

Unlawful Assault Occasioning Death

s 281 *Criminal Code*

From 1 January 2014

Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
agg	aggravated
burg	burglary
sex pen	sexual penetration without consent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
max	maximum
TES	total effective sentence
CRO	community release order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
1.	<p><i>The State of Western Australia v Smith</i></p> <p>[2019] WASCA 42</p> <p>Delivered 06/03/2019</p>	<p>18 yrs 6 mths at time offending.</p> <p>Convicted after early PG (20% discount).</p> <p>No prior criminal history; traffic convictions in Children's Court.</p> <p>Aboriginal; good upbringing; exposed to some alcohol as a child.</p> <p>Youngest child of parent's union; parents separated aged 10 yrs; after which lived with an older brother; returned to live with his father aged 16 yrs.</p> <p>Educated to yr 11.</p> <p>Never held full-time employment.</p> <p>Single; no children.</p>	<p>1 x Unlawful assault causing death.</p> <p>The deceased was aged 33 yrs.</p> <p>Smith was at a family party. He was intoxicated.</p> <p>The deceased challenged Smith to a fight when he became involved in a verbal altercation with the deceased's sister. He initially did not want to fight but the deceased continued to challenge him.</p> <p>The two were fighting each other on the road when a police vehicle on routine patrol approached. The deceased dropped his guard and approached the vehicle. As he did so Smith punched him once, hard, to the head with his clenched fist.</p> <p>The punch was unexpected and caused the deceased to fall to the ground and hit his head on the bitumen. He started convulsing and fell unconscious.</p> <p>When instructed by police to stay where he was Smith racially abused the officers before running from the scene.</p> <p>The deceased was conveyed by ambulance</p>	<p>2 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the respondent probably did not realise the deceased was seriously injured and that he did not mean to kill the deceased or cause him serious injury.</p> <p>The sentencing judge found the offence was too serious to impose a sentence of suspended imp.</p> <p>The sentencing judge took into account the increase in the max penalty for the offence from 10 yrs to 20 yrs imp.</p> <p>Respondent remorseful; insight into the effect of his offending; good prospects of rehabilitation.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence.</p> <p>Re-sentenced to: 4 yrs 9 mths imp.</p> <p>EFP.</p> <p>At [25] ... A sentence of only 10% of the max penalty fails to reflect the seriousness of the offence, even taking account of the substantial mitigating factors in the respondent's favour ... While the offence is not in the most serious category, the respondent brazenly inflicted a heavy blow to the head of an unsuspecting victim who was walking towards the onlooking police officers. [The] sentence ... imposed</p>

			to hospital and placed on life support. He died the following day from his head injury.		in this case fails to properly reflect the high value of human life, or to have an appropriate deterrent effect.
<p><i>Transitional Provisions Repealed (14/01/2009)</i> <i>Transitional Provisions Repealed (08/02/2017)</i></p>					