

Possess prohibited drug with intent to sell or supply

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

MDMA, Heroin, Cocaine, Methylamphetamine/Amphetamine

Prior to 1 January 2014

Note: This chart is arranged in ascending order of the total weight of prohibited drugs. Weights of drugs the subject of attempts to possess or offer to sell or supply offences are included in the total weight, together with those amounts actually possessed, supplied or sold, and are separately noted in the weight column as well. Please refer to the summary of facts or the judgement itself for the circumstances of those offences. Weights of cannabis have not been included in the total weights.

Glossary:

methyl	methylamphetamine
MDMA	3,4-Methylenedioxy-n, Alpha Dimethylphenylethylamine (Ecstasy)
wiss	with intent to sell or supply
imp	imprisonment
susp	suspended
immed	immediate
conc	concurrent
cum	cumulative
PG	plead guilty
ct	count
TES	total effective sentence
EFP	eligible for parole
SIO	suspended imprisonment order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal	Quantity
129.	<p><i>RIF v The State of Western Australia</i></p> <p>[2013] WASCA 88</p> <p>Delivered 05/04/2013</p> <p>NB: Facts, circumstances of the offending, personal circumstances, antecedents and other relevant matters, set out in confidential annexure to reasons of BUSS JA and subject to confidentiality</p>	<p>Convicted after PG.</p> <p>Provided substantial assistance to police before sentenced.</p>	<p>5 x poss prohibited drug wiss/ att poss prohibited drug wiss (MDMA and methylamphetamine).</p> <p>The appellant sourced and supplied or intended to supply a very significant quantity of tablets, believing them to contain MDMA, but in fact containing methylamphetamine.</p> <p>The purity of the drugs, the subject of Cts 2-3 and 5, was very low and the purity of the drugs the subject of the other counts was unknown.</p>	<p>Not specified.</p>	<p>Allowed.</p> <p>Re-sentenced</p> <p>Ct 1: 2 yrs imp. Ct 2: 2 yrs imp. Ct 3: 2 yrs imp. Ct 4: 4 yrs imp. Ct 5: 2 yrs imp.</p> <p>Cts 1-4 and 5 conc and cum on Ct 4.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>At [21] The degree of purity is often regarded as significant.</p> <p>At [24] Where the purity of a prohibited drug is very low the substance is unlikely to produce the deleterious effects usually associated with prohibited drugs having a high level of purity. However, the essence of the appellant's criminality was reflected in his belief that the tablets were prohibited</p>	<p>Not specified.</p>

					<p>drugs and his willingness to deal in them, for profit with that knowledge. He was running a drug dealing business. The scope of the business was beyond what was necessary to repay a drug debt he had incurred as a result of his own usage.</p> <p>At [25] Although the appellant had access to the supply of significant quantities at short notice, it is not possible to assess the position he occupied in the ‘dealing chain’ because ..., the purity of the drugs, was very low ...</p> <p>At [26] the principal mitigating factors were the appellant’s cooperation with the police and his pleas of guilty. All of his cooperation was past cooperation as at the date on which his Honour imposed sentence.</p>	
128.	<i>Jackson v The State of Western</i>	46 yrs at time offending. Convicted after PG (pleaded	31 x Offer to sell/supply methyl. 1 x Poss methyl wiss. 1 x Breach CBO.	TES 6 yrs 6 mths imp.	Dismissed. Appeal against 21 mths	Not specified.

	<p><i>Australia</i></p> <p>[2008] WASCA 95</p> <p>Delivered 30/04/2008</p>	<p>to various counts in satisfaction of indictment).</p> <p>Offending breached CBO for 3 count sell methyl (0.38g, 0.16g, 3.44g at 18%).</p> <p>Prior criminal record - minor drug offences; poss stolen property, explosives, ammunition, stealing.</p> <p>Drug user; taking steps to curb his use; three children (one very young).</p>	<p>Appellant conducting business drug dealing from home. Local residents expressed concern to police about regular anti-social behaviour of people attending property to buy drugs and excessive vehicle traffic at the appellant's home. Police placed appellant's home under surveillance.</p>		<p>imp imposed for breach of CBO only.</p>	
127.	<p><i>Ness v The State of Western Australia</i> [No 2]</p> <p>[2013] WASCA 56</p> <p>Delivered 28/02/2013</p>	<p>39 yrs at time of offending.</p> <p>Convicted after PG.</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>1 x Poss heroin wiss 0.03g unspecified purity.</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</p>	<p>12 mths imp.</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>Dismissed by majority. Mazza JA dissenting.</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 test messages in</p>	0.03g.

		<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>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>combination with the scales found in the appellant's vehicle proves that she was an active low level drug dealer.</p> <p>At [34] 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 prohibited drug.</p>	
126.	<p><i>Koushappis v The Queen</i></p> <p>[2001] WASCA 18</p> <p>Delivered 16/02/2001</p>	<p>48 yrs.</p> <p>Convicted after trial.</p> <p>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.</p> <p>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.</p> <p>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>	0.09g.
125.	<i>Tran v The State of</i>	28 yrs at time sentencing.	Ct 1: Supply heroin 0.2g.	<p>Ct 1: 12 mths imp cum. Ct 2: 12 mths imp conc.</p>	Allowed in part, in relation to fines only.	1.0g.

	<p><i>Western Australia</i></p> <p>[2013] WASCA 77</p> <p>Delivered 19/03/2013</p>	<p>Convicted after early PG.</p> <p>Extensive prior criminal history including multiple possess prohibited drugs charges. Some offending committed whilst on bail.</p> <p>Entrenched history of illicit drug abuse.</p>	<p>Ct 2: Supply heroin 0.2g.</p> <p>Ct 3: Supply heroin 0.2g.</p> <p>Ct 4: Supply heroin 0.4g.</p> <p>24 x s32 offences – various sentences including total 4 yrs imps cum.</p> <p>Police searched the appellant’s hotel room. He was in possession of a number of stolen items and drug dealing paraphernalia.</p> <p>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.</p> <p>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.</p> <p>s32 offences, included No MDL, burglary, fraud and receiving.</p>	<p>Ct 3: 12 mths imp conc.</p> <p>Ct 4: 12 mths imp conc.</p> <p>TES 5 yrs imp.</p> <p>Fined \$9,600.</p> <p>MDL disq 6 yrs cum</p> <p>EFP.</p>	<p>Fine of \$6,000 for three s32 offences, where terms of immediate imprisonment also imposed, set aside.</p> <p>At [23] The voluntary disclosure of offending conduct is a mitigating factor.</p> <p>At [43] The total effective custodial sentence, although high, was of a severity that was appropriate in all the circumstances.</p> <p>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.</p>	
124.	<p><i>Sumption v Gaunt</i></p> <p>[2013] WASC 258</p> <p>Date delivered 10/07/2013</p>	<p>Convicted after PG.</p> <p>Limited prior criminal record; included 4 previous convictions of possess prohibited drug, one of which was intent to sell or supply.</p>	<p>1 x Possess methyl wiss 3.51g at 30%.</p> <p>1 x Fail to obey data access order.</p> <p>The appellant was stopped by police whilst driving between Bunbury and Collie. A small bag of 3.5 grams of methyl was found inside the appellant’s bra. Also found on the appellant were a small number of clipseal bags, one of which contained 0.1 grams of</p>	<p>30 mths imp.</p> <p>4 mths imp (conc).</p> <p>TES 30 mths imp.</p> <p>EFP.</p> <p>Sentenced on the basis that her possession was</p>	<p>Appeal allowed in part. Sentence on possession charge set aside. Appellant re-sentenced to 9 mths imp. The sentence for breach of data access order was unaffected.</p>	3.51g

		<p>Single mother of 3 children however at date of hearing of the appeal children were in custody of family; pregnant at hearing.</p> <p>Had intermittently used amphetamines.</p> <p>Shortly before arrest her relationship with the father of her two younger children had broken down; The stress associated with this had caused her to again resort to drug use.</p> <p>Support of parents.</p> <p>A number of favourable character references were tendered to the Magistrate.</p>	<p>methyl. A set of electronic scales were found on another woman in the car. The scales were later tested and no detectable traces of drugs were found on them.</p> <p>A mobile phone belonging to the appellant was also seized. The phone had a pin lock which prevented the police from accessing it. The appellant refused to reveal the pin, stating that she did not want to 'get anyone into trouble'.</p> <p>A month later police obtained and served a data access order in respect of the appellant's mobile phone. The order required the appellant to provide her pin. She again refused to comply, stating that she did not want to get anyone into trouble. She refused a further request 6 days later. About 2 months later she was charged; only then providing the pin. An attempt to access the phone using that pin was unsuccessful.</p>	<p>for the purpose of personal use and sharing with friends.</p> <p>Denied any intention to sell the drugs.</p> <p>The drugs that were found in her possession were said to have been purchased relatively recently and she had not expected to receive the quantity that she did.</p>	<p>TES 9 mths imp.</p> <p>At [18] Whilst the admission that the appellant intended to supply some of the drugs to her friends meant that she could not rebut the presumption of an intent to sell or supply and remained liable to the higher penalty applicable to an offence in such circumstances, whether she was dealing in drugs by selling them or was merely sharing them with her friends was a relevant factor in sentencing.</p> <p>At [20] ... Having accepted that there was no intention to sell any of the drugs, it was not appropriate to deal with the appellant as if she was a mid-level dealer.</p> <p>At [29]... Whilst an intention to provide drugs to friends should not be viewed as being benign, it is clearly less serious than the conduct of a person engaged in dealing on a</p>	
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123.	<i>Vogel v The Queen</i> [2002] WASCA 261 Delivered 20/09/2002	Youth mitigating factor. No significant prior criminal record. Good character; employed; favourable references.	1 x Poss methyl wiss: 3.8g at 11% & 2.86g at 37%. Drugs found on appellant's person at police lock-up following his arrest after an incident outside a nightclub - also found \$1850 cash. Appellant purchased drugs as "party drugs" to use while on holiday in WA (from Sydney).	3 yrs imp. TES 3 yrs. Equivalent to 2 yrs imp after implementation of transitional provisions. EFP.	Dismissed.	6.66g.
122.	<i>Swains v The State of WA</i> [2007] WASCA 251 Delivered 6/11/2007	45 yrs at time offending. Convicted after PG. Stable relationship; three daughters. Post traumatic stress disorder from traffic accident; drug addiction. Willingness to address substance abuse issues.	1 x Poss methyl wiss 8.071g – 25%. 1 x Poss cannabis wiss 63g. 1 x Receiving. Engaged in sale of methyl from his home - drug user selling drugs to finance habit. Not engaged in drug dealing in a very significant manner, but ongoing. Drugs were found during search of appellant's home – also found cash and drugs paraphernalia.	18 mths imp. 3 mths imp. 3 mths imp. TES 21 mths imp. EFP.	Dismissed. At [14] 'Dealing in serious drugs, whether to feed a habit or otherwise, is a serious offence. There is nothing in this case to take it out of the ordinary range.'	8.071g.
121.	<i>Attenborough v The State of Western Australia</i> [2005] WASCA 132	20 yrs at time offending. Convicted after PG - co-operated with police. No prior criminal record. Excellent work record; strong community support.	1 x Poss MDMA wiss 36 tablets, 8.43g 40%. Low end of scale seriousness. Appellant did not profit from drugs – absence commercial motive. MDMA found in appellant's home - purchased for appellant and her friends for her upcoming 21 st birthday party.	20 mths imp. TES 20 mths imp. Remorseful.	Allowed – SIO imposed. TES reduced 12 mths imp susp for 12 mths.	8.43g

			\$3835 cash also located.			
120.	<p><i>Coleski v The State of Western Australia</i></p> <p>[2008] WASCA 260</p> <p>Delivered 11/12/2008</p>	<p>24 yrs at time offending.</p> <p>Convicted after fast track PG. Fully co-operated during VROI.</p> <p>Prior criminal record - simple poss and poss smoking implement.</p> <p>Addicted to methyl since 21 yrs; depression.</p>	<p>1 x Poss methyl wiss 9.87g at 24%.</p> <p>Driving motorbike when dropped package containing methyl. Police driving behind him have seen him drop it and stopped to pick it up. Appellant returned later to collect the package and police were waiting for him.</p>	<p>12 mths imp.</p> <p>TES 12 mths imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>Nothing exceptional to make susp sentence appropriate.</p>	9.87g.
119.	<p><i>Gullelo v The State of Western Australia</i></p> <p>[2011] WASCA 261</p> <p>Delivered 30/11/2011</p>	<p>Convicted after late PG.</p> <p>Offending breached parole.</p> <p>Significant prior criminal record – spent majority of adult life in custody.</p>	<p>1 x Poss heroin wiss 10.1g at 24%.</p> <p>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>Appellant searched following police vehicle stop and 10.1g heroin found concealed in his underwear. Appellant also had \$1,406 cash in his wallet.</p> <p>Receiving offence unrelated to drug dealing and involved appellant placing his own license plates on a stolen vehicle he was</p>	<p>3 yrs imp.</p> <p>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>	10.1g.

			given the keys to and driving it.			
118.	<i>Cartwright v The State of Western Australia</i> [2010] WASCA 4 Delivered 15/01/2010	25 yrs at time sentencing. Convicted after trial. Very heavy user of methyl but had ceasing using at time sentencing; mother started her on methyl as teenager and she had lived in abusive relationship with man who supplied her with methyl. At time sentencing working part-time, drug free and in stable relationship.	1 x Poss methyl wiss 11.8g at 78%. Sentenced on basis acting as user/courier. Appellant stopped by police for speeding. Appellant's car was searched, a drug-smoking pipe was located. In the back of the vehicle, among bags of clothing was \$16,400 cash wrapped in newspaper. Police also found \$3,000 in the pocket of the appellant's jeans, \$2,500 in a CD case and \$250 lying loose on the console of the vehicle (total of \$22,150 in cash found). Appellant then driven to the police station in her car. On leaving the car, appellant flung a black jewellery bag away. The police located it and drugs subject of charge found. Appellant lied about origins of money.	3 yrs imp. TES 3 yrs imp. EFP. Little remorse.	Dismissed. At [15] Well within the standards of sentencing customarily imposed.	11.8g.
117.	<i>Trang v The State of Western Australia</i> [2010] WASCA 44 Delivered 9/03/2010	38 yrs at time offences. Convicted after fast-track PG. Prior criminal record - variety of offences including poss illicit drugs (incl heroin). Significant and entrenched drug habit; admitted to previously dealing heroin to pay off drug debts.	1 x Poss heron wiss 4.73g 51%. 1 x Poss heroin 0.46g 1 x Poss MDMA 11 tablet, 2.49g 1 x Cash unlawfully obtained (\$1720) 1 x Poss methyl 2.65g 1 x Poss heroin 3.9g Sentenced as user-dealer. Judge accepted significant quantity of drugs may be for own use. 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	2 yrs imp. 8 mths imp. 8 mths imp. 8 mths imp. 16 mths imp. 16 mths imp. TES 4 yrs imp. No acceptance responsibility; little remorse.	Allowed. TES reduced 3yrs 4mths imp (NB indiv sentences not altered). At [16] '...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 objectionableBearing that in mind, the sentence of 16 months imprisonment for a simple	14.23g.

		<p>Came to Australia as refugee; minimal employment history;</p> <p>In stable relationship and father figure to 7 mth old baby.</p>	<p>days prior. MDMA and smallest amount heroin found after police executed search warrant appellant's home. 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>possession of 3.69g of heroin...is very high.'</p> <p>At [43] poss heroin is an offence so serious that generally only immediate imp appropriate.</p>	
116.	<p><i>Thurling v The Queen</i></p> <p>[2000] WASCA 271</p> <p>Delivered 22/09/2000</p>	<p>25 yrs at time sentencing.</p> <p>Prior criminal record – poss wiss offences of 5 different drugs (LSD, cannabis, amphetamine, heroin and MDMA); served term imp previously for drug offences.</p> <p>While on bail for offences subject of appeal, appellant charged, and was subsequently convicted of, two further drug offences (amphetamine and heroin). In 14 mths prior to trial appellant given up heroin, moved away from scene offences (Kalgoorlie) to Perth and secured part-time employment.</p> <p>Support of parents and partner.</p>	<p>1 x Poss cocaine wiss 16g. 1 x Poss LSD wiss five dots.</p> <p>Characterised as dealing for profit – no evidence that appellant had cocaine addiction.</p>	<p>5 yrs imp. 12 mths imp.</p> <p>TES 5 yrs imp.</p> <p>Equivalent to 3 yrs 4 mths imp after implementation of transitional provisions.</p>	<p>Dismissed.</p> <p>At [5] cocaine regarded in the same light as heroin. Personal circumstances and antecedents have little mitigatory force.</p>	<p>16g. 5 dots.</p>

<p>115.</p>	<p><i>Pellew v The State of Western Australia</i></p> <p>[2008] WASCA 169</p> <p>Delivered 20/08/2008</p>	<p>29 yrs at time offending.</p> <p>Convicted after PG.</p> <p>No prior significant convictions.</p> <p>2 young children; suffered depression; drug addict; sold drugs to fund her own use; sought treatment after arrest.</p>	<p>1 x Poss methyl wiss 17.5g at 31%. 8 x Sell/supply methyl.</p> <p>Search of house located methyl in first count, along with scales, clipseal bags, cutting agent and over \$5000 cash Computer listed 8 names with money recorded next to them. Appellant admitted she had supplied methyl to these people</p>	<p>18 mths imp. 12 mths imp each count.</p> <p>TES 4 yrs 6 mths imp.</p> <p>EFP.</p>	<p>Dismissed</p> <p>At [13] TES in range according to serious and repeated nature of offending, guilty plea, cooperation with police and personal circumstances.</p>	<p>17.5g.</p>
<p>114.</p>	<p><i>Baghdadi v The State of Western Australia</i></p> <p>[2011] WASCA 38</p> <p>Delivered 17/02/2011</p>	<p>43 yrs at time sentencing.</p> <p>Convicted after fast-track PG.</p> <p>Offending breached bail (att poss methyl wiss charge).</p> <p>Prior criminal record – drugs; firearms; dishonesty. Never served term imp.</p> <p>History substance abuse since 20 yrs; long-term employment; carer for father (partially paralysed by stroke) and mother.</p>	<p>1 x Poss methyl wiss 15.78g at 9% & 2.6g at 32%.</p> <p>Commercial enterprise.</p> <p>Search warrant executed at appellant’s home. Powdered substance in glass tray on top microwave found in kitchen – ‘bong water residue’ (methyl appellant recovered from evaporated water left in smoking implement (15.78g). Also found smaller amount methyl (2.6g), 95.3g cutting agent, 4 sets of digital scales with methyl residue (2 belonging to appellant), pieces of paper with numbers written on them, sawn-off 12-gauge shotgun, .22 calibre rifle and a crossbow.</p>	<p>2 yrs 3 mths imp.</p> <p>TES 2 yrs 3 mths.</p> <p>EFP.</p>	<p>Dismissed – leave to appeal refused on papers.</p> <p>At [30] that the sentence impacts on invalid father and mother is not mitigatory.</p>	<p>18.38g.</p>
<p>113.</p>	<p><i>Davis v The Queen</i></p> <p>[2001] WASCA 386</p>	<p>44yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal record –</p>	<p>1 x Sell heroin 6.86g at 78-80%. 1 x Sell heroin 13.8g at 80%.</p> <p>Undercover officer taken to appellant’s vehicle by co-offender, where both were</p>	<p>2 yrs imp. 3 yrs imp.</p> <p>TES 5 yrs imp.</p>	<p>Dismissed.</p> <p>Cumulative sentences appropriate as offences occurred on quite separate</p>	<p>20.66g.</p>

	Delivered 7/12/2001	heroin related offence. Mother deceased; father ill; on methadone medication and not using at time of offences.	involved in sale of drugs to officer. Assisting with infiltration of very high grade heroin into the community.	Equivalent to 3 yrs 4 mths imp after implementation of transitional provisions.	occasions and sentence did not infringe totality principle.	
112.	<i>The State of Western Australia v Hatch</i> [2008] WASCA 162 Delivered 1/08/2008	48 yrs at time PSO imposed. Convicted after PG. Prior criminal record – incl poss drug convictions. Entrenched drug user – on methadone at time offending. Single parent with four children, including disabled son aged 14yrs and 19yr daughter recently given birth to twins.	1 x Poss heroin wiss 4.2g at 26%. 1 x Poss methyl wiss 3.4g at 21% . 1 x Poss methyl wiss 11.45g at 24%. 1 x Poss cocaine wiss 6.38g at 80%. 1 x Supply heroin .04g. Drug dealer at a relatively high level. Police searched respondent’s car and home. Found drugs subject first 4 charges and other indicia of commercial distribution. (first 4 charges) While on bail for first 4 charges, house searched again – police found .04g of heroin.	PSO imposed 06/03/2008. Spent 234 days in custody prior PSO. 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’.	Allowed – remitted to DC for sentencing – imposition PSO an error. 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.	25.47g.
111.	<i>O’ Driscoll v The State of Western Australia</i> [2011] WASCA 156 Delivered 15/07/2011	27 yrs at time sentencing. Convicted after late PG. Some of the s 32 offences breached bail for indictable offence. Long prior criminal record – drugs; firearms; driving offences; receiving;	1 x Poss methyl wiss 22.5g at 11%. 24 x s 32 offences. 2 drug related s 32 offences: Ct 1: Poss testosterone 3mL. Ct 24: Poss methyl wiss 3.2g. Police searched appellant’s home and found methyl subject of indictable charge along with digital scales and clip-seal bags. Text messages from appellant’s mobile phone	3 yrs imp. Sentence range fines – 8 mths imp. Ct 1:1 mth imp. Ct 24: 8 mths imp. TES 4 yrs 10 mths imp.	Dismissed – leave refused on papers. NB: Individual sentences not challenged.	25.7g. 3mL.

		<p>burglary.</p> <p>Travelled to India at 12 yrs with father – father disappeared and has not been seen or heard of since; dysfunctional upbringing since that time.</p> <p>Involvement in criminal gangs.</p> <p>Drug abuse problem.</p>	were indicative of drug dealing.			
110.	<p><i>The State of Western Australia v Reid</i></p> <p>[2012] WASCA 109</p> <p>Delivered 18/05/2012</p>	<p>Convicted after fast-track PG.</p> <p>Minor prior criminal record – common assault; disorderly behaviour; driving offences.</p> <p>Heavy methyl addiction.</p> <p>Raised in supportive family environment; no alcohol or domestic violence issues.</p> <p>Educated to yr 10; employed in mining industry as dump truck operator until 2008 when lost job due to alcohol related driving conviction.</p> <p>After lost job encountered financial difficulties – lost</p>	<p>1 x Poss methyl wiss 26.6g at 17%.</p> <p>Respondent is an aboriginal man. Police executed a search warrant at respondent’s residence. During the search, police found a eight clip-seal bags of methyl (total weight 26.6g) in respondent’s jeans pocket. Also found empty clip-seal bags and electronic scales. During search respondent admitted to obtaining methyl on credit and selling it in point quantities (0.1g) for \$50.</p>	<p>2 yrs imp.</p> <p>TES 2 yrs imp susp 12 mths.</p>	<p>Allowed.</p> <p>TES 2 yrs immediate imprisonment substituted.</p> <p>At [22] Imposition of SIO inconsistent with sentences of immediate imp imposed in closely comparable cases.</p> <p>At [24] “The fact that the respondent’s life conditions and circumstances are not the norm in indigenous communities is not a material fact that reduces his culpability for the offending.”</p> <p>At [26] Quantity and</p>	26.6g

		<p>family home; vehicles repossessed.</p> <p>Relationship with mother of his children ended in 2008.</p> <p>Alcohol and drug use escalated after events of 2008.</p>			<p>purity of drug significant factor in sentencing as it speaks to the potential harm caused to the community – close association between methyl use and crime is well recognised.</p>	
109.	<p><i>Moreton v The State of Western Australia</i></p> <p>[2011] WASCA 258</p> <p>Delivered 29/11/2011</p>	<p>39 yrs at time offending. 40 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Offending breached bail for earlier offence of poss methyl wiss.</p> <p>Prior criminal record – drug offences; traffic and driving offences; breach VRO; poss stolen property; breach bail; breach CBO.</p> <p>Parole on 8 mths imp imposed for poss methyl wiss (3.27g) cancelled when failed urinalysis.</p>	<p>1 x Poss methyl wiss 27.3g at 16%.</p> <p>Low-mid level drug dealer.</p> <p>Appellant passenger in a parked car adjacent to his house when police approached. Police saw cigarette packet, blue container and used syringe on the ground next to the car. Cigarette packet contained 3 cigarettes and visible traces of methyl. Blue container contained 8 sachets of methyl totalling 27.3g at 16% purity. \$1, 600 cash also found concealed in the car. Appellant denied knowledge of drugs and lied to police about the cash.</p> <p>Police later seized appellant’s mobile phone – analysis of calls and messages revealed appellant involved in sale illicit drugs. DNA analysis of cigarette packet and blue container revealed appellant’s DNA on both. After results DNA analysis known to police, they required appellant to accompany them to police station (approx 2 months later). Appellant attempted to throw away a new mobile phone he had – police seized that and also analysed contents. Phone revealed</p>	<p>5 yrs imp.</p> <p>TES 5 yrs imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>Sentence high but not manifestly excessive.</p> <p>At [2] Significant need in this instance for personal deterrence.</p> <p>At [33] Weight of drugs important factor but not prime factor in sentencing process.</p> <p>At [45] Purpose or motive behind drug dealing does not detract from commercial nature of such offending.</p>	27.3g.

			appellant continued to engage in sale of illicit drugs.			
108.	<i>The State of Western Australia v Wynne</i> [2008] WASCA 195; (2008) A Crim R 502 Delivered 26/09/2008	27 yrs at time offending. Convicted after early PG. Minor prior drug offences (possession). Attempted to assist police in other drug investigations. 5 children, gave birth after charged; history violent relationships. History of drug abuse in family; became mother to her younger brothers due to her own mother's dealing and drug habit.	1 x Poss methyl wiss 27.3g at 21%. Police conducting random breath testing stopped the respondent's car as it was travelling south towards Albany. Respondent was informed that she and the vehicle were going to be searched. Respondent voluntarily produced a bag containing methyl which had been hidden in her bra. Also carrying \$1,685 in cash on her. Respondent had travelled from Albany to Perth to purchase the drugs on behalf on her husband who had pre-arranged the sale.	12 mths imp. TES 12 mths imp susp 2 yrs.	Allowed. TES increased to 15 mths imp. EFP. Susp sentence manifestly inadequate.	27.3g.
107.	<i>The State of Western Australia v Buck</i> [2010] WASCA 188 Delivered 21/09/2010	23 years old at time offending. Convicted after fast-track PG. Minor prior criminal record - not drug related. Stable employment; talented sportsman (played Australian u 18 rugby league team) favourable antecedents; steps toward rehabilitation; strong family support; numerous	1 x Supply MDMA – 20 tablets. 1 x Poss cocaine wiss 27.8g at 28%. s 32 notice offences: 3 x deal prohibited drug. Characterised as courier for reward. <u>Ct 1:</u> Respondent supplied 20 MDMA tablets to an associate. <u>Ct 2:</u> Respondent passenger in car stopped by police. Taken into custody and house	6 mths imp. 30 mths imp. 6 mths imp; 12 mths imp; 12 mths imp. TES 3 yrs imp susp 2 yrs. EFP.	Allowed – SIO set aside. TES 3 yrs immediate imp. At [10] consequences offending on family/friends not ordinarily relevant in sentencing nor is offender's emotional distress or shame. At [13] ' <i>... drug dealers will not receive a</i>	27.8g. 20 tablets.

		positive references. Attended drug counselling at Cyrenian House before sentencing.	searched – 27.8g cocaine at 28% purity found in plastic bag wrapped in kitchen towel in respondent’s underwear drawer. <u>s 32 offences:</u> Offered supply girlfriend 15 ecstasy tablets for a concert; supplied 3.5g cocaine; 10 MDMA tablets found hidden in respondent’s car.		<i>suspended sentence unless the seriousness of the circumstances fall at the very low end of the scale.’</i>	
106.	<i>TLM v The State of Western Australia</i> [2009] WASCA 106 Delivered 25/06/2009	30 yrs at time offending. Convicted after early PG - full admissions in VROI. Placed on CBO 2 days before arrest – breached and reinstated – poor compliance. Signed witness statement against others. Prior criminal record - traffic and assault; no prior drug convictions. Drug user.	1 x Sold methyl 13.8g at 30%. 1 x Att to poss methyl at 14g. Recruited by friend to sell 1 ounce methyl to another (UCO). Sold UCO first half. UCO gave appellant \$9000 for second half but she was arrested before she could source second half.	3 yrs imp. 2 yrs imp. TES 3 yrs imp. EFP.	Allowed. Failure to give or quantify discount for cooperation with authorities. TES reduced to 22 mths imp.	27.8g. 13.8g poss. 14g att poss.
105.	<i>Ottaway v The State of Western Australia</i> [2012] WASCA 21 Delivered 30/01/2012	29 yrs at time offending. 31 yrs at time sentencing. Convicted after trial. Heavy methyl user – begun using methyl after 5 yrs abstinence following his father’s death.	1 x Poss methyl wiss 28g (14g at 19% and 14g at 15%). Low-mid level drug dealer. Police were carrying out surveillance and telephone intercepts on co-offender. Appellant was stopped by police after leaving co-offender’s house and car search. Initial search found nothing and appellant	2 yrs 8 mths imp. TES 2 yrs 8 mths imp. EFP. No remorse; no acceptance of responsibility – continues to deny	Dismissed. At [57]-[73] No disparity between appellant’s sentence and that of co-offender given co-offender’s PG, personal circumstances and positive prospects of rehabilitation.	28g.

		Dysfunctional family background; father abused alcohol; domestic violence. Educated to yr 9 and then expelled;	was detained until further officers arrived. Second search found 2 bags of methyl subject of offending above, digital scales, empty clip-seal bags and a pipe used to smoke methyl hidden under the panelling of the left-hand side of the centre console.	offending.		
104.	<i>McDougall v The State of Western Australia</i> [2009] WASCA 232 Delivered 22/12/2009	27 yrs at time offending. Convicted after trial – admitted cocaine was his during police interview, however PNG asserting admission was a false confession enabling partner to be discharged from custody to care for children. No prior relevant criminal record. Stable family life; good employment history.	1 x Poss cocaine wiss 28.1g at 67%. Characterised in sentencing as mid-level user/prospective dealer (conceded by sentencing counsel for appellant). Police executed search warrant at property where appellant lived with partner and child. Located clip seal bag. None of usual paraphernalia associated with dealing found by police (ie no scales, no clipseal bags, no large sums cash, no mixing or cutting agents). No evidence at trial appellant was cocaine user or that cocaine for personal use.	4 yrs 6 mths imp. TES 4 yrs 6 mths imp.	Dismissed – sentence at high end but not outside range. At [15] ‘...because significant weight is given to considerations of deterrence for drug trafficking offences, reduced weight is given to matters personal to the offender.’ NB: Original sentence, upheld by Court of Appeal, was imposed whilst the transitional provisions were in force.	28.1g.
103.	<i>Dann v The State of Western Australia</i> [2006] WASCA 254 Delivered 24/11/2006	28 yrs at time offending. Convicted after PG. Offending breached ISO and SIO. Prior criminal record - numerous dishonesty and drug offences including possess heroin wiss.	1 x Poss methyl wiss 30.99 g at 79-80%. Search of appellant’s home located drugs, three sets of electronic scales, empty clip seal bags and \$242,000 cash.	6 yrs imp. TES 6 yrs imp. EFP.	Dismissed. At [9] ‘Considering the weight and purity of the drug, the fact that the appellant was dealing on more than a minor scale, and the absence of mitigation, it is difficult to see the sentence imposed as inappropriate.’	30.99g.

		Drug addict - using since 12 yrs old; one child from former relationship.				
102.	<i>The State of Western Australia v MacKenzie</i> [2011] WASCA 116 Delivered 13/05/2011	39 yrs at time offending. Convicted after fast-track PG. Prior criminal record – previous drug offences for which term imp has been served; previously declared a drug trafficker. Good employment history; stable and supportive family. Long history entrenched substance abuse – high functioning addict.	Ct 1: Poss methyl wiss 31.34g (27g at 48%, 2.05g at 57%, remainder unknown purity) Ct 2: Poss cannabis wiss 281.75g hydroponic. s 32 offences: 1 x Poss cannabis wiss 0.57g head material. 1 x Poss smoking utensil. 1 x Poss methyl 0.67g. Respondent driving along West Coast Highway when stopped by police for a traffic matter. As police conducted a license check, the respondent ran through the car park and up a dune track to the beach. Police saw respondent throw a clip-seal bag away – recovered later and contained 27g methyl (ct 1). Police also saw respondent tear open second clip-seal bag and throw it away – recovered later as were traces of drugs from the sand (ct 1).Cannabis (s 32) also found in clip-seal bag in dunes. Respondent reached the water and disposed of an unknown substance in the surf. Subsequent search of respondent’s uncovered \$3,750 cash and smaller amount methyl (0.9g). Also found \$200 on respondent’s person. Police later searched respondent’s home – cannabis subject of ct 2 found, as well as smoking implements and methyl which were	18 mth PSO imposed on 21/01/2011.	Allowed. Remitted to DC for sentencing before a different judge. At [42] there are no exceptional circumstances in this case to allow a conclusion that a sentence other than immediate imprisonment was open. Re-sentenced on 2 September 2011 to TES 3 yrs imp. EFP.	31.34g.

			the subject of the s 32 charges.			
101.	<i>The State of Western Australia v Marchese</i> [2006] WASCA 153; (2006) 163 A Crim R 363 Delivered 4/08/2006	24 yrs at time offending. Convicted after PG. Employed; 20mth old daughter;	1 x Poss methyl wiss 27.97g 1 x Poss MDMA wiss 2.06g. Found in respondent's home; also found cutting agent, clip-seal bags, scales and \$18,000 (half which was admitted to be drug-related), book & electronic organizer containing drug debts owed; respondent admitted dealing drugs for financial motive & denied being addicted.	2 yrs imp. 18 mths imp. TES 2 yrs imp susp 2yrs. PSR positive - insight shown.	Dismissed. Suspended sentence inadequate but not disturbed as appellant spent 8 mths in the community before appeal was decided. NB: Double jeopardy principles applied and exceptional case as State didn't expedite appeal.	32.03g.
100.	<i>Lynch v The State of Western Australia</i> [2011] WASCA 243 Delivered 3/11/2011	43 yrs at time offending. Convicted after fast-track PG. Educated to yr 12. Good employment history. Heavy methyl user.	1 x Poss methyl wiss 34.76g at 34%. 1 x Cultivate cannabis. 1 x Poss smoking utensil. Appellant car stopped by police – passenger was co-offender (respondent in <i>The State of Western Australia v Berlingeri</i> [2011] WASCA 242). Appellant and co-offender had been in relationship approx 10 yrs. Police searched vehicle and co-offender's handbag – co-offender gave permission for bag to be searched but removed her wallet immediately after giving that permission. Police told co-offender wallet would need to be searched too – co-offender threw wallet in car and said only her passport was in it. Police searched wallet and found 27.9g methyl at 34% purity. co-offender stated she did not know how drugs came to be in her wallet. Co-offender advised under arrest. co-	3 yrs 6 mths imp. 2 mths imp. 6 mths imp. TES 3 yrs 6 mths imp. EFP.	Dismissed. At [10] Establishing a range of sentence customarily imposed does not establish a range of sound sentencing discretion. At [11] <i>Bosworth v The State of Western Australia</i> (2007) A Crim R 49 does not provide a sentencing matrix for establishing an appropriate length of sentence nor does it establish a customary range. At [12] Weight and purity are integral part of the	34.76g.

			<p>offender moved to the passenger side of the car with her hands in her pocket and threw two clip-seal bags containing 3.38g and 3.48g methyl both at 34% purity.</p> <p>Co-offender denied all knowledge of drugs and appellant testified he secretly placed drugs in her wallet and jacket pocket.</p> <p>Sentenced on basis drugs partly for personal use and partly to supply to friends.</p>		assessment of the seriousness of offending.	
99.	<p><i>The State of Western Australia v Berlinger</i></p> <p>[2011] WASCA 242</p> <p>Delivered 3/11/2011</p>	<p>32 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal record.</p> <p>Educated to yr 12; diploma of child care services.</p> <p>Good employment history.</p> <p>Supportive family; stable home environment and history.</p> <p>Social use of methyl.</p>	<p>1 x Poss methyl wiss 34.76g at 34%.</p> <p>Respondent was a passenger in car stopped by police – car driven by co-offender (appellant in <i>Lynch v The State of Western Australia</i> [2011] WASCA 243). Respondent and co-offender had been in relationship approx 10 yrs.</p> <p>Police searched vehicle and respondent’s handbag – respondent gave permission for bag to be searched but removed her wallet immediately after giving that permission. Police told respondent wallet would need to be searched too – respondent threw wallet in car and said only her passport was in it. Police searched wallet and found 27.9g methyl at 34% purity. Respondent stated she did not know how drugs came to be in her wallet.</p> <p>Respondent advised under arrest.</p> <p>Respondent moved to the passenger side of</p>	<p>2 yrs 8 mths imp.</p> <p>TES 2 yrs 8 mths imp susp 2 yrs.</p> <p>Low treatment needs; low risk re-offending.</p>	<p>Allowed.</p> <p>TES 2 yrs 4 mths immediate imp substituted – reduced to reflect performance of obligations imposed as part of SIO.</p> <p>EFP after 14 mths imp.</p> <p>At [18] Suspended term inconsistent with type sentence customarily imposed and with sentence given to co-offender – culpability less than co-offender but not so low as to leave suspended imp open.</p>	34.76g.

			<p>the car with her hands in her pocket and threw two clip-seal bags containing 3.38g and 3.48g methyl both at 34% purity.</p> <p>Respondent denied all knowledge of drugs and co-offender testified he secretly placed drugs in her wallet and jacket pocket.</p>			
98.	<p><i>Giannopoulos v The Queen</i></p> <p>[2000] WASCA 396</p> <p>Delivered 13/12/2000</p>	<p>33 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No relevant prior criminal record.</p> <p>History substance abuse (using 2-3g cocaine per day and had health problems as result) – self referred for detox but progress in program unsatisfactory.</p> <p>Married with 3 yr old child and another baby on way; good work history; numerous positive references.</p>	<p>1 x Poss cocaine wiss 24.8g at 20%. 1 x Poss amphetamine wiss 12.8g at 3.5%. 1 x Poss cannabis wiss 451g leaf.</p> <p>Amphetamine and cocaine found in appellant's car. Appellant maintained for personal use but jury rejected and found intent to sell. Due to purity and addiction, sentencing judge sentenced on basis not commercial dealer but still intended sell/supply two destructive drugs.</p>	<p>5 yrs imp. 3 yrs imp. 6 mths imp.</p> <p>TES 5 yrs imp.</p> <p>Equivalent to 3 yrs 4 mths imp after implementation of transitional provisions.</p> <p>EFP.</p>	Dismissed.	37.6g.
97.	<p><i>Ruich v The State of Western Australia</i></p>	<p>36 yrs at time sentencing.</p> <p>Offending breached parole (heroin offences – 6 yrs imp).</p>	<p>Ct 1: Conspired sell/supply heroin. Ct 2: Supplied heroin 2.02g 36%. Ct 3: Poss heroin wiss 35.75g 38%.</p> <p>Conspiracy – appellant and co-offender had</p>	<p>Ct 1: 2 yrs 8 mths imp. Ct 2: 2 yrs 8 mths imp. Ct 3: 4 yrs 8 mths imp.</p> <p>TES 7 yrs 4 mths.</p>	Dismissed. Severe but within range given purely commercial enterprise in which was	37.77g.

	[2006] WASCA 241 Delivered 15/11/2006	Significant prior criminal record – including previous drug convictions. History substance abuse; unemployed at time offences; supportive parents and de-facto partner.	business arrangement to sell heroin to others. Appellant paid co-offender wage for distributing drug on his behalf. Appellant weigh and pack drug after receiving orders and co-offender distribute drug using appellant's car.		repetitive and involved an established market; hardened and persistent offender.	
96.	<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.	37.83g.
95.	<i>Haasy v The State of Western Australia</i> [2010] WASCA 207 Delivered 27/10/2010	25 yrs at time offending. Convicted after fast-track PG. Offending breached bail. Prior criminal record –agg burg; steal motor vehicle; poss drugs. Long-time drug user; selling drugs to support own	Ct 1: Poss methyl wiss 3.79g at 2%. Ct 2: Poss methyl wiss 9.54g at 5%. Ct 3: Poss methyl wiss 25.22g at 10%. <u>s 32 Offences:</u> 2 x Poss methyl 0.6g; 0.62g 2 x poss smoking utensil. 2 x Poss cannabis. 1 x Poss cannabis wiss 1g. 1 x Poss stolen/unlawfully obtained property. No evidence to suggest appellant making	Ct 1: 6 mths imp. Ct 2: 2 yrs 3 mths imp. Ct 3: 3 yrs 9 mths imp. 1 mth imp each ct. \$100 fine each ct. \$200 fine each ct. \$200 fine. \$200 fine. TES 4 yrs 5 mths imp.	Allowed. TES reduced to 3 yrs 6 mths imp. At [23] Aggregate sentence excessive and disproportionate to total criminality.	39.77g.

		addiction and pay back accumulated drug debt. Strong family support; willing to address addiction issues.	profit on drugs – dealing predominantly to support habit. Appellant’s car was stopped and searched on 3 separate occasions – drugs subject cts 1-3 found respectively and the s 32 charges.	EFP.		
94.	<i>Smith v The State of Western Australia</i> [2012] WASCA 91 Delivered 24/04/2012	29 yrs at time sentencing. Convicted after PG. Extensive prior criminal record – including numerous drug convictions. Entrenched heroin addiction; current partner also heroin addict.	Ct 1: Attempt poss heroin wiss 1.75g. Ct 2: Poss heroin wiss 3.44g at 34%. Ct 3: Poss firearm. Ct 4: Poss ammunition. Ct 5: Manufacture heroin. Cts 6-11: Sold heroin. Ct 12: Conspire to supply heroin. Cts 13-75, 77-131: Offer sell heroin 0.2g-0.5g. Total quantity heroin involved approx 40g. 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. 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.	Ct 1: 6 mths imp. Ct 2: 12 mths imp. 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. TES 4 yrs imp.	Dismissed. At [25] “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.” 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.	40g.
93.	<i>Wickham v The State of Western</i>	30 yrs at sentencing. Convicted after PG. 2 nd & 3 rd offences committed	1 x Poss MDMA wiss 22 tablets 6.19g at 28%. 1 x Poss MDMA wiss 69 tablets 14g at 34%.	12 mths imp. 2 yrs imp. 6 mths imp. TES 3 yrs 6 mths imp.	Dismissed. Sentence clearly within the range indicated in	46.19g.

	<p><i>Australia</i></p> <p>[2010] WASCA 73</p> <p>Delivered 28/04/2010</p>	<p>whilst on bail for 1st offence</p> <p>Minor prior criminal record.</p> <p>Supportive family and steady employment; sole custody of son but since 2007 son living with appellant's parents until after 2nd arrest returned to live with 8 yr old son and his parents.</p>	<p>1 x Poss methyl wiss 26g 17% (judge found bulk for personal use).</p> <p>1st offence drug found with \$550 and MSN and tick list and \$2600 found at his house. 2nd and 3rd offences result of search warrant on appellant's house.</p>	EFP.	<p><i>Bosworth.</i></p> <p>NB: appeal after State appeal [2009] WASCA 137 resulted in matter being remitted to District Court for a trial of issues and re-sentencing.</p>	
92.	<p><i>The State of Western Australia v Polmear</i></p> <p>[2013] WASCA 291</p> <p>Delivered 23/12/2013</p>	<p>33 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Criminal record; mainly traffic offences; minor drug offences.</p> <p>Upbringing was itinerant and dysfunctional; victim of sexual and physical abuse.</p> <p>Never met biological father; mother had chronic issues with illicit substance and alcohol abuse.</p> <p>Heavy user of cannabis since 13 yrs - ceased 4 yrs ago; regular user of methyl.</p> <p>Significantly reduced his drug use since arrest; had 12</p>	<p>Offered to sell/supply methyl x 19. Offered to sell/supply cannabis x 2. Sold methyl x 1. Conspire to sell/ supply methy x 9.</p> <p>Police intercepted a number of telephone communications involving the respondent. Among the intercepted communications were telephone conversations between the respondent and unknown persons in which the respondent offered to sell or supply prohibited drugs or various weights and types – cannabis and methyl.</p> <p>Police also intercepted telephone conversations between the respondent and his partner. On nine occasions the respondent and his partner conspired with each other to sell or supply methyl. One sale was personally effected by the respondent at a carpark.</p> <p>Police executed a search warrant at the</p>	<p>6 mth PSO.</p> <p>Initially denied involvement.</p> <p>Sentencing judge acknowledged he had been dealing extensively in illicit drugs as a 'relatively low quantity street level'.</p> <p>Dealing principally to support his drug addiction.</p>	<p>Allowed.</p> <p>PSO order set aside.</p> <p>Remitted to District Court for sentence by a different Judge.</p> <p>At [29] The present case is not one where it would be open to the learned sentencing judge, even if the respondent successfully completed the pre-sentence order, to impose anything other than a term of immediate imprisonment. ..</p> <p>At [33] ... there is nothing in the circumstances of this case to reasonably justify a</p>	46.2g.

		relapses over 12 mths.	respondent's house and located mobile phones various indicia of drug dealing. Total amount of methyl 46.2g. Total amount of cannabis offered 6 oz. Total amount of money discussed between \$18,600 and \$21,750. Taken at its lowest, the respondent averaged \$300 a day on drug sales between the period of communication intercept.		departure from the imposition of the ordinarily appropriate sentence of a term of imprisonment. It is not uncommon in cases of dealing in dangerous illicit drugs for offenders to have taken positive steps towards rehabilitation ...	
91.	<i>HV v The State of Western Australia</i> [2006] WASCA 242 Delivered 16/11/2006	Convicted after fast-track PG. Co-operated with police.	Ct 1: Supply methyl 3.5 g. Ct 2: Poss methyl wiss 44.1 g at 20-21%. Search warrant executed at appellant's home. Appellant and associate were found in garage. Drugs subject to ct 1 found on associate - appellant admitted supplying them. Dealing in part to support own habit.	Ct 1: 8 mths imp. Ct 2: 2 yrs imp. TES 2 yrs 8 mths imp. EFP.	Dismissed - sentence proportionate to the criminality.	47.6g.
90.	<i>Waldron v The State of Western Australia</i> [2010] WASCA 63 Delivered 7/04/2010	Convicted after trial.	1 x Poss MDMA wiss 200 tablets 48.4g. 1 x Poss cannabis wiss 216g. Claimed drugs for personal use - rejected by jury Targeted traffic stop located MDMA. Search of house uncovered cannabis, smoking implement, \$3300 cash, nine cannabis plants.	3 yrs imp. 1 yrs imp. TES 4 yrs imp.	Dismissed.	48.4g.
89.	<i>Karakuyu v The State of Western Australia</i>	29 yrs at time sentencing. Convicted after trial.	Ct 1: Poss methyl wiss 21.2g at 56%. Ct 2: Poss methyl wiss 27.6g at 48%. Ct 3: Poss dexamphetamine 62 tablets.	Ct 1: 2 yrs 6 mths imp. Ct 2: 3 yrs 6 mths imp. Ct 3: 3 mths imp.	Dismissed – leave refused on papers. At [26]-[29] Some	48.8g. 62 tablets.

	<p>[2012] WASCA 75</p> <p>Delivered 30/03/2012</p>	<p>Prior criminal record – no drug offences.</p> <p>Offending on ct 2 breached bail ct 1 and seven s 32 matters. Offending on ct 3 breached bail for ct 2.</p> <p>Born in Kurdistan; came to Australia at 14-15 yrs old with family; family supportive.</p> <p>Left school at 15 yrs; employed in family business.</p> <p>Occasional methylamphetamine user – no significant addiction.</p>	<p>s 32 matters: 1 x Poss firearm (circ of agg). 1 x Poss cannabis. 3 x Poss smoking utensil. 1 x Poss methamphetamine. 1 x Possess unlicensed firearm. 1 x Permits use of premises for drug use.</p> <p>Appellant sentenced on basis he was mid-level commercial trafficker for profit.</p> <p>s 32 matters result of police search on appellant’s home. Appellant subsequently placed under electronic and physical surveillance. Police stopped and searched car appellant travelling in and found drugs subject of ct 1. While on bail for ct 1 and seven s 32 matters, police executed search warrant on appellant’s home and found drugs subject of ct 2 and indicia of drug dealing, including a tick list. While on bail after being charged with ct 2, police again searched the appellant’s house and found drugs subject of ct 3 and smoking utensil.</p>	<p>TES 6 yrs 3 mths imp.</p> <p>3 mths imp. \$50 fine. \$200 fine each matter. \$100 fine. 1 mth imp. 2 mths imp.</p> <p>No remorse.</p>	<p>discussion of comparative cases.</p> <p>At [40] Overall criminality was high.</p> <p>At 42] Cts 1 and 2 were separate offences and warranted accumulation.</p>	
88.	<p><i>EBE v The State of Western Australia</i></p> <p>[2009] WASCA</p>	<p>In early 40s at time offending.</p> <p>Convicted after trial. Significant co-operation with police and provided information of use.</p>	<p>1 x Poss methyl wiss 49.1g at 13%</p> <p>Sentenced on basis that offending was not isolated event but course conduct. Police executed search warrant at appellant’s home – drugs found on his person. Police also located \$30 000 cash,</p>	<p>4 yrs imp.</p> <p>TES 4 yrs imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>Sentence failed to take into account cooperation with police.</p> <p>TES reduced to 3 yrs imp.</p>	49.1g.

	<p>236</p> <p>Delivered 22/12/2009</p>	<p>No prior criminal record.</p> <p>Separated from wife; 3 children.</p> <p>Heavy methyl user – accepted in sentencing small portion drugs fro own use.</p>	<p>ammunition, firearm, list of names and figures, cutting agent, clip seal bag, formula for making methyl</p>			
87.	<p><i>Smith v The State of Western Australia</i></p> <p>[2010] WASCA 150</p> <p>Delivered 30/07/2010</p>	<p>50 yrs at time offending.</p> <p>Shocking prior record; spent 24 yrs of his adult life in prison- prior serious drug convictions.</p> <p>Alcoholic until 33 yrs then became drug addict.</p> <p>Sexually abused 7-9 yrs old and regularly beaten by father; ward of the State 14 yrs – 16 yrs old.</p>	<p><u>Sentencing before Yeats DCJ:</u> Ct 1: Poss methyl wiss 14.77g at 20%. Ct 2: Poss methyl wiss 27.9g at 32%. s 32 offences: 8 x Receiving. 6 x Poss stolen/unlawfully obtained property. 1x Poss morphine wiss 46 Capanol tablets. 1 x Poss cannabis wiss 33g. 1 x Supply cannabis 2 x 2g ‘sticks’. 1 x Poss unlicensed firearms. 1 x Poss unlicensed ammunition. 1 x Fail to stop. 1 x Reckless driving. 1 x Drive contrary to learner’s permit.</p> <p><u>Sentencing before Wager DCJ:</u> 3 x Sold methyl 3.42g at 25%; 3.43g at 28%; 0.6g. 39 x Offer to sell/supply methyl 0.1g-3.5g. 1 x Poss methyl wiss 3.41g at 2%.</p> <p>Commercial enterprise – at [6] calculated</p>	<p>2 yrs imp. 3 yrs imp.</p> <p>2-9 mths imp each ct. 6 mths imp each ct. 6 mths imp. 2 mths imp. 3 mths imp. 9 mths imp. 6 mths imp. \$200 fine. 6 mths imp. \$100 fine.</p> <p>TES Yeats DCJ 6 yrs 3 mths imp.</p> <p>2 yrs; 20 mths; 1 yr imp. 18 mths each ct. 2 yrs imp.</p> <p>20 mths imp ordered cum on 6 yrs 3 mths</p>	Dismissed.	53.53g.

			and busy drug trade. Began dealing in drugs in 1991 – drug dealing main source income. Cts 1 & 2 before Yeats DCJ relate to sale methyl conducted at appellant’s home. Remainder drug offences result of telephone intercepts – 39 offer to sell/supply occurring over 5 week period.	imposed by Wager DCJ. TES 7 yrs 11 mths imp.		
86.	<i>Fernandes v The State of Western Australia</i> [2009] WASCA 227 Delivered 17/12/09	31 yrs at time offending. Convicted after late PG. Prior criminal record - convictions for poss wiss; served 4 yrs 6 mths imp in 2003. Used amphetamines since 23 yrs. Single; owned own business as panel-beater. Committed current offence to repay business loan.	1 x Poss methyl wiss 47.58g at 7 – 30%. 1 x Poss MDMA wiss 2.52g at 17%. 1 x Poss methyl wiss 3.53g at 20-29%. Appellant observed placing canister on top of a shed located inside yard of neighbouring industrial unit. Police attended and seized canister – contained drugs subject cts 1 & 2. Following day, police searched appellant’s car – found drugs subject ct 3 and \$575 cash.	3 yrs imp. 1 yr imp. 2 yrs imp. TES 5 yrs imp.	Dismissed.	53.63g.
85.	<i>Marker v The Queen</i> [2002] WASCA 282; (2002) 135 A Crim R 55	Youth mitigating factor. Convicted after late PG – charges changed and extensive plea negotiations. Engaged in rehabilitative	1 x Poss methyl wiss 53.9 g at 41% 1 x Poss methyl 0.1 g at 59.3% User/dealer who was an integral part of chain of supply. Appellant despatched to obtain sample of	6 yrs 8 mths imp. 15 mths imp. TES 6 yrs 8 mths imp. Equivalent 4 yrs 3 mths imp after	Dismissed. At [80]-[81] drug addiction not mitigating factor.	54g.

	Delivered 10/18/2002	measures and self improvement in two years between sentence and arrest.	drugs in poss of co-offender (Kezkiropolous). Appellant meant to test quality and potency of sample so decision could be made as to whether larger amount would be purchased. Arrested after left co-offender's hotel room and drugs found on his person. Co-offender known to Federal Police and under surveillance from time he left Victoria. Subsequent search of offender's home located assault rifle, handgun, scales (traces of methyl found on them) and \$7600 cash.	implementation of transitional provisions. EFP.		
84.	<i>Borbil v The State of Western Australia</i> [2007] WASCA 24; (2007) A Crim R 152 Delivered 1/02/2007	52 yrs at time offending. Convicted after PG. Migrated to Australia from Romania in 1982 as political refugee. Sole carer of 11 yr old son with learning disabilities; strong bond with son; glowing references. In poor health; previously had heart by-pass surgery. Financial difficulties; on disability pension at time offending.	Ct 1: Supply heroin 0.057g at 20%. Ct 2: Supply methyl 26.806g at 14%. Ct 3: Supply heroin 28g at 17%. Ct 4: Poss heroin 0.29g. Sold drugs due to financial pressures, not a user of illicit drugs. 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).	Ct 1: 11 mths imp. Ct 2: 3 yrs 4mths imp. Ct 3: 4 yrs imp. Ct 4: 8 mths imp. TES 7 yrs 4 mths imp. EFP. Very low risk re-offending; offending out of character.	Allowed. TES reduced to 5 yrs 6 mths imp. At [55]-[81] lengthy discussion of comparative cases.	55.153g.

			After a police search of the appellant's home, the drugs forming subject ct 4 found.			
83.	<p><i>The State of Western Australia v Saxild</i></p> <p>[2008] WASCA 156</p> <p>Delivered 24/7/08</p>	<p>21 yrs at time offending.</p> <p>Convicted after PG.</p> <p>No prior criminal record.</p> <p>Lived with family; had almost completed a 4yr apprenticeship; positive reference from employer;</p> <p>Completed drug/alcohol program at Holyoak.</p>	<p>1 x Poss MDMA wiss 171 tablets 50.69g 35-50%.</p> <p>1 x Poss methyl wiss 2g 10-18%.</p> <p>1 x Poss MDMA wiss tablets 2.56g.</p> <p>1 x Poss methyl wiss 0.73g.</p> <p>Drugs found following search appellant' scar and house - \$9140 cash also found.</p>	<p>18 mths imp each count.</p> <p>TES 18 mths imp susp 18 mths.</p> <p>EFP.</p>	<p>Allowed – immed imp ordered.</p> <p>15mths immediate imp each count substituted.</p> <p>TES increased to 15mths imp.</p> <p>NB: double jeopardy applied to State appeals at this time.</p> <p>At [12] whatever motive engaging drug trade, incentives must be weighed against clear and certain understanding that such offences ordinarily result in imprisonment.</p>	55.98g.
82.	<p><i>Brittain v The Queen</i></p> <p>[2001] WASCA 92</p> <p>Delivered 23/03/2001</p> <p>[2001] WASCA 117 (re-sentencing after</p>	<p>Convicted after trial.</p> <p>Significant period of rehabilitation between commission of offence and sentencing – including 25 drug and alcohol free urine samples and active engagement in programs at Palmerston Centre.</p>	<p>1 x Poss cocaine wiss 27.7g 33%.</p> <p>1 x Poss MDMA wiss 29.37g 34-41%.</p> <p>s 32 convictions:</p> <p>1 x Poss methyl 4 tablets 1.5%.</p> <p>1 x Poss methyl 0.15g 14% & 0.3g 2.1%.</p> <p>Working in nightclub at time of offences – paid \$3000 for drugs above. Arrested after seen attending premises of drug dealer who was under police surveillance.</p>	<p>7 yrs imp.</p> <p>7 yrs imp.</p> <p>6 mths imp.</p> <p>6 mths imp.</p> <p>TES 7 yrs imp.</p> <p>Equivalent to 4 yrs 8 mths imp after</p>	<p>Allowed in part – sentences reduced but not suspended.</p> <p>TES reduced to 3 yrs imp.</p> <p>At [26] impeccable efforts at rehabilitation but offending too serious to suspend term.</p>	57.52g. 4 tablets.

	leave granted in [2001] WASCA 92) Delivered 12/04/2001	Self employed and working long hours – business being carried on by fiancée while appellant imprisoned.	Issue as to how much was for personal use and how much for sale. Evidence showed appellant had been spending large amounts own money on drug habit.	implementation of transitional provisions.		
81.	<i>Direen v The State of Western Australia</i> [2010] WASCA 211 Delivered 29/10/2010	27 yrs at time offending. Convicted after very late PG (on morning of trial). Limited prior criminal record. Supportive family.	1 x Poss methyl wiss 13.7g at 13%. 1 x Poss methyl wiss 52.8g at 26% Search of premises located \$17,250 cash, drug paraphernalia and tick list.	TES 3 yrs 6 mths imp. Co-offender received 2 yrs 6 mths imp.	Dismissed. Appeal run on grounds of parity only.	66.5g.
80.	<i>Cant v The State of Western Australia</i> [2009] WASCA 188 Delivered 3/11/2009	37 yrs at time offending. Convicted after fast-track PG. Prior criminal record - poss amphetamines, cannabis and smoking implement. Full-time employment; assisted mother with care of mentally ill brother.	1 x Poss methyl wiss 69g at 21%. Classified by sentencing judge as low to mid-range dealer Appellant stopped by police and apprehended for other matters. Appellant then informed police he was in poss of the methyl.	4 yrs imp. TES 4 yrs imp. EFP.	Dismissed. At [21] The sentence is...at the higher end of the range but the offence involved a substantial quantity of methylamphetamine at quite a high level of purity. NB: The original sentence was imposed whilst the transitional provisions were in force.	69g.
79.	<i>Cotic v The Queen</i>	Convicted after trial. While on bail for offences	1 x Poss amphetamine wiss. 1 x Poss heroin wiss 69.4g at 14.7%.	10 yrs imp. 7 yrs imp.	Dismissed. Sentencing judge	69.4g.

	<p>[2003] WASCA 14</p> <p>Delivered 19/02/2003</p>	<p>subject of appeal, committed further serious drug offences resulting term 13 yrs imp.</p>	<p>Substantial drug reselling activity.</p> <p>Police searched property appellant residing at. Found drugs hidden in kitchen and garden. Also found scales.</p>	<p>TES 10 yrs imp - 2 yrs to be served cumulatively to 13 yr sentence imposed for separate offences.</p> <p>Equivalent to 6 yrs 8 mths imp after implementation of transitional provisions.</p>	<p>constructed sentencing strategy which recognised the gravity of the offending conduct, but also made due allowance for the operation of the totality principle.</p>	
78.	<p><i>Phillips v The State of Western Australia</i></p> <p>[2011] WASCA 69</p> <p>Delivered 23/03/2011</p>	<p>34 yrs at sentencing.</p> <p>Convicted after fast-track PG.</p> <p>At time offending on 12 mth ISO (1 x poss prohibited drug; 1 x stealing; 1 x receiving) and 6 mth CBO (1 x unlawful damage).</p> <p>Serious prior criminal record – drugs; burglary; assault; AOBH; assault public officer; robbery; breach VRO; dep lib; unlawful wounding; various traffic offences.</p> <p>Married 6 yrs – wife supportive; 4 children (all under 9 yrs). History poly substance abuse – began in early to mid teens; alcohol, cannabis,</p>	<p>Ct 1 -16: Offer sell/supply methyl. Ct 17 -20: Att obtain methyl wiss. Ct 21: Poss methyl wiss 20.9g at 6%.</p> <p>Street level dealer – unable to work because of mental health issues and financial pressure lead to drug dealing.</p> <p><u>Ct 1:</u> Phone call to arrange sale methyl. <u>Ct 2:</u> Arranged meeting to sell methyl. <u>Ct 3:</u> Arranged for person to meet with supplier to purchase 3.5g methyl for \$1600. <u>Ct 4:</u> Arranged meeting to purchase 1.75g methyl. <u>Ct 5:</u> Arranged to sell 1.5g methyl for 4200. <u>Ct 6:</u> Arranged meeting to sell \$150 worth methyl. <u>Ct 7:</u> Arranged meeting to sell 1.75g methyl for \$1000.</p>	<p>Cts 1-20: 15 mths imp each count. Ct 21: 18 mths imp.</p> <p>Also sentenced to 3 mths imp for each offence subject of ISO and 1 mth for offence subject of CBO.</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>Significant risk re-offending given criminal history, personality pathology and major psychiatric disorder.</p>	<p>Dismissed - leave to appeal refused on papers.</p>	<p>75.445g.</p> <p>20.9g poss. 54.55g att or offer.</p>

		<p>heroin and methyl.</p> <p>Diagnosed schizophrenic – history mental illness and was receiving treatment at Bentley Mental Health services prior to sentencing. Mental illness was, to significant degree, result illicit drug use.</p>	<p><u>Ct 8:</u> Agreed to meet to sell 1g methyl for \$500.</p> <p><u>Ct 9:</u> Agreed to meet to sell 0.3g methyl for \$150.</p> <p><u>Ct 10:</u> Agreed to supply 0.5g methyl in return for 6 MS Contin tablets.</p> <p><u>Ct 11:</u> Discussed supplying either 1g methyl for \$500 or 1.5g methyl for \$700.</p> <p><u>Ct 12:</u> Offered sell \$15,000 worth methyl – said could obtain one pound (16 ounces) of high quality methyl.</p> <p><u>Ct 13:</u> Agreed to sell 0.6g methyl for \$300.</p> <p><u>Ct 14:</u> Offered to sell 0.6g methyl for \$200.</p> <p><u>Ct 15:</u> Offered to sell 0.5g methyl for \$250.</p> <p><u>Ct 16:</u> Offered to sell 0.5g methyl for 4250.</p> <p><u>Ct 17:</u> Agreed to meet to sell \$250 worth methyl.</p> <p><u>Ct 18:</u> Offered to sell 1.7g methyl for \$750.</p> <p><u>Ct 19:</u> Asked for 7 g methyl to be given to him to sell, saying drugs worth approx \$2000 and he would sell it all that day. Offered part payment.</p> <p><u>Ct 20:</u> Discussed obtaining 3.5g methyl for \$1300.</p> <p><u>Ct 21:</u></p>			
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			Detectives stopped motor vehicle appellant travelling in – found \$2600 in console. Executed search warrant on appellant's house and found 20.9g methyl at 6% purity. Also located 2 sets scales and numerous plastic bags.			
77.	<i>Dixon v The State Of Western Australia</i> [2006] WASCA 255 Delivered 28/11/2006	27 yrs at time offending. Convicted after PG. No relevant convictions not the subject of a spent conviction order. Qualified as a welder; working since 2004. Took initial steps to rehabilitate and had powerful motivations for rehabilitation.	1 x Poss methyl wiss 56.17g 4-6%. 1 x Poss MDMA wiss 19.3g 21-25%. 1 x Poss 0.02 g LSD. All drugs found in 13 clip-seal bags in appellant's car. Appellant was dealing to support his own drug habit.	3 yrs 2 mths imp. 1 yr 3 mths imp. 3 mths imp. TES 4 yrs 8 mths imp. EFP.	Dismissed. At [12] TES proportionate to total criminality of offending.	75.49g.
76.	<i>Colangelo v The State of Western Australia</i> [2004] WASCA 294 Delivered 8/12/04	23 yrs at time sentencing. Convicted after PG (not at first available opportunity). Ct 3 committed whilst on bail for first two counts. Drug user.	1 x Poss methyl wiss 53.32g at 9-48%. 1 x Poss MDMA wiss 74 tablets. 1 x Poss methyl wiss 26.3g at 36%. Found in appellant's house. Carried on the business of drug-dealing; "significant drug dealer".	4 yrs imp. 2 yrs imp. 2 yrs imp. TES 6 yrs imp. EFP.	Appeal dismissed. Within range of sentences for this type of offending.	79.62g. 74 tablets.

<p>75.</p>	<p><i>Burke v The State of Western Australia</i></p> <p>[2007] WASCA 210</p> <p>Delivered 17/10/2007</p>	<p>22 yrs at time offending.</p> <p>Convicted after PG (cts 2-3). Convicted after trial (ct 1).</p> <p>No prior criminal record.</p> <p>Suffered depression; supportive family; substantial amphetamine habit.</p>	<p>Ct 1: Supply MDMA 3.2g at 33%, 300 tablets Ct 2: Poss MDMA wiss 49g at 32%, 200 tablets. Ct 3: Poss methyl wiss 27.89g 11-46%. 2 x s 32 offences.</p> <p>Offending described as serious.</p> <p>Police arrested appellant in car 22.12.2004 – drugs subject of cts 2 and 3 in DVD case under passenger seat. Earlier that day police saw appellant go to house and hide something under statue. Search warrant at the house later that day located drugs subject of ct 1 in desk drawer. Scientific evidence those drugs and drugs subject of ct 2 came from same source. Also found \$21,000 cash at appellant’s home which he admitted at trial was for drugs.</p>	<p>Ct 1: 3 yrs 4 mths imp. Ct 2: 1 yr 9 mths imp.</p> <p>Ct 3: 2 yrs imp. s 32 offences concurrent on sentences above.</p> <p>TES 5 yrs 4 mths imp. EFP.</p>	<p>Allowed only in relation to ct 3 and TES not disturbed.</p> <p>Ct 3 reduced to 1 yr 10 mths.</p> <p>TES 5 yrs 4 mths imp unaltered.</p> <p>At [18] ‘It appears...that the TES imposed in respect of counts 1 and 2 was entirely appropriate for offending of this type committed in circumstance where there was significant personal mitigation.’.</p>	<p>80.09g.</p>
<p>74.</p>	<p><i>Formica v The State of Western Australia</i></p> <p>[2013] WASCA 237</p> <p>Delivered 15/10/2013</p>	<p>26 yrs at time sentencing.</p> <p>Convicted after PG – 25% discount.</p> <p>Criminal record.</p> <p>Completed year 12; worked in various security positions; unemployed since 2009.</p>	<p><u>Indictment</u> Ct 1: Sold methyl 55g between 52%-64 purity. Ct 2: Poss methyl wiss 28g at 60%.</p> <p><u>Section 32</u> Ch 1: Possess or using a prohibited drug. Ch 2: Possess or using a prohibited drug. Ch 3: Poss smoking utensil. Ch 4: Poss ammunition w/o licence or permit.</p>	<p><u>Indictment</u> Ct 1: 3 yrs imp. Ct 2: 2 yrs imp (cum).</p> <p>Section 32 Ch 1: 2 mths imp (conc). Ch 2: 1 mth imp (conc). Ch 3: 1 mth imp (conc). Ch 4: \$500 fine.</p> <p>TES 5 yrs imp.</p>	<p>Dismissed – on papers.</p> <p>At [26] The fact that his involvement was apparently, at least in part, for the purpose of paying drug debts does not alter the fact that he was involved in commercial drug trafficking.</p>	<p>83.2g.</p>

		<p>Began using methyl at 18 yrs; ceased using after 12 mths but relapsed.</p> <p>In relationship with supportive partner.</p>	<p><u>Ct 1:</u> The appellant met an associate at a carpark in Nornada. The appellant got into the associate's vehicle where he sold him 55 grams of methyl for \$25,000. The methyl was in 2 packages.</p> <p><u>Ct 2:</u> Police executed a search warrant at the appellant's home where they found a clip seal bag containing methyl concealed in the backyard of the house.</p> <p><u>Section 32</u> In the course of the search of the appellant's house police found 4 clipseal bags containing methyl totalling 0.2g. Police also found 1g of cannabis. Two glass smoking implements containing traces of methyl were found as was a single round of .22 calibre ammunition.</p>	<p>EFP.</p> <p>Sentencing judge commented that appellant was more than a street level dealer and was higher up in the chain of distribution in what was effectively a commercial operation.</p> <p>Involvement was, at least in part, for the purpose of paying drug debts.</p>		
73.	<p><i>Ho v The State of Western Australia</i></p> <p>[2011] WASCA 108</p> <p>Delivered 2/5/2011</p>	<p>38 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>No relevant prior criminal record.</p> <p>Full-time employment; good character references.</p> <p>Ecstasy user 10 yrs; entrenched gambling habit; after arrest ceased illicit drug use but continued to</p>	<p>Ct 1: Supply MDMA 97 tablets 28.7g 13%. Ct 2: Poss MDMA wiss 198 tablets 58.6g 13%.</p> <p>s 32 offences (not relevant to appeal)</p> <p>Accepted in sentencing MDMA sold to finance gambling habit.</p> <p>Appellant obtained 300 ecstasy tablets, almost immediately afterwards supplied 97 tablets to another. Arrested by police who located 198 tablets in his jacket pocket.</p>	<p>Ct 1: 1 yr imp</p> <p>Ct 2: 2 yrs 6 mths imp.</p> <p>TES 3 yrs 6 mths.</p> <p>EFP.</p>	<p>Dismissed – leave refused on papers.</p> <p>Individual sentences not challenged.</p> <p>At [9] ecstasy on par with cocaine, heroin and methyl in terms of seriousness.</p>	87.3g.

		gamble.				
72.	<p><i>The State of WA v Littlefair</i></p> <p>[2013] WASCA 177</p> <p>Delivered 07/08/2013</p>	<p>47 yrs at time offending. 48 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Minor criminal record; old conviction for poss cannabis; not previously been incarcerated.</p> <p>Commenced using cannabis as a teenager and methyl at 2008.</p> <p>Left school at Year 10; Stay-at-home mother.</p> <p>‘Good caring mother’</p> <p>Son has ADHD; lives with respondent in her home; dependent on her; husband serving prison sentence after arrest.</p> <p>Some steps taken towards rehabilitation.</p>	<p><u>Indictment</u> Poss methyl wiss 96.9g at average 40%.</p> <p><u>s32 notice</u> Poss cannabis Poss unlawfully obtained property Poss smoking implement Poss smoking implement</p> <p>Police executed a search warrant at the respondent’s home address. She admitted that she was in possession of methyl. She directed police to a safe in her bedroom. Police searched the safe and found two clip seal bags. One contained 81.7g of methyl (44% purity). The other 15.2g of methyl (36% purity).</p> <p>During the search, the respondent admitted the methyl belonged to her and she intended to sell it.</p> <p>When police searched the respondent’s bedroom they found drug dealing paraphernalia including electronic scales, empty clip seal bags, spoons with visible drug residue and a quantity of MSM. Police also found \$2950 in cash in her handbag and in other locations in her bedroom.</p> <p>A search of the respondent’s home also revealed 3 mobile phones and a notebook with names, dollar values and other</p>	<p><u>Indictment</u> 2 yrs 6 mths imp</p> <p><u>s32 notice</u> 3 mths imp (conc). 9 mths imp (conc). \$1000 fine \$1000 fine</p> <p>TES 2 yrs 6 mths imp.</p> <p>EFP.</p> <p>Dealt in drugs in order to fund her own addiction and to repay a substantial drug debt.</p> <p>Sentencing judge found she was involved in ‘street level dealing’ but the quantities and amounts shown in the ‘tick book’ indicated that she was also selling larger amounts.</p> <p>Also found that methyl was part of ongoing drug dealing which involved ‘some degree of commercial sophistication’.</p>	<p>Allowed.</p> <p>Sentence of 2 yrs 6 mths imp set aside. Re-sentenced to 4 yrs imp.</p> <p>At [32] ... The offence was not an uncharacteristic aberration. It was part of active and ongoing drug dealing which his Honour found involved some degree of commercial sophistication. The size of the respondent’s drug debt (about \$65,000) shows that the drug dealing business was not of recent origin...</p> <p>At [34] The respondent’s drug dealing was of a commercial nature in that she sold methyl for the purpose of financing her own drug use, paying for basic living expenses and repaying her drug debt. These motives are not unusual in cases of this kind. Selling prohibited</p>	96.9g.

			<p>notations written by the respondent.</p> <p>Made admissions to police during the search that included:</p> <ul style="list-style-type: none"> • She used the scales to weigh drugs for sale and MSM to dilute the drugs. • The cash was the proceeds of drug sales. <p>She declined to comment on the notebook, but at sentencing her counsel accepted that it was a 'tick book', which contained a record of drug sales she had made and money owed to her by people who had purchased drugs on credit.</p>	<p>Casual connection between respondent's substance abuse and her drug dealing.</p>	<p>drugs in order to discharge a drug debt is of no mitigatory significance.</p> <p>At [35] The fact that the respondent's client base comprised friends and acquaintances who were already habitual users of methyl is not mitigatory. The ongoing abuse of prohibited drugs of addiction causes serious harm, directly and indirectly, to people who are addicted to the drugs, their families and community generally. In any event, a perusal of the 'tick book' indicates that at least 14 different people had been purchasing drugs from the respondent.</p> <p>At [37] The respondent's personal circumstances and antecedents were, in general, reasonably good. She had only a minor criminal record and had taken some steps towards rehabilitation. However, as I have mentioned, it is</p>	
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					well-established that matters personal to an offender who has dealt in prohibited drugs are almost always subsidiary considerations in the sentencing process. The principal sentencing considerations in the present case were appropriate punishment and general deterrence. Personal deterrence was also a relevant factor because the respondent committed the offence in question in the course of carrying on a drug dealing business of some duration.	
71.	<p><i>“S” v The Queen</i></p> <p>[2000] WASCA 34</p> <p>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</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 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>Equivalent to 4 yrs imp after implementation of transitional provisions.</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</p>	98.29g.

		convictions; breach CBO; traffic offences. Married with young child.			possession of around 100 grams of heroin/cocaine of high purity – anything above about 55%.’	
70.	<i>Rigney v The State of Western Australia</i> [2008] WASCA 96 Delivered 10/04/2008	Convicted after PG. 2 nd offence committed whilst on bail for 1 st offence. Prior criminal record – 32 convictions between 1983-2005. Good family, hard working person; performed well in programs since imprisonment.	<u>Indictment 1:</u> 1 x Poss methyl wiss 87.74g at 30-51% <u>Indictment 2:</u> 1 x Poss methyl wiss 11.07g at 25-34% <u>s 32 offences:</u> 1 x Poss cannabis wiss 318.5g bud & 6.5g seed material. 1 x Poss unlicensed ammunition. <u>Indictment 1:</u> Appellant passenger in car that was stopped by police. Electronic scales and \$5000 cash found in car and drugs were found in 3 clip-seal bags hidden in appellant’s socks and underwear. <u>Indictment 2:</u> Police executed search warrant at appellant’s home. Drugs found in appellant’s tracksuit pants and at various locations throughout house. \$8070 cash also found along with scales, clip-seal bags and a piece of paper with numbers written on. <u>s 32 offences:</u> Cannabis found when police attended appellant’s home on separate occasion. Cannabis found in different locations and in different size quantities.	4 yrs 6 mths imp. 18 mths imp. 3 mths imp. 3 mths imp. TES 6 yrs imp. EFP.	Dismissed.	98.81g.
69.	<i>The State of Western Australia v</i>	50 yrs at time offending. Convicted after PG (not at	1 x Poss methyl wiss 100.6g at 4% (also consisted of 5% pseudoephedrine). 1 x Assault public officer.	2 yrs imp. 1 yr imp.	Allowed. Concurrent sentence for	100.6g

	<p>Fleming</p> <p>[2010] WASCA 162</p> <p>Delivered 5/08/2010</p>	<p>earliest opportunity).</p> <p>Extensive prior criminal record - minor drug offences.</p>	<p>Police attempted to apprehend respondent who ran towards known drug house. Violent struggle ensued on porch with officer assaulted, receiving cuts and bruises. Respondent attempted to throw away the 100.6g methyl during the struggle. Two bags of cutting agent also found on respondent when searched.</p>	<p>TES 2 yrs imp.</p> <p>EFP.</p>	<p>assault public officer infringed totality principle by failing to adequately reflect overall criminality.</p> <p>TES increased to 3 yrs 6 mths imp.</p> <p>EFP.</p>	
68.	<p>The State of Western Australia v Johnson</p> <p>[2010] WASCA 187</p> <p>Delivered 21/09/2010</p> <p>NB: supplier of drugs for <i>Buck</i> [2010] WASCA 188.</p>	<p>23 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>No relevant prior criminal record.</p> <p>Stable employment; good character; positive steps towards rehabilitation; stable and supportive upbringing; significant number positive references.</p>	<p>Ct 1: Offer to supply cocaine 7g. Ct 2: Supply cocaine 3.5g. Ct 3: Supply cocaine 27.8g at 28%. Ct 4: Poss cocaine wiss 64.74g at 39%.</p> <p>Sentencing Judge found offender mid to upper level drug dealer who had access to large quantities of drugs – commercial motivation.</p> <p>Police stopped respondent and searched vehicle. House then searched. When police arrived at house, appellant’s girlfriend in her car in the driveway – drugs subject ct 4 found in her car. Girlfriend knew of respondent’s arrest and attempted to remove drugs from his house. Police found cutting agent, tick lists and \$8,225 cash at house.</p> <p>No evidence to suggest any portion drugs for appellant’s personal use.</p>	<p>8 mths imp. 12 mths imp. 30 mths imp. 40 mths imp.</p> <p>TES 4 yrs 4 mths imp susp 2 yrs.</p> <p>EFP.</p> <p>Remorseful. Low risk re-offending.</p>	<p>Allowed in part - SIO quashed but sentences not altered.</p> <p>TES 4 yrs 4mths immed imp substituted.</p> <p>At [25] Youth and absence prior convictions do not usually result in suspended sentence for drug offences.</p> <p>At [25] many youthful offenders, after being charged, taken steps towards rehabilitation and not significant risk re-offending – immed imp reflects general deterrence required given prevalence this type offending among young people.</p> <p>At [26] offending too</p>	<p>103.04g.</p> <p>96.04g poss or supplied. 7 g offer.</p>

					serious to allow for suspension.	
67.	<p><i>Ricciardi v The State of Western Australia</i></p> <p>[2012] WASCA 106</p> <p>Delivered 11/05/2012</p>	<p>42 yrs at time sentencing.</p> <p>Convicted after late PG (4 days before trial listed to begin).</p> <p>Lengthy prior criminal record – drugs use; weapons; traffic offences; offences against public order.</p> <p>Long history cannabis use and recent history of methylamphetamine use.</p>	<p>Ct 1: Poss unlicensed firearm.</p> <p>Ct 2: Poss methyl wiss 104.23g at 23-24%.</p> <p>Offending was serious even if not sentenced on basis of being engaged in ongoing drug dealing.</p> <p>Police attended appellant’s home following a call from his de facto partner. On entering the home, police found 9mm handgun and 181 rounds of live ammunition on the kitchen bench. The identifying details of the gun had been removed and it had been modified so that it fired automatically. Police executed a warrant under the <i>Misuse of Drugs Act</i> a few hours later. During that search police found a secret cavity in a wall unit inside which were the drugs the subject of ct 2. Police also found cutting agent, tick lists involving substantial amounts of money and more ammunition. Also found during the search in the garage were a metal baton, mobile phone jammer, firearm cleaning kit, bulletproof vest, vacuum heat sealing machine, two boxes clip-seal bags and a money counting machine. Garage had a closed-circuit television surveillance system installed in it. Police also found a cavity above the study door which contained more ammunition, a USB thumb drive (containing photos of</p>	<p>12 mths imp.</p> <p>5 yrs imp.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p>	Dismissed – leave refused on papers.	104.23g

			approx \$480,000). Also found a tin of baked beans with a false bottom containing cutting agent.			
66.	<i>Nelis v The Queen</i> [2000] WASCA 194 Delivered 2/08/2000	Convicted after early PG. Significant prior criminal record of dishonesty offences. Ward of State after mother left at 2 yrs old – lived in a boy’s home. Good father; supported wife and 4 kids; hard worker – employed as fly-in, fly-out mine worker. Psychiatric issues, ADD and possibly bi-polar.	1 x Sell amphetamine powder 27.4 g at 2.5%. 1 x Sell amphetamine powder 54.75 g 1 x Poss amphetamine powder wiss 27.5g at 2.5-21%. Premeditated commercial dealing in amphetamines – mainstream dealer not merely a distributor. Not dealing to support own habit. Search of offender’s home located electronic scales, clip seal bags and \$4900 cash. Took active role in selling drugs, contacted undercover police officer in order to make sale.	3 yrs imp. 7 yrs imp. 3 yrs imp. TES 7 yrs imp. Equivalent to 4 yrs 8 mths imp after implementation of transitional provisions.	Dismissed. At [13] cost to community of the impact of illicit drugs discussed.	109.65g.
65.	<i>Ziino v The State of Western Australia</i> [2007] WASCA 222 Delivered 13/10/2007	40 yrs at time offending. Convicted after trial. No relevant prior criminal record. 2 children (shared custody with ex wife); unemployed at time offending but good work history	1 x Supply MDMA 55.26g 32-38%. 1 x Poss MDMA wiss 199 tablets 54.9g 37% Mid-level commerciality. Search of property after ongoing police surveillance and phone intercepts.	6 yrs imp. 6 yrs imp. TES 7 yrs imp. EFP after 5 yrs.	Dismissed. At [33] It seems that the severity of the sentence reflected the sentencing judge’s assessment of the overall criminality of the applicant’s conduct, including that it constituted a course of conduct and that the applicant was at the middle level of the drug	110.16g

					commercial hierarchy. In those circumstances, although the sentence was at the higher end of an appropriate range, it was not outside the range.’	
64.	<p><i>Pittard v The State of Western Australia</i></p> <p>[2013] WASCA 126</p> <p>Delivered 21/05/2013</p> <p>Co-offender of</p> <p><i>Jenkin v The State of Western Australia</i> [2014] WASCA 226</p>	<p>43 yrs at sentencing.</p> <p>Convicted after trial; however made sensible concessions at trial.</p> <p>Modest criminal record.</p> <p>In a stable relationship; good record of employment</p> <p>Long history of illicit drug abuse.</p> <p>Co-offender Forman charged with 11 Cts on indictment and 6 Cts on s32 notice. PG to all and sentenced to TES 6 yrs imp. EFP.</p> <p>Co-offender Jenkin charged with poss methyl wiss and poss MDMA wiss. Convicted after trial and sentenced to TES 6 yrs imp. EFP.</p>	<p>Ct 1: Poss methyl wiss, 54.65g at 20-21%</p> <p>Ct 2: Poss MDMA wiss, 58.75 g, 199-200 Pills.</p> <p>Ct 3: Poss cannabis wiss, 113.04g.</p> <p>Police officers in Geraldton had Trevor Forman under surveillance. He was seen to travel from Geraldton to Perth to acquire methyl and ecstasy from the appellant.</p> <p>In the early hours of 20 July 2012, the appellant supplied quantities of methyl and ecstasy to Foreman.</p> <p>Forman later drove from the appellant’s home. Police stopped the vehicle on the Grand Highway near Dongara. Hidden inside the tailgate the police discovered a cryovac sealed bag containing two packages of drugs. One package contained methyl and the other MDMA.</p> <p>At the same time as Forman’s car was being searched, police executed a search warrant at the appellant’s home. Next to the appellant’s bed two bags were found which contained a total of \$108,030 in cash.</p> <p>In the appellant’s shed, police found two</p>	<p>Ct 1: 6 yrs imp.</p> <p>Ct 2: 1 yr imp (cum).</p> <p>Ct 3: 6 mths imp (conc).</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found the appellant was Forman’s supplier and Forman was a dealer who would, in turn, supply those drugs to his customers in the Geraldton area.</p> <p>Sentencing judge found the offences were committed in the context of an established relationship between the appellant and Forman and were not a ‘one-off transaction’ between the two men.</p>	<p>Dismissed – refused on papers.</p> <p>At [56] Miller AJA’s analysis (in <i>Bosworth</i>) does not amount to a sentencing matrix... It is not the case that whenever an offender is convicted of an offence of possession between 3g and 65g of methyl with intent to sell or supply, he or she must receive a term of imprisonment between 2 and 5 years.</p>	<p>113.4g.</p> <p>199-200 pills.</p>

			<p>vacuum-sealing machines, vacuum bags, clipseal bags, heat shrink plastic, sets of electronic scales and a large quantity of a cutting agent.</p> <p>Police found cannabis separated into three identical bags, together with a grinder which had been used to chop up the cannabis.</p>	<p>Sentencing judge found that although police did not find any documentation that showed that the appellant was a commercial dealer in drugs, the appellant conducted his business on a cash basis; Found that ‘most if not all’ of the cash found was the proceeds of his drug dealing.</p> <p>Moderate risk of re-offending.</p>		
63.	<p><i>Olomi v The State of Western Australia</i></p> <p>[2004] WASCA 304</p> <p>Delivered 20/09/04</p>	<p>Convicted after fast-track PG.</p> <p>Committed offence whilst on parole for armed robbery.</p> <p>Supportive family; partner recently lost baby.</p>	<p>1 x Poss MDMA wiss 247 tablets 53.85g. 1 x Poss methyl wiss 64.48g. s 32 offence: quantity of ammunition, possess of smoking implement.</p> <p>Found in appellant’s home; also found \$3150, set of electronic scales, clip-seal bags and deal book.</p> <p>Offences committed to maintain a drug habit but also to gain \$30,000.</p>	<p>2 yrs 8 mths imp. 2 yrs 8 mths imp.</p> <p>Owed 987 days parole – ordered to be served concurrently.</p> <p>TES 5 yrs 6 mths imp.</p> <p>Remorse.</p>	Dismissed.	118.33g.
62.	<p><i>Bosworth v The State of Western Australia</i></p> <p>[2007] WASCA</p>	<p>57 yrs at time offending.</p> <p>Convicted after fast track PG.</p> <p>Offending breached 2yr</p>	<p>1 x Poss methyl wiss 84.17g at 15 – 36%. 10 x Sell methyl 3.5g.</p> <p>Police conducted a search of appellant’s house. Appellant helped police locate the drugs in various locations in the house. Also</p>	<p>5 yrs 10 mths imp. 18 mths imp each count.</p> <p>TES 7 yrs 4 mths imp.</p>	Dismissed. At [13] ‘There are a sufficient number of comparable sentences in this jurisdiction to satisfy	119.17g.

	<p>144; (2007) 175 A Crim R 49</p> <p>Delivered 13/07/2007</p>	<p>CRO (poss methyl wiss). Very stable family background.</p>	<p>located \$11,750 cash and set of electronic scales which appellant admitted using to weigh methyl. Appellant admitted \$10,000 of the cash came from selling drugs and admitted having sold methyl on 10 occasions in lots of 3.5g for \$1000 each.</p>	<p>EFP.</p>	<p>me that the sentence of 5 years and 10 months is not inconsistent with sentences customarily imposed or outside the range of a sound sentencing discretion’.</p> <p>At [19] ‘Weighing heavily ... is the ... cooperation with police which resulted in his convictions on the selling counts.’</p>	
61.	<p>Roncevic v The State of Western Australia</p> <p>[2012] WASCA 43</p> <p>Delivered 17/02/2012</p>	<p>37 yrs at time offending. Convicted after late PG. Significant and serious prior criminal record. Offending breached parole. Drug addiction – offending due to self-induced drug psychosis.</p>	<p>1 x Poss methyl wiss 114.1g at 9%. 1 x Poss methyl wiss 5.27g at 64%. 1 x Unlawful wounding s 301 <i>Criminal Code</i>. 2 x Assault police officer. 10 x s 32 offences. Appellant passenger in a car which was stopped by police. 114.1g methyl found hidden in appellant’s underwear. Appellant’s house was subsequently searched and police found cannabis, smoking utensil, metal baton and stolen jeans (all s 32 offences). Appellant involved in an incident in which he shot someone (unlawful wounding). Following that incident, appellant’s home was again searched by police and a handgun</p>	<p>4 yrs 6 mths imp. 18 mths imp. 2 yrs 6 mths imp. 2 yrs 4 mths imp each ct. Sentence range \$200 fine – 12 mths imp. Owed 2 yrs 10mths parole time at sentencing – ordered wholly concurrent with TES. TES 9 yrs 2 mths imp. EFP. No genuine remorse; late acceptance of</p>	<p>Dismissed – leave to appeal refused on papers.</p>	119.379g.

			<p>found (s 32 offences).</p> <p>Appellant driving a vehicle when stopped by police (victims 1 & 2) for a traffic matter. Victim 1 told appellant conducting a license check and appellant drove off at high speed. Victims 1 & 2 pursued appellant and appellant refused to stop, colliding with another car in his attempt to evade capture (further s 32 offences). Victims 1 & 2 found appellant's car stationary a short time after and approached the vehicle. Appellant again tried to escape and pointed a stolen handgun at victim 1 as he was reaching for her handcuffs. Victim 2 reached for her taser and the appellant pointed the gun at her. Appellant ran off, stopped after a short distance, turned, readied the gun for firing and pointed the handgun at each victim in turn. Victim 1 fired his police issue weapon. Appellant ran off and was later found hiding in a nearby yard. Police later found bag containing 5.27g methyl dropped by appellant. Appellant's car also searched and another handgun was found along with ammunition, \$39,990 cash, scales with traces of methyl, cutting agent and 2 mobile phones.</p>	responsibility.		
60.	<i>Than-Htay v The State of Western Australia</i>	<p>Convicted after trial.</p> <p>Significant prior crim record -conspiracy to sell/supply;</p>	<p>Ct 1: Poss methyl wiss 5.97g at 77%.</p> <p>Ct 2: Poss methyl wiss 19.55g at 73- 81%.</p> <p>Ct 3: Poss methyl wiss 112.16g at 30 – 77%.</p> <p>Drugs of very high purity, motivation was</p>	<p>Ct 1: 18 mths imp.</p> <p>Ct 2: 3 yrs imp.</p> <p>Ct 3: 8 yrs imp.</p> <p>TES 8 yrs imp.</p>	<p>Dismissed.</p> <p>At [21] 'However, the effect of differing</p>	137.68g.

	<p>[2011] WASCA 68</p> <p>Delivered 23/03/2011</p>	<p>poss amphetamines wiss.</p> <p>Offending breached parole (poss amphetamines wiss).</p>	<p>for commercial gain but also to service his own drug habit.</p> <p>Search warrant executed at appellant's home. Methyl found in pocket, backpack, bumbag & motor vehicle.</p> <p>If substances subject of cts 1 – 3 were diluted, would create over 680g of methyl at street level purity worth some hundreds of thousands of dollars.</p>	<p>EFP.</p> <p>Limited insight into offending; blamed others for his actions; high risk re-offending. Personal deterrence needed.</p>	<p>personal circumstances and antecedents will be reduced in those matters where deterrence is the dominant sentencing consideration: <i>Tulloh v The Queen</i> [2004] WASCA 169; (2004) 147 A Crim R 107 [46] McClure JA.'</p>	
59.	<p><i>The State Of Western Australia v Andela</i></p> <p>[2006] WASCA 77</p> <p>Delivered 19/05/2006</p>	<p>21 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>No prior criminal record.</p> <p>Employed full time; positive references.</p> <p>Committed offence to finance \$1200/week cocaine habit – began using marijuana and alcohol at 14 yrs in response to parent's marital problems. Began using amphetamines to manage weight problem (low self esteem and break-up relationship with girlfriend).</p> <p>Brother convicted drug offences in 2000 – 10 mth</p>	<p>1 x Poss MDMA wiss 500 tablets 138.5g 37-42%.</p> <p>Organised crime officers searched respondent's house – found 500 tablets in five lots of 100 wrapped in newspaper in a jacket in his bedroom. Also found \$4350 cash.</p>	<p>2 yrs imp.</p> <p>TES 2 yrs imp susp 2 yrs.</p>	<p>Allowed SIO set aside.</p> <p>TES 18 mths imp substituted.</p> <p>NB: principles double jeopardy applied to sate appeals.</p> <p>At [12] 'Marital and relationship breakdowns and youthful insecurities are common in modern Australian society, They do not justify or excuse criminal conduct.'</p>	138.5g.

		imp.				
58.	<i>Dillon v The State of Western Australia</i> [2010] WASCA 135 Delivered 4/08/2010	36 yrs at time offending. Convicted after fast-track PG. Prior criminal record - served 12 mths imp previously for poss methyl wiss. Good work record; positive character references.	1 x Poss wiss methyl 75.7g 11-13%. 1 x Poss wiss methyl 59.44g 12%. 1 x Poss wiss MDMA 5.54g 21%. 1 x Pervert the course of justice (PCJ). 5 x s 32 offences (not drug related). Drugs found after appellant's car stopped and searched. PCJ result of telephone intercepts recording appellant arranging for another person to say the drugs belonged to them in exchange for \$10,000.	4 yrs 6 mths imp. 4 yrs 6 mths imp. 1 yr imp. 2 yrs imp s 32 sentences concurrent. TES 6 yrs mths imp.	Dismissed – only sentence PCJ challenged.	140.68g.
57.	<i>Stagno v The State of Western Australia</i> [2013] WASCA 166 Date delivered 24/07/2013 Related: <i>Stagno v The State of Western Australia</i> [2015]	29 yrs at sentencing. Convicted after PG to Ct 3; Convicted after trial of other counts. (Although indicated PG to possession in Ct 2, just not circ of aggravation). Criminal record including substantial traffic convictions; possess cannabis wiss. User of illicit drugs prior to 2008. Excellent family background; highly skilled mechanic.	Ct 1: Poss methyl wiss 130.06g at 7-8%. Ct 2: Agg poss unlicensed firearm. Ct 3: Poss ammunition without licence. Ct 4: Poss methyl wiss 15.07g at 1% and 78%. <u>Ct 1:</u> The appellant was stopped by police driving on Manning Road, Wilson. Police found 130g of methyl distributed between a number of plastic bags hidden in the car. His Honour described the drugs as being carefully sorted and packaged in various quantity, ready for sale on a wholesale basis to street level dealers. <u>Ct 2:</u> Police also found, hidden under the driver's seat, a Glock handgun with its serial number	Ct 1: 4 yrs imp. Ct 2: 1 yr 6 mths imp (cum). Ct 3: 6 mths imp (conc). Ct 4: 2 yrs 6 mths imp (cum). TES 8 yrs imp. EFP. No remorse; lacked insight into offending. High risk of re-offending. Although sentencing	Dismissed. At [32] It is generally accepted that drug dealing is a hierarchical business. Those engaged in the business of selling drugs as a principal are ordinarily regarded as more culpable than those who act as a courier ... This is because it is the principal who stands to profit to a greater extent than the courier. At [36] The high purity showed that the appellant was very close to the	145.13g.

	WASCA 115	On bail for Cts 1-3 when Ct 4 was committed.	<p>erased. The weapon was located with 13 rounds of ammunition in the magazine. The appellant was found to be carrying \$2,380 in cash in his wallet.</p> <p><u>Ct 3:</u> The appellant's home was subsequently searched. There, police found tick lists which showed prior dealing on credit in very large sums of money. Police also discovered ammunition. The appellant's mobile phone was seized. Many of these messages plainly related to drug dealing. His Honour said that they showed that the appellant had 'close business links with known drug dealers'.</p> <p><u>Ct 4</u> Was committed more than 2 years after Cts 1-3. Police stopped and searched the appellant's work vehicle and found 2 bags containing methyl in the vehicle's freezer compartment. One bag contained 1.67g of methyl. His Honour said that he was minded to think that this was a contaminated cutting agent. The other bag contained 13.4g of methyl. His Honour said this quantity had 'more or less come uncut from manufacture' and described it as being 'carefully wrapped and tied'.</p>	<p>judge accused the appellant was a drug user, found that the quantities and extend of dealing far exceeded anything he could possibly need for personal use.</p> <p>Described as 'wholly commercial'.</p> <p>Ct 1: Principal in mid-level wholesale drug distribution network; Ct 4: A courier and bagman for others.</p>	<p>source of manufacture and the drug would almost inevitably have been diluted ... It is undoubtedly an aggravating factor that the offence was committed while the appellant was on bail for similar offending.</p> <p>At [46] There can be no doubt that the appellant's overall offending in this case was very serious ...</p>	
56.	<p><i>Wilson v The State of Western Australia</i></p> <p>[2010] WASCA 82</p>	<p>34 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Offence on indictment 2 breached bail for indictment 1.</p>	<p><u>Indictment 1:</u> Ct 1: Conspire to purchase MDMA wiss 500 tablets Ct 2: Poss methyl wiss 32.5g at 32%.</p> <p><u>Indictment 2:</u> Ct 1: Poss methyl wiss 116g at 9-39%.</p>	<p><u>Indictment 1:</u> Ct1: 15 mths imp.</p> <p>Ct 2: 2 yrs 8 mths imp.</p> <p><u>Indictment 2:</u> Ct 1: 5 yrs imp.</p> <p>TES 6 yrs 3 mths imp.</p>	Dismissed.	148.5g.

	Delivered 4/05/2010	<p>Prior criminal record - incl drug related convictions for which fines were imposed.</p> <p>Undertaken programmes in custody.</p> <p>Good work history.</p>	<p>Involved at a significant level in the hierarchy of drug industry – not street dealing but dealing at whole sale level in significant quantities.</p> <p><u>Indictment 1:</u> Agreed with third party to purchase and then sell 500 MDMA tablets at \$20 with intent on-sell them and split the profits (ct 1). Police observed appellant in car park of business and conducted a search of his car. Methyl (ct 2), \$2,000 cash found in car. \$4,100 cash found on appellant's person.</p> <p><u>Indictment 2:</u> Police stopped and searched appellant's car - \$2,140 cash found on appellant's person. Appellant's home subsequently searched and methyl, cutting agent, clip-seal bags, syringes and vials water found in hard case kit.</p>			
55.	<p><i>RP v The State of Western Australia</i></p> <p>[2010] WASCA 75</p> <p>Delivered 28/04/2010</p>	<p>20 yrs at time offending.</p> <p>Convicted after fast-track PG assistance given to authorities.</p> <p>No relevant prior criminal record.</p> <p>Born Bosnia-Herzegovina; came to Australia with parents as refugee; supportive family; good</p>	<p>1 x Poss MDMA wiss 539 tablets 149.18g.</p> <p>Characterised as user/dealer – money used to finance habit and repay drug debt. Significant commercial aspect to dealing given quantity tablets far exceed anything required personal use.</p> <p>Appellant and co-offender observed in appellant's parked car by police. Car then searched – 35 MDMA tablets, \$1450 cash and clip seal bags located. 2 further MDMA tablets found in appellant's trouser pocket.</p>	<p>2 yrs 10 mths.</p> <p>TES 2 yrs 10 mths imp.</p>	Dismissed.	149.18g.

		upbringing. Began using ecstasy after relationship breakdown and became addicted.	Appellant taken back to police station and searched again – 539 MDMA tablets found in underwear. Car searched again - further 17 MDMA tablets found.			
54.	<i>Mada v The Queen</i> [2003] WASCA 1 Delivered 17/01/2003	35yrs at time offending. Convicted after fast-track PG, and slightly slower PG. No prior criminal record. Romanian immigrant. Provided cooperation to police.	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. Non-user, traded for profit after experiencing financial difficulties. Position of seniority in drug hierarchy Searched after vehicle stop. Further drugs found buried in bushland as a result of surveillance of offender. Telephone intercepts also used.	7 yrs imp. 7 yrs imp. 7 yrs imp. 3 yrs imp. 7 yrs imp. 7 yrs imp. TES 10 yrs imp. Equivalent to 6 yrs 8 mths imp after implementation of transitional provisions.	Allowed. <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. TES reduced to 7 yrs 4 mths imp. At [46] Judge failed to deal with each offence individually, failed to deduct for cooperation with police and confiscation of assets.	161.56g.
53.	<i>Vagh v The State of Western Australia</i> [2007] WASCA 17 Delivered	22 yrs at time offending. Convicted after PG - co-operated with police. No prior criminal record. Strong family support.	Ct 1: Poss methyl wiss 133.3g at 15-17%. Ct 2: Poss LSD wiss 58 trips. Ct 3: Sold MDMA 98 tablets 30.65g. 3 x s 32 offences Commercial motivation. <u>Cts 1 & 2:</u> search warrant at appellant's home found 133.3g crystal methyl and 58	Ct 1: 3 yrs 9 mths imp. Ct 2: 1 yr 8 mths imp. Ct 3: 2 yrs 1 mth imp. s 32: 2 mths imp each offence. TES 6 yrs imp. EFP.	Dismissed. At [71]-[72] Sentence not disproportionate to overall criminality and not crushing. At [77] 'As the Sentencing Judge	163.95g. 58 trips.

	19/01/2007		LSD trips in jacket in wardrobe. Ct 3: appellant arranged to sell 98 MDMA tablets to another. Sent person to transact the sale and received \$2350 in return.		correctly observed, the appellants conduct involved extremely serious offending; it was not isolated, it involved a reasonable amount of dangerous drugs and he played an important role in their distribution.'	
52.	<i>Lam v The State of Western Australia</i> [2010] WASCA 61 Delivered 7/04/2010	22 yrs at time offending. Convicted after fast-track PG. Cooperated with police. Remorse. Prior minor criminal record. Migrated from Vietnam; poor English; commenced using methyl at 20 yrs. 8 mth old child and ceased drug use at time sentencing.	1 x Poss methyl wiss 172.36g at 5 – 37%. Engaged in a commercial activity of selling drugs. Search warrant executed at appellant's parent's home - over \$14,000 cash, clip-seal bags, cutting agent and electronic scales found in bedroom. Drugs were found on appellant's person.	5 yrs 4 mths imp. TES 5 yrs 4 mths imp. Remorse.	Dismissed. At [10] 'The commercial aspect of the appellant's activity reflected in the significant quantity and purity of the drug places the appellant's conduct in the very serious category of offences of this type.'	172.36g.
51.	<i>Dao v State of Western Australia</i> [2007] WASCA 237 Delivered 9/11/2007	51yrs at time offending. Convicted after PG earliest opportunity. Single mother; 2 children 10 & 14 yrs; came to Australia from Vietnam (via refugee camp in Hong Kong). Gambling addiction and significant debts as a result.	Ct 1: poss heroin wiss 56.03g 59%. Ct 2: poss methyl wiss 119.2g 49%. Sentenced on basis that actively participating in dissemination illegal drugs for financial gain (affirmed on appeal). Searched after arrival on QANTAS flight from Sydney to Perth. Found quantities above in two packages sewn into underwear. To be paid \$10 000 for courier work – claimed to pay a gambling debt.	Ct 1: 4 yrs imp. Ct 2: 4 yrs imp. TES 6yrs imp.	Dismissed. At [9] '...deterrent sentences were called for because of the need for community protection'.	175.23g.

			Telephone intercepts lead to arrest of principals in distribution network.			
50.	<i>Cohen v The State of Western Australia [No 2]</i> [2007] WASCA 279 Delivered 18/12/2007	53 yrs at time sentencing. Convicted after trial - cooperated by making certain admissions and reducing length trial. Prior criminal record – drug trafficking convictions. Not a drug addict, motivated solely by greed – carried on drug trafficking business.	Ct 1: Poss methyl wiss 1.68g at 19%. Ct 2: Poss methyl wiss 164g at 19%. Ct 3: Poss cocaine wiss 13.5g at 30%. Ct 4: Poss methyl wiss 1.64g at 19%. Came to attention of police through telephone intercepts. Car searched and drugs subject ct 1 found concealed in car's air-conditioning duct. Apartment subsequently searched – rubber gloves, clipseal bags and dextrose (cutting agent methyl) found, as well as \$100,000 cash. Empty apartment next door also searched – drugs subject cts 2 & 3 found. House then searched – drugs subject ct 4 found.	Ct 1: 1 yr imp. Ct 2: 8 yrs imp. Ct 3: 7 yrs imp. Ct 4: 2 yrs imp. TES 9 yrs imp. EFP.	Allowed - primarily on ground that confiscation of lawfully acquired house (inherited from mother and worth more \$1,000,000) not originally taken into account as mitigating factor given sentence cts 2 & 3 are at upper end of range. TES reduced 7 yrs 6 mths. At [21] the possibility of deportation alone not mitigating factor.	180.82g.
49.	<i>Nguyen v The State of Western Australia</i> [2009] WASCA 81 Delivered 7/05/2009	53 yrs at time offending. Convicted after fast-track PG (methyl & heroin). Convicted after trial (MDMA – also acquitted charge supply methyl 1.213kg). Minor prior criminal record. History poly-substance abuse. Poor health (two operations	1 x Poss methyl wiss 138.8g 52-55%. 1 x Poss heroin wiss 55.8g (59%). 1 x Poss MDMA wiss. Sentenced on basis commercial trafficker - flew from Sydney to Perth & rented house for sole purpose of dealing. 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.	5 yrs 6 mths imp. 3 yrs imp. 8 mths imp. TES 6 yrs imp. Minimal insight into illness and illicit substance abuse.	Dismissed. NB: The original sentence was imposed whilst the transitional provisions were in force.	194.6g.

		for brain haemorrhage; spinal injuries in car accident resulting in chronic back pain) - started using drugs as coping mechanism for disability.				
48.	<i>Birch v State of Western Australia</i> [2011] WASCA 101 Delivered 19/04/11	29 yrs at time offending. Convicted after PG – not at first opportunity and in face strong prosecution case. Prior criminal record – mainly traffic offences and poss cannabis (1998 – only prior drug conviction). 2 children aged 4 and 2 ½ yrs – taken to NZ without her permission by their father sometime in 2009; reasonable work history. Intravenous methyl user.	Ct 1: Supply MDMA 1000 tablets 208.9g. Ct 2: Conspire supply MDMA 4000 tablets. Ct 3: Offer supply MDMA 1000 tablets. Ct 4: Offer supply MDMA 40 or 50 tablets. Ct 5: Offer supply MDMA 400 tablets. Ct 6: Offer supply MDMA 400 tablets. Ct 7: Offer supply methyl 1.75g – 3.5g. Ct 8: Offer supply MDMA 1000 tablets. Described in sentencing as active drug dealer – implied financial motive. Offending period approx 2 mths. Charges result of intercepted phone calls and covert surveillance operation. Two co-offenders.	Ct 1: 5 yrs imp. Ct 2: 4 yrs imp. Ct 3: 5 yrs imp. Ct 4: 1 yr imp. Ct 5: 2 yrs imp. Ct 6: 2 yrs imp. Ct 7: 2 yrs imp. Ct 8: 5 yrs imp. TES 8 yrs. EFP. Limited insight into offending behaviour.	Dismissed – leave refused on papers. At [33] not enough to gather a selection of cases and by a broad exercise of comparison try to demonstrate error – what is required is an analysis of relevant factors.	210.65-212.4g. 208.9g supply. 1.75-3.5g offer. 400 tablets conspire supply. 1850 tablets offer.
47.	<i>Giglia v The State of Western Australia</i> [2010] WASCA 9	25 yrs at time offending. 27 yrs at time sentencing. Convicted after trial (acquitted 3 charges). Minor prior criminal record - assault, weapons and	3 x Poss MDMA wiss 300, 500 and 500 tablets. 1 x Poss methyl wiss 84g. 8 x Offer to supply methyl to another (70-98g; 500 tablets). 1 x Supply methyl 56g. 1 x Att to poss MDMA wiss 500 tablets.	TES 8 yrs 6 mths. Remorse at sentencing – previously maintained innocence.	Dismissed. At [48] ‘The offences committed by the appellant were serious. He was a commercial dealer of both methylamphetamines and	210-238g. 2000 tablets. 140g and 1500 tablets poss. 70-98g and 500 tablets offer

	Delivered 22/01/2010	<p>traffic offences.</p> <p>No substance abuse problem - never tried illicit substances.</p> <p>Educated to yr 12; good work history; supportive family and fiancée.</p>	<p>Offending in context joint enterprise between appellant and co-offenders to try and sell methyl and MDMA.</p> <p>Arrest and charges result telephone intercepts over approx 4 week period.</p>		<p>ecstasy. He was not solely involved in the sale of drugs at the street level, but was selling drugs to other people who were selling them to the ultimate users. He sold drugs purely for financial gain, rather than to support an addiction.'</p> <p>NB: The original sentence was imposed whilst the transitional provisions were in force.</p>	
46.	<p><i>Chu v The State of Western Australia</i></p> <p>[2012] WASCA 135</p> <p>Delivered 6/07/2012</p>	<p>34 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Prior criminal record – poss methyl; poss smoking implement.</p> <p>Born in Vietnam; arrived in Australia in 1996.</p> <p>Suffers advanced osteoarthritis in hips and ankle as a result of injuries sustained in a car accident.</p>	<p>Ct 1: Sold methyl 14g at 52%.</p> <p>Ct 2: Sold methyl 28g t 79%.</p> <p>Ct 3: Sold methyl 28.3g at 65%.</p> <p>Ct 4: Supplied MDMA one tablet.</p> <p>Ct 5: Sold methyl 27.8g at 78% and 27.8g at 70%.</p> <p>Ct 6: Poss methyl wiss 11.99g at 17%, 40.3g at 23% and 49.4g at 81%.</p> <p>Appellant conceded he was close to or at the top of the drug hierarchy with a critical role in the distribution of the drug.</p> <p>Appellant was selling drugs sourced from Sydney and a search of his home found clip-seal bags, electronic scales, cutting agent and \$159, 260 cash.</p>	<p>Ct 1: 2 yrs imp.</p> <p>Ct 2: 4 yrs imp.</p> <p>Ct 3: 4 yrs imp.</p> <p>Ct 4: 6 mths imp.</p> <p>Ct 5: 5 yrs imp.</p> <p>Ct 6: 5 yrs imp.</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>Minimised offending; attempted to portray himself as the victim.</p>	<p>Dismissed – leave refused on papers.</p> <p>At [27] To allege sentencing judge did not take proper account of mitigating factor is to allege a weighting error. A weighting error only gives rise to an appealable error if it amounts to a failure to exercise the discretion entrusted in the court. Absent a failure to exercise that discretion, a weighting error is not an independent ground of appeal which justifies appellate intervention.</p>	227.59g.

					At [33] Whether appellant selling drugs to generate wealth or pay off debt is of no mitigatory significance – it remains selling drugs for a commercial purpose and, at its highest point, is no more than an explanation of the offending rather than a mitigating factor.	
45.	<p><i>Tran v The State of Western Australia</i></p> <p>[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.</p> <p>1 x Poss methyl wiss 37.013g.</p> <p>1 x Poss heroin wiss 41.4g.</p> <p>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.</p> <p>2 yrs imp.</p> <p>2 yrs imp.</p> <p>2 yrs imp.</p> <p>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>	<p>237.713g.</p> <p>78.413 poss.</p> <p>159.3 att poss.</p>
44.	<p><i>The State of Western Australia v</i></p>	<p>35 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Supportive family; dyslexia</p>	<p>1 x Poss MDMA wiss 249g 33%.</p> <p>Dealer for financial gain who only used MDMA “once or twice”.</p>	<p>4 yrs imp.</p> <p>TES 4 yrs imp.</p>	<p>Allowed.</p> <p>TES increased 5 yrs 6 mths imp.</p>	<p>249g.</p>

	<p><i>Higgins</i></p> <p>[2008] WASCA 157</p> <p>24/07/2008</p>	<p>and ADD (did not contribute to offending).</p>	<p>Police found drug's at respondent's home along with \$54,250 and \$2,280 cash;</p>	<p>No remorse.</p>	<p>NB principles double jeopardy applied to State appeals.</p> <p>At [14] minor criminal record, good antecedents, employment waiting do not place appellant in a different position to many other who come before courts for this type of offending.</p> <p>At [19]-[36] review of comparative cases.</p> <p>At [12] no evidentiary basis to make distinction between MDMA and methyl, amphetamine, heroin and cocaine for sentencing purposes.</p>	
<p>43.</p>	<p><i>Hobby v The State of Western Australia</i></p> <p>[2009] WASCA 108</p> <p>Delivered 25/06/2009</p>	<p>24 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>No relevant prior criminal record.</p> <p>Relatively happy and stable upbringing; some difficulties when appellant 17 yrs</p>	<p>Ct 1: Offer to sell/supply amphetamine. Ct 2: Offer to sell/supply MDMA. Ct 3: Offer to sell/supply MDMA 50 tablets. Cts 4-6: Offer to sell/supply cannabis.</p> <p>Ct 7: Offer to sell/supply MDMA. Ct 8: Offer to sell/supply cannabis. Ct 9: Offer to sell/supply MDMA 490 tablets. Ct 10: Offer to sell/supply MDMA 20 tablets.</p>	<p>Ct 1: 8 mths imp. Ct 2: 8 mths imp. Ct 3; 16 mths imp. Cts 4-6: 4 mths imp each Ct 7: 12 mths imp. Ct 8: 6 mths imp. Ct 9: 3 yrs imp. Ct 10: 16 mths imp. Ct 11: 6 mths imp. Ct 12: 12 mths imp.</p>	<p>Dismissed.</p> <p>At [26] Submissions regarding good character missed the point that general deterrence comes to the fore.</p> <p>NB: The original sentence was imposed whilst the transitional provisions</p>	<p>252.75g. 560 tablets.</p> <p>53.5g poss. 199.25g offer. 560 tablets offer.</p>

		relating to death of his mother	<p>Ct 11: Offer to sell/supply cannabis 14g. Ct 12: Offer to sell/supply cannabis 56g. Ct 13: Offer to sell/supply methyl 84g. Ct 14: Offer to sell/supply methyl 28g. Ct 15: Offer to sell/supply methyl 2.25g. Ct 16: Offer to sell/supply methyl 28 g. Ct 17: Offer to sell/supply cannabis 28g. Ct 18: Offer to sell/supply methyl 3.5g. Ct 19: Offer to sell/supply methyl 53.5g. Ct 20: Poss methyl wiss 53.5g at 19-21%. Mid-range distributor. Offending period 23 days.</p> <p>Initially began dealing as a favour on non profit basis but became engaged in dealing for profit at some point - engaged in selling substantial quantities of 3 different drugs.</p>	<p>Ct 13: 4 yrs imp. Ct 14: 24 mths imp. Ct 15: 16 mths imp. Ct 16: 24 mths imp. Ct 17: 12 mths imp. Ct 18: 12 mths imp. Ct 19: 16 mths imp. Ct 20: 4 yrs imp.</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>Limited insight into seriousness of offending.</p>	were in force.	
42.	<p><i>Huynh v The State of Western Australia</i></p> <p>[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%. Ct 2: Poss heroin wiss 4.42g at 55%. Ct 3: Sold heroin 55.7g. Ct 4: Sold heroin 27.9g at 53%. Ct 5: Sold heroin 56.8g at 54%. Ct 6: Sold methyl 27.5g at 63%. Ct 7: Poss heroin wiss 100.57g at 45-51%. Ct 8: Poss methyl wiss 18.35g at 45-55% Ct 9: Poss of unlicensed firearm 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</p>	TES 10 yrs imp.	<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</p>	331.81g.

			trades. Offending period approx 7 mths. 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.		prospect of establishing that the sentencing judge erred in the exercise of his discretion in relation discount for PG. Appellant's claims of remorse and scope for rehabilitation at odds with breach of SIO and offending on bail.	
41.	<i>Samuels v The State of Western Australia</i> [2006] WASCA 222 Delivered 26/10/2006	33 yrs at time offending. Convicted after trial – 3 ½ yr delay between offending & trial. No previous convictions for similar offences and hadn't offended since 2001. Member Gypsy Joker motorcycle club. Separated from wife; 2 children.	1 x Poss methyl wiss 25.3g at 34%. 1 x Poss MDMA wiss 315.8g at 21%. Operating at a level of "mid-level commerciality". Taskforce established to investigate Gypsy Jokers involvement in the car bomb that killed Don Hancock and a companion. Intelligence from surveillance and phone intercepts led to search of tattoo shop owned by appellant – located drugs.	5 yrs imp. 4 yrs imp. TES 6 yrs imp. EFP.	Dismissed. At [75] characterised this as a case involving drugs at the upper end of seriousness.	341.1g.
40.	<i>Russell v The State of Western Australia</i> [No 2] [2010] WASCA 159	35 yrs at time offending. Convicted after fast-track PG. Prior criminal record - traffic offences and one possess cannabis (fined).	Ct 1: Offer to sell MDMA 50 tablets. Ct 2: Offer to sell methyl 56g. Ct 3: Sold MDMA 421 tablets 121g at 37%. Ct 4: Offer to sell MDMA 50 tablets. Ct 5: Sold MDMA 585 tablets 175.8g at 37%. Ct 6: Offer to sell MDMA 50 pills. Ct 7: Att to obtain MDMA wiss 2000 pills.	Ct 1: 1 yr imp. Ct 2: 3 yrs imp. Ct 3: 4 yrs imp. Ct 4: 1 yr imp. Ct 5: 4 yrs imp. Ct 6: 1 yr imp.	Allowed. Manifestly excessive in that original sentence did not bear proper relationship to level of criminality.	352.8g 2150 tabs. 296.8g sold. 56g offer. 2150 tablets offer.

	Delivered 4/08/2010	<p>Unremarkable family background; good references; good work history.</p> <p>Significant medical difficulties since birth – chronic asthma, sever lower back pain from spinal fusion, eczema and obesity; depression; low self esteem.</p>	<p>Categorised as mid range user/dealer. Offending period approx 2 mths. Claimed dealing drugs to fund addiction to ecstasy that had developed after becoming immune to effects painkillers.</p>	<p>Ct 7: 3 yrs 6 mths imp.</p> <p>TES 7 yrs 6 mths imp. EFP.</p> <p>Participated in program, at Cyrenian House on bail; remorse; good prospects rehabilitation.</p>	<p>TES reduced to 6 yrs imp.</p> <p>EFP.</p>	
38.	<p><i>Tanner v The State of Western Australia</i></p> <p>[2013] WASCA 142</p> <p>Date delivered 07/06/2013</p>	<p>50yrs at time offending. 51yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal record, however old and relatively minor.</p> <p>Worked initially as fibreglass laminator but changed to IT in 1994. Started own business in 2010. Started taking illicit drugs to deal with long working hours.</p> <p>Co-offender Paul Truslove convicted after early PG. Sentenced to 5 yrs imp. EFP. Had a more serious and extensive prior criminal</p>	<p>1 x Supply prohibited drug (methyl) 428g at 42%.</p> <p>Investigation into suspected drug dealer Mr Truslove. As part of that investigation, between 7 July and 2 August 2011 police lawfully intercepted Mr Truslove’s telephone calls and text messages he sent and received.</p> <p>On 18 July 2011, Mr Truslove received a text message from a mobile phone which belonged to the appellant, but was registered in a false name.</p> <p>On 1 August 2011, the appellant was seen to attend Mr Truslove’s home and depart 3 minutes later in a vehicle. It was alleged the appellant delivered a sample of methyl.</p> <p>On 2 August 2011, the vehicle in which the appellant travelled to Mr Truslove’s home</p>	<p>9 yrs imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>Trial judge made unprofessional comments during hearing, but CoA determined he had brought an impartial mind to sentencing and had taken into account all relevant considerations. Sentence not manifestly excessive.</p> <p>At [212] It has frequently been stated that it is highly desirable for co-offenders to be sentenced by the same sentencing judge. Alternatively, if that is not practicable, the second sentencing judge should be fully informed</p>	428g.

		<p>record. This is comparable to appellant's sentence as appellant higher in drug network hierarchy. (See [227] – [232].</p>	<p>the day prior was seen again at Mr Truslove's home. The appellant was seen to deliver an item (methyl) into Mr Truslove's home and then leave about 18 minutes later without the item. Numerous text messages were then exchanged between the two.</p> <p>Later that day a search warrant was executed at Mr Truslove's house where 428g of methyl and other items were located.</p> <p>A search of the appellant's house on the same date located a diary containing a tick list, a mobile phone which had the sent and received text messages to and from Mr Truslove, small amounts of methyl, smoking implements, MSM powder, electronic scales, \$27,000 cash, and computer routers. A CCTV camera was monitoring the shed.</p> <p>Defence said appellant and Truslove had been corresponding about IT matters as appellant was selling Truslove computer routers.</p> <p>Trial judge made following findings of fact:</p> <ul style="list-style-type: none"> • That the appellant was 'drug dealing' in commercial quantities of methyl for some time prior to committing this offence. • That the appellant must have been working for someone else. • The appellant must be the 'right-hand man to the syndicate network...owner or boss' and he was 'a high level 		<p>about the sentence imposed by the first sentencing judge... These observations apply also where offenders who have been participants in a common criminal enterprise are to be sentenced.</p> <p>At [222] The parity principle did apply as between the appellant and Mr Truslove in that they were participants in a common criminal enterprise, even though they were not charged with or found guilty of committing precisely the same offences.</p> <p>At [232] Evident Truslove treated more leniently but disparity not marked or clearly unjustifiable.</p>	
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			<p>operative in that syndicate’.</p> <ul style="list-style-type: none"> The transaction, the subject of the offence in question, was not ‘[the appellant’s] first by a long chalk’. <p>The appellant consciously and deliberately participated in ‘the methyl trade at a very high level for monetary gain’, the ‘monetary gain being a ready supply of high-quality drugs’.</p>			
37.	<p><i>Le v The Queen</i></p> <p>[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 addict on Naltrexone program when approached by undercover police.</p>	<p>1 x Sell methyl 6.94g at 81%.</p> <p>1 x Sell heroin 0.47g at 22%.</p> <p>1 x Sell heroin 55.95g at 19%.</p> <p>1 x Sell methyl 27.9g at 83%.</p> <p>1 x Offer to sell heroin 340g.</p> <p>5 x s 32 offences.</p> <p>Dealt to support habit. Involvement more serious than mere courier</p> <p>Met undercover police officer at house and aquatic centre.</p>	<p>2 yrs 1 mth imp.</p> <p>12 mths imp.</p> <p>4 yrs 11 mths imp.</p> <p>4 yrs 2 mths imp.</p> <p>4 yrs 4 mths imp.</p> <p>6 mths imp each count.</p> <p>TES 9 yrs 9 mths imp.</p> <p>Equivalent to 6 yrs 6 mths imp after implementation of transitional provisions.</p>	<p>Dismissed.</p> <p>At [22] indiv sentences well within range of a sound sentencing discretion.</p> <p>NB: The original sentence was imposed before the transitional provisions were in force.</p>	<p>431.26g</p> <p>91.26 sold.</p> <p>340g offer.</p>
36.	<p><i>Tricoli v The State of Western Australia</i></p> <p>[2011] WASCA 74</p> <p>Delivered 4/04/2011</p>	<p>32 yrs at time sentencing.</p> <p>Convicted after PG at earliest opportunity.</p> <p>No prior criminal record.</p> <p>Stable family; good employment history; single; educated to yr 12.</p>	<p>1 x Poss cocaine wiss 436.59g at 68%.</p> <p>1 x Poss unlawfully obtained property.</p> <p>Sentencing judge found appellant to be ‘in the upper level of the business enterprise’ – cocaine held at his house, involved in supply and taking of money (not simply holding it for another party).</p> <p>Appellant did not profit financially from sale of cocaine but was supplied with cocaine in</p>	<p>6 yrs imp.</p> <p>3 mths imp.</p> <p>TES 6 yrs imp.</p>	<p>Dismissed -leave refused on papers (only sentence in relation to cocaine challenged).</p> <p>At [5] poss large quantity cocaine often attract up to 10 yrs imp - amount in this case is ‘large’ quantity.</p>	<p>436.59g.</p>

		Began using cocaine in 2008 after break-up of relationship	exchange for involvement.		At [9] not entitled to lesser sentence on grounds drug addict.	
35.	<i>Stapleton v The Queen</i> [2004] WASCA 130 Delivered 21/06/2004	58 yrs at time offending. Convicted after PG on day of trial. Offending breached bail. Prior criminal record - dishonesty involving \$125 000. Gambling problems; separated from wife; two teenage children. Opportunistic offence.	1 x Supply methyl 437g at 58%. Couriered drugs from NSW with 2 co-offenders. Telephone intercepts specifically targeted appellant and one co-offender. Played an integral role in interstate distribution of drugs.	9 yrs imp. TES 9 yrs imp. Equivalent to 6 yrs imp after implementation of transitional provisions. EFP.	Dismissed. NB: The original sentence was imposed before the transitional provisions were in force.	437g.
34.	<i>Tema v The State of Western Australia</i> [2011] WASCA 41 Delivered 14/03/2011	43 yrs at time offending. 56 yrs at time sentencing. Prior criminal record – gaming and firearms offences. Born in Macedonia; emigrated to Australia as young adult; married; 4 adult children and 5 grandchildren at time sentencing.	1 x Poss methyl wiss 449.72g at 14%. Purely financial motive – not drug user. Appellant flew from Melbourne to Perth under false name and booked into motel using correct name. From arrival, appellant under police surveillance as result information provided by Victorian police. UCO took separate flight from Melbourne to Perth and booked into motel room adjoining the appellant's. Search warrant executed on appellant's room. Methyl found in two plastic bags (448.6g & 1.12g) wrapped in Victorian	7 yrs 6 mths imp. TES 7 yrs 6mths imp. EFP after 5 yrs 6 mths.	Dismissed.	449.72g.

			<p>newspaper pages hidden behind an exhaust fan in the bathroom wall. Appellant's home in Victoria searched approx 1 week later – newspaper missing the same pages the drugs had been wrapped in found, along with set electronic scale (traces methyl & heroin).</p> <p>Offending occurred in 1997 and, at commencement of trial in 2000 (delay attributable to delays in disclosure and applications from defence as to admissibility of evidence), appellant failed to appear and an bench warrant was issued. Appellant avoided detection for 8 yrs and legally changed his name. Eventually arrested in 2009 when arrived in Australia on a flight from Macedonia. Appellant then extradited to Perth and trial listed for August 2009. Appellant unrepresented and trial adjourned to Oct 2009.</p>			
33.	<p><i>MXP v The State of Western Australia</i></p> <p>[2010] WASCA 215</p> <p>Delivered 29/10/2010</p> <p>NB: Facts set out in</p>	<p>29 yrs.</p> <p>Convicted after fast-track PG.</p> <p>No prior criminal record.</p> <p>Cooperation to authorities.</p> <p>18 month old child.</p> <p>Undertook rehabilitation program before sentencing.</p>	<p>1 x Poss MDMA wiss 3011 tablets 479.99g 32 – 33%.</p> <p>Search of vehicle after traffic stop. Motive in offending was to satisfy drug debt.</p>	<p>6 yrs 6 mths imp.</p> <p>TES 6 yrs 6 mths imp.</p>	<p>Allowed - insufficient concession given for cooperation with police.</p> <p>TES reduced 5 yrs imp.</p> <p>Review of comparative cases at [34] – [45].</p> <p>Discussion as to letters of comfort and information to be given to sentencing judge in regard to</p>	479.99g.

	confidential annexure to reasons of BUSS JA and subject to confidentiality order				cooperation with police.	
32.	<p><i>Monument v The State of Western Australia</i></p> <p>[2007] WASCA 239</p> <p>NB: Co-offender of Toothill (below)</p> <p>Delivered 8/11/2007</p>	<p>37 yrs at time offending.</p> <p>Convicted after PG after trial listed but before it began.</p> <p>Minor prior criminal record for driving offences.</p> <p>Begun using amphetamines after work injury; offences 'out of character'; more significant role than co-offender.</p>	<p>1 x Poss methyl wiss 499g at 78%.</p> <p>1 x Poss somatropin wiss (growth hormone, intended to use for neck soreness and sell half to cover cost).</p> <p>Offender and co-offender tailed by police, co-offender observed throwing backpack containing 499g of methyl into bushes.</p> <p>Search of home located \$22,860 cash, scales and tick book.</p>	<p>6 yrs imp.</p> <p>1 yr imp.</p> <p>TES 7 yrs imp.</p>	<p>Dismissed.</p> <p>At [18] 'The sentence imposed in respect of the methylamphetamine was, having regard to the standards of sentencing appropriate for such offences, a moderate one having regard to the quantity and the purity of the drug and the role played by the appellant.'</p>	499
31.	<p><i>Ngo v The State of Western Australia</i></p> <p>[2007] WASCA 221</p> <p>Delivered 19/10/2007</p>	<p>Convicted after early PG – did not identify friend holding drugs for (fearful of retribution to himself and family).</p> <p>Offending breached susp sentence for poss amphetamine paste 25.2g at 18% (2 yrs 6 mths susp 2 yrs).</p>	<p>1 x poss wiss cocaine 490g at 68-74%.</p> <p>1 x poss wiss heroin 10g at 18%.</p> <p>Characterised as large scale drug user, dealing to support habit.</p> <p>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</p>	<p>6 yrs 6 mths imp.</p> <p>3 yrs imp.</p> <p>20 mths imp imposed for breach.</p> <p>TES 8 yrs 2 mths imp.</p> <p>EFP.</p> <p>Evidence of remorse.</p>	Dismissed.	500g.

		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.	own use and payment for looking after bottles.			
30.	<i>The State of Western Australia v Toothill</i> [2007] WASCA 236 Delivered 8/11/2007	24 yrs at time offending. 26 yrs at time sentencing. Convicted after PG - cts 2 and 3 – sentenced 18 mths imp susp 2 yrs each count. Offending ct 1 breached suspended imp above – PG to breach. Convicted after trial - ct 1 (499g). No prior criminal record. Good health, no dependants, good family relations; long standing drug habit (cannabis at 16 yrs, amphetamines 22 yrs).	Ct 1: Poss methyl wiss 499g 78%. Ct 2: Poss MDMA wiss 11.4g. Ct 3: Poss methyl wiss 3.36g 34%. Characterised as low in the distribution hierarchy. Telephone intercepts of co-offender’s mobile. Offender and co-offender tailed by police, offender observed throwing backpack containing 499g of methyl into bushes. Search of offender’s home located drugs subject of counts 2 and 3.	4 yrs 8 mths imp. 18 mths imp. 18 mths imp. TES 4 yrs 8 mths. EFP. Remorse.	Allowed. TES increased 6 yrs imp. EFP. At [39] ‘Having regard to the quantity and purity of the drug involved and the nature and level of the respondent’s participation..the usual range of sentences..is 6 - 10 years’.	513.76g.
29.	<i>Delovski v The Queen</i>	29 yrs at time offending. Convicted after PG.	1 x Poss heroin wiss 524g at 25% Ranked at upper end of commercial	9 yrs imp. TES 9 yrs imp.	Dismissed.	524g.

	<p>[2002] WASCA 88</p> <p>Delivered 18/04/2002</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>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>Equivalent to 6 yrs imp after implementation of transitional provisions.</p>		
28.	<p><i>Reid v The State of Western Australia</i></p> <p>[2012] WASCA 23</p> <p>Delivered 30/01/2012</p>	<p>26 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after trial of cts 1 & 3. Convicted after PG ct 2.</p> <p>No relevant prior criminal record</p> <p>Good character; supportive family; privileged background.</p> <p>Excellent work history and references.</p> <p>Became involved in peer support group in prison.</p> <p>Occasional social drug use – cannabis; ecstasy.</p>	<p>Ct 1: Poss methyl wiss 14.98g at 20%. Ct 2: Poss MDMA 10 pills. Ct 3: Att poss MDMA wiss 573g, 2339 tablets.</p> <p>Sentenced on basis willingly and voluntarily dealing drugs in partnership with her boyfriend to reduce the drug debt he owed. Appellant would also conduct drug transactions in the absence of boyfriend when he was working away.</p> <p>Drugs found when police executed a search warrant at the appellant’s home. Tablets subject of ct 3 later found to be caffeine and paracetamol but the appellant believed them to be ecstasy pills (MDMA). Police also found ‘tick lists’, scales, gloves and cutting agent.</p>	<p>Ct 1: 2 yrs imp. Ct 2: 3 mths imp. Ct 3: 6 yrs imp.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Little acceptance of responsibility; little insight into broader impact of offending; little remorse; unlikely to re-offend; good prospects rehabilitation (ended relationship with boyfriend at time sentencing).</p>	<p>Dismissed – leave refused on papers.</p> <p>At [50] No basis to distinguish between MDMA and other drugs such as methyl, heroin or cocaine in sentencing process.</p> <p>At [58] General sentencing principle that personal circumstances carry little weight in sentencing for dealing or trafficking prohibited drugs equally as applicable to attempts to deal or traffic in prohibited drugs.</p> <p>At [59] 6 yrs imp for ct 3 high but tempered by orders of concurrency so TES appropriate.</p>	<p>587.98g. Plus 10 tablets.</p>

<p>27.</p>	<p><i>Aconi v The Queen</i></p> <p>[2001] WASCA 211</p> <p>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. 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>Equivalent to 10 yrs imp after implementation of transitional provisions.</p>	<p>Allowed.</p> <p>TES reduced to 13 yrs imp.</p>	<p>592.7g.</p>
<p>26.</p>	<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%. Ct 2: Poss heroin wiss 167g at 64-66%. Ct 3: Conspire poss prohibited drug wiss. Ct 10: Offer sell/supply heroin/methyl 1 ounce. Ct 11: Offer sell/supply heroin/methyl 7g. 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. Ct 2: 4 yrs imp. Ct 3: 4 yrs imp. Ct 10: 3 yrs imp.</p> <p>Ct 11: 4 yrs imp. Ct 12: 4 yrs 6 mths imp. 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>	<p>667.5g.</p> <p>Weight includes only drugs poss wiss.</p>

			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.			
25.	<i>Pham v The State of Western Australia</i> [2011] WASCA 244 Delivered 4/11/2011 Co-offender of <i>Lai v The State of Western Australia</i> [2012] WASCA 181	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.	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. Sentenced on basis involved in drug trade for solely commercial reasons. Appellant flew from Sydney to Perth. Heroin and methyl were found in vacuum seal packs wrapped in socks in appellant's suitcase. 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.	7 yrs imp. 2 yrs imp. 8 mths imp. TES 9 yrs imp. Deep remorse and shame.	Dismissed – leave to appeal refused on papers. Only sentence on poss methyl wiss challenged. 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.	665.7g.
24.	<i>Halmi v The State of Western Australia</i>	44 yrs at time offending. 46 yrs at time sentencing. Convicted after late PG.	Ct 1: Sold heroin 3.5 g at 27% and .045g. Ct 2: Poss heroin wiss 8.68 g (bulk at 21%-24%). Ct 3: Poss heroin wiss 664.3 g ranging from 19% - 77% purity.	Ct 1: 2 yrs imp. Ct 2: 2 yrs imp (conc). Ct 3: 10 yrs 6 mths imp (conc).	Dismissed.	676.93g.

	<p>[2013] WASCA 229</p> <p>Delivered 02/10/2013</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>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><u>Ct 3:</u> 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</p>	<p>TES 10 yrs 6 mths imp. 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 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.</p>		
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			containing drug dealing.			
23.	<i>Tulloh v The Queen</i> [2004] WASCA 169; (2004) 147 A Crim R 107 Delivered 11/08/2004	28 yrs at time sentencing. Convicted after trial. Prior criminal record – cultivate cannabis; poss weapon. Previously served in the army. Partner pregnant at time sentencing.	1 x Poss methyl wiss 805g (423.8 g at 51% and 381.7g at 68%). Appellant booked a motel room and arrived at approx 6pm with a co-offender. Approx 2 hours later, police executed a search warrant on the motel room. Police had to force their way in by breaking down the door and when they entered the appellant was at an open window with the flyscreen removed. Police recovered the two packages containing the methyl in the garden below the window. Police found electronic scales, clipseal bags and glucodin in the motel room. Applicant claimed police placed the items above in the motel room and that he had no knowledge of the drugs in the garden.	15 yrs imp. TES 15 yrs imp. Equivalent to 10 yrs imp after implementation of transitional provisions.	Dismissed. At [13] “...persons prepared to possess large quantities of high grade methyl must realise that they will face lengthy terms of imprisonment if apprehended – particularly so if their involvement is for commercial gain.” NB: The original sentence was imposed before the transitional provisions were in force.	805g.
22.	<i>Fragomeni v The State of Western Australia</i> [2011] WASCA 67 Delivered 23/03/2011	Convicted after trial – acquitted Ct 1 (poss methyl wiss 22.7g). Prior criminal record - incl murder (life imprisonment). Offences committed while on parole.	Ct 2: Poss methyl wiss 14g at 14 – 18% Ct 3: Poss methyl wiss 845g at 17 – 18% Various s 32 offences. Search warrant – located 3 quantities of methyl at premises occupied by appellant, in bumbag, shorts (ct 2) and safe (ct 3). Also located scales, replica pistol, \$6000 cash, clip seal bags.	Ct 2: 2 yrs imp. Ct 3: 10 yrs imp. s 32 sentences conc on sentences above. TES 10 yrs imp.	Dismissed. Sentence for ct 3 not outside the discretionary range and TES appropriate for the totality of the conduct.	859g.
21.	<i>Burton v The State of Western Australia;</i>	Both 23 yrs at time sentencing. Both convicted after fast-	1 x Poss MDMA wiss 1000 tablets 243.89g 5% 1 x Poss MDMA wiss 2554 tablets 623.22g 5%	2 yrs 6 mths imp. 3 yrs imp. TES 5 yrs 6 mths imp.	Dismissed – leave refused on papers. At [11] ‘The facts of this	867.11g.

	<p><i>Fielding v The State of Western Australia</i></p> <p>[2010] WASCA 192 Delivered 8/10/2010</p>	<p>track PG.</p> <p>Neither have prior criminal record.</p> <p>Neither have substance abuse problems; both have supportive families; good employment histories.</p> <p>Both committed to rehabilitation.</p>	<p>Mid level dealers - both dealing purely for financial gain.</p> <p>Travelled to Qld to acquire drugs. Planned the procurement of the drug, its subsequent sale or supply and calculated and estimated profit</p> <p>Both appellants engaged in joint activity, nothing to distinguish level of criminality (received same sentences).</p>	<p>Both remorseful.</p>	<p>case underscores the continuing need for strong deterrent sentences. The appellants knew what they were doing was illegal and risky but were prepared to take the risk because of the anticipated financial gains from the enterprise.'</p>	
20.	<p><i>MGM v The State of Western Australia</i></p> <p>[2012] WASCA 24 Delivered 31/01/2012</p>	<p>32 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Cooperated with police; agreed to give evidence against co-offender 1 which resulted in co-offender changing plea to PG.</p>	<p>1 x Supply MDMA 3677 tablets, 966 g, 23 % pure.</p> <p>Appellant and two co-offenders planned the import of MDMA into WA from NSW. The appellant purchased a vehicle in NSW on behalf of co-offender 1 with the intent of using the car to transport the MDMA in the car to WA where it would then be sold by co-offender 1. Appellant carefully concealed the MDMA in the car before sending it to WA. Co-offender 2 sourced and acquired the MDMA in NSW.</p> <p>Appellant did not stand to gain financially from offending himself but was aware co-offender 1 would derive financial benefit from the sale of the MDMA.</p> <p>Police became aware of the plan and intercepted the car on its arrival in WA, removing the drugs. Co-offender 1 searched the car but could not find the drugs – resulting in a charge of attempt to poss</p>	<p>2 yrs 6 mths imp.</p> <p>TES 2 yrs 6 mths imp.</p>	<p>Dismissed.</p> <p>At [51]-[53] Co-offender 2's sentencing contained material errors in assessment of his culpability and resulted in him receiving an unjustifiably lenient sentence. That sentence could not then properly form the basis for the appellant to challenge his sentence on a ground alleging disparity, particularly where the TES received by the appellant was at the low end of the customary range of sentences imposed.</p>	966g.

			<p>MDMA (as well as charges for 3 other unrelated drug offences). Co-offender 1 received TES 8 yrs imp).</p> <p>Police telephone intercepts revealed the extent and willingness of appellant's involvement in the planning and execution of the offending.</p> <p>Appellant and co-offender 2 were extradited from NSW (where they usually resided) to face charges. Co-offender 2 charged supplying MDMA and received TES 4 yrs 6 mths imp.</p>			
19.	<p><i>Galbraith v The State of Western Australia</i></p> <p>[2011] WASCA 70</p> <p>Delivered 23/03/2011</p>	<p>27 yrs at time offending.</p> <p>Convicted after fast track PG – however judge took view that this was a willingness to facilitate process but not that the plea demonstrated remorse, as he had no alternative with the evidence against him (caught 'red-handed').</p> <p>Offending breached SIO.</p> <p>Extensive prior criminal record - illicit drugs; weapons; traffic.</p> <p>Went to uni; dropped out in 3rd year after succumbing to drug use; addicted to illicit</p>	<p>1 x Poss methyl wiss 485g at 74% and 485.6g at 78%.</p> <p>7 x s 32 offences.</p> <p>Appellant was a passenger in front passenger seat of a taxi. Police stopped the taxi and located a black satchel belonging to the appellant. Satchel contained two clip-seal bags wrapped in plastic wrap, bubble wrap and brown tape. Police searched his house and found clip-seal bags, \$4850 cash, cutting agent and tick list. Argued that he was a courier, and owed someone \$23,000. Value 'in millions once they hit the streets'. Purity indicated close to source of supply.</p>	<p>9 yrs imp.</p> <p>s 32 sentences made conc, except for poss stolen property - 6mths imp imposed cum.</p> <p>Breached SIO cum on sentence.</p> <p>TES 10 yrs imp. EFP.</p>	<p>Dismissed.</p> <p>Sentence high but no error and within range.</p>	970.6g.

		substance since 20 yrs old. Had worked in a spa hire business then worked sporadically as a roof carpenter.				
18.	<i>Koncurat v The State of Western Australia</i> [2010] WASCA 184 Delivered 17/09/2010	Convicted after fast track PG. No relevant prior criminal record. Educated to yr 12; steady employment until 2006 when appellant was the subject misconduct allegations at work. Began using illicit drugs 2001 – became daily user methyl; drug use escalated after breakdown of marriage Diagnosed depression (prescribed medication) and ADHD; family support.	Ct 1: Poss MDMA wiss 4.09g at 18%. Ct 2: Poss MDMA wiss 1023.89g. Ct 3: Preparation MDMA. <u>s 32 offences:</u> 1 x Poss pill press. 1 x Unlawful poss \$2,500 cash. 1 x Unlawful poss \$13,125 cash. 1 x Driving under suspension. Significant producer and commercial dealer ecstasy – not user/dealer. Began making ecstasy pills to fund methyl habit but at time arrest making profit far in excess of cost of habit. Pill press not automated but it was effective and capable producing large amount pills.	Ct 1: 1 yr imp. Ct 2: 7 yrs imp. Ct 3: 4 yrs imp. 18 mths imp. 12 mths imp. 12 mths imp. \$500 fine. TES 8 yrs 6 mths imp. Remorse.	Dismissed. At [58] ‘It was bad enough that he had in his possession a large quantity of ecstasy, but it was clear that he was producing the drug, an aggravating feature rarely present in other cases which have come before this court. This feature warranted a total sentence of some severity.’	1027.98g. (1.02798kg).
17.	<i>Basilio v The State of Western Australia</i> [2010] WASCA 202	32 yrs at time offending. Convicted after trial. Prior criminal record - poss methyl and smoking implement charges. 3 children – aged 3, 11 & 14	Ct 1: Att to poss methyl wiss 869g at 55-59%. Ct 2: Att to poss methyl wiss 139g at 34-37%. Ct 3: Poss methyl wiss 17.7g at 39-58%. Ct 4: Poss MDMA wiss 6.86g. Commercial dealer at very high level - not a	Ct 1: 10 yrs imp. Ct 2: 6 yrs imp. Ct 3: 3 yrs imp. Ct 4: 2 yrs imp. TES 13 yrs imp. EFP.	Allowed. TES reduced to 10 yrs. At [26] ‘Having regard to the maximum penalty for these offences, the comparable cases, and the	1032.56g. (1.03256kg). 24.56g poss. 1008g att poss.

	Delivered 21/10/2010	yrs at time sentencing. Became addicted to methyl after grandmother passed away – began dealing initially to support habit.	street level dealer supporting own habit but at top end of supply chain in WA. <u>Ct 1:</u> Appellant sent three people interstate to collect drugs and provided \$187,000 to purchase. Couriers arrested at Perth airport with 869g subject of first attempt. <u>Ct 2:</u> Appellant lent car to another person and sent them to collect 10 ounces. Person collected the drugs and took them to house in Canning Vale where police arrested them – seized 139g. <u>Cts 3 & 4:</u> Search at appellant’s house then located 17.7g methyl and 6.86g MDMA plus scales, snap lock bags, vacuum sealer, glass smoking pipe and \$18,440 cash		circumstances of this offending, the TES imposed by the sentencing judge exceeded a sound discretionary range.’	
16.	<i>Cameron v The Queen</i> [2000] WASCA 286 Delivered 3/10/2000	Convicted after PG. Prior criminal record - dishonesty offences and malicious wounding (2 yrs imp).	1 x Poss methyl wiss 5268 tablets, 1.136kg at 3-4%. Committed offence to gain money.	9 yrs imp. TES 9 yrs imp. Equivalent to 6 yrs imp after implementation of transitional provisions. EFP.	Dismissed.	1136g. (1.136kg).
15.	<i>The State of Western Australia v Tran</i>	67 yrs at time offending. Convicted after early PG. Cooperated with police, prepared to testify against	1 x Poss methyl wiss 1.213kg at 50 – 56%. Befriended at Burswood casino by co-offenders, asked to hold large quantities of drugs in safekeeping which co-offender was	3 yrs 3 mths imp. TES 3 yrs 3 mths imp. EFP.	Dismissed. Sentence low but not so low as to warrant State appeal.	1213g. (1.213kg).

	<p>[2008] WASCA 183</p> <p>Delivered 2/09/2008</p>	<p>co-offenders.</p> <p>Vietnam migrant; war veteran; POW; heart disease; gout; high blood pressure; asthma.</p> <p>Limited contact with four children after separating from wife.</p>	<p>bringing to Perth from Sydney.</p> <p>Carried out role in offence from lower rung of criminal hierarchy receiving only small reward.</p>			
14.	<p><i>Ruvinovski v The State of Western Australia</i></p> <p>[2013] WASCA 204</p> <p>Delivered 30/08/2013</p> <p>I Ruvinovski</p> <p>(Co-offender V Ruvinovski – below)</p> <p>Co-offender of <i>Goddard v The State of Western Australia</i> [2014] WASCA 59</p>	<p>28 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal record including minor drug possession.</p> <p>Father imprisoned when 13 yrs (co-offender); maintained regular contact.</p> <p>Completed schooling; employed.</p> <p>Drug user.</p>	<p>1 x Conspiracy to sell/ supply prohibited drug (Methyl) 1.252 kg at 68-70 % purity.</p> <p>The appellant and his co-offender are father (Vlado) and son (Ivan).</p> <p>Vlado was involved in planning 4 shipments of methyl from NSW to WA. He collected cash from the buyers, delivered it to the courier and monitored the delivery of methyl. Ivan travelled to and from Sydney in order to aid the shipment of methyl by courier.</p> <p>The conspiracy relates to the fourth shipment. Evidence of their earlier shipments was accepted as being relevant in sentencing to show that the fourth shipment was not an isolated event. The methodology employed for each of the 4 shipments was similar. Each shipment would be sold to buyers in WA.</p> <p>On the fourth shipment officers from the</p>	<p>8 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge noted that offending involved a very substantial quantity of methyl of very high purity; consistent with the methyl being close to the source of manufacture.</p> <p>Ivan’s involvement in the mechanics of the conspiracy was greater than that of the courier.</p> <p>Clear the offence was not an isolated transaction but part of a commercial drug enterprise; part of a</p>	<p>Dismissed – on papers.</p> <p>At [42] This is not an isolated act by men of otherwise good character, rather it was the most recent transaction in an established criminal business to which both appellants had a demonstrated commitment.</p>	<p>1252g. (1.252kg).</p>

			Organised Crime Squad executed a search warrant at a motel where the courier was staying where 1.252 kg of methyl was located. Total value of drugs estimated at \$536,000 if sold in ounce quantities. Police later executed a search warrant of Vlado's car and found \$47,100 in cash. A search warrant of Ivan's house found equipment associated with drug dealing.	very well organised syndicate.		
13.	<p><i>Ruvinovski v The State of Western Australia</i></p> <p>[2013] WASCA 204</p> <p>Delivered 30/08/2013</p> <p>V Ruvinovski</p> <p>(Co-offender I Ruvinovski below)</p> <p>Co-offender of <i>Goddard v The State of Western Australia</i> [2014] WASCA 59</p>	<p>63 yrs at time sentencing.</p> <p>Convicted after late PG – following a ruling regarding the admissibility of evidence, including evidence of the 3 earlier shipments.</p> <p>Criminal record including conviction for serious drug offence.</p> <p>Migrated from Macedonia in 1970; married with 2 adult children.</p> <p>Long history of depression, chronic dysthymia, anxiety & crohns colitis; receipt of disability pension.</p>	<p>1 x Conspiracy to sell/ supply prohibited drug (Methyl) 1.252 kg at 68-70 % purity.</p> <p>The appellant and his co-offender are father (Vlado) and son (Ivan).</p> <p>Vlado was involved in planning 4 shipments of methyl from NSW to WA. He collected cash from the buyers, delivered it to the courier and monitored the delivery of methyl. Ivan travelled to and from Sydney in order to aid the shipment of methyl by courier.</p> <p>The conspiracy relates to the fourth shipment. Evidence of their earlier shipments was accepted as being relevant in sentencing to show that the fourth shipment was not an isolated event. The methodology employed for each of the 4 shipments was similar. Each shipment would be sold to buyers in WA.</p> <p>On the fourth shipment officers from the Organised Crime Squad executed a search warrant at a motel where the courier was</p>	<p>10 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge noted that offending involved a very substantial quantity of methyl of very high purity; consistent with the methyl being close to the source of manufacture.</p> <p>Clear the offence was not an isolated transaction but part of a commercial drug enterprise; part of a very well organised syndicate.</p> <p>Vlado had a more senior position than that of his son.</p>	<p>Dismissed – on papers.</p> <p>At [42] This is not an isolated act by men of otherwise good character, rather it was the most recent transaction in an established criminal business to which both appellants had a demonstrated commitment.</p>	<p>1252g. (1.252kg).</p>

			staying where 1.252 kg of methyl was located. Total value of drugs estimated at \$536,000 if sold in ounce quantities. Police later executed a search warrant of Vlado's car and found \$47,100 in cash. A search warrant of Ivan's house found equipment associated with drug dealing.	No suggestion he was a drug user.		
12.	<i>Neuman v The State of Western Australia</i> [2013] WASCA 70 Delivered 15/03/2013	55-56 yrs at time offending. 57 yrs at time sentencing. Convicted after late PG. Prior WA criminal record – including poss MDMA wiss. Prior Qld criminal record – cultivation cannabis. Marriage breakdown. Suffered major depression.	Ct 1: Conspire to poss methyl wiss Ct 2: Poss methyl wiss 394.6g at 22-24% Ct 3: Poss methyl wiss 860.9g at 46-75% Ct 4: Poss methyl wiss 18.2g at 22% <u>Ct 1:</u> Between 30 August 2010 and 11 September 2010, the appellant conspired with Cookson (now deceased) to import an unknown quantity of methyl from Sydney into WA. The appellant's associates Cameron, Cookson and Crews, collected amounts owing by third parties, for the sale or supply of prohibited drugs, to fund the purchase of methyl. Cameron transferred the funds to Sydney, where the purchase was facilitated by another of the appellant's associates, Tresnjo. Cameron delivered the methyl to Perth. <u>Ct 3:</u> At a later date in September, police executed a search warrant at a home unit in Perth. The appellant and Cameron were found removing methyl from 4 unwrapped packages containing a total of 860.9 g of the drug ranging from 46-75%. The methyl in	Ct 1: 3 yrs imp (conc ct 3). Ct 2: 2 yrs imp (cum ct 3). Ct 3: 10 yrs imp. Ct 4: 3 yrs imp (cum ct 3). TES 15 yrs imp. Sentencing judge noted that the high degree of purity of the 860.9 of methyl indicated the appellant was close to the source of manufacture. The appellant was the leader of the group and the TI demonstrated he made executive decisions within the group. At a high level in the chain of distribution.	Dismissed. At [37] The appellant's offending in relation to count 3 was very serious: <ul style="list-style-type: none"> • The quantity was very large (860.9 g). • The diluted material would have weighed about 3.8kg. • The appellant was at a high level in the chain of drug distribution. He made the executive decisions and although a drug user, carried on a drug dealing business and derived substantial commercial profits from it. • The methylamphetamine was close to the source of manufacture. At [40] Sentence imposed	1273.7g. (1.273kg).

			<p>the 4 wrapped packages had been divided in 16 bags weighing about 28.3g each (averaging 59.4% purity) and 4 bags weighing about 100g each (averaging 70.75 purity).</p> <p><u>Ct 2:</u> On the same date at the unit, police located a set of digital scales and 394.6g of methyl in a plastic container which has been hidden behind a fire hose reel in the foyer outside the unit. Most of the drug had a purity of between 22-24%. Police also located \$7100 cash in the appellant's bag. Police then carried out a search at the appellant's home in Burswood. They found a black 'man bag' on the rear seat of his Porche Cayenne motor vehicle. The bag contained a loaded Glock handgun. The manufacturer's serial number had been removed.</p> <p><u>Ct 4:</u> The appellant whilst on bail for Cts 1-3, was apprehended by police at the Burswood resort complex. He was in possession of 18.2g of meth with a purity of 22%, a set of electronic scales, \$5000 cash in a black bag, \$1545 cash in his wallet and a 'tick list'. Police also seized a further \$70,050 cash from the appellant's hotel room.</p>	<p>Drug user, but not dealing merely to fund his own habit.</p> <p>There was a 'high level of commerciality' involved in the offending.</p>	<p>before s 9AA <i>Sentencing Act</i>.</p> <p>At [42] Although the appellant pleaded guilty and was entitled to some credit for the pleas, they were late and made in the face of a strong prosecution case.... Any remorse he experience appears to have arisen only when he reflected upon the inevitability of the outcome of the proceedings.</p> <p>At [50] The possession of the loaded handgun and the facts and circumstances of the offending as a whole indicate that these offences were committed by a group of people in organised crime. The appellant was the principal offender in a drug dealing syndicate.</p> <p>At [53] There was very little by way of mitigation. It comprised mainly the appellant's late pleas of guilty. As to his</p>	
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					age, the appellant will be 69 when he becomes eligible for parole and he will be 71 when he completes the sentences.	
11.	<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. Equivalent to 6 yrs 8 mths imp after implementation of transitional provisions.	Dismissed. NB: The original sentence was imposed before the transitional provisions were in force.	1500g. (1.5kg).
10.	<i>Gulyas v State of Western Australia</i> [2007] WASCA 263 Delivered 29/11/2007	79 yrs at sentencing. No prior convictions in WA - co-operated with police. No history of substance abuse. First wife died 1971; remarried; second wife die after illness in 1993 or 1994; lonely and socially isolated. Diagnosed with prostate cancer (not known at sentencing).	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%. Course conduct between 20 Oct 2005 and 18 Feb 2006 - sentenced on basis purely for financial gain (even though not leading extravagant lifestyle). Cts 1 & 2: Relate to actual sale drugs. Ct 3: Police search after appellant's car stopped. Cts 4 & 5: Search of the appellant's house – also	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. TES 9 yrs imp. Low risk re-offending .	Dismissed. Summarises relevant comparative cases before and after transitional provisions.	1931.7g. (1.9317kg).

			discovered scales, notebooks containing a record of drug transactions, clip-seal bags and \$186,000 cash. <u>Ct 6:</u> Search of appellant's house after he was in prison.			
9.	<i>The State of Western Australia v Atherton</i> [2009] WASCA 148; (2009) 197 A Crim R 119 Delivered 25/08/2009	44-45 yrs at time offending. Convicted after trial. Cts 8 & 9 committed whilst on bail for cts 1-7. Minor prior criminal record - had not previously served a term of imprisonment.	Ct 1: Poss methyl wiss 142.2g at 9-10%. Ct 2: Poss methyl wiss 855.4g at 13%. Ct 3: Poss cannabis wiss 50.4g. Ct 4: Poss cannabis wiss 133g. Ct 5: Poss cannabis wiss 353g. Ct 6: Poss MDMA wiss 655g at 28%. Ct 7: Poss MDMA wiss 342g at 9%. Ct 8: Poss methyl wiss 28.7g at 19 – 33%. Ct 9: Poss MDMA wiss 31.77g at 28-30%. Quantities of drugs and cash found indicated higher level of commercial dealing.	Ct 1: 3 yrs 4 mths imp. Ct 2: 6 yrs 8 mths imp. Ct 3: 8 mths imp. Ct 4: 8 mths imp. Ct 5: 12 mths imp. Ct 6: 5 yrs 4 mths imp. Ct 7: 3 yrs 4 mths imp. Ct 8: 16 mths imp. Ct 9: 16 mths imp. TES 8 yrs imp. EFP.	Allowed. TES increased to 11 yrs imp. At [175]-[179] Sentences imposed for cts 1, 2, 6 and 7 outside range of sound exercise of sentencing discretion in that they were manifestly inadequate.	2055.07g. (2.05507kg)
8.	<i>Bahn v The State of Western Australia and Luu v The State of Western Australia</i> [2008] WASCA 40	Both appellants convicted after PG – joint indictment with same charges. <u>Bahn:</u> 35 yrs at time sentencing. No relevant prior criminal record. Good work record;	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. Arrests result organised crime investigation involving phone intercepts, surveillance and undercover operative. <u>Luu:</u>	5 yrs imp. 4 yrs imp. 8 yrs imp. TES 10 yrs imp. Sentences same for each appellant.	Dismissed. Some summary of comparative cases for each offence in judgement.	3000g. (3kg). 10,000 tablets. 1000g supply. 2000g conspire sell. 10,000 tablets offer.

	Delivered 28/02/2008	offending out of character. <u>Luu:</u> 23 yrs at time offending. 27 yrs at time sentencing. No prior criminal record. Well educated; remorseful; became involved drugs following relationship breakdown; attempts at rehabilitation.	Offending way clearing drug debts and for personal financial gain. <u>Bahn:</u> Amphetamine user and financial difficulties led to offending.			
7.	<i>Bond v The State of Western Australia</i> [2011] WASCA 123 Delivered 1/06/2011	23 yrs at time offending. 22 yrs at time offence planned. Convicted after PG – TOI as to whether appellant courier or drug dealer. De facto partner pregnant with first child; hard working.	1 x Poss methyl wiss 3.061kg at 3-7%. Planned act done for personal financial gain. Characterised in sentencing as higher end courier. Appellant driving from NSW to WA. Car stopped and searched at Eucla. 4 bags containing 881g at 7%, 878g at 7%, 882g at 6% and 420g 3% methyl found concealed in car.	9 yrs imp. TES 9 yrs imp. EFP.	Allowed. TES reduced to 7 yrs imp. EFP. Sentencing Judge made an error as to the time at which appellant PG – not known if appellant received full benefit of plea.	3061g. (3.061kg).
6.	<i>Kirby v The Queen</i> [2003] WASCA 164 Delivered 31/07/2003	40 yrs at time offending. Convicted after early PG. Prior criminal record of serious drug convictions.	1 x Poss cocaine wiss 4.85g at 25%. 1 x Poss amphetamine wiss 3.168kg at 9-10%. 3 x s 32 convictions (not drug related). Characterised as being involved in commercial drug dealing. Appellant stopped and searched while riding	4 yrs imp. 9 yrs imp. 6 mths, 3 mths, 3 mths imp. TES 9 yrs imp. Equivalent to 6yrs imp	Dismissed – within proper range.’ At [144] “Courts must impose sentences which will operate as a real deterrent to those who may be minded to involve themselves in the business	3172.85g. (3.17285kg).

			motorbike. Initially co-operated but became aggressive when police wanted to search underpants. Appellant ran from police and was seen to remove something from his pants and throw it away. Appellant detained and drug dog found clipseal bag containing white powder in vegetation. Also found \$928 cash on appellant in search. Appellant's property then searched – found Tupperware container buried near water tank adjacent to the house. Container had 7 vacuum sealed bags inside (3.168kg amphetamine). Also found amphetamine residue in bags in bin, on kitchen sink and bench and on set scales found. Police also found \$363,700 cash buried in 5 different spots on the property, unlicensed ammunition and firearms.	after implementation of transitional provisions. EFP.	of drug dealing'. At [150] cocaine and amphetamine in highest category of drugs for sentencing purposes. NB: The original sentence was imposed before the transitional provisions were in force.	
5.	<i>Kitis v The State of Western Australia</i> [2013] WASCA 34 Delivered 11/02/2013 Co-offender of <i>Ozan v The State of Western Australia</i> [2011] WASCA 27 Co-offender of	29 yrs at time of sentencing. Convicted after late PG. Minor prior criminal record – three prior convictions for drug-related offences – simple possession only. Partner & young children. Full time employment. Regular user of illicit drugs.	Ct 5:Att poss methyl wiss 4.983kg at 53-69% Ct 6: Poss methyl wiss 207.6g at 22% <u>Ct 5:</u> An arrangement was made by others for a large quantity of methyl to be concealed in a motor vehicle and transported from Sydney to Perth by truck. The vehicle left Sydney in the custody of a transport company and intercepted by Police in Adelaide. Police located 4.983 kg of meth valued at about \$2,489,000. Police replaced the drugs with an inert substance. The vehicle continued its journey to Perth. On its arrival in Perth, the motor vehicle was	Ct 5: 9 yrs imp. Ct 6: 3 yrs imp. (reduced from 5 yrs in the application of the totality principle). Served cumulatively TES 12 yrs imp. EFP. The appellant knew, in the context of Ct 5, that he was involving himself in a 'significant	Dismissed. At [41] It was appropriate for his Honour to order some accumulation of the appropriate sentence for count 5 and the appropriate sentence for count 6. They were separate and distinct offences.	5190.6g. (5.190kg).

	<i>Milenkovski v The State of Western Australia</i> [2014] WASCA 48		<p>collected and driven to a car park in Bayswater. Later the appellant collected the keys of the motor vehicle and drove the vehicle to his brother's house. He was followed by a co-accused in another vehicle. On arrival, the appellant and co-offender removed the spare tyre containing the inert substance (which they believed to be meth). The appellant placed the spare tyre in a shed in the backyard. The appellant and co-offender then left.</p> <p>A little later, police attended and located the spare tyre.</p> <p><u>Ct 6:</u> Later that evening, police executed a search warrant at the appellant's house. When police arrived, the appellant ran from them and threw items over the fence between his backyard and his neighbours. Police searched both properties and located 207.6g of meth. The value of the methyl was about \$103,000. Police also found two sets of scales, \$17,000 cash, a 12-gauge shotgun and various small quantities of MDMA and cocaine which were the subject of summary charges.</p>	dealing' involving a 'significant quantity of drugs'.		
4.	<i>Ozan v The State of Western Australia</i> [2013] WASCA 27	<p>25 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after late PG.</p> <p>No relevant prior criminal record.</p>	<p>Ct 1:Supplied methyl wiss 2.675kg at 17-19% Ct 3:Att supply methyl wiss 4.983kg at 53-69%</p> <p><u>Ct 1:</u> An arrangement was made by others for methyl to be concealed in a motor vehicle</p>	<p>Ct 1: 2yrs imp. (reduced from 9 yrs in the application of the totality principle).</p> <p>Ct 3: 12 yrs imp. Served cumulatively.</p>	<p>Dismissed.</p> <p>At [76] Ordinarily there will be no material difference in culpability between an attempt and a completed offence involving drug dealing</p>	7658g. (7.658kg.)

<p>Delivered 11/02/2013</p> <p>Co-offender of <i>Kitis v The State of Western Australia</i> [2013] WASCA 34</p> <p>Co-offender of <i>Milencovski v The State of Western Australia</i> [2014] WASCA 48</p>	<p>Positive childhood with caring & loving parents.</p> <p>Strong relationship with his wife.</p> <p>Completed Year 12 and part completion of Diploma in Network Engineering.</p> <p>Good employment history.</p> <p>Good health.</p>	<p>and transported from Sydney to Perth by truck.</p> <p>The appellant, who resided in Sydney, purchased a motor vehicle in which the methyl was to be concealed and delivered and arranged for it to be transported in a truck from Sydney to Perth.</p> <p>The appellant subsequently travelled from Sydney to Perth on a commercial flight. On arrival, the appellant collected the vehicle from the transport company and drove it to a hotel car park and removed the methyl.</p> <p>The appellant met with a co-offender and delivered the drugs to him. Police searched the co-offender's residence and discovered 2.675kg of methyl with purity ranging between 17-19%. The drugs had a value of \$1,300,000.</p> <p><u>Ct 3:</u> A further arrangement was made by others for methyl to be concealed in a motor vehicle and transported from Sydney to Perth by truck.</p> <p>The appellant was again responsible for the purchase of a motor vehicle in which the methyl was concealed and delivered to a transport company.</p> <p>The vehicle was intercepted by Police in Adelaide.</p> <p>Police located 4.983 kg of meth ranging between 53-69% & valued at about \$2,489,000. Police replaced the drugs with an inert substance. The vehicle continued its</p>	<p>TES 14 yrs imp.</p> <p>EFP.</p> <p>The appellant's role was more than a mere courier.</p> <p>The sentencing judge was not satisfied on the balance of probabilities that the appellant had committed either offence under duress or threat.</p>	<p>where the intervention of law enforcement agencies to replace a prohibited drug with an inert substance prevents the commission of the completed offence.</p> <p>At [88] It was proper for the sentencing judge to order some accumulation of the appropriate sentence for count 1 and the appropriate sentence for count 3. They were separate and distinct offences.</p>
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			<p>journey to Perth. The appellant subsequently travelled from Sydney to Perth on a commercial flight. The appellant collected the vehicle from the transport company and drove it to a carpark and passed on the keys to a co-offender. The vehicle was then driven in convoy to a co-offender's house where the inert substance (which they believed to be methyl) was removed and stored.</p>			
3.	<p><i>Sinagra-Brisca v The Queen</i> [2004] WASCA 68 Delivered 7/4/2004</p>	<p>Convicted after fast-track PG – in face strong prosecution case.</p> <p>Prior drug convictions – poss wiss amphetamines and MDMA (3 yrs imp.)</p> <p>Good upbringing; stable employment.</p> <p>Gambling problem; substance abuse problem; very low IQ with significant deficits in verbal cognitive skills (partly due to drug use); lacking social skills.</p>	<p>Ct 1: Poss MDMA wiss 10 000 tablets, 2.4kg at 27%. Ct 2: Poss methyl wiss 5.06kg at 21 – 50%. Ct 3: Poss methyl wiss 800g at 28 – 70%. Ct 4: Poss MDMA wiss 55 tablets, 14g at 18%.</p> <p>Significant drug dealer in a well-organised syndicate. Attempted to sell drugs interstate. Arrest came after covert police operation</p> <p>10 000 tablets found in vehicle, subsequent charges resulted from search of properties. Also found \$8000 cash, scales, clip-seal bags, cutting agent.</p> <p>Appellant rented unit in false name for purpose storing and preparing drugs.</p>	<p>Ct 1: 17 yrs 6 mths imp. Ct 2: 17 yrs 6 mths imp. Ct 3: 3 yrs imp. Ct 4: yrs imp.</p> <p>TES 20 yrs 6 mths imp.</p> <p>Equivalent to 13yrs 4 mths imp after implementation of transitional provisions.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>Adequate discount for guilty plea, more acceptance of inevitable prosecution than genuine remorse.</p> <p>No further mitigation required for property confiscation, offender failed to lead evidence property sourced from non-drug related funds.</p> <p>TES not disproportionate to conduct.</p> <p>NB: The original sentence was imposed before the transitional provisions were in force.</p>	8274g. (8.24kg).
2.	<p><i>Penney v The State of Western</i></p>	<p>37 yrs at time offending. 38 yrs at sentencing.</p>	<p>1 x Poss cocaine wiss 3.09kg at 64%. 1 x Poss methyl wiss 5.76 kg at 10 – 12%. 3 x s 32 offences.</p>	<p>9 yrs imp. 4 yrs imp. 18 mths; 1 mth; 1 mth</p>	<p>Dismissed.</p> <p>Sentence high but within</p>	8850g. (8.85kg).

	<p>Australia</p> <p>[2011] WASCA 71</p> <p>Delivered 23/03/2011</p>	<p>Convicted after PG. No relevant prior criminal record.</p> <p>Mental disorder – relevant to risk re-offending not culpability.</p> <p>Excellent work record. Used 3.5 g methyl and 5 g cocaine each day.</p>	<p>More than a courier but not the ‘principal’ in the distribution network. Primary motivation to pay off debts – commercial gain.</p> <p>Vehicle (hire car from Sydney) stopped by police driven by associate of the appellant, appellant asleep in the vehicle. Searched vehicle finding drugs in scuba diving equipment and keys that opened a factory and a caravan. Heat sealing machines, heat seal bags, digital scales, boxes of rubber gloves, face mask, elastic bands, envelope, Alinta gas account addressed to appellant, filter components from an air extractor unit, 2 hard covered books containing figures, money counting machine and \$854,550 cash.</p>	<p>imp.</p> <p>TES 13 yrs imp.</p> <p>EFP.</p> <p>Low risk of re-offending; evidence of remorse and acceptance of personal responsibility</p>	<p>sound range.</p>	
1.	<p>Mikulic v The State of Western Australia</p> <p>[2011] WASCA 127</p> <p>Delivered 8/06/2011</p>	<p>48 yrs at time sentencing.</p> <p>Convicted after PG after 5 days trial (12 prosecution witnesses testified). PG to Cts 2, 4, -10 accepted in full satisfaction of indictment.</p> <p>No prior criminal record.</p>	<p>Ct 2: Att to poss MDMA wiss 8.832kg. Ct 4: Att to poss methyl wiss 3.108kg at 23-26%. Ct 5: Poss MDMA wiss 1.23kg. Ct 6: Poss MDMA wiss 1.921 kg. Ct 7: Poss cocaine wiss 19.15g at 76-80%. Ct 8: Poss methyl wiss 2.07g at 26-27%. Ct 9: Poss MDMA wiss 8.59g. Ct 10: Poss methyl wiss 2.98g at 25%.</p> <p>Involved in drug dealing at high level – planned, financed and facilitated inter-State importation drugs subject cts 2 & 4. Financial motivation. Close to the source manufacture.</p>	<p>TES 12 yrs imp.</p>	<p>Dismissed.</p>	<p>15,123g. (15.123kg).</p> <p>3183.79g poss. 11,490g att poss.</p>

			<p><u>Cts 2 & 4:</u> Drugs in possession 2 co-offenders (one of whom is the appellant's brother) and were found when police searched a car at Eucla. Drugs were hidden in a steel tube. Co-offenders has driven car from Perth to Sydney to purchase drugs and were returning to Perth. Sydney.</p> <p><u>Ct 5:</u> Appellant's home searched as result of the above and drugs subject ct 5 found. Also found note books with details of drug names, measurements and prices and over \$30,000 cash.</p> <p><u>Ct 6, 7 & 8:</u> Police found handbag containing drugs subject cts 6, 7 & 8 in bushland on golf course 7-8m from rear of appellant's home.</p> <p><u>Cts 9 & 10:</u> Police searched property in Lancelin owned by appellant. Found drugs subject cts 9 & 10, as well as heat sealing machine, digital scales, note books and pares detailing drug weights and transactions.</p> <p>Wife also charged and convicted.</p>			
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