

Stealing as a servant or public servant

ss 378(7) and 378(6) *Criminal Code* or analogous instances of stealing

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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

imp	imprisonment
susp	suspended
PG	plead guilty
att	attempted
ct	count
TES	total effective sentence
EFP	eligible for parole
CBO	community based order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
3.	<p><i>Pflug v The State of Western Australia</i></p> <p>[2018] WASCA 65</p> <p>Delivered 17/01/18</p>	<p>44 at time offending. 46 yrs at time sentencing.</p> <p>Convicted after late PG (20% discount).</p> <p>No prior convictions.</p> <p>Born USA; Australian permanent resident; but not an Australian citizen.</p> <p>Married; ended relationship due to emotional, physical and verbal abuse; engaged in Family Court proceedings over 5 yr old daughter; significant debt with Australian Child Support Agency.</p> <p>Three children living in USA with former husband.</p> <p>In supportive relationship at time sentencing.</p> <p>Employed full-time until offending.</p> <p>History of depression; 2016 suicide attempt; personality and alcohol use disorder.</p>	<p>5 x Stealing as a servant, contrary to s378(7). Maximum penalty 10 yrs imp.</p> <p>Pflug was employed in a senior administrative role. On five occasions in a one week period she transferred a total of \$68,992.59 from her employers' bank accounts to her personal bank account.</p> <p>Pflug stole the money by manually changing the accounting software programme by substituting her bank details for creditor's bank details, implementing a number of steps to defeat the software programme.</p> <p>Shortly after the offending Pflug travelled to the USA, using some of the money to fund the airfares and accommodation. She voluntarily returned to Australia some six months later, surrendering to police and repaying \$12,000 of the stolen money.</p>	<p>Cts 1 & 2: 12 mths imp (conc). Cts 3-5: 15 mths imp (conc).</p> <p>TES 15 mths imp. EFP.</p> <p>The sentencing judge found the appellant's offending serious; it involved a number of transactions and was not merely one incident; she was a trusted employee; the victim was a small business and it involved a 'gross abuse of trust'.</p> <p>The sentencing judge accepted the appellant used \$16,258 to assist her ill mother in the USA, however, the very great bulk of the money had nothing to do with her mother, she spent it on herself, living expenses and paying of a debt.</p> <p>Remorseful; took responsibility for her offending; steps taken towards treatment.</p>	<p>Dismissed.</p> <p>Appeal concerned type of sentence.</p> <p>At [67] In the present case, it was open to the sentencing judge to decide that the facts and circumstances militating against suspending the terms of imp decisively outweighed the facts and circumstances militating in favour of suspension. It was open to his Honour to be positively satisfied that it was not appropriate to select a lesser sentencing option (in particular, to suspend or conditionally suspend the terms of imp).</p>

<p>2.</p>	<p><i>Allie v The State of Western Australia</i></p> <p>[2016] WASCA 6</p> <p>Delivered 13/01/16</p>	<p>43 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior relevant convictions.</p> <p>Married with two children. Works full time.</p> <p>Happy upbringing. Supportive parents. Sexually abused at school in early teens and left home.</p> <p>Abnormal behaviour patterns.</p>	<p>1 x Stealing as a servant.</p> <p>The appellant was employed as a store manager for Supa IGA. The appellant used the store's computer ordering system to place an order for cigarettes to the value of \$17,175.00. The appellant stole the cigarettes from the store and loaded them into the boot of his car and left the store. The appellant was pulled over by police and the cigarettes were recovered in full.</p>	<p>20 mth imp.</p> <p>The sentencing judge described the offending as serious as the appellant had breached the trust placed on him as store manager.</p> <p>Need for specific deterrence.</p>	<p>Dismissed.</p> <p>At [11] – [13] Discussion of comparable cases.</p> <p>At [15]... his criminal record demonstrates that this offence was not an uncharacterised aberration... personal deterrence is a factor of particular importance in this case.</p> <p>At [16]... offending involved a serious breach... of trust... It did not occur as the results of a spur of the moment decision, but was a calculated act of dishonesty... The amount involved was... significant for a small business.</p>
<p>1.</p>	<p><i>Carter v The State of Western Australia [No 2]</i></p> <p>[2015] WASCA 59</p> <p>Delivered 20/03/15</p>	<p>22 yrs at time offending and sentencing.</p> <p>Convicted after fast-track PG.</p> <p>No prior criminal history.</p> <p>Raised in a fragmented family; physically abused</p>	<p>1 x Stealing as a servant.</p> <p>The appellant was employed by the victim. For three mths, the appellant took possession of scratchcards, the property of the victim, to the value of \$17,647. The appellant scratched the scratchcards and took money from the victim's cash register for the prize money on the 'winning' scratchcards. She discarded the 'losing' scratchcards.</p>	<p>12 mths imp.</p> <p>Sentencing judge found the appellant had not shown significant remorse due to her attitude and demeanour in interview with police.</p> <p>Offending caused terrible</p>	<p>Allowed.</p> <p>Original sentence set aside.</p> <p>Re-sentenced to 9 mths imp susp 9 mths.</p> <p>At [60] I am satisfied that the error in question was</p>

		<p>as a child.</p> <p>Single; 2-3 yr old son.</p> <p>High stress and anxiety caused by poor coping methods; poor self-esteem; engages in self-harm behaviours.</p> <p>Gambling addiction; taken steps to rehabilitate.</p> <p>Prior to sentencing: participated in victim-offender mediation; wrote an apology letter and repaid some money to victim.</p>	<p>Offending discovered after the victim identified discrepancies following an audit.</p>	<p>harm to victim; fellow employee lost employment.</p> <p>Erroneously stated offences committed over 15 mths when in fact the offending was over three mths.</p>	<p>material in that an offence of stealing as a servant which involves repeated theft over a period of about 15 mths will ordinarily be more serious than an otherwise comparable offence over a period of about three mths.</p>
<i>Transitional provisions repealed (14/01/2009)</i>					
<i>Transitional Provisions enacted (31/08/2003)</i>					