

Attempted armed robbery & Assault with intent to rob

from an individual, committed on smaller establishments, using a syringe

ss 552, 392 and 393 *Criminal Code*

From 1 January 2014

Transitional Sentencing Provisions: This table is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period (from 14/01/2009 31/08/2003)
- Transitional provisions period (between 31/08/2003 and 14/01/2009)
- Pre-transitional provisions period (pre 31/08/2003)

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

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
EFP	eligible for parole
indec	indecent
pen	penetrate
TES	total effective sentence
CRO	conditional release order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
7.	<p><i>Gittos v The State of Western Australia</i></p> <p>[2016] WASCA 7</p> <p>Delivered 13/01/2016</p>	<p>29 yrs at time offending.</p> <p>Conviction after PG (10% discount for indictable offences; 15% for section 32 offences).</p> <p>Criminal history, including violent offences.</p> <p>Dysfunctional childhood; ADHD as a child.</p> <p>Left school at age 14; good employment history.</p> <p>No contact with three children.</p> <p>Supportive new partner.</p> <p>Substance abuse from age 13.</p>	<p><u>Indictment</u> Ct 1: Agg armed robbery. Ct 2: Agg armed assault with intent to rob.</p> <p><u>Section 32 Notice</u> Ch 1: Criminal damage. Ch 2: Agg assault. Ch 3: AOBH. Ch 4: Drive MV with number plates not issued for that vehicle. Ch 5: Poss drug paraphernalia containing methyl.</p> <p><u>Ct 1</u> The appellant was the front seat passenger in a car that drove up and parked outside the victim's house. The appellant demanded \$150 from the victim, through the open car window. The victim stated that he did not have any money.</p> <p>The appellant pointed a double-barrelled shotgun at the victim at very close range, through the open car window. He demanded the victim give all property he was carrying. The victim complied. The appellant then stated "Bring the \$150 in cash to [a stated address] within the hour, or I'll blow your fucking head off".</p> <p><u>Ct 2</u> 40 minutes later, the victim attended the stated address with two others, to give the appellant \$100. The appellant aimed the shotgun at the victim and</p>	<p><u>Indictment</u> Ct 1: 4 yrs imp. Ct 2: 3 yrs 6 mths imp to start 6 mths after Ct 1 (conc).</p> <p><u>Section 32 Notice</u> Ch 1: 8 mths imp. Ch 2: 6 mths imp. Ch 3: 10 mths imp. Ch 4: \$200 fine. Ch 5: 2 mths imp (cum).</p> <p>Ch 1-3 conc with each other, but cum with sentence on ch 5.</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found that the appellant's acceptance of responsibility and remorse for cts 1 and 2 were qualified by the appellant showing little insight into his offending.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p> <p>At [30] Both indictable offences ... involved...an apparent element of premeditation and planning, albeit of a simple kind. They were calculated to force the first complainant to pay to the appellant money he considered he was owed from a drug transaction. Both involved the use of a firearm which was not simply brandished by the appellant ... Each act was accompanied by what was, in effect, a threat to kill. .. The fact that a firearm was used, and the manner in which it was used, make these offences</p>

			<p>then pressed the barrels of the shotgun against his head. The appellant demanded an additional \$300 from the victim and made similar threats as earlier.</p> <p>The victims left and reported the incidents to police.</p> <p><u>Section 32 Notice</u> The second victim is the mother of the appellant's 10-mth-old son.</p> <p>In attempt to gain entry to the victim's house, the appellant caused substantial damage to the garage door (ch 1). The appellant gained entry through a window and, in the presence of their son, repeatedly punched and kicked the second victim's mother (ch 2). The appellant then punched the second victim in the face while she was carrying their son (ch 3).</p> <p>On another date, the appellant drove a car with number plates that were not issued for that car (ch 4). A glass pipe containing traces of methyl was found in the car (ch 5).</p>	<p>Sentencing judge found significant qualifications on the appellant's prospects of rehabilitation.</p>	<p>particularly serious.</p> <p>At [32] The [section 32] offences ... were also serious offences. Again, these offences were not the result of a momentary aberration ... Given the nature of the assaults, it is only a matter of good fortune that the victims did not suffer more serious injuries.</p> <p>At [33] In relation to these [section 32] offences, there appears on the part of the appellant to have been no acceptance of responsibility, remorse or insight, apart from the pleas of guilty and the appellant's understanding of his anger management problem.</p> <p>At [34] ... there is cause for concern about the appellant's</p>
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					prospects of rehabilitation and that without substantial change on the appellant's part there is a real risk that he will reoffend.
6.	<p><i>Lawson v The State of Western Australia</i></p> <p>[2015] WASCA 178</p> <p>Delivered 02/09/2015</p>	<p>25 yrs at time offending; 26 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Criminal history, including convictions of agg armed robbery and agg robbery.</p> <p>Born in New Zealand; parents separated soon after birth; no contact with father; mother abused alcohol and suffered domestic violence from partner.</p> <p>Significant problem with methyl; appellant using daily since late teens; used methyl at time offending.</p> <p>Had difficulties with transition into the community on release from</p>	<p>Att armed robbery x 1.</p> <p>The appellant went to a convenience store wearing a cap with the hood of his jumper over the top. He waited until just before the store was about to close before entering.</p> <p>At the counter, the appellant produced a syringe, pointed it towards a staff member and demanded money.</p> <p>The staff member, fearing for his personal safety, backed away from the appellant and armed himself with a hockey stick. The appellant fled from the store without obtaining the money.</p> <p>The appellant ran to a stolen car. The staff member followed the appellant to the car and struck the car with the hockey stick. The appellant drove away.</p>	<p>3 yrs 8 mths imp.</p> <p>EFP.</p> <p>Sentencing judge was satisfied that the appellant went to the store with the intention of carrying out a robbery and that he had used the syringe in a way that caused the store keeper to believe that he was being threatened with being infected with a virus.</p> <p>Some remorse; regretted the fear that he had caused to the shop attendant.</p>	<p>Dismissed – on papers.</p> <p>At [24] ... the fact that on release from prison the appellant had returned to drug use and to criminal offending heightened the need for personal deterrence and protection of the community.</p> <p>At [32]-[38] Discussion of comparable cases.</p> <p>At [39] The appellant's failure to obtain money was through no lack of effort on his part but due to the unexpected response of the shopkeeper. Unlike most of the other cases involving att armed robbery that the</p>

		previous term of imp.			<p>appellant referred to, there was an almost complete absence of any mitigating factors in the case of the appellant, other than the PG. Personal deterrence and community protection loomed large given the appellant's history of similar offending.</p> <p>At [40] While the sentence imposed on the appellant is longer than sentences imposed in the cases cited by him, it remains broadly consistent with them. In the particular circumstances of this case a sentence of the magnitude imposed was open in the proper exercise of sentencing discretion.</p>
5.	<i>Wallam v The State of Western Australia</i> [2015] WASCA	19 yrs at time sentencing. Convicted after PG. Lengthy criminal history,	Ct 1: Stealing a motor vehicle. Ct 2: Agg assault with intent to rob. Ct 3: Agg armed robbery. <u>Ct 1:</u>	Ct 1: 9 mths imp (conc). Ct 2: 5 yrs 6 mths imp. Ct 3: 4 yrs 6 mths imp (conc).	Allowed. Resentenced to: Ct 1: 6 mths imp (conc).

<p>132</p> <p>Delivered 29/06/2015</p>	<p>including violent offending.</p> <p>Parents separated when aged 14; talented footballer; educated to yr 10; no employment history.</p> <p>Appellant had a chronic major depressive episode with significant anti-social personality traits.</p> <p>Using alcohol and drugs at time offending.</p> <p>At time offending, appellant serving a 12 mth CSIO for offence of agg rob. Order breached by bail offence and failing to attend supervision appointments.</p>	<p>The appellant was a passenger in a stolen car. He travelled in it knowing it to be stolen and became a party to the offence of stealing by that conduct.</p> <p><u>Ct 2:</u> The stolen car was driven through the car park of a shopping centre. The appellant got out of the car and yelled out to a young woman demanding that she hand her handbag to him. The appellant tried to pull the bag away from her and in the ensuing struggle he struck her to the side of the head with a clenched fist. He continued to demand the handbag and struck the victim to the head several times as she lay on the ground. He was then joined by the driver of the vehicle who also assaulted the victim and a female friend of the victim who was trying to assist. The appellant and his co-offender ran off without the bag.</p> <p>The appellant subsequently identified his cousin as being driver of the car.</p> <p><u>Ct 3:</u> The appellant entered a liquor store armed with a machete and approached the counter demanding money. The attendant began to open the tills to get out money and while the appellant menaced him with the machete. After being given a quantity of cash the appellant stole a four pack of pre-mixed alcoholic drinks and left the store.</p>	<p>Breach of CSIO: 12 mths imp (cum).</p> <p>TES 6 yrs 6 mths imp.</p> <p>Sentencing judge accepted that the appellant's mental illness diminished his ability to think rationally.</p> <p>Psychiatric report noted that the risk of reoffending was assessed as being at the higher end of the spectrum.</p>	<p>Ct 2: 4 yrs 9 mths imp. Ct 3: 4 yrs imp (conc).</p> <p>Requirement to serve previously susp sentence was unaffected.</p> <p>TES 5 yrs 9 mths imp.</p> <p>At [34]-[40] Discussion of comparable cases.</p> <p>At [47] The first two offences were committed within two weeks of that [CSIO] sentence being imposed. To offend in these circumstances shows contempt for the law.</p> <p>At [56] In respect of ct 2 his Honour reduced the sentence by 18 mths, but this is less than the 25% that he said he would allow.</p> <p>At [57] ... it is apparent that the discounts for</p>
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					PG were the only reductions allowed in respect of all three cts. This is not consistent with the fact that the sentencing judge acknowledged that the appellant's youth, limited cooperation and mental illness were deserving of some weight.
4.	<p><i>Jose v The State of Western Australia</i></p> <p>[2015] WASCA 13</p> <p>Delivered 20/01/2015</p>	<p>19 yrs at time offending.</p> <p>Convicted after early PG.</p> <p>Lengthy juvenile criminal history including common assault, threats to kill and threats to injure.</p> <p>Two young children from different relationships; has partner.</p> <p>Emotionally immature; below-average intelligence.</p> <p>Significant alcohol problem.</p>	<p>Att armed robbery x 1.</p> <p>At 9.45pm on 25 February 2013, the appellant and co-offender entered the Reading Cinema complex in Mandurah armed with metal poles and faces covered.</p> <p>They demanded the keys to the cash registers from one of the two employees. The employee was unable to provide the keys, so the appellant and co-offender went behind the counter and unsuccessfully attempted to force open the cash registers. They hit things with the metal poles. The cash registers were damaged. Eventually, they left the complex empty handed.</p> <p>They were apprehended by police soon afterwards and the appellant essentially admitted the offence. The offending was recorded by CCTV.</p>	<p>2 yrs 9 mths imp.</p> <p>EFP.</p> <p>PG and youth important factors in mitigation.</p> <p>Limited comprehension of consequences of offending behaviour on victims.</p> <p>High risk of violent re-offending; could be reduced if substance abuse and other issues addressed.</p>	<p>Dismissed - on papers.</p> <p>At [22] Without question, the offence was serious... Although the offence was an attempt, the offenders did not fail to achieve their aim for any want of trying. While no actual physical injury was inflicted upon the victims, that ignores the potential for such injury in offences of the kind committed by the appellant and the psychological effects that may readily be inferred as a</p>

					consequence of his behaviour.
3.	<p><i>Adams v The State of Western Australia</i></p> <p>[2014] WASCA 191</p> <p>Delivered 28/10/2014</p>	<p>44 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>No relevant criminal history.</p> <p>Parents separated when 3 yrs old; raised by his mother; very difficult upbringing.</p> <p>Previously married; long term relationship; no children.</p> <p>Former AFP, Customs and Immigration officer.</p>	<p><u>Indictment</u></p> <p>Deprivation of liberty x 1. Att armed robbery x 1. Armed robbery x 1. Fraud x 9. Attempted fraud x 9. Possess identification material w/i to commit an offence x 1.</p> <p><u>Section 32 Notice</u></p> <p>Stealing Commonwealth property x 1. Bringing stolen goods into State x 1. Stealing x 2. Poss prohibited weapon x 3. Poss controlled weapon x 1. Unlicensed ammunition x 1. Possess stolen or unlawfully obtained property x 2. Possess false number plates x 1.</p> <p>Sometime before the appellant left the AFP in 2006, he dishonestly appropriated a number of items belonging to his employer, including a police radio, a ballistic vest & a container of OC spray.</p> <p>Between 2006 and 2010 the appellant resided and was employed as a customs officer in Darwin. Whilst his neighbours were on holiday the appellant broke into their unit and stole property and identification. The appellant subsequently transferred to Perth between November 2010 and</p>	<p>TES 10 yrs imp.</p> <p>EFP.</p> <p>\$300 fine.</p> <p>Remorse; victim empathy; acceptance of responsibility.</p> <p>Sentencing judge described robberies and sexual offences as involving ‘a significant measure of premeditation, sexual motivation and planning’; described fraud as ‘deliberate, systematic and planned criminality over a significant period’.</p> <p>Low - moderate risk of re-offending in a sexual way; moderate – high risk of committing further dishonesty offences.</p>	<p>Allowed – Grounds 3 & 6.</p> <p><u>Section 32 notice</u></p> <p>Ct 1 varied – release after serving 7 mths of it on recognizance in the sum of \$10,000.</p> <p>At [8] It is very difficult, for the purposes of comparison in the context of the first limb of the totality principle, to identify any relevant total effective sentences imposed in previous cases. The nature, extent and diversity of the appellant’s overall offending, by a person with his antecedents, is very unusual. No previous case is truly comparable.</p> <p>At [61] The past, present and likely future conditions of the</p>

		<p>January 2011 and took with him these items.</p> <p>In 2011 the appellant became an immigration officer. During this time he applied online for credit cards using the stolen identity details as well as incorrect information as to his employment, assets and liabilities. Some of the false information as to his employment came from documents he had accessed through his employment. The applications were approved. The appellant also attempted to apply for further credit cards but when asked for further documentation he did not proceed or did not collect the card.</p> <p>In 2011 the appellant stole a cheque from a letterbox and deposited it into one of his false accounts, withdrew money from the credit account he had opened and stole cheques from a cheque deposit box at a bank and then deposited the cheques into an access account he had opened.</p> <p>In 2012 the appellant rented a self-storage unit and post office box under the false name and address previously stolen. The box was used as a mailing address for invoices for the rented storage unit and applications for bank accounts.</p> <p>In March 2012 the appellant received two parking infringements for failing to display an unexpired ticket. Affixed to the vehicle were registration plates from another vehicle. The purpose being he would avoid paying the parking fees.</p>		<p>appellant's imprisonment, by reason of his status as a former police officer, were a relevant sentencing consideration that his Honour was bound to take into account.</p> <p>At [138] The appellant's overall offending was self-evidently very serious. It was varied and substantial. It involved deliberate, systematic and planned criminality executed with considerable sophistication... The appellant used the skills he had gained in the work he had undertaken in the banking and law enforcement sectors to commit the offences, and went to considerable lengths to avoid detention.</p> <p>Discussion on the scope</p>
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2.	<p><i>Pilling v The State of Western Australia</i></p> <p>[2014] WASCA 146</p> <p>Delivered</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after very late PG.</p> <p>Significant prior criminal history including burglary and stealing.</p>	<p>s 392 <i>Criminal Code</i> armed robbery x 3. s 552, 392 <i>Criminal Code</i> att armed robbery x 1. s 392 <i>Criminal Code</i> agg armed robbery x 4.</p> <p>The appellant went on a crime spree in just over a three week period. Four of the offences were committed while the appellant was in company who either entered the premises or drove a getaway car.</p>	<p>TES 10 yrs imp.</p> <p>EFP.</p> <p>Admitted committing several armed robberies although reluctant to provide</p>	<p>Dismissed – on papers.</p> <p>At [37] the sentencing judge's failure to quantify the s9AA discount was not a material error and did not invalidate the</p>

	12/08/2014	<p>Committed first of the present offences less than two weeks after release from prison.</p> <p>Parents separated when 12 yrs old and caused marked instability in his life.</p> <p>Been intermittently in detention and prison since 13 yrs old.</p> <p>Did not perform well at school and was frequently truant.</p> <p>Illicit drug addiction.</p> <p>Suffers an antisocial personality disorder and borderline personality traits.</p> <p>Co-offender in relation to two of the offences Jason Hapke pleaded guilty and sentenced to 4 yrs 6 mths imp.</p>	<p>The appellant entered small businesses including pharmacies disguising his face and head.</p> <p>The appellant made threats and demanded money, Sudafed or pseudoephedrine from staff whilst armed with either a screwdriver, small replica handgun or tyre lever.</p> <p>On fleeing the final armed robbery, police had obstructed the appellant's vehicle which stopped. He and his co-offender escaped. The appellant used a tyre lever to smash a window of the police vehicle and demanded the officer get out. His co-offender pointed a replica handgun at the officer through the window. The officer pulled his own firearm and pointed it at the co-offender. The co-offender was distracted by another officer who was approaching with his firearm drawn. The co-offender turned towards the other officer, pointed the replica gum at him and attempted to flee on foot. The appellant also attempted to flee. Both were apprehended by police.</p>	<p>details; committed offences to obtain money to fund his drug addiction.</p> <p>Little by way of mitigation.</p> <p>Sentencing judge concluded was a 'seasoned criminal' and had an 'unregulated and raging substance abuse problem'.</p> <p>Significant risk factors in relation to re-offending.</p>	<p>sentence imposed.</p> <p>At [44] A failure to order a pre-sentence report, psychiatric or psychological report does not in itself indicate any error in the sentence.</p> <p>At [45] It must be recognised that the mitigating effect of mental illness may be offset by other factors eg. where a particular condition or illness raises the risk of re-offending.</p>
1.	<i>Sartori v The State of Western</i>	20 yrs at time offending.	Ct 1: Agg burg. Ct 2: Att armed robb.	Ct 1: 3 yrs 3 mths imp. Ct 2: 18 mths imp	Dismissed – on papers.

	<p><i>Australia</i></p> <p>[2014] WASCA 98</p> <p>Delivered 05/05/2014</p>	<p>Convicted after early PG.</p> <p>Minor criminal record.</p> <p>Qualified auto electrician; stable employment; unemployed at time of offending.</p> <p>Suffers mild depression.</p> <p>Association with undesirable elements.</p> <p>Occasional user of illicit substances.</p> <p>Favourable character references.</p> <p>Family support.</p>	<p>The appellant and two others formed a common intention to commit a burglary and steal firearms. The appellant knew from information that he had received that there were firearms in the house.</p> <p>They travelled to the victim’s house, a husband and wife aged 66 and 56 years respectively. The appellant went to the front door, leaving his accomplices in a motor vehicle. Wearing a balaclava and armed with a machete, the appellant knocked on the front door which was opened by the male victim. The appellant forced entry and pushed the machete against the chest of the male victim demanding the firearms.</p> <p>The appellant forced the male victim to walk backwards down the hallway with the machete against his chest. He continued to demand the firearms. The male victim fell.</p> <p>The appellant turned his attention to the female victim who was trying to call police. He knocked the phone out of her hand, but was then pushed away from the woman by the male victim. The appellant ran from the house.</p> <p>The male victim sustained soreness to his right hip and shoulder, lacerations to the web space of his right thumb and laceration to his finger.</p>	<p>(conc).</p> <p>TES 3 yrs 3 mths imp.</p> <p>Denied any involvement in ROI.</p> <p>Claims he offended under duress.</p> <p>Some co-operation with Police prior to sentencing.</p> <p>Remorseful; wrote letters to victims apologising.</p> <p>Low risk of re-offending.</p>	<p>At [31] A consideration of the sentences customarily imposed for the offence of aggravated burglary reveals a significant distinction between burglaries commonly described as a home invasion, which involve forcible entry into residential premises known or suspected to be occupied at the time accompanied by threatened or actual violence, and burglaries which lack those characteristics.</p> <p>At [32] The aggravated burglary committed by Mr Sartori was a home invasion at the more serious end of the spectrum.</p>
			<p><i>Transitional Provisions Repealed (14/01/2009)</i></p>		

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