

Driver in incident occasioning bodily harm, fail to stop, ensure assistance and give information

s 54 Road Traffic Act

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
- Transitional provisions period
- Pre-transitional provisions period

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

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| imp | imprisonment |
| susp | suspended |
| conc | concurrent |
| cum | cumulative |
| PG | plead guilty |
| occ | occasioning |
| BAC | blood alcohol content |
| AOBH | assault occasioning bodily harm |
| GBH | grievous bodily harm |
| att | attempted |
| EFP | eligible for parole |
| DDOGBH | dangerous driving occasioning grievous bodily harm |
| DDOD | dangerous driving occasioning death |
| DDOBH | dangerous driving occasioning bodily harm |
| agg | aggravated |
| circ | circumstances |
| TES | total effective sentence |

| No. | Case | Antecedents | Summary/ facts | Sentence | Appeal |
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| 2. | <p><i>Billing v The State of Western Australia</i></p> <p>[2017] WASCA 80</p> <p>Delivered 21/04/2017</p> | <p>37 yrs at time sentencing.</p> <p>Convicted after early PG (20% discount).</p> <p>Prior criminal history, including convictions of 3 x breaching VROI, 3 x criminal damage, 3 x threats to injure and several driving offences.</p> <p>Divorced; three children.</p> <p>Educated to yr 10; sandblaster by trade.</p> | <p><u>Indictment</u> Ct 1: Agg DDOD.</p> <p><u>Section 32 Notice</u> Ch 1: DDOBH. Ch 2: DDOBH. Ch 3: Driver failing to report incident occasioning death or GBH. Ch 4: Failed to render assistance to victim of incident occasioning BH, not GBH or death Ch 5: No MDL (fine suspension) Ch 6: Breach of VRO.</p> <p>The three victims were all passengers in Billing's car.</p> <p>Approx. 30 mins before the fatal crash, Billing drove in a grossly dangerous fashion. He drove at speeds of up to 220km per hour and through four red lights. At one intersection he nearly collided with another car. He drove over one victim's foot at a service station. He did a burnout out at his former partner's house in breach of a VRO.</p> <p>Billing ignored pleas from two victims asking him to stop and let them out.</p> <p>Billing drove at 145km per hour in a residential street where the speed limit was 50km per hour. The street was a two-lane carriageway. Another car had to swerve to avoid colliding with Billing's car. Billing collided with a raised median island, causing him to lose control of the</p> | <p><u>Indictment</u> Ct 1: 10 yrs imp.</p> <p><u>Section 32 Notice</u> Ch 1: 6 mths imp (conc). Ch 2: 6 mths imp (conc). Ch 3: 12 mths imp (conc). Ch 4: 12 mths imp (conc). Ch 5: \$1500 fine. Ch 6: \$2000 fine.</p> <p>5 yrs 9 mths MDL disqualification.</p> <p>TES 10 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge erroneously found that the agg DDOD fell within the worst category.</p> <p>Sentencing judge found that the DDOBH offences were severe, but noted that the victims suffered relatively minor injuries.</p> <p>Sentencing judge found that Billing's dangerous driving was willful and did not involve an error of judgment or other momentary driving error. He found that while the outcome was not inevitable, the risk of a catastrophic outcome became grossly</p> | <p>Allowed in part.</p> <p>Appeal concerned finding of agg DDOD as worst case of its kind.</p> <p>Re-sentenced to:</p> <p><u>Indictment</u> Ct 1: 8 yrs imp.</p> <p><u>Section 32 Notice</u> Ch 1, 2 and 3: to be served cum upon each other and Ct 1. Ch 3: to remain conc with new sentence on Ct 1.</p> <p>All other sentences to remain.</p> <p>TES 10 yrs imp (thus the TES was left unchanged).</p> <p>At [34] ... while the overall circumstances of the offence and the offender warranted a lengthy sentence of immediate imp, it did not warrant the maximum prescribed penalty.</p> <p>At [37] ... his Honour erred in his assessment of the gravity of the offence of DDOD. A different</p> |

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| | | | <p>car. The car struck the vegetation on the median island and the rear passenger side struck a large pole. The impact caused fatal injuries to the left rear passenger. The front passenger suffered a deep cut to the scalp, grazing and bruising. The right rear passenger suffered a cut to his top lip and scratches to both arms.</p> <p>Billing got out of the car and urged the victims to leave with him. One victim said that another was critically injured, and Billing responded “I don’t give a fuck”. Billing fled from the scene.</p> <p>Billing repeatedly denied being the driver and being involved. He failed to report the crash. He attempted to implicate one of the victims.</p> <p>Billing had a BAC of 0.048%.</p> <p>Billings was not authorised to drive, having previously been disqualified from holding an MDL for 8 mths.</p> | <p>unacceptable by the time the collision occurred.</p> <p>Sentencing judge characterised Billing’s behaviour in abandoning the victim shortly after the crash as callous and deliberate.</p> <p>Sentencing judge noted that Billing had been drinking alcohol before driving and that at the time of the crash this was in his system.</p> | <p>and lower sentence should have been imposed with respect to the indictable offence.</p> <p>At [39] Although the offence of agg DDOD was not in the worst category of cases, it was nevertheless a bad offence of its kind.</p> <p>At [44] The only significant matter in mitigation in the present case was the appellant's PG, which was entered at the first reasonable opportunity. Having regard to the strength of the case against the appellant I would give a discount of 20%...</p> <p>At [49] ... the TES imposed by his Honour of 10 yrs' imp was appropriate...</p> |
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| <p>1.</p> | <p><i>Petersen v The State of Western Australia</i></p> <p>[2016] WASCA 66</p> <p>Delivered 21/04/2016</p> | <p>27 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No previous sentences of imp. Past DUI for 0.08 and just prior to this offence received a summons for driving in excess of 0.05.</p> | <p>2 x Fail to ensure victim of road traffic incident received all assistance that was necessary and practicable.</p> <p>1 x Fail to report a road traffic accident.</p> <p>The appellant drove his car when it struck two pedestrians. He stopped and stayed at the scene for a short time but left when other people arrived. He did not assess the injuries to the two victims.</p> <p>After leaving the scene the appellant drank two stubbies of beer before returning some 2¼ hrs later. At the incident scene the appellant approached police and told them he was the driver of the vehicle involved in the incident.</p> <p>Both victims were pronounced dead at the scene.</p> | <p>2 x Fail to ensure assistance: 2 yrs 6 mths imp each ct.</p> <p>1 x Fail to report: 2 yrs imp.</p> <p>MDL disqualified 4 yrs.</p> <p>TES 4 yrs 6 mths imp.</p> <p>EFP</p> <p>The sentencing judge regarded the appellant's offending as serious and his consumption of alcohol following the incident as a significant aggravating factor.</p> <p>The appellant knew he would be losing his MDL as a result of an earlier drink driving offence and that he left the scene as he feared he was driving in excess of the legal blood alcohol limit.</p> <p>The appellant's criminal history demonstrated a persistent defiance and disregard for the law in relation to traffic matters.</p> | <p>Dismissed.</p> <p>Appellant challenged length of sentence and claimed breach of the totality principle and defence of emergency.</p> <p>At [191] The TES imposed is high. However ... the total sentence does not infringe the first limb of the totality principle having regard to ... the seriousness of the offences; ... why the appellant left the incident scene and his motive for subsequently drinking beer and the effect that ... conduct had on the ability of the police to investigate the incident; the seriousness of the injuries sustained by the victims; the need for personal and general deterrence.</p> |
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