born and educated in Vietnam; served in Vietnamese Army. Fled Vietnam with wife and children in 1988 to Hong Kong; came to Australia in 1990. Stable employment until July 2010. Wife incurred significant gambling debts which they could not repay.</p> | <p>1 x Poss methyl wiss 498.7g at 47-52%. 1 x Poss heroin wiss 167g at 64-66%. 1 x Poss \$3,230 cash unlawfully obtained.</p> <p>Sentenced on basis involved in drug trade for solely commercial reasons.</p> <p>Appellant flew from Sydney to Perth. Heroin and methyl were found in vacuum seal packs wrapped in socks in appellant's suitcase.</p> <p>Cash found partly in wallet and partly in a sock and was part of \$10,000 appellant was to be paid by co-offender for acting as drug courier.</p> | <p>7 yrs imp. 2 yrs imp. 8 mths imp.</p> <p>TES 9 yrs imp.</p> <p>Deep remorse and shame.</p> | <p>Dismissed – leave to appeal refused on papers.</p> <p>Only sentence on poss methyl wiss challenged.</p> <p>At [10] Even though appellant unaware of weight or purity of drugs, they remain central to sentencing – relevant to the assessment of the potential harm and impact on community of the drugs and form part of the factual basis the sentencing judge relied on when finding the appellant was close to the top of distribution hierarchy and an integral link in the distribution chain.</p> |
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Transitional Provisions Repealed (14/01/2009)

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| 25. | <p>Nguyen v The State of Western Australia [2009] WASCA 8 Delivered 13/01/2009</p> | <p>27 yrs at sentencing. Convicted after PG. Prior criminal record - previous interstate drug convictions relating to cannabis and heroin, plus convictions for assault and traffic offences; four outstanding Victorian warrants.</p> | <p>Ct1: Poss heroin wiss 113g 14% (rock form). Ct 2: Poss heroin wiss 23g 26%. Ct 3: Poss methyl wiss 207g 21-55%. Ct 4: Poss BDMPEA wiss 1004 tablets. Ct5: Cult cannabis wiss 124 plants. Ct 6: Poss cannabis wiss 2.38kg. Ct 7: Cult cannabis wiss 148 plants. Ct 8: Poss cannabis wiss 7-8kg.</p> | <p>Ct1: 4 yrs imp. Ct 2: 2 yrs 6 mths imp. Ct 3: 4 yrs imp. Ct 4: 3 yrs imp. Ct 5: 3 yrs imp. Ct 6: 2 yrs imp. Ct 7: 3 yrs imp. Ct 8: 2 yrs imp.</p> | <p>Dismissed.</p> <p>At [130] '...The cases reviewed in <i>Tulloh</i>...reveal numerous instances of sentences within this range for possession with intent to sell or supply large quantities of methylamphetamine and/or</p> |
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| | | <p>Lived in Vietnam until 10 yrs old, then in refugee camps in Hong Kong until coming to Australia 14 yrs old.</p> <p>Heroin addiction approx 10 yrs.</p> | <p>Appellant and girlfriend in car at shopping centre. Police questioned them and appellant said from Melbourne and living in his car. When challenged by police as to living arrangements, appellant ran off and was caught after chase 100-150m. Police searched car and found drugs subject of cts 1-4 and approx \$17 000 in cash.</p> <p>Police investigations into houses involved in cultivation hydroponic cannabis (cts 5-8).</p> | <p>TES 10 yrs imp. EFP.</p> | <p><i>heroin.....put this case squarely into the 7-10 year imprisonment range.'</i></p> <p>At [132] '<i>...no basis for making any significant distinction for sentencing purposes between MDMA and other drugs, such as methylamphetamine, amphetamine, heroin and cocaine.'</i></p> |
| 24. | <p><i>Bahn v The State of Western Australia and Luu v The State of Western Australia</i></p> <p>[2008] WASCA 40</p> <p>Delivered 28/02/2008</p> | <p>Both appellants convicted after PG – joint indictment with same charges.</p> <p><u>Bahn:</u> 35 yrs at time sentencing.</p> <p>No relevant prior criminal record.</p> <p>Good work record; offending out of character.</p> <p><u>Luu:</u> 23 yrs at time offending. 27 yrs at time sentencing.</p> <p>No prior criminal record.</p> <p>Well educated; remorseful; became involved drugs following relationship breakdown; attempts at rehabilitation.</p> | <p>1 x Conspire to sell methyl 2kg. 1 x Offer to sell MDMA 10,000 tablets. 1 x Supply heroin 1 kg. Offences part multifaceted course criminal conduct.</p> <p>Arrests result organised crime investigation involving phone intercepts, surveillance and undercover operative.</p> <p><u>Luu:</u> Offending way clearing drug debts and for personal financial gain.</p> <p><u>Bahn:</u> Amphetamine user and financial difficulties led to offending.</p> | <p>5 yrs imp. 4 yrs imp. 8 yrs imp. TES 10 yrs imp. Sentences same for each appellant.</p> | <p>Dismissed.</p> <p>Some summary of comparative cases for each offence in judgement.</p> |

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| 23. | <p><i>Gulyas v State of Western Australia</i> [2007] WASCA 263</p> <p>Delivered 29/11/2007</p> | <p>79 yrs at sentencing.</p> <p>No prior convictions in WA - co-operated with police.</p> <p>No history of substance abuse.</p> <p>First wife died 1971; remarried; second wife die after illness in 1993 or 1994; lonely and socially isolated.</p> <p>Diagnosed with prostate cancer (not known at sentencing).</p> | <p>Ct1: Poss heroin wiss 224g. Ct 2: Poss methyl wiss. Ct 3: Poss heroin wiss 13.8g. Ct 4: Poss heroin wiss over 500g 8-27%. Ct 5: Poss methyl wiss 772.9g 14-26%. Ct 6: Poss heroin wiss 421g 36%.</p> <p>Course conduct between 20 Oct 2005 and 18 Feb 2006 - sentenced on basis purely for financial gain (even though not leading extravagant lifestyle).</p> <p><u>Cts 1 & 2:</u> Relate to actual sale drugs.</p> <p><u>Ct 3:</u> Police search after appellant's car stopped.</p> <p><u>Cts 4 & 5:</u> Search of the appellant's house – also discovered scales, notebooks containing a record of drug transactions, clip-seal bags and \$186,000 cash.</p> <p><u>Ct 6:</u> Search of appellant's house after he was in prison.</p> | <p>Ct1: 3 yrs 6 mths. Ct 2: 1 yr 6 mths. Ct 3: 18 mths. Ct 4: 4 yrs 6 mths. Ct 5: 4 yrs 6 mths. Ct 6: 4 yrs 6 mths.</p> <p>TES 9 yrs imp. Low risk re-offending .</p> | <p>Dismissed.</p> <p>Summarises relevant comparative cases before and after transitional provisions.</p> |
| 22. | <p><i>Le v The Queen</i> [2004] WASCA 214</p> <p>Delivered 24/09/2004</p> | <p>32 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record - poss heroin; burglary.</p> <p>Vietnamese immigrant, lived in Australia for 21 yrs; recovering drug</p> | <p>1 x Sell methyl 6.94g at 81%. 1 x Sell heroin 0.47g at 22%. 1 x Sell heroin 55.95g at 19%. 1 x Sell methyl 27.9g at 83%. 1 x Offer to sell heroin 340g. 5 x s 32 offences.</p> <p>Dealt to support habit. Involvement more serious than mere courier</p> | <p>2 yrs 1 mth imp. 12 mths imp. 4 yrs 11 mths imp. 4 yrs 2 mths imp. 4 yrs 4 mths imp. 6 mths imp each count.</p> | <p>Dismissed.</p> <p>At [22] indiv sentences well within range of a sound sentencing discretion.</p> <p>NB: the original sentence, upheld by the Court of Appeal, was imposed</p> |

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| | | addict on Naltrexone program when approached by undercover police. | Met undercover police officer at house and aquatic centre. | TES 9 yrs 9 mths imp. | before the transitional provisions came into force. |
| 21. | <i>Ciobanu v The Queen</i> [2003] WASCA 229 Delivered 25/09/2003 | Convicted after late PG (day before trial). Children. | 1 x Att poss heroin wiss 1.5kg at 37-43%. Appellant held to be higher in criminal hierarchy than co-offenders. Police apprehended co-offender, agreed to switch heroin with inert substance and delivered to appellant's home address. Police conducted search warrant that night. Street value \$1m, however offender claimed he was only to receive \$1000. | 10 yrs imp. TES 10 yrs imp. | Dismissed. |

Transitional Provisions Enacted (31/08/2003)

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| 20. | <i>Cotic v The Queen</i> [2003] WASCA 14 Delivered 19/02/2003 | Convicted after trial. While on bail for offences subject of appeal, committed further serious drug offences resulting term 13 yrs imp. | 1 x Poss amphetamine wiss.. 1 x Poss heroin wiss 69.4g at 14.7%. Substantial drug reselling activity. Police searched property appellant residing at. Found drugs hidden in kitchen and garden. Also found scales. | 10 yrs imp. 7 yrs imp. TES 10 yrs imp - 2 yrs to be served cumulatively to 13 yr sentence imposed for separate offences. | Dismissed. Sentencing judge constructed sentencing strategy which recognised the gravity of the offending conduct, but also made due allowance for the operation of the totality principle. |
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| 19. | <p><i>Mada v The Queen</i> [2003] WASCA 1</p> <p>Delivered 17/01/2003</p> | <p>35yrs at time offending.</p> <p>Convicted after fast-track PG, and slightly slower PG.</p> <p>No prior criminal record.</p> <p>Romanian immigrant.</p> <p>Provided cooperation to police.</p> | <p>1 x Poss heroin wiss 81.6g at 38-46%. 1 x Poss heroin wiss 7.86g at 45%. 1 x Poss heroin wiss 21.76g at 42%. 1 x Supply heroin 14.1g. 1 x Poss heroin wiss 28g at 50%. 1 x Poss heroin wiss 8.24g.</p> <p>Non-user, traded for profit after experiencing financial difficulties. Position of seniority in drug hierarchy</p> <p>Searched after vehicle stop. Further drugs found buried in bushland as a result of surveillance of offender. Telephone intercepts also used.</p> | <p>7 yrs imp. 7 yrs imp. 7 yrs imp. 3 yrs imp. 7 yrs imp. 7 yrs imp.</p> <p>TES 10 yrs imp.</p> | <p>Allowed.</p> <p><u>Sentences on appeal:</u> 4 yrs 3 mths imp. 1 yr 7 mths imp. 3 yrs 8 mths imp. 2 yrs 3 mths imp. 5 yrs 1 mth imp. 3 yrs imp.</p> <p>TES reduced to 7 yrs 4 mths imp.</p> <p>At [46] Judge failed to deal with each offence individually, failed to deduct for cooperation with police and confiscation of assets.</p> |
| 18. | <p><i>Delovski v The Queen</i> [2002] WASCA 88</p> <p>Delivered 18/04/2002</p> | <p>29 yrs at time offending.</p> <p>Convicted after PG.</p> <p>No prior criminal record.</p> <p>Macedonian immigrant; could not work due to visa issues, became dependant on brother and involved in drugs under obligation of brother.</p> | <p>1 x Poss heroin wiss 524g at 25%</p> <p>Ranked at upper end of commercial hierarchy, arranged transport of drug to Perth and handover to intended customer.</p> <p>Placed under surveillance after arriving on flight from Melbourne. Apprehended when attempting to arrange sale of heroin.</p> | <p>9 yrs imp. TES 9 yrs imp.</p> | Dismissed. |

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| 17. | <p><i>Aconi v The Queen</i> [2001] WASCA 211 Delivered 25/07/2001</p> | <p>36 yrs at time offending.</p> <p>Convicted after fast-track PG - but attempted to mislead the court stating courier of drugs to support wife's drug addiction.</p> <p>Romanian immigrant.</p> | <p>1 x Poss heroin wiss 112.5g at 43%. 1 x Poss heroin wiss 480.2g at 57%.</p> <p>Police observed offender entering bushland on 2 separate occasions.</p> <p>Found scales, duct tape and freezer bags in car.</p> <p>Sentencing Judge found involved in drugs for purpose of profit, non-user. Telephone intercepts showed involvement greater than offender had suggested</p> | <p>15 yrs imp. 15 yrs imp.</p> <p>TES 15 yrs imp.</p> | <p>Allowed.</p> <p>TES reduced to 13 yrs imp.</p> |
| 16. | <p><i>"S" v The Queen</i> [2000] WASCA 34 Delivered 28/02/2000</p> | <p>53yrs at time sentencing.</p> <p>Convicted after PG at earliest opportunity – co-operated with police at risk to own safety and letter of comfort before sentencing judge (information provided led to conviction of person of poss wiss 180g heroin – received 6 yrs imp).</p> <p>Prior criminal record – incl poss cannabis; 22 stealing offences; numerous fraud convictions; breach CBO; traffic offences.</p> <p>Married with young child.</p> | <p>1 x Poss cocaine wiss 18.29g 70-75%. 2 x Poss heroin wiss 58g & 22g 70-75%.</p> <p>Appellant stopped while driving car – 58g heroin found. House then searched – 22g heroin and 18.29g cocaine found behind loose brick in cavity wall. Appellant claimed holding drugs as security for repayment of \$10,000 loan he had made to another person. That person not apprehended – alleged to have fled overseas.</p> <p>On appeal, appellant admitted in process delivering drugs to third party – retracting earlier explanation.</p> | <p>6 yrs imp. 6 yrs imp each count.</p> <p>TES 6 yrs imp.</p> | <p>Allowed – inadequate recognition assistance to police and early PG.</p> <p>Sentences reduced to 5 yrs (cocaine) and 3 yrs and 2 ½ yrs (heroin).</p> <p>TES reduced to 5 yrs imp.</p> <p>At [13] ‘... it has been accepted that prison sentences of between 7 and 10 years represent the range of punishment for possession of around 100 grams of heroin/cocaine of high purity – anything above about 55%.’</p> |

Weight of Heroin: Below 65 grams

| | Case | Antecedents | Summary/Facts | Sentence | Appeal |
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| 15. | <i>Tran v The State of Western Australia</i> [2013] WASCA 77 Delivered 19/03/2013 | 28 yrs at time sentencing. Convicted after early PG. Extensive prior criminal history including multiple possess prohibited drugs charges. Some offending committed whilst on bail. Entrenched history of illicit drug abuse. | Ct 1: Supply heroin 0.2g. Ct 2: Supply heroin 0.2g. Ct 3: Supply heroin 0.2g. Ct 4: Supply heroin 0.4g. 24 x s32 offences – various sentences including total 4 yrs imps cum. Police searched the appellant's hotel room. He was in possession of a number of stolen items and drug dealing paraphernalia. Cts 1-3 the appellant admitted to police, in a VROI that he had supplied small amounts of heroin to others in exchange for 3 laptop computers and a stolen credit card. Ct 4 the appellant admitted to police, during the interview that he had supplied his partner with heroin on a daily basis for her personal use, including 0.4g of heroin the previous morning. s32 offences, included No MDL, burglary, fraud and receiving. | Ct 1: 12 mths imp cum. Ct 2: 12 mths imp conc. Ct 3: 12 mths imp conc. Ct 4: 12 mths imp conc. TES 5 yrs imp. Fined \$9,600. MDL disq 6 yrs cum EFP. | Allowed in part, in relation to fines only. Fine of \$6,000 for three s32 offences, where terms of immediate imprisonment also imposed, set aside. At [23] The voluntary disclosure of offending conduct is a mitigating factor. At [43] The total effective custodial sentence, although high, was of a severity that was appropriate in all the circumstances. At [51] It is unusual for a sentencing judge to impose a term of immediate imprisonment and a fine for the offence of driving while disqualified or suspended. |
| 14. | <i>Ness v The State of Western Australia</i> [No 2] | 39 yrs at time of offending. Convicted after PG. | 1 x Poss heroin wiss 0.03g unspecified purity. | 12 mths imp. | Dismissed by majority. Mazza JA dissenting. |

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| | <p>[2013] WASCA 56 Delivered 28/02/2013</p> <p>Prior to 2012 had no convictions. In 2012 convicted and fined for one charge of possess amphet and two of cannabis.</p> <p>Regular user of cannabis since her teenage years and commenced using amphet. in 2008 as a form of self-medication following a diagnosis of depression and anxiety after the birth of her second child.</p> <p>Has two children aged 12 and 11 yrs that reside with the appellant's former husband.</p> <p>The author of a PSR expressed some concern about the appellant's failure to comply properly with the interview process for the report.</p> | <p>Police stopped the appellant's vehicle and searched it. Police found three clipseal bags in the appellant's purse. One contained 0.03g of heroin, and the others contained traces of heroin.</p> <p>In the VROI the appellant claimed she purchased the heroin for \$150 and that she had intended giving it to a friend. She said that she had divided the drug into three smaller quantities to enable her to deliver one bag to her friend at successive intervals. She was unable to explain why, if that was so, two of the bags contained only traces of the drug. According to the appellant, she was attempting to assist her friend cease to use heroin by gradually using smaller amounts. She also claimed that she did not use heroin herself and that the purchase of the heroin for \$150 was '... a one off sort of thing'.</p> <p>When police searched her vehicle they also found a set of working scales, a set of non-working set of scales and a bag which contained Xanax and Serepax tablets. Two other bags located contained a small amount of methyl. and cannabis which were for her personal use.</p> <p>Police located a number of text messages on the appellant's mobile phone which showed she was involved in drug dealing.</p> | <p>Judge found that the text messages on the appellant's mobile phone indicated that she was 'engaged in active low level or end of the chain dealing to some extent'.</p> | <p>At [1] The crucial fact in this case was that the appellant committed the offence in the course of engaging in active end-of-the chain drug dealing.</p> <p>At [32] The appellant's offending was not a 'one-off' occurrence or an uncharacteristic aberration. The very small amount of heroin cannot be viewed in isolation. The text messages in combination with the scales found in the appellant's vehicle proves that she was an active low level drug dealer.</p> <p>At [43] A drug dealer (including an active low level dealer) will not ordinarily, as a matter of fact, receive a lesser type of sentence than a term of immediate imprisonment because on the occasion he or she was apprehended the dealing involved a very small quantity of a prohibited drug.</p> |
| 13. | <p><i>Smith v The State of Western Australia</i></p> <p>29 yrs at time sentencing.</p> <p>Convicted after PG.</p> | <p>Ct 1: Attempt poss heroin wiss 1.75g. Ct 2: Poss heroin wiss 3.44g at 34%. Ct 3: Poss firearm.</p> | <p>Ct 1: 6 mths imp. Ct 2: 12 mths imp.</p> | Dismissed. |

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| | <p>[2012] WASCA 91 Delivered 24/04/2012</p> | <p>Extensive prior criminal record – including numerous drug convictions.</p> <p>Entrenched heroin addiction; current partner also heroin addict.</p> | <p>Ct 4: Poss ammunition. Ct 5: Manufacture heroin. Cts 6-11: Sold heroin.</p> <p>Ct 12: Conspire to supply heroin. Cts 13-75, 77-131: Offer sell heroin 0.2g-0.5g.</p> <p>Total quantity heroin involved approx 40g.</p> <p>Appellant involved in offending of methodical and concerted nature – manufacturing home bake heroin, obtaining heroin from others and selling heroin. The possession of the firearm and ammunition add to the seriousness of the offending.</p> <p>Appellant convicted after PG in 2008 of 3 cts poss amphetamine wiss – on analysis powder contained no illicit substances (not known until after appellant served full 15 mths imp). Convictions later overturned on appeal.</p> | <p>Ct 3:12 mths imp. Ct 4: 6 mths imp. Ct 5: 18 mths imp. Cts 6-11: 6 mths imp each ct. Ct 12: 3 yrs imp. Cts 13-75, 77-131: 6 mths imp each ct.</p> <p>TES 4 yrs imp.</p> | <p>At [25] “<i>Where an offence is committed after serving time in custody in respect of a charge upon which the offender is subsequently acquitted, there would ordinarily be no reason to take the prior period of custody into account so as to reduce the sentences imposed in respect of the current offence.</i>”</p> <p>At [28] Court of Appeal entitled to have regard to fact that a term of imprisonment was served for offences the appellant was subsequently acquitted of.</p> |
| 12. | <p>Gullello v The State of Western Australia [2011] WASCA 261 Delivered 30/11/2011</p> | <p>Convicted after late PG. Offending breached parole.</p> <p>Significant prior criminal record – spent majority of adult life in custody.</p> | <p>1 x Poss heron wiss 10.1g at 24%. 1 x Receiving (motor vehicle).</p> <p>Found in sentencing to be at lower end of drug distribution hierarchy.</p> <p>Appellant and co-offender under covert police surveillance and all phone calls they made and received were monitored. During that period, appellant and co-offender engaged in numerous street level drug trades.</p> | <p>3 yrs imp. 9 mths imp.</p> <p>TES 3 yrs imp.</p> <p>Owed 1471 parole days at time sentencing – TES ordered to run concurrently.</p> <p>EFP.</p> | <p>Dismissed.</p> <p>No error in failure of sentencing judge to take into account 163 days appellant spent in custody solely in relation to the receiving and drug offences.</p> |

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| | | | Appellant searched following police vehicle stop and 10.1g heroin found concealed in his underwear. Appellant also had \$1,406 cash in his wallet. Receiving offence unrelated to drug dealing and involved appellant placing his own license plates on a stolen vehicle he was given the keys to and driving it. | | |
| 11. | <p><i>Trang v Western Australia</i> [2010] WASCA 44</p> <p>Delivered 9/03/2010</p> | <p>38 yrs at time offences.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record - variety of offences including poss illicit drugs (incl heroin).</p> <p>Significant and entrenched drug habit; admitted to previously dealing heroin to pay off drug debts.</p> <p>Came Australia as refugee; minimal employment history;</p> <p>In stable relationship and father figure to 7 mth old baby.</p> | <p>1 x Poss heron wiss 4.73g 51%. 1 x Poss heroin 0.46g</p> <p>1 x Poss MDMA 11 tablet, 2.49g</p> <p>1 x Cash unlawfully obtained (\$1720)</p> <p>1 x Poss methyl 2.65g</p> <p>1 x Poss heroin 3.9g</p> <p>Sentenced as user-dealer. Judge accepted significant quantity of drugs may be for own use.</p> <p>Appellant passenger in a car police stopped and searched. 4.73g heroin in crate on rear seat of car (under puppy and some towels). Appellant admitted purchasing 15g heroin 2 days prior.</p> <p>MDMA and smallest amount heroin found after police executed search warrant appellant's home.</p> <p>Methyl and 3.9g heroin found when appellant's car stopped and searched.</p> <p>All occurred on separate occasions and some committed on bail.</p> | <p>2 yrs imp. 8 mths imp. 8 mths imp. 8 mths imp. 16 mths imp. 16 mths imp.</p> <p>TES 4 yrs imp.</p> <p>No acceptance responsibility; little remorse.</p> | <p>Allowed.</p> <p>TES reduced 3yrs 4mths imp (NB indiv sentences not altered).</p> <p>At [16] '<i>...it cannot be said that the term of 2 years for the offence if possessing heroin with intent to sell or supply is in any way objectionable Bearing that in mind, the sentence of 16 months imprisonment for a simple possession of 3.69g of heroin...is very high.</i>'</p> <p>At [43] Poss heroin is an offence so serious that generally only immediate imp appropriate.</p> |

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| 10. | <p><i>Tran v The State of Western Australia</i> [2010] WASCA 38</p> <p>Delivered 2/03/2010</p> | <p>45 yrs at time offending.</p> <p>Convicted after trial – 2 x att to poss methyl.</p> <p>Convicted after PG - 3 x poss wiss.</p> <p>Prior criminal record - dishonesty & drug offences.</p> <p>Vietnamese refugee; 4 children (19, 14, 13 & 11 yrs at sentencing); difficulty integrating since arrival in Australia; victim domestic violence (ex husband served term imp for abuse);</p> | <p>2 x Att to poss methyl (27.3g & 132g). 1 x Poss methyl wiss 37.013g. 1 x Poss heroin wiss 41.4g. 1 x Poss cannabis wiss 60 large & 125 small plants.</p> <p>Involved commercial drug dealing. Drug user but offences not to support her habit – role more significant than courier.</p> <p>Recruited two women to bring in methyl from Eastern State. Couriers caught by police on both occasions (attempt charges). Later search of her home found 3 quantities of drug the subject of possession charge. Also found scales, dilutants and plastic wrap.</p> | <p>4 yrs & 5 yrs imp. 2 yrs imp. 2 yrs imp. 2 yrs imp. TES 9 yrs imp.</p> | <p>Dismissed.</p> <p>At [28] attempted possession, as opposed to actual possession, is not significant factor in sentencing.</p> <p>At [39] heavy penalty but in circumstances proper reflection criminality given 3 types drugs involved, organisation behind offending and commercial aspect.</p> |
| 9. | <p><i>Nguyen v The State of Western Australia</i> [2009] WASCA 81</p> <p>Delivered 7/05/2009</p> | <p>53 yrs at time offending.</p> <p>Convicted after fast-track PG (methyl & heroin).</p> <p>Convicted after trial (MDMA – also acquitted charge supply methyl 1.213kg).</p> <p>Minor prior criminal record.</p> <p>History poly-substance abuse.</p> <p>Poor health (two operations for brain haemorrhage; spinal injuries in car accident resulting in chronic back pain) - started using drugs as coping mechanism for disability.</p> | <p>1 x Poss methyl wiss 138.8g 52-55%. 1 x Poss heroin wiss 55.8g 59%. 1 x Poss MDMA wiss.</p> <p>Sentenced on basis commercial trafficker - flew from Sydney to Perth & rented house for sole purpose of dealing.</p> <p>Methyl found in 5 packages in bag in appellant's pocket. Heroin in package on table in centre of bedroom. Also found electronic scales & \$2,110 cash.</p> | <p>5 yrs 6 mths imp. 3 yrs imp. 8 mths imp. TES 6 yrs imp. Minimal insight into illness and illicit substance abuse.</p> | <p>Dismissed.</p> <p>NB: The original sentence was imposed whilst the transitional provisions were in force.</p> |

| <i>Transitional Provisions Repealed (14/01/2009)</i> | | | | | |
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| 8. | <p><i>The State of Western Australia v Hatch</i></p> <p>[2008] WASCA 162</p> <p>Delivered 1/08/2008</p> | <p>48 yrs at time PSO imposed.</p> <p>Convicted after PG.</p> <p>Prior criminal record – incl poss drug convictions.</p> <p>Entrenched drug user – on methadone at time offending.</p> <p>Single parent with 4 children, including disabled son aged 14yrs and 19yr daughter recently given birth to twins.</p> | <p>1 x Poss wiss heroin 4.2g at 26%. 1 x Poss wiss methyl 3.4g at 21% . 1 x Poss wiss methyl 11.45g at 24%. 1 x Poss wiss cocaine 6.38g at 80%.</p> <p>1 x Supply heroin .04g.</p> <p>Drug dealer at a relatively high level.</p> <p>Police searched respondent's car and home. Found drugs subject first 4 charges and other indicia of commercial distribution. (first 4 charges)</p> <p>While on bail for first 4 charges, house searched again – police found .04 g of heroin.</p> | <p>PSO imposed 06/03/2008.</p> <p>Spent 234 days in custody prior PSO.</p> <p>Respondent admitted to taking prohibited drugs after being released on bail for these offences, showed little insight into her current offences and seemed to place the majority of the blame on outside sources'.</p> | <p>Allowed – remitted to DC for sentencing – imposition PSO an error.</p> <p>At [22] Not open to sentencing judge to conclude that if respondent complied with PSO might not impose term of imprisonment – relevant sentencing principle together with serious nature and circumstances of offending meant immed imp only appropriate option.</p> |
| 7. | <p><i>Dao v State of Western Australia</i></p> <p>[2007] WASCA 237</p> <p>Delivered 9/11/2007</p> | <p>51yrs at time offending.</p> <p>Convicted after PG earliest opportunity.</p> <p>Single mother; 2 children 10 & 14 yrs; came to Australia from Vietnam (via refugee camp in Hong Kong).</p> | <p>Ct 1: poss heroin wiss 56.03g 59%. Ct 2: poss methyl wiss 119.2g 49%.</p> <p>Sentenced on basis that actively participating in dissemination illegal drugs for financial gain (affirmed on appeal).</p> <p>Searched after arrival on QANTAS flight from Sydney to Perth. Found quantities above in two packages sewn into underwear.</p> | <p>Ct 1: 4 yrs imp. Ct 2: 4 yrs imp. TES 6yrs imp.</p> | <p>Dismissed.</p> <p>At [9] ‘...deterrent sentences were called for because of the need for community protection’.</p> |

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| | | Gambling addiction and significant debts as a result. | To be paid \$10 000 for courier work – claimed to pay a gambling debt. Telephone intercepts lead to arrest of principals in distribution network. | | |
| 6. | <i>Ngo v The State of Western Australia</i> [2007] WASCA 221 Delivered 19/10/2007 | Convicted after early PG – did not identify friend holding drugs for (fearful of retribution to himself and family). Offending breached susp sentence for poss amphetamine paste 25.2g at 18% (2 yrs 6 mths susp 2 yrs). At time offences had fulltime job; de facto relationship and twin boys (6 yrs at time sentence). Arrived in Australia at 15yrs as refugee and fell in with wrong crowd; addiction to drugs; attempts to overcome addiction. | 1 x poss wiss cocaine 490g at 68-74%. 1 x poss wiss heroin 10g at 18%. Characterised as large scale drug user, dealing to support habit. Appellant's house searched – two plastic bottles hidden in vent in bathroom. Appellant stated they contained cocaine and he was keeping them for a friend. Heroin located separately and appellant stated for own use and payment for looking after bottles. | 6 yrs 6 mths imp. 3 yrs imp. 20 mths imp imposed for breach. TES 8 yrs 2 mths imp. EFP. Evidence of remorse. | Dismissed - sentences severe but in range At [16] Heroin and cocaine both at top drug hierarchy. At [27]-[28] ‘...vital cog in the wheel of distribution...holding of cocaine was part of a distribution network and constituted criminality of the most serious kind.’ At [31] Heroin and methyl in same category prohibited drugs, affirming <i>Darwell</i> (1997) 94 A Crim R 35. At [36] Court of Appeal can not intervene on basis mercy. |
| 5. | <i>Borbil v The State of Western Australia</i> | 52 yrs at time offending. Convicted after PG. | Ct 1: Supply heroin 0.057g at 20%. Ct 2: Supply methyl 26.806g at 14%. Ct 3: Supply heroin 28g at 17%. | Ct 1: 11 mths imp. Ct 2: 3 yrs 4 mths imp. Ct 3: 4 yrs imp. | Allowed. TES reduced to 5 yrs 6 mths imp. |

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| | <p>[2007] WASCA 24; (2007) A Crim R 152</p> <p>Delivered 1/02/2007</p> | <p>Migrated to Australia from Romania in 1982 as political refugee.</p> <p>Sole carer of 11 yr old son with learning disabilities; strong bond with son; glowing references.</p> <p>In poor health; previously had heart by-pass surgery.</p> <p>Financial difficulties; on disability pension at time offending.</p> | <p>Ct 4: Poss heroin 0.29g.</p> <p>Sold drugs due to financial pressures, not a user of illicit drugs.</p> <p>Associate of appellant contacted him and arranged for a third party to meet appellant at his home. Appellant supplied third party with small amount of heroin (ct 1). Third party returned to appellant's home and appellant offered to supply one ounce of heroin for \$10,000. Appellant offered third party a sample of methyl. Third party subsequently bought quantity of methyl (ct 2). Appellant then left his home and went to nearby bushland where he retrieved a quantity of heroin. Appellant returned to his house and supplied it to third party for \$10,000 (ct 3). After a police search of the appellant's home, the drugs forming subject ct 4 found.</p> | <p>Ct 4: 8 mths imp.</p> <p>TES 7 yrs 4 mths imp.</p> <p>EFP.</p> <p>Very low risk re-offending; offending out of character.</p> | <p>At [55]-[81] lengthy discussion of comparative cases.</p> |
| 4. | <p><i>Ruich v State of Western Australia</i></p> <p>[2006] WASCA 241</p> <p>Delivered 15/11/2006</p> | <p>36 yrs at time sentencing.</p> <p>Offending breached parole (heroin offences – 6 yrs imp).</p> <p>Significant prior criminal record – including previous drug convictions.</p> <p>History substance abuse; unemployed at time offences; supportive parents and de-facto partner.</p> | <p>Ct 1: Conspired sell/supply heroin.</p> <p>Ct 2: Supplied heroin 2.02g 36%.</p> <p>Ct 3: Poss heroin wiss 35.75g 38%.</p> <p>Conspiracy – appellant and co-offender had business arrangement to sell heroin to others.</p> <p>Appellant paid co-offender wage for distributing drug on his behalf. Appellant weigh and pack drug after receiving orders</p> | <p>Ct 1: 2 yrs 8 mths imp.</p> <p>Ct 2: 2 yrs 8 mths imp.</p> <p>Ct 3: 4 yrs 8 mths imp.</p> <p>TES 7 yrs 4 mths.</p> | <p>Dismissed.</p> <p>Severe but within range given purely commercial enterprise in which was repetitive and involved an established market; hardened and persistent offender.</p> |

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| | | and co-offender distribute drug using appellant's car. | | |
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Transitional Provisions Enacted (31/08/2003)

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| 3. | <i>Davis v The Queen</i> [2001] WASCA 386 Delivered 7/12/2001 | 44yrs at time offending. Convicted after trial. Prior criminal record – heroin related offence. Mother deceased; father ill; on methadone medication and not using at time of offences. | 1 x Sell heroin 6.86g at 78-80%. 1 x Sell heroin 13.8g at 80%. Undercover officer taken to appellant's vehicle by co-offender, where both were involved in sale of drugs to officer. Assisting with infiltration of very high grade heroin into the community. | 2 yrs imp. 3 yrs imp. TES 5 yrs imp. Equivalent to 3 yrs 4 mths imp after implementation of transitional provisions. | Dismissed. Cumulative sentences appropriate as offences occurred on quite separate occasions and sentence did not infringe totality principle. |
| 2. | <i>Gyurka v The Queen</i> [2001] WASCA 113 Delivered 11/04/2001 | Convicted after fast-track PG - cooperated with police. Romanian immigrant; marriage breakdown; introduced to cannabis then heroin. | 1 x Sell heroin 6.93g at 48%. 1 x Sell heroin 3.3g at 40%. 1 x Poss heroin wiss 27.6g at 74%. Held in sentencing role greater than courier, actively involved in sale of heroin. Dealing at wholesale level. Two instances of handing drugs to purchaser, sale organised by co-offender. Apprehended conducting sale at service station with co-offender for poss offence. Search of home located scales, plastic bags and \$2060. | 3 yrs imp. 3 yrs imp. 5 yrs imp. TES 6 yrs imp. Equivalent to 4 yrs imp after implementation of transitional provisions. Very remorseful. | Dismissed. Error in sentencing process in that Judge not given sufficient information regarding involvement of undercover police officer. However aggregate sentence not too severe, willingly took part in heroin trade. |

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| 1. | <p><i>Koushappis v The Queen</i> [2001] WASCA 18 Delivered 16/02/2001</p> | <p>48 yrs. Convicted after trial. Prior criminal record - prior convictions for rape; 4 x serious drug offence; substantial number of other convictions.</p> | <p>1 x Sell heroin 0.04g at 56%. 1 x Sell heroin 0.05g at 53%. 1 x Poss heroin wiss.</p> <p>Non-user - dealing heroin solely for financial reward. Sentenced on commercial trafficking. Sold heroin to undercover police officer. Attempted to flush down toilet remaining heroin when search conducted, weight and purity unascertainable due to water contamination.</p> | <p>4 yrs imp. 4 yrs imp. 6 yrs imp.</p> <p>TES 6 yrs imp. Equivalent to 4 yrs imp after implementation of transitional provisions.</p> <p>No regard for the observance of the law or rights of other people.</p> | <p>Dismissed.</p> <p>Severe but not such as to justify Court's interference on the ground of appealable error.</p> |