SENTENCING FOR
BREAK, ENTER AND STEAL
IN NEW SOUTH WALES

BY IVAN POTAS
Sentencing for Break, Enter and Steal in New South Wales

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I am indebted both for the patient assistance of my secretary, Diane Grant, and the assistance of Lynne Reeder who was responsible for the preparation of the cases summarised in the appendix. I also appreciate the help of Jack Sandry and Leona Jorgensen for their editorial assistance.
INTRODUCTION

This publication is concerned with the sentencing of offenders who have pleaded guilty or otherwise have been convicted of break, enter and steal offences. The original paper was presented at a seminar on burglary at the Queensland Institute of Technology in Brisbane on 26 June 1985. In this presentation, however, there is added an appendix containing summaries of New South Wales Court of Criminal Appeal decisions. It was those decisions which formed the background of the present work.

This work then is intended to inform those who are concerned with the sentencing of offenders for break, enter and steal. It will be observed that it contains analyses both of statistical data and higher court sentencing decisions. The case analyses are, by and large, of unreported sentencing decisions of the New South Wales Court of Criminal Appeal. Similar studies in relation to drug sentencing and sentencing violent offenders have been published by the Institute and the present offering is intended to complement those earlier works.

The analyses presented herein should not be viewed as a substitute for doing any necessary legal research from primary sources. Rather the material is offered as an aid towards understanding the sentencing patterns of the courts in relation to break, enter and steal offences. It is important to recognise that sentencing involves a combination of factors that ultimately leads the court to reach its final verdict on sentence. Accordingly, for a fuller appreciation of the factors relevant to sentencing there is no substitute for examining the original judgments of the courts. In this regard the appendixes should prove to be a research tool of considerable assistance.

It should also be noted that the bulk of the cases considered below were decided before the introduction of the Probation and Parole Act 1983 (NSW). This means that many of these cases, involving as they did sentences of less than 3 years, still attracted the specification of non-parole periods. Under the new Act, courts are no longer empowered to set non parole periods for sentences of less than 3 years and instead now set non probation periods. With this slight reservation in mind the present work should assist those who have an interest in the uniformity of sentencing and who may wish to identify the broad tariff that applies in New South Wales in respect of those who commit break, enter and steal offences.

In assessing the parity of sentences it is sometimes overlooked that the prisoner may have served a lengthy term of pre-sentence custody. Given that this is so, it is not always clear on the face of the record whether, in the course of determining the length of sentence, the trial judge has taken into account the time that the prisoner has already served. In McHugh, unreported decision of the New South Wales Court of Criminal Appeal, 24 May 1985, a case involving misappropriation of valuable securities and moneys by a solicitor from his trust account the Chief Justice, Sir Laurence Street, observed that in setting the duration of the sentence and non-parole (or non-probation period) it was preferable that sentencing courts should back date their sentences so that they commence to run from the time that they
were taken into custody. This practice was to be preferred to the process of assessing the proper sentence and non-parole period or non-probation period and then subtracting or discounting the period of pre-sentence custody and thereby setting a notionally shorter sentence and non parole or non probation period. His Honour added

The desirable practice will promote the accuracy of the record, preventing there being a hidden factor affecting the length of the custody involved in consequence of the sentencing order. In addition, this practice will remove inequalities and unfairness as between prisoners arising from delays prior to the sentencing, in particular in relation to remission or reduction entitlements; recognition of this does not infringe the principle in O’Brien (1984) 2 NSWLR 449 that remissions and reductions are to be disregarded when determining the length of sentences, non parole and non probation periods. A judge departing from this practice could be expected to indicate his reasons for so doing.

This general principle has been enunciated only recently and accordingly it is not unlikely that many of the cases cited in the appendixes were derived by the application of a 'discounting' rather than a 'back dating' method. It is important to recognise this distinction because first, it may help to explain why two similar cases may appear to attract dissimilar sentences and secondly, it should caution users of this material to exercise extreme care in accepting on face value many of the assumptions that underlie the bold statement that is taken to constitute the ultimate sentencing decision.
Sentencing for Break, Enter and Steal in New South Wales

In recent times, more and more space is taken up in the press and electronic news media concerning the incidence of burglaries within the community. For example, in Queensland the Sunday Mail has been running a series of articles on the subject. On 3 March, the headlines read 'Burglars have Brisbane under siege - terror strikes five times every hour'. There is a picture of a man named 'Tom' going through an open security screen door - almost a prisoner in his own home, in order, so the caption reads, to protect himself from 'knife-wielding thieves'. On the same page there are pictures of ransacked houses and interviews with victims of burglary. Another article talks about 'an explosion of juvenile crime' and statistics are presented suggesting that juvenile offending, particularly involving housebreaking, is Queensland's fastest growing crime. According to this report, 2411 juveniles were on break, enter and steal charges, but arrests cleared up only 21 per cent of the 11,000 home burglaries. Some 10,000 of these homes were in Brisbane, Ipswich and the Gold Coast. It is interesting to observe that the Juvenile Aid Bureau has claimed that, in about 80 per cent of cases, counselling has worked. Only the hard cases, it is claimed, proceed to prosecution.

Similarly in other states there is considerable anxiety surrounding the growing frequency of housebreaking. A recent survey conducted by the Community Relations Bureau of the New South Wales Police Department, being part of a research study undertaken for the Neighbourhood Watch Program, revealed that over 90 per cent of residents living in the inner city area of Sydney feared that they, or their property, would become the target of crime. Furthermore 88 per cent of these respondents felt that burglary was the greatest single crime problem. About half of those interviewed had been burgled in the preceding two years. The headlines read 'Sydney, A Fortress of Fear'. Another headline, this time in the Sydney Morning Herald on 4 June 1985, read 'Thou shalt not steal - except in Sydney'. In this article it is said that even church poor boxes are the targets of burglars.

Another indicator of the high incidence of burglary in the community is its impact on the security industry, and upon insurance premiums. The

1. At common law burglary related only to certain breaking and entering offences committed at night. Under New South Wales law any reference to the term of burglary was removed as a consequence of the passing of the Crimes and Other Acts (Amendment) Act 1974. This amendment was made because it was found that the section which dealt with burglary was adequately covered by other sections in the Act. In Queensland however, the term burglary is synonymous with housebreaking (see S. 419 of the Criminal Code) The maximum penalty for housebreaking in Queensland is 14 years unless it is committed at night, in which case it is life imprisonment. In this paper no particular significance should be placed on the term burglary because it is not used in its narrow or technical legal sense but rather in its more common meaning of housebreaking.

Financial Review recently reported that the security industry was amongst the fastest growing areas of business in Australia. It estimated that various security companies have been increasing in size since 1980 at a rate of between 15 and 20 per cent per annum, and that the industry was now turning over an estimated $400 to $500 million each year. In NSW in 1982-83, there were 61,529 reported housebreakings and a further 32,981 other premises were broken into, about double the number for the previous year. In Victoria, 32,000 homes were broken into in 1980. By 1984 the figure had increased to 51,000. Naturally insurance company payouts have also been increasing. According to the Insurance Council of Australia some $150 million dollars were paid out last year. This compares with $40 million dollars in 1980. Not surprisingly, insurance premiums have increased, with the result that either directly, or indirectly, few people have not been affected by the prevalence of housebreaking.

Hardening Attitude of the Courts

The courts have also taken notice of this apparent epidemic. In Hayes the New South Wales Court of Criminal Appeal demonstrated its determination to do what it could to stamp out this crime. Its response was to indicate to both the public at large and to would-be offenders that stiff penalties would be imposed by the courts for this offence.

Hayes had appealed against the severity of an effective sentence of thirteen years with a specified non-parole period of eight years. He had pleaded guilty to four separate counts of break, enter and steal involving some $10,000 worth of goods. These goods consisted mainly of electronic equipment, such as video recorders, cameras and other personal effects which had potential resale value. He also admitted to the commission of a further 30 offences of a similar kind so that, in total, the value of property stolen amounted to $37,808. The offences took place over a period of eight months (between August 1982 and April 1983) and were restricted generally to the northern beaches area of Sydney. In sentencing the prisoner, the judge took into account the 30 outstanding offences, as is provided for under the terms of S. 447B of the Crimes Act, 1900 (NSW). Hayes was 24 years of age, unemployed, and had a prior record of offences extending back to when he was 16 years of age. He was on parole for other break, enter and steal offences when he committed the present offences, having been released from prison on 5 July 1982. Indeed he commenced offending only one month after he was released on parole.

During the course of his judgment, the Chief Justice, Sir Laurence Street, made the following observations:

It is becoming notorious in the community that offences of break enter and steal are being committed with increasing frequency. In the six years from 1976 to 1981 they increased from 849.19 per 100,000 population to 1332.77 per 100,000 population - an increase of 57 per


cent. Higher courts appearances for the same period show an increase from 504 to 860 - an increase of 71 per cent. If one takes the latest public statistics for higher courts appearances, that is to say, 1982, the figure is 1,004 - an increase of 99 per cent over the 1976 figure.

The Chief Justice spoke of the trauma to the victim upon re-entering a home that has been ransacked, the emotional distress occasioned by the loss of property, particularly property that cannot be replaced and the escalating premiums charged by insurance companies. His Honour continued

The invasion of people’s homes and the plundering of their property is a social evil from which the community looks for protection to the law enforcement agencies and the criminal courts. It is, however, the considered view of this Court that the time has come for a hardening in the policy of criminal courts when sentencing for this offence.

Chief Justice Street then referred to the maximum legislative penalty for break, enter and steal and pointed out that the prescribed penalty of 14 years penal servitude placed this crime in the category of the more serious offences dealt with in the Crimes Act. His Honour added

It behoves the courts in consequence to treat the offence of break enter and steal with corresponding seriousness when sentencing. Those tempted to commit this offence should heed this warning. In a phrase - burglary is out.

In delivering his judgment in the same case, Mr Justice Lee also referred to the growing incidents of housebreaking in the Sydney metropolitan area. In His Honour’s words:

Many householders have virtually converted their homes into mini-fortresses in an attempt to keep their property safe from the depredations of criminals. Ugly steel grilles on windows, massive mesh doors of metal, deadlocks, window locks, automatic light and sound devices, burglar alarms are but some of the desperate means being employed by people to keep their homes safe. Some are so certain that their homes will be burgled that they will not go out unless there is an occupant on the premises. But still the offences go on and homes are broken into morning, noon and night. One may wonder whether the time is not very far distant when a moat and drawbridge, adapted to modern conditions, will be an integral part of every freestanding home.

Mr Justice Lee then asked what the courts could do about the problem. He responded by expressing the view that the courts had a duty to make clear to the public that their prime responsibility is the protection of the community and that they would impose stern measures against those who are involved repeatedly in break enter and steal offences. The present case involved a professional burglar who carried out his task with a degree of cool premeditation and planning. Accordingly His Honour concurred with the Chief Justice that the aggregate sentence imposed by the trial judge was not erroneous. The appeal against the severity of the sentence was dismissed.

Although the individual offences committed by Hayes were not atypical, the aggregate sentence of thirteen years penal servitude accompanied by an eight year non-parole period were clearly more severe than the normal measurement of punishment for such offences.
Higher Court Statistics

Table 1 gives a breakdown of sentences and non-parole periods imposed for break enter and steal offences in the higher criminal courts of New South Wales for the year 1982. It shows that 340 or 42 per cent of those convicted for this offence were given bonds or probation with or without a fine. 16 persons, or 2 per cent of offenders received periodic detention and 32 or 4 per cent received community service orders. In other words, 48 per cent or about 1 out of 2 persons convicted were given a non-custodial or a semi-custodial sentence.

Table 1 also shows that 26 per cent of sentenced offenders received non-parole periods of less than one year, 42 per cent received non-parole periods of less than two years, and only 5.2 per cent received non-parole periods in excess of 2 years. Figures 1 and 1A illustrate graphically the patterns of sentences and non-parole periods for 1982.

The question arises as to whether the sentences imposed in 1982 were atypical. In order to examine this question, data covering a five year period, 1978 to 1982 inclusive, were collected and average sentences and non-parole periods were calculated (Table 2). When the data presented in Table 2 are compared with the 1982 statistics there is little change to be found in the general pattern of sentences. Figures 2 and 2A depict the average pattern of dispositions and non-parole periods imposed by the courts over the 5 year period.

Once again these data reveal that almost half the number of persons sentenced for break, enter and steal offences in the higher criminal courts of New South Wales were not given prison sentences. Those that were sentenced to imprisonment seldom received terms exceeding 4 years with respect to their most serious offence. Table 2 shows that fewer than 1 person in 10 received a sentence of imprisonment of 4 years or more for a single offence of break, enter and steal. Only 3.2 per cent received sentences of 5 years or more.

However, it is important to qualify these findings by stressing that the penalties which are the subject of statistical tabulation relate only to the most serious offence in respect of which each individual offender has been sentenced. In other words, where the offender is convicted on a number of charges and a term of imprisonment is imposed for the most serious offence, only this term is shown in the statistics irrespective of whether or not that term of imprisonment is ordered to run cumulatively or concurrently with any other term of imprisonment. Indeed, a significant proportion, if not the majority, of offenders who come before the higher criminal courts on break enter, and steal charges are sentenced in respect of two counts or more.

5. Note however that the average sentence calculated includes 1982 data so that to some extent at least, the average sentence is affected by the figures with which it is being compared.
<table>
<thead>
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<th>No.</th>
<th>%</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
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<tr>
<td>Bond/Probation with</td>
<td>340</td>
<td>42</td>
<td>-</td>
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<tr>
<td>or without fine</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Periodic Detention</td>
<td>16</td>
<td>2</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Community Service Order</td>
<td>32</td>
<td>4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>IMPRISONMENT</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under 1 year</td>
<td>33</td>
<td>4</td>
<td>207</td>
<td>26</td>
</tr>
<tr>
<td>1 year and under 2 years</td>
<td>87</td>
<td>11</td>
<td>125</td>
<td>15</td>
</tr>
<tr>
<td>2 years and under 3 years</td>
<td>132</td>
<td>16</td>
<td>32</td>
<td>4</td>
</tr>
<tr>
<td>3 years and under 4 years</td>
<td>94</td>
<td>12</td>
<td>5</td>
<td>0.6</td>
</tr>
<tr>
<td>4 years and under 5 years</td>
<td>45</td>
<td>6</td>
<td>2</td>
<td>0.2</td>
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<tr>
<td>5 years and under 10 years</td>
<td>27</td>
<td>3</td>
<td>3</td>
<td>0.4</td>
</tr>
<tr>
<td>10 years and more</td>
<td>2</td>
<td>0.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>n/s</td>
<td>46</td>
<td>6</td>
<td></td>
</tr>
</tbody>
</table>

Total Imprisoned                  | 436 | 52 | 436 | 52 |
Total Distinct Persons             | 816 | 100|     | 100|


** This total includes 8 juveniles who were committed to a juvenile institution.
FIGURE 1
SENTENCING FOR BREAK ENTER AND STEAL
Higher Court Statistics 1982 (NSW)*

FIGURE 1A
Non-Parole Statistics 1982 (NSW)

KEY:
A - Bond/Probation with or without fine
B - Periodic detention
C - Community Service Order
D - Imprisonment
E - Under 1 year
F - 1 year and under 2 years
G - 2 years and under 3 years
H - 3 years and under 4 years
I - 4 years and under 5 years
J - 5 years and under 10 years
K - 10 years and over
L - Non-Parole Periods
M - Not specified
N - Under 1 year
O - 1 year and under 2 years
P - 2 years and under 3 years
Q - 3 years and under 4 years
R - 4 years and under 5 years
S - 5 years and under 10 years
<table>
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<tr>
<th>Sentence</th>
<th>1978</th>
<th>1979</th>
<th>1980</th>
<th>1981</th>
<th>1982</th>
<th>Total</th>
<th>Average (5 yr)</th>
<th>%</th>
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<tr>
<td><strong>Non-Custodial</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Bond/Probation with or without fine</td>
<td>200</td>
<td>267</td>
<td>290</td>
<td>331</td>
<td>340</td>
<td>1428</td>
<td>285.6</td>
<td>43.4</td>
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<td>Periodic Detention</td>
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<td>7</td>
<td>12</td>
<td>13</td>
<td>16</td>
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<td>10.8</td>
<td>1.6</td>
</tr>
<tr>
<td>Fine Only</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>2</td>
<td>0.4</td>
<td>0.1</td>
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<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>32</td>
<td>32</td>
<td>6.4*</td>
<td>1.0*</td>
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<td><strong>Committed to an Institution</strong></td>
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<td>4</td>
<td>8</td>
<td>8</td>
<td>29</td>
<td>5.8</td>
<td>0.8</td>
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<tr>
<td><strong>Imprisonment</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Under 1 year</td>
<td>14</td>
<td>28</td>
<td>27</td>
<td>33</td>
<td>33</td>
<td>135</td>
<td>27</td>
<td>4.1</td>
</tr>
<tr>
<td>1 year and under 2 years</td>
<td>.74</td>
<td>51</td>
<td>75</td>
<td>72</td>
<td>87</td>
<td>359</td>
<td>71.8</td>
<td>10.9</td>
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<tr>
<td>2 years and under 3 years</td>
<td>91</td>
<td>82</td>
<td>92</td>
<td>111</td>
<td>132</td>
<td>508</td>
<td>101.6</td>
<td>15.4</td>
</tr>
<tr>
<td>3 years and under 4 years</td>
<td>84</td>
<td>79</td>
<td>70</td>
<td>98</td>
<td>94</td>
<td>425</td>
<td>85.0</td>
<td>12.9</td>
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<td>4 years and under 5 years</td>
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<td>37</td>
<td>30</td>
<td>25</td>
<td>45</td>
<td>179</td>
<td>35.8</td>
<td>5.4</td>
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<td>5 years and under 10 years</td>
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<td>31</td>
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<td>26.6</td>
<td>4.0</td>
</tr>
<tr>
<td>10 years and more</td>
<td>4</td>
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<td>6</td>
<td>12</td>
<td>1.2</td>
<td>0.1</td>
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<td><strong>Total Imprisoned</strong></td>
<td>341</td>
<td>315</td>
<td>331</td>
<td>376</td>
<td>436</td>
<td>1779</td>
<td>359.8</td>
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<td>816</td>
<td>3290</td>
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<td><strong>Convicted</strong></td>
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<td></td>
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<tr>
<td>Under 1 year</td>
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<td>143</td>
<td>171</td>
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<td>795</td>
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<td>1 and under 2 years</td>
<td>107</td>
<td>94</td>
<td>104</td>
<td>109</td>
<td>125</td>
<td>539</td>
<td>107.8</td>
<td>16.3</td>
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<td>10</td>
<td>4</td>
<td>5</td>
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<td>7.6</td>
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<td>2</td>
<td>2</td>
<td>8</td>
<td>1.6</td>
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<tr>
<td>5 years and under 10 years</td>
<td>6</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td>11</td>
<td>2.2</td>
<td>0.3</td>
</tr>
<tr>
<td>10 years or more</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other</td>
<td>36</td>
<td>48</td>
<td>36</td>
<td>51</td>
<td>46</td>
<td>217</td>
<td>43.4</td>
<td>6.5</td>
</tr>
</tbody>
</table>

* This figure is misleading as CSO's were not available before 1982. The true average for CSO's is likely to be at least 32 or 5% of sentences imposed for this offence.
FIGURE 2  SENTENCING FOR BREAK ENTER AND STEAL
Higher Court Statistics 1978-82 (NSW)

(Average % over 5 years)

**KEY:**

A - Bond/Probation with or without fine
B - Periodic detention
C - Community Service Order - Imprisonment
D - Under 1 year
E - 1 year and under 2 years
F - 2 years and under 3 years
G - 3 years and under 4 years
H - 4 years and under 5 years
I - 5 years and under 10 years
J - 10 years and over
K - Not specified
L - Under 1 year
M - 1 year and under 2 years
N - 2 years and under 3 years
O - 3 years and under 4 years
P - 4 years and under 5 years
Q - 5 years and under 10 years
Thus, in the case of multiple convictions the courts either impose cumulative or concurrent sentences. For example, one strategy of the courts is to impose a relatively long sentence on one charge and order the other sentence or sentences to run concurrently with it. Alternatively the court may impose relatively short sentences in respect of each charge but order them to run consecutively. In many cases, the sentencing court will adopt a combination of concurrent and consecutive sentencing procedures with the result that the statistics that are collected will not always reflect the aggregate sentence that the prisoner is obliged to serve. Indeed, as will be seen, courts will often take a 'global' or holistic view as to the proper overall sentence to impose in a particular case and by no means follow a strictly mathematical equation in order to reach their sentencing verdicts. For this reason caution has to be exercised in interpreting the statistical data, and an analysis of the sentencing decisions themselves is inevitable if a proper appreciation of the sentencing process and the difficulties inherent in it are to be obtained.

In order to examine whether the decision in Hayes was outside the pattern of sentencing outlined above, some 126 judgments from the New South Wales Court of Criminal Appeal, decided over a seven year period (principally between 1976 and 1983) were analysed. It is important to note that in the main only those offenders who are dissatisfied with sentences imposed upon them are likely to appeal against the severity of their sentences. Thus the cases on appeal tend to represent the most serious category of offences together with the longest sentences and so may also give a distorted picture of the general pattern of sentences for this offence. However, in four out of the 126 cases studied the Crown appealed against the leniency of sentences imposed. In these cases it may be assumed that the sentences imposed by the trial judge tended to err on the side of excessive leniency. These cases also are examined in this paper.

6. In deciding whether sentences should be ordered to run consecutively or concurrently, the courts often apply the 'single transaction rule'. This rule was recently applied by the Western Australian Court of Criminal Appeal in the case of 'Fred Finch' Supreme Court Library No. 5702. Finch had been convicted on three counts of breaking and entering and one of attempted breaking and entering and had been sentenced to 2 1/2 years imprisonment on each charge - aggregating to 10 years with a non-parole period of 5 years. On appeal however the Court reduced the sentences to 5 years with a non-parole period of 2 1/2 years, because the first two offences, committed on 11 October and the last two offences, committed on 8 November, followed a two stage process. The first stage involved breaking into premises to obtain oxy-acetylene equipment which Finch used during the second stage when he broke into other premises. The first pair of offences formed one transaction - these also were ordered to run concurrently. The two pairs of sentences however were ordered to run cumulatively with each other - thereby resulting in a total effective sentence of 5 years imprisonment. A non-parole period of two and a half years was also substituted. See 'Pattern eases burglar's burden' West Australian, 29 April 1985.
Why Study Appeal Court Decisions?

The advantage of examining the decisions of the Court of Criminal Appeal is that it has the function of setting the policy that lower courts are required to follow. It acts as the pacesetter, declares the relevant principles to be applied to the sentencing decision, and in general attempts to ensure that a degree of uniformity or consistency in sentencing is achieved throughout the jurisdiction. Thus when the Court of Criminal Appeal enunciates its reasons for either upholding or dismissing an appeal against the sentence imposed by the trial judge, it serves the dual function of instructing sentencers on how to structure their decisions in the future, and at the same time it serves to legitimate the practice itself.

The cases then provide the principles that serve to establish the going rate for sentences in respect of particular kinds of offences, when committed by particular kinds of offenders.

A principle of justice is that like cases should be decided alike. Another assumption or principle in sentencing is that only the most serious cases attract the heaviest penalties. The following discussion then will focus upon some of the more serious offences found in the break, enter and steal category in order to discover what kinds of cases attract the highest penalties.

The Severe Sentence Category

From 126 New South Wales Court of Criminal Appeal sentencing decisions involving break, enter and steal offences there were 14 cases (involving 18 individual appellants) who received in the aggregate sentences of 10 years or more. In the majority of these cases, the offenders admitted to the commission of a series of offences, some of which included charges that were more serious than break, enter and steal. For the reasons given above, many of these cases therefore will not be adequately reflected in the higher court statistics.

The usual pattern was that the offender pleaded guilty to several offences, including charges other than break, enter and steal, such as larceny, larceny of a motor vehicle, possession of housebreaking implements, forging and uttering, malicious damage, escape from institutions. Indeed, in the most serious cases, armed robbery and sexual assault offences (rape) tended to overshadow the housebreaking charges. Where no violence was used, many of the offences that attracted the heavier penalties included one or more other factors.

Taking Outstanding Offences into Account

For example, offenders often admitted to the commission of further offences which were taken into account for the purposes of sentencing under the provisions of s.447B of the Crimes Act. Under the terms of that section outstanding charges may be taken into account by the trial judge when passing sentence. This procedure is permissible when a document in the form of the ninth schedule to the Act, is signed by a member of the police force and by the offender and has been filed in court. In these circumstances the court may, with the consent of the Crown, take any or all offences set out in the list into account during the sentencing process.
In so sentencing the prisoner, the court may not sentence the person to a term exceeding the legislatively prescribed maximum penalty in respect of the offence for which he or she has been convicted.

In Hayes, it may be recalled, the Court took into account a further 30 offences of break, enter and steal listed on a schedule. In Bell, Towers and Bell (unreported decision NSWCCA, 30 March 1979) the Court took into account 107, 27 and 35 other offences listed on a schedule and prison sentences of 15 years, 11 years 6 months and 12 years respectively were imposed. In Fowler and Fowler (unreported decision NSWCCA, 5 May 1983) the Court took into account a further 88 and 8 offences listed on a schedule and imposed prison sentences of ten years and eight years respectively.

Another common feature of cases involving sentences of ten years or more is that often the offenders net quite considerable amounts of money from their criminal activities. For example, in Bell, Towers and Bell (supra) each offender netted $65,000, $47,000 and $33,000 dollars worth of goods respectively.

In McDonnell and Hincksman (unreported NSWCCA, 17 February 1983), McDonnell had pleaded guilty to 5 charges of break, enter and steal together with a further eleven substantially similar matters on a schedule and Hincksman pleaded guilty to four charges of break, enter and steal with 4 substantially similar matters listed on a schedule. All offences involved non-residential clubs, cutting safes open with oxy-acetylene equipment and stealing their contents. For their pains - a total amount of $43,000 was obtained, of which only $9,500 was recovered. McDonnell was sentenced to a total of 12 years imprisonment with a non-parole period of 5 years and Hincksman received 9 years with a non-parole period of 4 years.

In both McDonnell and Hincksman and Bell, Towers and Bell, the Court pointed to the sheer number of offences committed by each offender, and the period of time over which they were committed. The professionalism and planning added to the Court's overall assessment of the gravity of these offences. These cases are consistent with Hayes who, it will be recalled, went about his business in a professional manner and had accumulated a total of $37,808 worth of stolen goods over a period of 8 months.

Breach of Court or Parole Order

A further common feature of the more serious cases is that often the offenders have a bad criminal record, and in addition may be in breach of a bond, be on bail or be on parole at the time they commit their offences. For example, Hayes who had a record of convictions extending back to when he was 16 years of age, was on parole at the time he committed his offences. Similarly in Fowler and Fowler, both offenders were drug addicts with long records. The younger of the two was subject to two good behaviour bonds at the time of his offences and the Court of Criminal Appeal expressed its reluctance to interfere with his sentence of eight years penal servitude coupled with a non-parole period of 4 years and 3 months.

The Court's general attitude to breach of parole is summed up in the following observation of the trial judge and quoted with approval by Street C.J. in Sutton (unreported NSWCCA, 13 December 1979) a case involving several charges of breaking, entering and stealing from commercial premises:

It is seldom I come across a prisoner who has twice been admitted to parole on the same sentences and has twice had his parole revoked ...

The object of granting parole is to give prisoners the opportunity of rehabilitating themselves and to do so under supervision which is aimed at assisting that rehabilitation. This prisoner has shown himself to be quite incapable of or unwilling (I think the latter) to take advantage of what large numbers of the ordinary members of the community regard as the leniency shown to prisoners in the operation of the parole system.

... In my view it is incumbent on the courts to assist, if possible, in the working of the system by letting it be known that when a prisoner fails, and in particular when he deliberately rejects, as this prisoner did, the opportunity given him by the grant of parole, he can expect, as the Court of Criminal Appeal has said on many occasions, very little in the way of leniency.

Another case which attracted sentences in the higher bracket for break enter and steal was that of Poole and Prest (unreported NSWCCA, 18 May 1984). The case involved breaking into bowling clubs and commercial premises and stealing a quantity of property valued at $18,259. Although the offenders had only been charged with 2 counts of break, enter and steal, and one of larceny, with a further 3 offences on a schedule, one offender was on parole and had a bad criminal record, while the other was on bail at the time of their offences. Sentences of 10 years with a three and a half year non-parole period and nine years with a three year non-parole period were upheld by the Court.

Of course, not all offences involving large amounts of money, or several charges, or bad criminal records necessarily attract sentences in excess of ten years. For example, in Sobey (unreported NSWCCA, 19 September 1980), the offender was charged with four counts of break, enter and steal with a further 92 matters listed on a schedule - 82 involving Bankcard offences. His illegal activities netted him over $40,000 over a period of five months. He was sentenced to imprisonment for eight years with a non-parole period of three years. With regard to mitigating factors, the Court observed that he had no record of any substance and had a stable home life. He was 35 years of age and was a compulsive gambler. The Court considered that his prospects for rehabilitation were good but even so declined to interfere with the sentence imposed by the trial judge.

In Hasson (unreported NSWCCA, 12 November 1981) the offender had pleaded guilty to 5 charges consisting of two charges of larceny of motor vehicles, one charge of breaking and entering a factory, and two charges of maliciously setting fire to factories. In addition one further matter on a ninth schedule was taken into account. In one of the fires the building was completely destroyed, causing some $255,000 worth of damages. The building and contents were only insured for $128,000 and as a consequence the company went out of business. Thirty employees, with long service leave entitlements, lost their livelihood.
Hasson aged 24 years, had a minor criminal record. A psychiatrist described him as 'a psychopath of somewhat low mentality and addicted to alcohol'. The major mitigating factor in this case was that the offender suffered from a degree of diminished responsibility so that he was unable to appreciate fully the nature of the conduct in which he was engaged. In the result he was given a head sentence of seven years with a non-parole period of three years and six months.

Violence and Break, Enter and Steal

Cases of break, enter and steal where violence is used often attract sentences in the ten years or over category. An example of the worst kind is that of Holder and Johnston (unreported NSWCCA, 14 November 1983). In that case, the Crown appealed against the leniency of sentences of 15 years penal servitude with a non-parole period of 4 years imposed upon each respondent in respect of their pleading guilty to break and enter and inflicting grievous bodily harm, robbery with striking and wounding and having sexual intercourse without consent. Johnston was also convicted of maliciously inflicting grievous bodily harm with intent to to grievous bodily harm. It should be obvious by now that this was not a typical case of burglary, and a number of offences that were committed carried the maximum penalty of life imprisonment.

The circumstances out of which these offences arose reveal that the respondents broke into a house at about midnight with the intention of committing a burglary. They had climbed in through the bathroom window and they were armed with an iron tyre lever and a small knife. The house was occupied by a mother and her eight year old son who were asleep. The woman awoke and thinking that it was her husband called out to him. The respondents then entered the bedroom and began striking her with the iron bar. At this point she began screaming and Johnston, attempting to quieten her down, tore her nightdress. Furthermore in the course of the struggle the knife was plunged into her body. That, unfortunately, was not the end of the matter. Johnston watched as Holder had intercourse with her and then Johnston also committed similar atrocities upon her. Nor was all the violence directed at the female occupant for Johnston struck the little boy with the tyre lever so severely that he had to be placed on a life support system for some 20 days after the event. The evidence indicated that the boy would suffer significant neuro-psychologic deficits in the future.

Before leaving the scene of the crime Johnston ordered the woman to lie on her stomach and then he proceeded to stab her in the back. In consequence of this and the previous assaults the female victim suffered considerable injuries including a collapsed lung from a wound to her chest. She required 24 stitches to her head and had to undergo surgery in order to have the point of the knife, which had broken off in her sternum, removed from her back. The respondents took some bottles of liquor from the house and left both victims in a critical condition.

In allowing the Crown's appeal against the leniency of the sentences imposed, the Court held that the trial judge had given too much weight to the circumstance that the respondents had pleaded guilty in order to demonstrate their contrition for what they have done. Both men had quite extensive criminal records and both were on parole at the time of the commission of these offences. Considerable significance was placed on the fact that the attacks were committed in what ought to have been the safety
of the victim's home. In the result, the Court of Criminal Appeal substituted sentences of penal servitude for life upon both respondents.

In the course of his judgment, Priestley J.A. had this to say about the problem of sentencing those who commit a combination of offences for which there are no statistics:

The various elements which a sentencing judge must take into account in arriving at his sentences are, in my respectful opinion, well described in R v Williscroft & Ors. [1975] VR 1982. A feature of the discussion in that case is its recognition that 'ultimately every sentence imposed represents the sentencing judge's instinctive synthesis of all the various aspects involved in the punitive process' (at 300). The reported decisions show a constant effort by the courts to reduce the sentencing process to a reasonable degree of regularity and order and to eliminate so far as possible the idiosyncrasies of individual judges in arriving at the 'instinctive synthesis' spoken of in R v Williscroft. What is to me a very instructive example of this search for reasoned orderliness is the recent decision of this court in R v Visconti (1982) 2 NSWLR 104. This decision discussed in detail the desirability of even-handedness in sentencing. To obtain a reasonable degree of even-handedness involves the sentencing court in being aware of the general pattern of sentencing in respect of particular types of crime. The pattern, once ascertained, will indicate to a court in a particular case a range within which the sentence should fall, bearing in mind the various factors which the court must consider. R v Visconti was concerned with sentencing for rape and in order to ascertain the general pattern of sentences for rape the available statistics for a number of years were tabulated and considered. The use which was made of the statistics paid due regard to the limitations inherent in looking simply at the results of cases without considering the individual circumstances giving rise to each sentence which took its place in the statistics. Even in regard to a single crime such as rape, although the process can be stated plainly enough, the variety of factors to be weighed by the court makes for the possibility of considerable variation from judge to judge in particular cases within a relatively standard sentencing pattern. When there is a combination of offences such as in the present case, the possibility of such variation increases because comparable cases are much fewer. Indeed, even if for the individual crimes to which Johnston pleaded guilty there were relatively standard patterns, reference to them would be of little help in evaluating the appropriate head sentence for the combination of his crimes. So far as I am aware there is no statistical material available which would help in ascertaining any pattern of sentencing for Johnston's combination of crimes. Nor do the head sentences in other cases give any but the most general assistance.

So much for an example of an extreme case of violence involving behaviour that commenced as a burglary of a dwelling house. Such cases are seldom classified as break, enter and steal offences, although the offenders involved in them may set out to do little else. No doubt it is partly on account of the fear that ordinary burglary can generate into the more serious assaultive crimes, such as armed robbery or even murder that the courts treat this offence so seriously. Less severe examples of the use of violence can be found in Ellem (unreported NSWCCA, 21 May 1982) where the offender pleaded guilty to two counts of break, enter and steal and a larceny in 1981, then two armed robberies, and a further count of robbery
in 1982. The break and enter offences related to private dwelling houses while the robberies took place at service stations. Although these offences did not result in any physical injuries being occasioned to the victims, and further although very little in the way of financial gain was involved, the Court of Criminal Appeal refused to interfere with the aggregate sentence of twelve years and a specified non-parole period of 4 years. Of particular significance in this case was that the appellant had a bad record of dishonesty, was subject to a current good behaviour bond when he committed the break, enter and steal offences and was released on bail at the time he committed the robberies. The Court said:

'Freedom on bail which is abused as an opportunity to commit further offences will necessarily result in the courts taking a serious view'.

Another case involving offences of break and enter with intent to steal, unlawful sexual intercourse and robbery was that of Kennedy (unreported NSWCCA, 19 May 1983). The appellant appealed against the severity of an aggregate sentence of eleven years penal servitude with a non-parole period of five years and four months. In this case, the offender had broken into a flat at the time when the female victim was in bed. When he confronted her she believed that he had a knife and submitted to sexual intercourse. At a later date he broke into another house and stole a rifle and assaulted the occupants with the rifle before decamping. The appellant had a history of violent sexual assaults and the Court in dismissing his appeal against the sentence held that although the non-parole period was on the long side it was not prepared to hold that the trial judge had been in error.

The latter case may be contrasted with Talbott (unreported NSWCCA, 7 June 1984) where the prisoner was successful in having his sentence reduced on appeal. In this case, the appellant had broken and entered the victim's house by removing the flyscreen of a window. He found the occupant asleep in her bed. When she awoke, she found him having sexual intercourse with her. Both the appellant and the victim, who were complete strangers, were under the influence of alcohol at the time of the offence. Afterwards the woman had seen the appellant to the door and appeared to have suffered no physical or psychological harm. It was the latter circumstance that persuaded the Court to reduce his sentence to an effective term of imprisonment of six years. The original non-parole period of three years remained unaltered. Other facts in the appellant's favour were that he had no prior record of violence or of sexual offences and had displayed genuine contrition for what he had done.

In Ryan (unreported NSWCCA, 17 December 1984) the appellant had pleaded guilty to armed robbery, larceny of a motor vehicle and three break enter and steal offences with a further 13 matters listed on a schedule. The offences took place in various suburban districts of Sydney and involved private homes. With regard to the armed robbery offence the appellant had been known to the female victim and had left possessions at her premises in the past. On the day of the offence he confronted the woman and demanded money. He was wearing a balaclava and carrying a replica rifle wrapped in a sheet and he struck the woman on the head before leaving the scene. He obtained some $60 cash, a mickey mouse boys watch and a signet ring. With regard to the break, enter and steal offences, the appellant's modus operandi was to gain entry by smashing windows or breaking down doors. He stole electrical goods such as videos, and colour television sets, cash and jewellery, the total value being some $12,000. The Court of Criminal Appeal
reduced his overall sentence of 14 years penal servitude with a non-parole period of six years to 10 years and 5 years respectively.

In the course of its judgment the Court of Criminal Appeal noted that the appellant was a drug addict and under the influence of drugs at the time of the offence. On this issue it adopted the views expressed by Street C.J. in Ildes (unreported NSWCCA, 21 September 1984) where it was said that the obtaining of money for drugs was not a justification for regarding the criminality involved in such offences as diminished and that therefore the sentences would not on that account be reduced. The Court also referred to judgment of Street C.J. in Hayes (supra) where reference was made to the Court's role in protecting the community from break, enter and steal offences through its sentencing policies.

In the present case, the Court also took into account the number of offences listed on the ninth schedule, the intrinsic seriousness of the armed robbery offence and the general prevalence of break, enter and steal crimes in the community. The appellant who was aged 27 years, had numerous convictions dating back to the Children's Court. However the Court also observed that Ryan's offences were not carried out in a professional manner, that he expressed contrition, and that he had good prospects for rehabilitation. Applying the totality principle the Court felt that the effective sentence imposed by the trial judge exceeded the appropriate level that was called for in the circumstances. As indicated above, both the head sentence and non-parole period were reduced.

The cases clearly reveal that the threat of violence or serious harm is sufficient to call for quite heavy sentences. For example in Nolan (unreported NSWCCA, 11 April 1980) the appellant carried a .22 calibre revolver that could not work. He pleaded guilty to four charges of break, enter and steal but admitted to a further 57 offences on a schedule about half of which were for break, enter and steal. The crimes principally related to dwelling houses although it included one charge involving a chemist shop. The Court approved of the trial judge's comments that the carrying of the weapons was an aggravating circumstance whether it worked or not. Furthermore, although only $8,222 worth of property was not recovered, the appellant was sentenced to 6 years penal servitude with a non-parole period of two years.

Some Appeal Statistics

Earlier it was pointed out that about half the number of persons who are convicted of break, enter and steal offences in New South Wales receive sentences other than terms of imprisonment. In Holder and Johnston (supra) Chief Justice Street quoted statistics for 1981 indicating that in that year there had been 307 appeals relating to sentences. From this total, 62 appeals by convicted persons and 7 appeals by the Crown were successful. These figures, of course, refer to all offences brought before the New South Wales Court of Criminal Appeal in 1981. Similarly data for 1982 show

8. Another example of the way in which the courts treat the threat of violence is given in Blaikie, discussed below.
that there were 391 appeals of which 95 were abandoned or withdrawn, 201 were dismissed, 36 had their terms of imprisonment reduced, 18 had their non-parole periods reduced and 17 had their sentences increased. During the same year there were 21 Crown appeals, 17 of which were successful and 4 of which were dismissed.

An examination of statistics relating solely to break enter and steal cases shows that of a total of 59 appeals during 1982, 25 were withdrawn and 25 were dismissed. Of the remaining 9 cases, 5 had their non-parole periods reduced and 4 had their sentences reduced. Based upon these figures it may be assumed that the incidence of Crown appeals relating specifically to this offence is likely to be very infrequent indeed.

Crown Appeals

The present study, covering as it does, a period of some 7 years of Appeal Court decisions produced four cases involving Crown appeals against sentence. One of these, Holder and Johnston has already been considered, although as indicated above, that case is not properly classified as one of break, enter and steal. The other three Crown appeals were (Ferguson unreported NSWCCA, 21 May 1976), Noonan, Portus, and Ryan (unreported NSWCCA, 6 November 1980) and Blaikie (unreported NSWCCA, 17 December 1984). The last three cases have in common the fact that they all involved challenges by the Crown against the imposition of bonds.

In Ferguson (supra) the respondent was originally given a 4 year good behaviour bond and ordered to pay a total of $3,159 as compensation. He had pleaded guilty to five counts of break, enter and steal involving some $3,000 worth of goods taken from dwelling houses. He had previously jumped bail so that the period between the time of his apprehension and the date of sentencing (some eight months) had contributed to the delay in sentencing him. The rationale for imposing the bond was that the respondent had recently married and that his wife was shortly to have a child. The Court of Criminal Appeal felt it should intervene because the good behaviour bond fell far short of what was appropriate in the circumstances. It observed that the respondent had a prior criminal record and that he committed the crimes over an extended period of some one and a half years. In addition, the Court referred to an earlier decision decided in 1973 and observed as follows:

It has been said many times in this Court and in the District Court that the prevalence of the crime of break, enter and steal must be put down in the interests of the preservation of the ordinary peace and confidence that citizens of this community are entitled to enjoy. Begg J., in 1973 in R v Sloane [1973], 1 NSWLR 202, at 212) expressed himself in terms that we have later expressly approved:

10. Ibid.
11. Ibid, Table 20.
'This crime is most prevalent at this time and it attracted the attention of the legislature in 1966 when the maximum term of imprisonment was increased from ten years to fourteen years.

I think it is an appropriate time for this Court to say in an emphatic way, if persons continue to resort to breaking into other persons' property and stealing contents (often valued objects), the courts will reflect the community feelings on this type of crime by upholding the severe sentences and that, if a series of crimes are committed by the one offender, by imposing cumulative sentences it will be made plain that he will be punished for each crime committed.'

In the result, the Court substituted for the bond a sentence of 12 months imprisonment in respect of each of the five offences and ordered that they be served consecutively. In addition, it specified a non-parole period of three years.

In Noonan, Portus and Ryan (unreported NSWCCA, 6 November 1980), three offenders were each charged with one count of breaking and entering a private dwelling and stealing a total of $30,000 being cash and jewellery contained in a safe. They absconded with the safe and, after removing its contents, they jettisoned it in the Hunter River. In addition to a bond, the trial judge had imposed fines of $300 on each offender. Amongst the mitigating considerations were the fact they pleaded guilty, that their prior criminality was insignificant, that they expressed a desire to obtain employment and that they were young. However, the Court acceded to the submission by the Crown that the sentences were inadequate and accordingly substituted sentences of 3 years imprisonment with non-parole periods of 12 months in respect of each respondent. In doing so, the Court was clearly influenced by the circumstance that the crime was carefully planned and premeditated and also by the fact that a considerable sum of money was involved.

In Blaikie (unreported NSWCCA, 17 December 1984) the Crown appealed against the leniency of a 3 year good behaviour bond imposed upon the respondent who had pleaded guilty to the following three charges - one count of break and enter with intent to steal from a dwelling house, one count of assault occasioning actual bodily harm and one count of common assault. The circumstances were that the respondent had been caught by the occupant, an off duty policeman as he, Blaikie, was attempting to gain entry through a side window of the house. A struggle ensued during which the policeman was struck three times with a housebrick to the head. Ultimately the policeman was able to arrest the respondent but the prowler had to be treated in hospital for serious injuries to his head and right eye. On route to the hospital, the respondent deliberately tripped another policeman who, as a consequence, also needed treatment.

The respondent was 40 years of age and had a long history of criminal offences including rape, stealing, forging and uttering and malicious injury. He was on parole at the time that he committed these offences.

In upholding the Crown appeal, the Court held that the three year good behaviour bond was manifestly inadequate and that a custodial sentence should be imposed. Accordingly it substituted a head-sentence of six years and declined to specify a non-parole period.

Although the present study is not a statistical one, a breakdown of the 126
appeal decisions that were examined revealed that about one out of two
involved the breaking and entering of dwelling houses. About one case out
of five involved shops (a third of these were chemist shops) and the next
highest proportion about one in ten consisted of larger commercial premises
and factories. Most other offences took place in clubs, garages, car yards
or service stations. Only a small proportion involved offices, schools or
bottle shops although it should be noted that in over 10 per cent of the
cases the Court of Criminal Appeal did not specify the kind or kinds of
premises broken into.

In general, offenders who broke into clubs and larger commercial premises
tended to be more professional and carry more preparatory equipment than
their dwelling-house targeting counterparts. In Stewart (unreported
NSWCCA, 17 December 1981) the appellant had been found not guilty of
breaking, entering and stealing from a dwelling house, but had been
convicted of possessing housebreaking implements. The housebreaking
implements consisted of a screwdriver and a pair of long socks. The socks
were used in lieu of gloves as a means of concealing his finger prints.
However the appellant received a prison sentence of eighteen months
commencing from the expiration of a five year term that he was currently
serving. Stewart was aged 23 years at the time of his offence, was not
intellectually bright, was a heroin addict and had a record of convictions
commencing in 1974. Although the trial judge had declined to specify a
non-parole period on account of what was described as the appellant's
persistent criminality, the Court nevertheless held that the appellant
should have the benefit of a non-parole period. Accordingly, a minimum
term of twelve months was specified.

Professionalism

The unprofessionalism evidenced in the latter case can be compared with
Perry (unreported NSWCCA, 23 October 1981), where the Court refused to
interfere with a sentence of four and a half years without a specified
non-parole period. The appellant had pleaded guilty to three charges of
breaking into clubs and stealing the contents of safes. He was 52 years of
age and had a lengthy prior criminal record including an offence of shoot-
ing with intent to prevent apprehension for which he had been sentenced to
14 years penal servitude. To make matters worse, he was on bail at the
time of his present offences. In upholding the aggregate sentence imposed
by the trial judge, the Court made reference to the appellant's profession-
alisn with regard to the way in which he carried out his offences.

An example of professionalism already discussed, was that of McDonnell and
Hincksman (supra) where, it may be recalled, the appellants broke into
several non-residential club premises and used oxy-acetylene equipment to
penetrate safes thereby netting themselves some $43,000. A similar example
is that of Cox and Formby (unreported NSWCCA) where the offenders stole
$80,949 from commercial premises by using oxy-acetylene equipment. These
offenders were aged 21 and 23 years respectively, had no prior criminal
records and came from stable family backgrounds. Even so the Court
decided to interfere with their sentences, each receiving an effective
seven and a half years term of imprisonment coupled with a non-parole
period of 4 years.

On the face of it, there would appear to be little to distinguish the
circumstances surrounding the preceding two cases, yet the head sentences
imposed were quite disparate - twelve years in the case of McDonnell and
Hincksman, seven and a half in the case of Cox and Formby. Both involved extensive planning, use of oxy-acetylene equipment, both involved 5 charges with additional offences listed on a schedule (11 and 15 respectively for McDonnell and Hincksman and 49 each for Cox and Formby) both had good backgrounds without any significant record of convictions, and both obtained considerable sums of money as a result of their nefarious activities.

To conclude that these two cases were unfairly disparate however, would involve the assumption that there were no other aggravating or mitigating factors relating to these cases. Reasons given in judgments do not always reveal all the relevant facts, but prima facie at least there would appear to be room for concern that the sentences imposed upon one or other of these two groups of offenders were excessively severe or unduly lenient. When however, the specified non-parole periods are examined the same degree of disparity is no longer apparent. Each offender received a specified non-parole period of four years, with the exception of McDonnell who received a five year term. Therefore, examining these sentences from the minimum term of imprisonment that each offender is likely to serve, the sentences assume a different perspective and no longer appear to be unduly disparate.12

In McDonnell and Hincksman, Cross J. justified his approach in the following terms:

Parliament has seen fit to enact, as the Chief Justice has said, that the maximum penalty for breaking, entering and stealing is 14 years penal servitude. But if one was to speculate on or imagine the type of bad case that might attract that maximum penalty, one's mind would probably turn to a case of bold intrusion into premises, such as office premises or a licensed club, where a safe was likely to be, the use of oxy-acetylene equipment, sledge-hammers and other implements for the purpose of opening the safe and the removal of substantial sums of money. This is precisely what happened in this case, not once but on a very large number of occasions. The amount of money taken was substantial and no satisfactory explanation has been advanced as to its dissipation or its present location.

At the Lower End of the Scale

A common feature found at the lower end of the imprisonment scale is that the cases often, but not always, involve but one or two isolated offences. Nevertheless, the individual offences themselves may be quite serious in that courts feel obliged to impose custodial sentences rather than select one of the non-custodial or semi-custodial alternatives.

12. Note however that not all persons eligible for parole are released at their earliest date. Furthermore those with longer head sentences are likely to remain under supervision for longer periods. Thus head sentence disparity remains an important consideration for sentencers concerned with equitable sentencing practices.
In Davis (unreported NSWCCA, 23 June 1983) the appellant had pleaded guilty to several charges of larceny and break, enter and steal. Originally the sentencing court had bound the appellant over to be on good behaviour for four years. The appellant also undertook to repay $1,159 by paying monthly instalments of $25. When he defaulted in repaying the monthly instalments, having made but one payment only, he was brought up for sentencing in respect of his original offences. As a result the trial judge sentenced him to a term of eighteen months penal servitude, with a non-parole period of nine months. At his appeal the New South Wales Court of Criminal Appeal found that he defaulted at the relevant time because he was unable to pay compensation at the required rate. In allowing the appeal, the Court held that while it was proper to sentence the appellant in respect of the original offence as a consequence of a breach of his recognisance, it was not proper in the circumstances for the trial judge to penalise the appellant for not being able to pay the compensation. Accordingly the Court quashed the sentence imposed by the trial judge and substituted a term of imprisonment of two months and five days (being the amount of time that the appellant had already served in prison). In addition it ordered the appellant to pay compensation at the rate of $20 per month.

In Horne and Shaw (unreported NSWCCA, 2 May 1980) the appellants were successful in having their sentences reduced from two years penal servitude to one year. They had committed one offence of break, enter and steal which involved the theft of a safe containing drugs from a chemist shop. The trial judge had declined to set a non-parole period because of the poor antecedents of the appellants and particularly because they had previously shown themselves to be disinclined to abide by the terms of bonds and parole orders. Although the Court of Criminal Appeal discussed the statutory obligation of courts to set non-parole periods, it held that the trial judge was fully justified in refusing to set non-parole periods in the special circumstances of the present case.

In Jackson (unreported NSWCCA, 30 October 1980) the appellant, a sixteen year old youth, had pleaded guilty to three charges of break, enter and steal together with a further 25 matters listed on a schedule. The offences had been committed in company with an older man who played the dominant role in these offences. On the one hand the Court recognised that the appellant's childhood had been disrupted, that he was a low achiever academically, and had no earlier involvement with the criminal law. On the other hand, it was unable to regard the offences as negligible. Accordingly the court refused to interfere with the trial judge's sentence which consisted of the committal of the appellant to an institution for 12 months as well as the imposition of a two year good behaviour bond.

The Aggravating Factors

With regard to the longer prison sentences certain features are commonly found. These may be summarised as follows:

1. Often offenders are charged on several counts of break, enter and steal and ask the courts to take into account a large number of similar offences for the purposes of sentencing.

2. Often the offences are committed over a comparatively long period of time.

3. Often the offences are carefully planned and are executed in a
professional manner. Professionalism is often inferred from the kind of equipment carried by the offenders, eg oxy-acetylene equipment for breaking into safes.

4. Often the offences or the accumulation of offences involve large sums of money.

5. Often the offenders have a long record of similar crimes and may be in breach of a bond, probation or bail condition, or may be subject to parole at the time that they commit further offences.

6. Often where violence, robbery or sexual assault is associated with break and enter offences particularly lengthy terms of imprisonment are imposed. This is even more evident where serious physical injury is occasioned to innocent victims.

Some Concluding Comments

It is always difficult to determine the appropriate level of punishment for any crime, let alone for break, enter and steal. Yet, having regard to the penalties imposed for violent offences, such as armed robbery, sexual assault offences and even manslaughter, sentences exceeding ten years for break, enter and steal where no violence is involved appear to be excessively severe. From the statistics quoted earlier, it is apparent that sentences for individual break, enter and steal offences seldom exceed five years. Typically those who are sentenced to terms of imprisonment receive prison sentences of between one and three years in respect of their most serious offences. Accordingly it is submitted that the legislature would afford a far better guide to sentencers if the maximum penalty for this offence were to be reduced from 14 years to 7 years penal servitude. Courts could then regard 7 years as the appropriate penalty for the most serious cases of break, enter and steal and still have the flexibility of imposing cumulative or longer sentences in appropriate circumstances.

It is further submitted that sentences exceeding ten years for this offence should be avoided, even in circumstances where a holistic view is taken of the gravity of several offences committed by multiple offenders. This approach would not offend against the principles of deterrence, community protection and just retribution but rather would support them. It would support these principles by ensuring that a distinction is drawn between non-violent property offences and property offences involving violence. Serious violent crime commonly attracts prison sentences in the region of ten or more years. Even the majority of life sentenced prisoners serve little more than ten years of their sentences before being released into the community. Similarly, offenders convicted of several armed robberies for example are unlikely to receive sentences that are any more severe than those imposed upon Hayes (supra). Thus as the present sentencing policy stands there is little to separate the penalties imposed upon those who commit multiple but non-violent break, enter and steal offences from those who commit the most serious crimes in the criminal calendar.

Most would agree that increasing penalties upon armed robbers is unlikely to reduce the incidence of such robberies because sentence lengths are already comparable to those served by life sentenced prisoners. Hence the object of deterrence may best be pursued, not by increasing but by reducing penalties for break, enter and steal. Such a strategy may help to discourage those who, regardless of penalty, would engage in housebreaking.
from committing the more violent crimes that are sometimes associated with that activity. It would also serve to indicate that the criminal law through its sentencing policies will regard injury to persons more seriously than invasion of privacy, property damage and theft.

Finally, one should question the extent to which courts through their sentencing policies can bring about a reduction in this crime. One of the first lessons offenders learn in gaol is how to break into cars and become more effective criminals. Until a radical change takes place in our penal institutions keeping offenders out of gaol may still be one of the most effective ways of ensuring that they will not graduate into hardened criminals.

This thesis then presents a fundamental dilemma for criminology. Courts talk about protecting the community by imposing long sentences of imprisonment on offenders who are caught and by threatening would be offenders with harsh measures should they succumb to temptation. Prisons it is said, are intended to deter, isolate and rehabilitate offenders. Yet it is common knowledge that our institutions do not do any of these things particularly well. The very process that is intended to prevent crime ensures its continuance. Accordingly it is futile to expect that the punishment system can resolve single handedly our present predicament concerning the incidence of housebreaking. Realistically, courts, through their sentencing powers, can only provide a band-aid solution for what has apparently become a gaping sore and one for which there is no immediate or otherwise readily discernable remedy.
INTRODUCTION TO APPENDIXES

The following appendixes (Appendix I and II) set out in annotated form the complete range of sentencing decisions that formed the background to the present study. Appendix I contains a summary of all the unreported sentencing decisions referred to in the text, and Appendix II provides a fuller description of all the cases of break, enter and steal decided in the Court of Criminal Appeal and made available to the author. The summaries have been compiled by research assistant, Lynne Reeder, and are reproduced here in the belief that they will assist those with an interest in the sentencing practices of the New South Wales Court of Criminal Appeal.

While the cases analysed include the majority of break, enter and steal offences decided by the New South Wales Court of Criminal Appeal over a period of approximately 7 years, it is not unlikely that a small number of decisions have been omitted. Inevitably the descriptions given in the summaries are skeletal and even the sentences that are ultimately imposed may only reveal the aggregate sentences. Furthermore readers are cautioned that many of the relevant factors that may have been taken into account by the sentencing judge may not have been included in the summaries.

Another consideration, and one already referred to in the introduction, is that courts are no longer empowered to specify non parole periods where sentences are for 3 years or less. Instead non probation periods are now fixed by the courts. Caution should also be taken lest it be assumed that all sentences commence to run from the date that they are imposed. Again, as set out in the introduction, some sentences may be back dated so as to run from the date that the accused was taken into custody, while at other times where the offender has been in custody, the court may impose a shorter sentence but direct that it should commence to run from a later date. Sometimes sentences are ordered to run from a date in the future, as in the case of prisoners serving an unexpired sentence of imprisonment in respect of some earlier offence or offences. These important considerations are not always identified in the summaries.

Finally, persons who refer to the material presented in these appendixes in circumstances where they may wish to use it for legal purposes should ensure that they consult the original judgments of the Court of Criminal Appeal.
Case List for Appendix I

Unreported Decisions of the New South Wales
Court of Criminal Appeal

BELL, TOWERS AND BELL, 30 March 1979.......................... 27-28
BLAIKIE, 17 December 1984............................................ 29
COX AND FORMBY, 24 July 1981................................. 30
DAVIS 23 June, 1983..................................................... 31
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HASSON, 12 November 1981............................................ 36
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Reported Decisions

SLOANE (1973) 1 NSWLR 202 at 212................................. 18
VISCONTI (1982) 2 NSWLR 104........................................ 14
WILLISCROFT & Ors. (1975) VR 1982................................. 14
Circumstances of Offences:

R.J. Bell 7 counts in the indictment; 5 break, enter and steal 2 x 2 of larceny of motor vehicles and 107 other scheduled offences.

W.D. Bell 3 cases of break, enter and steal in the indictment, 4th count of larceny of a motor vehicle and 27 other scheduled offences.

D.A. Towers 5 counts of break, enter and steal; 2 counts of larceny of motor vehicle and 35 other scheduled offences.

R.J. Bell seen as major criminal involved.

Sums involved in indictments, to $65,000, $33,000 and $47,000 respectively. Offences committed in the New England area.

R.J. Bell:

10 yrs p.s. on 1st count; 2 years penal servitude on the 2nd count, 2 years on 3rd count concurrent. On the 4th count 2 1/2 years to commence at the expiration of the 1st sentence, 2 1/2 years on 5th count to commence on the expiration of the 4th sentence imposed - 6 and 7 counts 2 years penal servitude all to be concurrently with the sentences already imposed non-parole period of 6 years.

W.D. Bell:

7 1/2 years to commence at the expiration of the sentence which that person was serving, 2nd and 3rd counts - 2 years penal servitude each cumulative, to commence at the expiration of the 1st sentence, 4th count - 2 years penal servitude non-parole period to expire on 1 December 1983.

D.A. Towers:

1st count - 8 years; 2nd count - 2 years concurrent; 3rd count - 2 years hard labour commence at expiration of the 1st sentence; 4th count - 2 years to commence at the expiration of the 3rd sentence; 5th, 6th and 7th to 2 years hard labour - non-parole period of 5 years.

Aggravating Circumstances:

'The gravity of the criminality here fully justifies the
sentences imposed by the learned sentencing judge.'
'This series of crimes must be regarded as one of the gravest
of its nature that has come before this court.'
All judges agree that the appeal should be dismissed and 2 out
of 3 held that the time spent awaiting the outcome of the
appeal should not count as part of the sentence.

Result:

Appeal Dismissed.

R.J. Bell
Head sentence - 10 + 2 + 2 1/2 + 2 1/2 = 15 years
Non-parole period - 6 years

W.D. Bell
Head sentence - 7 1/2 + 2 + 2 + 2 = 11 1/2 years
Non-parole period - 3 3/4 years

D.A. Towers
Head sentence - 8 + 2 + 2 + 2 + 2 + 2 = 12 years
Non-parole period - 5 years
John Arthur Blaikie

Appeal Upheld

N.S.W.C.C.A.
No. 203 of 1984
17 December 1984

Circumstances of Offences:

Appeal by Attorney-General. Respondent pleaded guilty to following 3 charges.

1. Attempting to break and enter with intent to steal from dwelling house.
2. Assault - injured victim's back
3. Common assault.
   Given 3 year good behaviour bond.

Background:

40 years old. Prior record extending back to age 13.
Diversity in criminal conduct - rape, stealing, forgery and uttering, malicious injury, and break, enter and steal.

Aggravating Factors:

Court felt that having given anxious consideration to the relevant subjective and objective factors, that the sentences announced were manifestly inadequate given the appellant's prior record. Custodial sentences were clearly required. Offences committed whilst on parole.

Result:

Appeal upheld - sentence manifestly inadequate.
Sentences for break, enter and steal - 3 years, assault - 2 years, common assault - 1 year and 6 months.
Aggregate head sentence 6 years instead of the bond. No non-parole period specified.
Barry James Cox  
Walter Charles Formby

Appeal Dismissed

N.S.W.C.C.A.
No. 148 of 1981
No. 149 of 1981
24 July 1981

Circumstances of Offences:
Appeals against severity on pleas of guilty to 5 break, enter and steals, 1 car stealing and 49 scheduled offences.
Each appellant sentenced to $1/2 + 5 + 4 = 7 1/2 years with non-parole period 4 years.
Offences committed over 12 month period involving commercial premises.
A total of $80,949 taken. Oxy-acetylene equipment was used to open safes.

Background:
Aged: 21 and 23
Employment record good, both come from stable homes.
Cox lived with parents; Formby married and lived with wife.
No history of childhood deprivation or emotional hardship.

Mitigating Circumstances:
1. Long sentence since these are their first offences.
2. They pleaded guilty and co-operated with police.

Aggravating Circumstances:
Extraordinary contrast between the seriousness of the criminality on one hand and the subjective circumstances on the other (those being the stable and crime-free past of the appellants)

Result:
Appeal dismissed.
Head sentence - 7 1/2 years
Non-parole period - 4 years
Wayne Brian Davis

Appeal Allowed

N.S.W.C.C.A.,
No. 97 of 1983
23 June 1983

Circumstances of Offences:

Appeal from a sentence passed on the appellant for larceny and break, enter and steal.
Was sentenced to 18 months penal servitude with non-parole period of 9 months.
Originally given a good behaviour bond for 4 years and ordered to pay compensation at $1,159 with monthly instalments at rate of $25 per month.
Appellant made one payment only of $25 but otherwise complied with the terms of the bond.
Inability to make payments.
Received $128 per fortnight in social services and paid out $94 per fortnight in rent alone.

Mitigating Factors:

Had not broken good behaviour bond.
Been in jail already for 2 months.
It was felt that he should be sentenced only on original offence and not punished by additional imprisonment for the fact that he had broken a term of the bond requiring him to pay a certain sum of money.

Result:

Appeal allowed.
Reduced period of imprisonment - appellant discharged forthwith having served 2 months 15 days in gaol.
Ordered to pay $20 per month
Kept on good behaviour bond.
Anthony Ellem

N.S.W.C.C.A.
No. 303 of 1981
21 May 1982

Circumstances of Offences:

Appeal against severity of sentences, appellant pleaded guilty to 2 groups of offences.
1st group consisted of 1. larceny 1980
   2. break, enter and steals 1981
2nd group comprised - 2 armed robberies 1981
   - robbery 1981
First group committed with juvenile girl in private homes.
Second group involved obtaining money from service station in company of 2 other males.
Violence and threat of violence was used in all 3 robberies.
The amounts stolen were not large.

Background:

Age 20 years.
Long record with appearances in Children's Court between November 1975 and July 1980.
Left school aged 15 years.
Parents separated while young.
Used drugs.

Aggravating Factors:

Violence used during robberies.
Has had no gainful employment.
Committed robberies while on bail 'freedom on bail which is abused as an opportunity to commit further offences will necessarily result in the court taking a serious view'.

Result:

Appeal dismissed.
Head sentence - 12 years.
Non-parole period - 4 years.
Circumstances of Offences:

Appeal by Attorney-General against original sentence - a four year good behaviour bond conditioned upon his placing himself under the supervision and guidance of the Probation and Parole Service, and further, upon his paying a total of $3,159 as compensation.

Respondent had a long record of criminal activity. Has had previous terms of imprisonment. In 1967 before the court for 4 counts of break, enter and steal, 1 count of larceny, and 17 further matters on a schedule. Given 4 1/2 years head sentence. Non-parole period 2 years. Released March 1969, less than a month later broke into factory, stole property valued at $457. Was arrested later in April, granted bail then absconded. In May 1969 committed further crimes of break, enter and steal.

In August 1969 sentenced to 3 1/2 years with a non-parole period of 2 years 3 months for above crimes and another 4 break, enter and steals and another of larceny on a schedule. Released from custody December 1971 - lived within the law for next six months.

In January 1974 arrested on present charges - these had been committed on dates from beginning of June 1972 to December 1973. 5 break enter and steals - involved private homes. Over $3,000 stolen. The learned judge, when these matters came before him, was influenced by the fact that there appeared to be a prospect of the respondent changing his way of life. He had married recently and his wife was shortly to bear him a child, influenced judge's decision to give him a bond and compensation payment.

The court saw fit to intervene - 'the decision to release this respondent upon a four year good behaviour bond fell so far short of what was an appropriate order to be made in the circumstances that it attracts the appellate intervention of this Court'.

Aggravating Factors:

Respondent's past history.
Serious nature of crimes.
Period over which they extended.
Felt that 'criminal law must be administered with due regard to the interests of the community at large'.

Mitigating Factors:

Personal tragedy affecting the respondent's wife. However Court felt that the personal consideration of particular
criminals who came before the court cannot be permitted to outweigh the primary duty of the court towards the community at large.

Result:

Appeal allowed. Court ordered that the decision of the District Court be quashed. Compensation paid so far to be returned to respondent. Sentenced to 1 year for each of 5 charges, i.e.

Head sentence - 5 years.
Non-parole period - 3 years, to date from 21 May 1976.
Circumstances of Offences:

Appeal against severity of sentences for 8 charges of break enter and steal to which the appellants pleaded guilty. Mark Fowler disclosed a further 88 offences of break enter and steal. Steven Fowler disclosed a further 8 matters on a schedule - 4 of break, enter and steal, 3 of break and enter with intent to steal and 1 of housebreaking implements in possession.

Mark Fowler was sentenced on 1st charge (and matters on a schedule) to 10 years. On the 7 remaining counts to 5 years. 10 + 5 = 10 years, head sentence.

Non-parole period 5 years 3 months.

Steven Fowler sentenced on first charge to 8 years. On remaining 7 counts to 5 years each concurrent, i.e. head sentence - 8 years. Non-parole period - 4 years and 3 months.

4 offences carried out on pharmacies. Period covered by 96 offences of break enter and steal ran from November 1980 to September 1982.

Backgrounds:

Both brothers were drug addicts, and lived in stable emotional relationships with young women.

Ages - Mark - 24 years. Steven - 22 years. Both had records of appearances before Children's Courts.

Aggravating Factors:

Steven - had two previous 2 year good behaviour bonds and had committed offences during their currency.

Types of premises broken into - 'breaking into pharmacies should be viewed seriously even if it is done by drug addicts. The onslaught on these shops, which exist to help people who are in need of legitimate medication, is a serious matter'.

Number of offences. Length of time over which these offences were committed. Court agreed that the sentences were lengthy but felt they were justified bearing in mind the very significant degree of criminality.

Result:

Appeal dismissed.

Mark Fowler - head sentence - 10 years.
Non-parole period 5 years and 3 months

Steven Fowler - head sentence - 8 years.
Non-parole period - 4 years and 3 months.
Joseph Hasson

Appeal Dismissed

N.S.W.C.C.A.  
No. 185 of 1981  
12 November 1981

Circumstances of Offences:

Appeal against severity. Appellant pleaded guilty to five charges.
1st - stole motor car, sentenced to 2 years.
2nd - maliciously set fire to Spotwell Wireworks - 3 years.
3rd - broke and entered factory - 3 years p.s.
4th - Set fire to Rockdale laundry - 5 years.
5th - stole motor car + one matter on a schedule - 3 1/2 years.
Head sentence - 7 years.
Non-parole period 3 1/2 years.
Not much damage done at Spotwell Wireworks - but fire at Rockdale laundry completely destroyed building - $250,000. Building and contents were only insured for $128,000 and as a consequence the company has gone out of business and 30 employees with long service entitlements lost their livelihood. Compensation sought by various persons affected amounted to $255,423.55.

Background:

Aged 24, prior record 6 previous convictions. Born in Britain. At the time of arrest was employed as a glass bender.

Mitigating Factors:

Addicted to alcohol. He referred to lack of adequate love and death of father. Was in a relationship with a young woman whom he wished to marry and believed that this would be the turning point of his life. Psychiatrist report said that the applicant had a psychopathic anti-social personality which was aggravated by the consumption of alcohol. Report suggested that certain answers in the record of interview indicated a diminished responsibility on his part or, more particularly a failure to fully to appreciate the nature of the conduct in which he was engaged.

Result:

Appeal dismissed - Court was unable to see that the sentences which were imposed fell outside the limits of discretion available to the sentencing judge.
Head sentence - 7 years
Non-parole period - 3 1/2 years.
Paul Eric Hayes

Appeal Dismissed

N.S.W.C.C.A.
No. 304 of 1983
8 May 1984

Circumstances of Offence:

Appeal against severity of sentence. Appellant pleaded guilty to 4 charges of break, enter and steal and in addition disclosed a further 30 offences of break enter and steal. On 1st charge of break enter and steal and 30 offences on schedule given - 13 years penal servitude to commence from 7 September 1983. On remaining 3 charges sentenced to 4 years to be served concurrently with 1st charge. Head sentence - 13 years + 4 + 4 + 4 = 13 years. Non-parole period - 8 years. Offences involved appellant breaking into private homes and stealing personal property such as jewellery, electronic equipment and other goods that might have been expected to command some resale value. Total worth of the property involved in the 4 offences = $10,030. Property recovered = $2,714. Total worth of property stolen in the 30 offences listed = $37,808 of which nothing was recovered. Offences took place over the period between August 1982 and April 1983. Appellant arrested on 27 April 1983.

Background:
Aged 24 - unemployed throughout time of committing present offences. Left school in form 3 and obtained work as a welder for 12 months but thereafter has a spasmodic work record. Record extends back to 1975 when at age 16 was committed to a boys' home for stealing a motor bike. In 1976 and 1977 again before courts and received fines. 1978 - another fine, 1979 - 9 months periodic detention, 1979 and 1980 - fines. The significant entry is in March 1981 where he was sentenced to a total of 3 years on 3 break, enter and steals, non-parole period expiring 4 July 1982. Released on parole 5 July 1982 and commenced committing the present offences in August 1982.

Mitigating Factors:
Co-operated with police - volunteered information and in fact travelled with the police to various sites and physically identified the premises involved. In relation to other break, enter and steal cases it was contended that 'the aggregate sentence and this non-parole period fall outside the current sentencing pattern to such a degree as to expose a manifest error on the part of the sentencing judge'.

Aggravating Factors:

Committed offences whilst on parole for his previous sentence for break, enter and steal offences.
Nature of offence - judges spoke at length on the rising number of break, enter and steal offences being committed and the need 'for a hardening in the policy of criminal courts when sentencing for this offence'.
Pointed to the fact that the maximum penalty for this offence is 14 years and this brings out the conclusion 'that the legislature marks down break, enter and steal as a serious crime. It behoves the court in consequence to treat it with corresponding seriousness when sentencing'.

Result:

Appeal dismissed.
Judges agreed that the aggregate sentence and the non-parole period were undoubtedly lengthy, but they were designedly and properly lengthy.
Head sentence - 13 years.
Non-parole period - 8 years.
Phillip John Holder
Mark Rodney Johnston

Appeal Allowed

N.S.W.C.C.A.
No. 191 of 1983
No. 192 of 1983
14 November 1983

Circumstances of Offence:

Crown Appeal against inadequacy of sentences. Johnston pleaded
1. guilty to break, enter and inflicting grievous bodily harm (12 years).
2. maliciously inflicting grievous bodily harm with intent to do grievous bodily harm (10 years concurrent)
3. robbery with striking and wounding (10 years concurrent)
4. sexual intercourse without consent (3 concurrent 3 year terms cumulative upon the earlier sentences).
Head sentence - 15 years.
Non-parole sentence - 4 years.

Johnston:
Non-parole sentence - 6 years.

Holder:
1. Break, enter and inflict grievous bodily harm - 10 years
2. Robbery with striking and wounding - 10 years concurrent
3. Sexual intercourse without consent - 1 year cumulative.
Head sentence - 11 years
Non-parole period - 4 years.

Background:

Emotionally deprived earlier life - number of occupations, but none for any significant length of time. Married in July 1982 - separated in October 1982.

Crown's challenges based on
1. manifest inadequacy of sentences
2. error in evaluation of significance of unexpired portion of prior sentences
3. giving of undue weight to element of contrition.
Court spoke at length of the job an appellant court is expected to do - 'An appellant court interferes only if it be shown that the sentencing judge was in error in acting on a wrong principle or in misunderstanding or in wrongly assessing some salient feature of the evidence. The detection of error of principle is straightforward - but evaluating whether the error is manifested by an excessive or inadequate sentence is more difficult.'

'Disparity of sentencing standards is a very serious deficiency in a system ... it is the task of a Court of Criminal Appeal to minimise disparities of sentencing standards yet still recognise that perfect uniformity cannot be attained and that a fair margin of discretion must be left to the sentencing judge'.


Looking at the first and second challenge, that of manifest inadequacy of sentences - there was some evidence to suggest that His Honour was under the impression that the remission release date (9 March 1984 and December 1983 respectively) was in fact the expiry dates of the pre-existing sentences and in result Johnston, instead of receiving an accumulation of about 14 years 4 months on top of his pre-existing sentence, received only 11 years 10 months. Holder instead of receiving an accumulation of 10 years 7 months on top of his pre-existing sentenced, received 7 1/2 years. Second challenge by Crown is that His Honour gave undue weight to the presence of the element of contrition. Court said that all accused persons can ordinarily expect to receive the benefit of some credit in the matter of sentence when proffering a plea of guilty.

Looking at this case the Court felt that His Honour may have given too much weight to this factor and that this may have contributed to the inadequacy of the sentences. The Court felt, especially regarding Holder, that he realised that he should plead guilty and hope for the best.

Result:

Appeal allowed.
Sentence was in each case manifestly inadequate. Court attached significance upon the fact that the attacks were committed in what ought to have been the safety of the home. Johnston - sentenced on first charge to imprisonment for life. Sentenced on each of the 2nd and 3rd charges to imprisonment for 15 years. To be served concurrently and for 3 remaining charges to aggregate of 9 years.

Holder:

Even though the totality of his criminality was less than that of Johnston, still called for life sentence. Sentenced to prison for life. On 2nd charge imprisonment for 15 years. On 3rd charge imprisonment for 4 years.
Rodney Christopher Horne
Robert George Shaw

Appeal Upheld

N.S.W.C.C.A.
No. 7 of 1980
No. 8 of 1980
2 May 1980

Circumstances of Offences:

Appeals against severity of sentences. Each given 2 year head sentence. No non-parole period specified. Both pleaded guilty to break, enter and steal from a chemist shop. Stole drug safe and contents.

Aggravating Factors:

Offence was planned and both had prior criminal records. The Court also noted their failure to take advantage of the chances that had been given to them previously.

Result:

Appeal upheld - both sentenced to 1 year cumulative on the sentences presently being served. Non-parole period not specified.
George Jason Jackson

N.S.W.C.C.A.
No. 171 of 1980
30 October 1980

Circumstances of Offences:
Appeal against severity of sentences. Plead guilty to 3 charges of break, enter and steal plus 25 matters on a schedule. Broke into commercial premises.

Background:
Aged 16 years. Childhood of disrupted nature. Academically a low achiever.

Mitigating Factors:
Seen as minor, and had no earlier involvement with the criminal law.

Aggravating Factors:
Offences cannot be simply dismissed as negligible.

Result:
Appeal dismissed.
Committed to an institution for 12 months and placed on a 2 year good behaviour bond.
Anthony Patrick Kennedy

Appeal Dismissed

N.S.W.C.C.A.
No. 355 of 1982
19 May 1983

Circumstances of Offence:

Appeal against severity of sentence.
1. Charged with break, and enter with intent to steal and rape - 6 years.
2. Charged with break, enter and steal (stole rifle) then used it to assault occupant of flat - 5 years.
Head sentence - 11 years.
Non-parole period - 5 years 4 months.

Aggravating Factors:

Committed offences while on bond (for previous sexual offence).
Appellant showed regrettable lack of response to rehabilitation.
Prior record seemed to point to the appellant associating sex with violence.

Result:

Appeal dismissed.
Court conceded that the non-parole period was long but felt this was warranted.
Head sentence - 11 years.
Non-parole period - 5 years 4 months.
Brian Kenneth McDonnell
Christopher John Hincksman

Appeals Dismissed

N.S.W.C.C.A.
No. 251 of 1982
No. 253 of 1982
17 February 1983

Circumstances of Offences:

Appeals against severity on plea of guilty to series of break, enter and steals.
McDonnell pleaded guilty to 5 charges of break, enter and steal and disclosed a further 11 substantial matters on a schedule.
Head sentence - 12 years
Non-parole period - 5 years.
Hincksman pleaded guilty to 4 charges of break, enter and steal and a further 4 substantially similar matters on a schedule.
Head sentence - 9 years.
Non-parole period - 4 years.
All offences involved non-residential clubs, cutting open safes within those clubs with oxy-acetylene equipment and stealing contents of safe - total amount stolen $43,000 - $9,500 recovered.

Backgrounds:


Aggravating Factors:

Repetition of similar offence
Professionalism of break and enter styles - use of oxy-acetylene equipment.
Sheer accumulation of number of offences and period over which the offences were committed.
Amounts of money stolen and the fact that a substantial amount had not been recovered.

Mitigating Factors:

First offence.
Nothing in the background to indicate the origin of this course of criminal conduct.
Result:

Appeal dismissed. Court held that sentences lengthy but not excessive.
McDonnell - head sentence - 12 years
Non-parole period 5 years
Hincksman - head sentence - 9 years.
Non-parole period 4 years.
Grant George Noonan
Anthony John Portus
Canice Patrick Ryan

Appeal Allowed

N.S.W.C.C.A.
No. 147 of 1980
No. 148 of 1980
No. 149 of 1980
6 November 1980

Circumstances of Offences:

3 appeals by the Attorney-General under provisions of s.5D of Criminal Appeal Act.
The 3 respondents were charged with break, enter and stealing $30,000 in cash, jewellery and gold ingots.
His Honour in each case deferred passing sentence upon the respondents on their entering into recognisances in the sum of $300, conditioned upon their being of good behaviour for a period of 3 years from that date.
Appeals by Attorney-General are on the basis that the sentence was inadequate.

Mitigating Factors:

Plead guilty.
Prior criminality was not great at all.
Expressions of desire to work.

Aggravating Factors:

Premeditated break and enter.
Calculated crime.
Substantial amount of money involved.

Result:

Appeal allowed.
Orders made by District Court Judge quashed.
Three respondents given head sentence - 3 years.
Non-parole period 12 months.
Ordered that the respondents Noonan, and Portus be taken into custody forthwith and a warrant be issued for the apprehension of Ryan.
Lindsay John Perry

Appeal Dismissed

N.S.W.C.C.A.
No. 89 of 1981
23 October 1981

Circumstances of Offence:

Appeal against severity. Plead[ed guilty to 3 charges of break, enter and steal, sentenced to 1 1/2 + 1 1/2 + 1 1/2 = 4 1/2 years, with no non-parole period. Offences took place in clubs - safes and contents stolen. Seen as professional jobs.

Background:

Age 52. Served 5 1/2 years in the army. Record noted as extraordinarily long.

Aggravating Factors:

Totality of criminality involved.
Offences committed whilst on bail.
Lengthy criminal record - involving a sentence of 14 years penal servitude for shooting with intent to prevent apprehension.
Gross repudiation of parole.

Mitigating Factors:

Contention that appellant had been prejudiced by present offences not having come forward at the same time as other contemporaneous offences.
May have reached a stage in his life where he may have ultimately decided to abandon a criminal career.

Result:

Appeal dismissed.
Head sentence - 4 1/2 years.
Non-parole period not specified.
Rodney James Poole
George Arthur Prest

Appeals Dismissed

N.S.W.C.C.A.
No. 390 of 1983
No. 383 of 1983
18 May 1984

Circumstances of Offences:

Application by 2 prisoners for leave to appeal against sentences. Charges of break, enter and steal from commercial premises.
Prest - head sentence 6 + 4 = 10 years.
Non-parole period = 3 years 6 months
Poole - head sentence 5 + 3 + 1 = 9 years.
Non-parole period = 3 years.
Offences included breaking and entering the premises: of a bowling club (South Wagga) and stealing $2,331 and commercial premises (Waltons Stores Limited) and stealing a quantity of property valued at $15,928.

Background:

Prest - 24 years of age. Prior record involving gaol sentences.
Poole - 24 years of age. Prior record but not as bad as Prest. Seen as a person of low intelligence.

Aggravating Factors:

Prest - on parole at time offences were committed.
Bad record.
Probation and parole report referred to the fact that he had not shown any willingness to co-operate.
Associate of criminal element.

Mitigating Factors:

Poole - not associative of criminal element.
Obvious that he would be easily led.

Result:

Appeal dismissed.
Court felt that sentences were entirely appropriate.
Prest - head sentence - 10 years.
Non-parole period - 3 years 6 months.
Poole - head sentence - 9 years.
Non-parole period - 3 years.
Circumstances of Offences:

Appeal against severity of sentence. Pleased guilty to armed robbery, larceny of motor vehicles and break, enter and steal along with 26 matters listed on a schedule. Sentenced to 14 years, head sentence. Non-parole period - 6 years.

The major offence took place in suburban dwelling, appellant wearing a balaclava. Used weapon (long barrel replica rifle) and caused injury to victim - stole $60 in cash and some jewellery. A ninth schedule listed 13 matters. Total value of property stolen approximately $12,000. Robbery whilst armed - 1 year; larceny for motor vehicles - 2 years; break, enter and steal including matters on a schedule - 5 years.

Head sentence - 14 years.
Non-parole period - 6 years.

Background:


Mitigating Factors:

Expressed contrition.
Unprofessional way offence was committed.
Under influence of drugs at time of offence.
Good prospects for rehabilitation.

Aggravating Factors:

Number of offences on schedule of break, enter and steal.
Seriousness of offence of armed robbery referred to the fact that:
'crimes of this nature are carried out by drug addicts in order to obtain money with which to feed their addiction' provides no justifiable basis 'for regarding the criminality involved as diminished so as to lead to more lenient sentences being passed than would otherwise be proper'.
Prevalence of crimes.
Trauma of having home broken into considered - 'the invasion of people's homes and the plundering of their property is a social evil from which the community looks for protection to the criminal courts'.
Spate of similar offences.
Result:

Appeal allowed.

After considering all relevant subjective and objective factors, the Court held that 'the totality of the sentences imposed so far exceeds that appropriate to the overall degree of criminality involved that a review is called for'.

Head sentence - from 14 years reduced to 10 years penal servitude.

Non-parole period - from 6 years reduced to 5 years.
John David Sobey

Appeal Dismissed

N.S.W.C.C.A.
No. 119 of 1980
19 September 1980

Circumstances of Offences:

Appeal against severity. Plead guilty to 4 charges of break, enter and steal with 92 matters on a schedule. Sentenced to $8 + 3 \times 4 = 8$ years. Non-parole period = 3 years. Offences involved clothing shops, shops and post office - of the scheduled offences, 84 were false pretences by misuse of a stolen bankcard. Offences committed between May and October 1979 with over $40,000 involved.

Background:


Mitigating Factors:

Argued that appellant would benefit from a shorter period of time on parole. Because of home life an unserved balance of a sentence hanging over him in all probability ensures that he does not offend again. Offences motivated by weakness for gambling.

Aggravating Factors:

Number of crimes committed. Equipping stolen car with false plates.
Value of property taken calls for 3 years minimum sentence.

Result:

Appeal dismissed. Court stated that it was its job to 'determine whether the judge was wrong and it was not able to reach that conclusion.'
Head sentence - 8 years.
Non-parole period 3 years.
Glenn Allan Stewart

Appeal Allowed

N.S.W.C.C.A.
No. 184 of 1981
17 December 1981

Circumstances of Offences:

Appeal against severity. Charged with break, enter and steal and possession of housebreaking implements. Found not guilty of break, enter and steal but charged with the possession of housebreaking implements (screwdriver and long socks). Sentenced to 18 months to begin at the expiration of the sentence he was then serving. No non-parole period specified.

Head sentence increased by 18 months to 5 years.

Background:

Aged 23. Prior record commencing in 1974. Not intellectually bright. Comes from stable home. Heroin addict. Employment history had been reasonably satisfactory - entered into a partnership with friends but it collapsed and thereafter was unable to obtain employment.

Aggravating Factors:

Prior record. Trial judge refused to give non-parole period. 'From what I have heard today and the overall picture of his persistant criminality, I am not prepared to grant him a non-parole period...

Mitigating Factors:

Court felt that the appellant should have the benefit of a non-parole period. Quoted Mesdaghi (1979) 2 N.S.W.L.R. 68 at 71. Street C.J. said 'a prisoner has by s.4(ii) of the Act an expressed statutory right to have a non-parole period specified.'

Result:

Court felt that it had to decide whether the learned sentencing judge had fallen into error in refusing to specify a non-parole period. Held that there was a case for giving the prisoner the benefit of a non-parole period.

Head sentence - 18 months to commence at expiration of previous sentence - 5 years.

Non-parole period specified to expire on 4 May 1982 - i.e. 1 year.
Warren Alexander Sutton

Appeal Dismissed
Non-parole period - not specified

N.S.W.C.C.A.
No 72 of 1978
13 December 1979

Circumstances of Offence:

Appeal against conviction of sentence - 3 charges of break, enter and steal and 1 of break, and enter with intent to steal. Sentenced to $1/2 + $2 + $1/2 + $1/2 = 5 years, with no non-parole period specified.
Offences took place in commercial premises and stealing contents took oxy-acetylene burning set. $519 in cash stolen. Break and enter with intent involved tennis club.

Background:

Age 25 - prior record including 2 1/2 years for offences of assault occasioning actual bodily harm. Labourer by occupation. This is all that was offered to the judge concerning the appellant's background.

Appeal regarding conviction:

Pressed on basis that appellant had evidence of an alibi. He felt that through no fault of his own - witnesses be wanted called were not. An order was made out under s.475 requiring a magistrate to have the alibi witness called before him. The inquiry was called, and the magistrate concluded that the evidence of the alibi witnesses '... is not properly capable of being accepted by a jury and would not have been likely to produce a different verdict'.

Result:

Appeal against conviction failed.

Appeal against sentences:

No non-parole period was specified.

Aggravating Factors:

Minimal background upon which to assess the subjective situation.
Prior record which disentitles him to any particular leniency.
Fact that the prisoner had twice been admitted to parole on the same sentences and twice had his parole revoked.
The sentencing judge noted that it is incumbent on the courts
to assist in the working of the (parole) system by letting it be known that when a prisoner fails, and in particular when he deliberately rejects as this prisoner did, the opportunity given him by the grant of parole he can expect very little in the way of leniency'.

Result:

Court felt that the approach by His Honour was entirely well-founded.
Appeal dismissed.
Head sentence - 5 years.
Non-parole period - not specified.
Allan William Talbott

Appeal Allowed

M.S.W.C.C.A.
No 12 of 1984
7 June 1984.

Circumstances of Offences:

Appeal against sentence - Pleaded guilty to break, enter and sexual intercourse. Sentenced to 8 year with non-parole period - 3 years. Appellant had previously filed notice of abandonment in reliance on erroneous advice from Corrective Services Officer. Appellant given leave to withdraw notice of abandonment. Offence took place in private home. Gone to victim's house, got in, walked through the house and got into bed with the victim and had sexual intercourse with her. She awoke and did not struggle for fear of reprisals. Afterwards, they had got up and she let him our the door.

Background:

Age 25 record goes back to 1971, 1975, 1976 and 1979 - crimes of dishonesty. In August 1982 (3 weeks before present offence) was given an 18 month good behaviour bond for malicious injury - rose out of domestice dispute between appellant and de facto wife. Unemployed, addicted to intoxicating liquor.

Aggravating Factors:

Associate of the criminal element. Seriousness of crime.

Mitigating Factors:

Absence of any prior record of violence or sexual offences by the appellant.
Genuine manifestation of contrition from the time that the appellant was interviewed by police through to plea of guilty.
Behaviour affected by alcohol.
Total absence of any physical, or it seems emotional, damage to the victim.

Result:

Challenge to head sentence well founded - reduced from 8 year to 6 1/2 year non-parole period. Court felt that there was no case made for reducing non-parole period - stayed at 3 year.
Head sentence - 6 1/2 years.
Non-parole period - 3 years.
APPENDIX II
Leslie Noel Agland

Appeal Dismissed

N.S.W.C.C.A.
No 107 of 1980
6 November 1980

Circumstances of Offences:

Appeal questioning non-parole period. Pleaded guilty to break, enter and steal. Offence took place in shop and stamps, coins and banknotes taken. Pleaded guilty. Head sentence 2 1/2 years to begin at expiration of sentence being served. Trial judge originally felt that it was a case where no non-parole period should be given at all, but in the end decided to do so. non-parole period 15 March 1983.

Background:

No background given.

Mitigating Factors:

Alterations to the practice governing releases with regard to the decision of the High Court in Smith.

Result:

Minor adjustment made to parole period. Now expires 26 October 1982, i.e. some 5 months earlier.
Head sentence - 2 1/2 years.
Non-parole period - expires 26 October 1982.
N.S.W.C.C.A.
No 256 of 1983
28 June 1984

Circumstances of Offences:

Appeal against conviction on 2 charges,
1) using an offensive weapon, with intent to prevent lawful apprehension
2) break and enter with intent to steal.
Sentenced to 4 years, non-parole period - 6 months.
Offence took place in 1979 - observed in chemist shop - police called - appellant arrested but escaped after scuffle in which he produced a pistol. 12 months later he was recognised by the policeman who arrested him. Appellant originally denied he was the offender in the chemist shop, but later statements he gave were consistent with guilt.

Mitigating Factors:

Held that jury was not given adequate directions on summing up on identification. Pointed out that adequacy of warning and assistance in relation to fact will vary according to circumstances of each particular case; essential question was whether warning was such as to ensure a fair trial. Appeal court held that the summing up was not deficient.

Result

Appeal dismissed.
Head sentence - 4 years.
Non-parole period - 6 months.
Peter John Baily

N.S.W.C.C.A.
No 372 of 1981
27 May 1982

Circumstances of Offence:
Appeal against severity on plea of guilty to break, enter with intent.
Plus 2 break, enter and steals, $3 + 3 + 2 = 3$ years with non-parole period 2 years.
Amount taken not substantial, but were of sentimental value.
Broke into suburban homes.

Background:

Aggravating Factors:
Seriousness of record.

Mitigating Factors:
Emotional deprivation, lack of parental or other guidance.

Result: Head sentence unchanged, 3 years.
Non-parole period quashed; as it fell beyond the estimated remission release date.
Circumstances of Offence:

6 charges of break, enter and steal and 1 of break enter with intent to steal.
Sentenced on each of the first 6 matters to penal servitude for 6 years, all to be served concurrently and to commence 14 January 1982.
He was sentenced on the remaining charge to a concurrent term of 5 years.
Non-parole period of 2 1/2 years.
Offences all involved homes, took personal property - jewellery, silver etc.

Background:

Age 22
At 16 he appeared before Children's Court for armed robbery.
Released into father's custody - returned to Lebanon. Returned to Australia became involved with drugs and other offences
November 1978 Heroin - 2 year bond
April 1979 3 1/2 years on 3 charges of larceny.

Aggravating Factors:

1) total disregard of personal feelings of victims shown in methods of disposal of the stolen articles.
2) Committed second offence while on bail for 1st offence.
'Significant accumulated sentences will be passed upon persons who abuse their freedom on bail'.

Result:

Appeal Dismissed.
Head sentence - 6 years
Non-parole period - 2 1/2 years
Circumstances of Offence:
Pleaded guilty to 4 charges of breaking, entering and stealing; a further 7 similar offences listed on a schedule were taken into account.
Drug related - robberies took place in homes - money, jewellery taken.
1st charge - penal servitude for 6 years.
Remaining 3 charges - concurrent terms of 3 years which were concurrent with the 6 year term.
Non-parole period expiring 9 August 1983.
In addition - recommended that he be deported to N.Z. (came here in Feb. 1979).

Background:
26 years
(came to Australia in Feb. 1979)
- working on casual basis with band at time of arrest
- prior criminal convictions
  1971 - placed on probation
  1972 - detention centre for theft
  1974 - fined for theft
May 1977 - 9 months penal servitude
July 1977 - fined for receiving.

Mitigating Circumstances:
- Although record is unsatisfactory; only once imprisoned
- pleaded guilty = contribution 'persons who do manifest contribution by pleading guilty can expect to receive a clement of leniency in their favour'.

Result: Appeal Dismissed
Head sentence - 6 years
Non-parole period - 3 years
Wayne Douglas Bell  
David Allen Towers  
Reginald James BeTl

Appeal Dismissed

N.S.W.C.C.A.  
No. 301 or 1978  
No. 302 of 1978  
No. 303 of 1978  
30 March 1979

Circumstances of Offences:

R.J. Bell 7 counts in the indictment; 5 break enter and steal 2 x 2 of larceny of motor vehicles and 107 other scheduled offences.

W.D. Bell 3 cases of break, enter and steal in the indictment, 4th count of larceny of a motor vehicle and 27 other scheduled offences.

D.A. Towers 5 counts of break enter and steal; 2 counts of larceny of motor vehicle and 35 other scheduled offences.

R.J. Bell seen as major criminal involved.

Sums involved in indictments, to $65,000, $33,000 and $47,000 respectively. Offences committed in the New England area.

R.J.Bell:

10 yrs p.s. on 1st count; 2 years penal servitude on the 2nd count, 2 years on 3rd count concurrent. On the 4th count 2 1/2 years to commence at the expiration of the 1st sentence, 2 1/2 years on 5th count to commence on the expiration of the 4th sentence imposed - 6 and 7 counts 2 years penal servitude all to be concurrently with the sentences already imposed non-parole period of 6 years.

W.D.Bell:

7 1/2 years to commence at the expiration of the sentence which that person was serving, 2nd and 3rd counts - 2 years penal servitude each cumulative, to commence at the expiration of the 1st sentence, 4th count - 2 years penal servitude non-parole period to expire on 1 December 1983.

D.A.Towers:

1st count - 8 years; 2nd count - 2 years concurrent; 3rd count - 2 years hard labour commence at expiration of the 1st sentence; 4th count - 2 years to commence at the expiration of the 3rd sentence; 5th, 6th and 7th to 2 years hard labour - non-parole period of 5 years.

Aggravating Circumstances:

'The gravity of the criminality here fully justifies the
sentences imposed by the learned sentencing judge.'
'This series of crimes must be regarded as one of the gravest of its nature that has come before this court.'
All judges agree that the appeal should be dismissed and 2 out of 3 held that the time spent awaiting the outcome of the appeal should not count as part of the sentence.

Result:

Appeal Dismissed.

R.J. Bell

Head sentence - 10 + 2 + 2 1/2 + 2 1/2 = 15 years
Non-parole period - 6 years

W.D. Bell

Head sentence - 7 1/2 + 2 + 2 + 2 = 11 1/2 years
Non-parole period - 3 3/4 years

D.A. Towers

Head sentence - 8 + 2 + 2 + 2 + 2 + 2 = 12 years
Non-parole period - 5 years
Circumstances of Offences:

Appeal against conviction and sentence. Break, enter and steal offences involved jewellery shop. Sentenced to 2 1/2 years. Non-parole period expires February 1982. Found not guilty of the break enter and steal, but of receiving. His Honour erred in his direction to the jury as to the legal significance of evidence of the recent possession of stolen property. Appeal Court found that the terms in which the jury were directed in the present case were capable of erroneously conveying to the jury an impression of an obligation to convict. The case was one in which significant importance attached in the Crown case to the appellant's possession of the recently stolen jewellery. It followed that the appellant was entitled to have his conviction quashed in association with their being a new trial.

Result:

Appeal allowed. Conviction quashed and new trial ordered.
Circumstances of Offence:

D.J. Bengar pleaded guilty to a charge of breaking, entering and stealing on 21 August 1978.
J.E. Tacon pleaded guilty to a charge of receiving, harbouring maintaining and assisting Bengar, knowing he had committed this break, enter and steal to which Bengar pleaded guilty.
Both men sentenced to imprisonment for 3 years.
Bengar - non-parole period of 12 months specified.
Tacon - judge declined to specify a non-parole period
Stole from retail premise - 27 firearms, 3 telescopic sights, a large quantity of ammunition, 2 knives.

Background:

Bengar 33 years - bricklayer; 3 previous convictions - none involving penal servitude - married 2 small children.
Tacon 32 years - more serious record, although it includes only 1 period of custodial sentence - 3 1/2 years for attempted rape released after 6 months (non-parole period).

Aggravating Circumstances:
Nature of goods stolen.

Mitigating Circumstances:
Overborne by 3rd party, but judge felt this does not hold up as each of them was a knowing and willing party to the crime.

Appeal Dismissed:
Bengar's case, realised that non-parole period lengthy in Bengar's case but it was meant to be so.

Tacon's non-parole period unspecified originally because of confusion over dates - original crime committed June 1977 but he didn't come to court till 3 August 1978. When sentencing, judge concluded that Tacon had been guilty 'while on that recognisance committing a further crime of dishonesty only 18 days before committing this crime' - in fact it was not 18 days but 14 months.
Result:

Bengar's case – appeal dismissed.

Tacon's case appeal upheld in as much as Tacon's 3 year sentence should commence from 22 September 1978 and should be non-parole period expiring on 21 March 1980.

While all judges agreed, one added comments on judgments which do not specify non-parole periods. Roden, J. felt that in Bengar's case – the sentence imposed and the non-parole period are at the highest point of the range and only agreed this was warranted because of the nature of the goods stolen.

Tacon Case – Roden, J. regards parole as important

1) keeps prison population down

2) protects both persons sentenced and the members of their families from some of the less desirable consequence of incarceration.

3) provides means whereby when persons are released from custody, there will be a period during which they are subject to the conditions and supervision of parole in order to assist in the difficult task of making the transition from complete confinement to unconditional liberty.

J. Roden, felt that because parole is important it should only in the most exceptional circumstances be refused. He quoted a previous case Humphries and O'Brien (1971) N.S.W.L.R. 751 'The terms of s.4 of the Parole of Prisoners Act indicate clearly that it is only in exceptional circumstances that the non-parole period should not be specified and then the reasons therefore should be given in writing'. He felt that in this case, even if the judge mixed the dates, it was not enough to refuse specifying a non-parole period.
Samuel Francis Betros

Appeal Dismissed

N.S.W.C.C.A.
No 144 of 1979
2 November 1979

Circumstances of Offence:

Pleaded guilty to breaking, entering and stealing; larceny of a motor vehicle and attempt to steal a motor vehicle.* Sentenced on 29 June to 8 years on first charge and to 2 years on 2nd and 3rd charges; \( 8 + 2 + 2 = 8 \) years 4 years non-parole period expiring 28 June 1983. 3 offences all committed same day 5 March 1979. Also pleaded guilty to 5 further offences - August 1978, January 1979, February 1979. *Broke and entered a hotel - took $13.00 cash, $6 in silver a lighter and beer mug.

Background:


Mitigating Circumstances:

Not an associate of the criminal element; does not drink; was able to get a job; and importantly there are no crimes of violence in his record.

Aggravating Circumstances:

Seems to be incapable of going straight - given a chance in 1974 and didn't take it (was released on a 3 year bond and required to pay compensation at $50.00 a month)

Result:

Appeal Dismissed.
Head sentence - 8 years
Non-parole period - 4 years
Tamara Lorraine Birch

Appeal Dismissed

N.S.W.C.C.A.
No 70 of 1983
No 173 of 1983
18 November 1983

Circumstances of Offence:

2 applications - 1) appeal against sentences to which she pleaded guilty - involved 2 charges of forgery, 2 charges of uttering and a further 13 matters on a schedule.

2) application for leave to withdraw a notice of abandonment and to seek leave to restore an application for leave to appeal against the severity of a sentence passed by Judge Collins after the appellant had been convicted of an offence of obtaining property by deception - sentence to 4 years, with non-parole period 18 months. Obtaining property by deception involved deceiving jeweller into parting with 2 diamond rings, maintained innocence but both jury and judge felt conviction was justified.

2nd appeal - 2nd judge for car stealing - 2 counts of forging and uttering with 13 scheduled matters mostly being manipulations of bank passbook - sentences involved effective extension of 1 year over pre-existing sentence and 6 months over pre-existing non-parole period. Firstly court looked at application to withdraw the notice of abandonment - doubted reliability. However, the court considered that it would be preferable to allow the matters to be developed in full on the merits, rather than shutting out the challenge. Judge Collins felt it was preferable that we deal with the cases on their merits.

Background:

41 years old - claims to have come from wealthy family and to be well educated. Has 8 children and first husband drank excessively - created tension in home life. Probation and Parole Officer describes her as 'an aggressive lady who is prepared to "take-on" society'.

1st case - judge, with complete justification, formed a strongly unfavourable impression of the appellant. However he addressed appellant in strong terms in the second person and the appellant was appealing on the grounds that the judge was wrongly swayed by hostility towards her.*

"It is cool reason, not passion or generosity, that must characterise sentencing, as all other acts of judgement". (R v Rushby, 1977 1 N.S.W.L.R. 594 & 597).

There was a comment passed on the desirability of judges avoiding criticizing prisoners in the second person as it can
convey impression of personal hostility. Overall, however it was felt that his honour's extension of Judge Collins pre-existing 4 year term by only 1 year was appropriate to bring about an ultimate aggregate sentence which cannot in any way be seen to be excessive.

Result - Appeal dismissed - 5 years head sentence 2 year non-parole period to stand.
John Arthur Blaikie

Appeal Upheld

N.S.W.C.C.A.
No. 203 of 1984
17 December 1984

Circumstances of Offences:

Appeal by Attorney-General. Respondent pleaded guilty to following 3 charges.

1. Attempting to break and enter with intent to steal from dwelling house.
2. Assault - injured victims back
3. Common assault.
   Given 3 year good behaviour bond.

Background:

40 years old. Prior record extending back to age 13.
Diversity in criminal conduct - rape, stealing, forgery and uttering, malicious injury, and break enter and steal.

Aggravating Factors:

Court felt that having given anxious consideration to the relevant subjective and objective factors, that the sentences announced were manifestly inadequate given the appellant's prior record. Custodial sentences were clearly required. Offences committed whilst on parole.

Result:

Appeal upheld - sentence manifestly inadequate.
Sentences for break, enter and steal - 3 years, assault - 2 years, common assault - 1 year and 6 months.
Aggregate head sentence 6 years instead of the bond. No non-parole period specified.
Jennifer Blair

Appeal Allowed

N.S.W.C.C.A.
No 193 of 1981
22 October 1981

Circumstances of Offences:

Appealing against sentences imposed on 25th June 1981 for 3 counts of break, enter and steal.
4 1/2 years for 1st offence; 2 years each of 2nd and 3rd offence - concurrent with first - 4 1/2 + 2 + 2 = 4 1/2 years.
Non-parole period - 2 years from 25 June 1981 with remissions will expect to get out 19 February 1984. Broke into 2 houses stole goods worth $13,750. 2 days later stole $2,400 worth of goods from another home.

Background:

24 years, heroin addict, unemployed.

Aggravating Circumstances:

Was on 2 bonds at the time she committed the offences.

Mitigating Circumstances:

Was in the company and in the view of the judges under the bad influence of L. Price who has a substantial record. First time she has been given a period of imprisonment. Drug addict - judges felt that while this explains crimes, it does not excuse them.

Result:

4 1/2 years reduced to 3 1/2 years on the head sentence. Non-parole period reduced from 2 years to 1 year. The one year to date from October 1981.
Malcolm Anthony Boyle  
David Alexander Hendry Boyle

Appeal Allowed

N.S.W.C.C.A.  
No 151 of 1980  
No 209 of 1980  
24 October 1980

Circumstances of Offences:

4 break, enter and steal with 8 others on a schedule.  
M. Boyle sentenced to 2 1/2 + 3 x 1 1/4 = 3 3/4 years, non-parole period - 1 year.  
D. Boyle sentenced to 3 1/2 + 3 x 1 1/2 = 5 years, non-parole period - 1 1/4 years.  
Broke and entered shops - breaking windows and taking contents of window.

Backgrounds:

Differing criminal backgrounds which explains the disparity between the 2 sentences.

Malcolm Boyle - only 1 previous conviction - November 1976 - satisfactory work record, no suggestion that he is an associate of undesirable or criminal companions; clear matter of unfortunately deprived emotional relationships in his early life.  
David Boyle - appeared before criminal court on 5 previous occasions - also shares a childhood of emotional deprivation, 3 years older than brother Malcolm, work history less satisfactory possibly due to ill health - (asthma). Married with 1 child.  
Both pleaded guilty.  
Court felt judge was justified in not treating the 2 men alike, but felt that the head sentence and the non-parole periods were excessive.

Mitigating Circumstances:

Pre-sentence report and the reports from the Probation & Parole officer were encouraging for Malcolm.  
For David - the prospect of building a stable family life was seen as a positive influence.  
Court felt that the offences should be served concurrently.

Result:

Appeal upheld; but ordered that the offences be served concurrently.  
All sentences should begin from the date they were passed (25 July 1980).  
Head sentence - Malcolm Boyle - 3 3/4 years to 2 1/2 years  
David Boyle - 5 years to 3 1/2 years.  
Quashed non-parole period - Malcolm Boyle - 6 months  
David Boyle - 9 months.
Ian Francis Britton

Appeal Dismissed

N.S.W.C.C.A.
No 176 of 1979

Circumstances of Offences:

1 charge of break, enter and steal and 7 charges of receiving. A further 7 charges of offences of receiving listed on a schedule were taken into account. Sentenced to 5 years on 1st charge of break, enter and steal, sentenced to 2 years on 1st receiving charge. Non-parole period of 18 months.

Background:

Age 23
The appellant has prior convictions
The break, enter and steal was committed in the company of 3 juveniles and an adult
Married with 3 children and has a satisfactory employment record.

Aggravating Circumstances:

Was on a bond at the time the offences were committed.
Total value of property stolen $37,000; only $12,500 worth recovered - property stolen from private homes.

Mitigating Circumstances:

1) That the appellant was older than the 3 who accompanied him - seen as bad influence.
2) Appellant's personal gain from offences minimal - only got a refrigerator.

Result:

Court felt that the sentence was not excessive, felt that because of the nature of the crime and the fact that he can expect to be released at the end of his non-parole period; that 18 months is not excessive and is satisfactory.
Head sentence 7 years
Non-parole period - 18 months
Leslie Thomas Burr

Appeal Dismissed

N.S.W.C.C.A.
No 37 or 1979
8 June 1979

Circumstances of Offence:

Break, enter and steal, sentenced to 9 years penal servitude. Committed crime while on Parole - had served 8 years 1 month of his 15 year term - 6 years 11 months remained unserved. The present crime was committed 3 months after he was released from penal servitude.
In company with another, broke into commercial premises and using explosives opened strongroom and safe doors, small amount taken $2,000 approx.

Background:

35 years old - extensive record beginning age 12, was committed to care of Child Welfare Department. He was also before courts on offences of dishonesty - 1957, 1958, 1959 and 3 times in 1960.

Aggravating Factors:

1) prior record which seems to indicate that the appellant has thus far hardened his attitude in rejecting the requirements of living within a law-abiding community.
2) committed offence while on parole.
3) Led minor into the crime.
4) Used firearms to gain admission to club.
Interesting that hard life i.e. time spent in institutions not seen as mitigating but as aggravating factors.

Result:

Sentenced to 9 years for this offence - to be served cumulatively upon the previous sentence of 6 years 11 months. Non-parole period expires August 1985 i.e. 6 years non-parole period.
Wayne Donald Burt

Appeal Allowed

N.S.W.C.C.A.
No 68 of 1980
26 September 1980

Circumstances of Offence:

Plead guilty to 4 charges of break, enter and steal.
Sentenced to 2 concurrent terms of 12 months for 2 break, enter and steals committed on 8 November 1979. A cumulative term of 18 months on a break, enter and steal committed on 13 December 1979 and to a further term of 12 months for break, enter and steal - 30 January 1980. i.e. 3 1/2 years head sentence; 21 months non-parole period. There was some confusion over the length of the head sentence. There was some basis for concluding that his Honor intended that the 12 months (for the 30 January 1980 break, enter and steal) should have been cumulative upon the pre-existing aggregate of 2 1/2 years - the evidence for this being in the fact that the non-parole period was for 21 months, a period which would bear relativity to a 3 1/2 head sentence. This court considered that the appellant, because the judge had not formally expressed that the extra year be served separately, should have the benefit of retaining the 2 1/2 year rather than 3 1/2 year sentence.

Background:

Age 21, with no prior record of any relevance. Drug addict. Break, enter and steal being committed in chemist shops to obtain drugs.

Aggravating Factors:

Bad company he keeps.
Committed 2 of the offences while on bail.
Was the leader during one of the offences.

Result:

Head sentence reduced from 3 1/2 years to 2 1/2 years.
Non-parole period originally would have expired on 7 November 1981. Now that the head sentence is reduced to 2 1/2 years, with remission the appellant would expect to get out on the 31 August 1981.
After evaluating the appellant's non-parole period with regards to the 2 1/2 years head sentence, as well as the sentences and non-parole periods given to the other 3 young men who came forward at the same time, it was decided that the appropriate non-parole period for the appellant would be one expiring 12 months from the commencement of the sentence i.e. it will expire on the 7 February 1981.
Rickey John Castles

Appeal dismissed for Head Sentence
Appeal allowed Non-parole period

N.S.W.C.C.A.
No 165 of 1982
1 September 1982

Circumstances of Offences:

Appellant pleaded guilty to the 3 charges of break, enter and
steal and 2 charges of larceny of a motor vehicle. Sentenced
to 2 years penal servitude for 1st break, enter and steal and
on each of remaining 4 charges to 18 months penal servitude
i.e. 2 + 4 + 1 1/2 = 2 1/2 years.
This was to be served at the expiration of the sentences to
which the appellant was previously subject. Non-parole period
extended by 13 months.

Background:

Age 17 years. Prior record commencing aged 10. Absconded from
Youth Training Centre in 1981 and the offences were committed 2
months later, and involved car stealings and break, enter and
steals into homes.
History of car stealing and in May 1981 was sentenced to 3
years hard labour for break, enter and steal and with a further
18 matters being taken into account.
Left school at 15 and has emotionally deprived background.
Drinks heavily.
Court 'hopes that first experience of adult penal institution'
will shock him into a realisation of the life which lies ahead
of him if he does not decide to mend his ways.

Mitigating Circumstances:

Wanted to give appellant benefit of longer period of
supervision under parole. Felt extension of non parole period
by 13 months when head sentence increased by 2 years was
disproportionately lengthy.

Result:

2 1/2 year head sentence will remain.
Non-parole period shortened by 5 1/2 months.
(effective non-parole period is 12 months).
Garry Raymond Clark

Appeal Dismissed

N.S.W.C.C.A.
No 196 or 1981
11 September 1981

Circumstances of Offence:
Appellant pleaded guilty to 6 charges that were before the court on that occasion and for breach of a 2 year good behaviour bond.
Sentenced to 3 years for possession of stolen motor vehicle
Sentenced to 4 years for break, enter and steal - entered clubs, stole property.
Sentenced to 2 years (concurrent) for 2 break, enter and steals and 1 attempted break, enter and steal = 7 years head sentence - non-parole period 2 years beyond remission release date from pre-existing sentences i.e. 3 1/2 years.

Background:
Age 20. Has a record of involvement with the criminal law - been in children's courts and youth training institutions

Aggravating Factors:
Was on good behaviour bond at time of offences
'...wholly disregarded the chance that was then extended to him...'. Court felt trust was breached and saw no basis for changing the original sentence.

Result:
Appeal Dismissed: Head sentence - 7 years
Non-parole - 3 1/2 years
Bradley Mark Clegg

Appeal Allowed

N.S.W.C.C.A.
No 270 of 1979
11 April 1980

Circumstances of Offence:

Appeal against severity of sentence on charges of break, enter and steal, 3 of stealing motor vehicle and 23 ninth schedule offences.
The head sentence is 7 years 6 months and non-parole period 3 years 6 months.

Background:

Age 20 years. Prior record and dealings with the Children's Court, some of these resulted in his being committed to an institution. Offences were mainly juvenile in character.

Mitigating Circumstances:

1) Sentenced to various charges in 2 courts, 1 in Macksville, 1 in Wollongong. Combined sentences amount to 7 1/2 years - a period of time that this court felt 'too long'. If all the offences had been dealt with at the same time, the total effective sentence of 7 1/2 years for a person so young who had never been in gaol, in this country would not have been passed.
2) Not an associate of the criminal class.
3) No violence appears to have been involved in any of the crimes.
4) Offences juvenile in type and substantial amounts were not involved.

Note by one of the judges that the appellant was in possession of an unlicensed pistol. It wasn't held against him, though as it was an air pistol and 'in the totality of his criminality does not assume the proportions it might otherwise attract'.

Result:

Head sentence reduced by 2 years and non-parole period by 1 year i.e. 7 1/2 years to 5 1/2 head sentence
3 years 6 months to 2 years 6 months non-parole period
John William Cormack

Appeal Dismissed by majority

N.S.W.C.C.A.
No 39 of 1979
14 December 1979

Circumstances of Offence:
Appeal against conviction of break, enter and steal.
Sentenced to 5 years with 2 year non-parole period.
Appellant kept watch in get-away car outside bank whilst co-offender attempted to cut open bank safe got only $28.00 - appellant noticed on 2 occasions by 2 patrolling security officers.
The appeal is being challenged on the grounds
1) His Honour erred in admitting into evidence, Exhibit B (photo of the appellant) and Exhibit C (7 other photos) during the evidence in chief of Dennis George Fulford
2) His Honour was further in error, in that he failed to direct the jury on the manner in which they should use the photographs Exhibits B and C in their deliberations on the question of identification.

Result:
2 judges held that photographs were rightly admitted in evidence. By majority, appeal dismissed.
Head sentence - 5 years
Non-parole period - 2 years
Barry James Cox  
Walter Charles Formby

N.S.W.C.C.A.  
No. 148 of 1981  
No. 149 of 1981  
24 July 1981

Circumstances of Offences:
Appeals against severity on pleas of guilty to 5 break, enter and steals, 1 car stealing and 49 scheduled offences. Each appellant sentenced to $1/2 + 5 + 4 = 7 1/2 years with non-parole period 4 years. Offences committed over 12 month period involving commercial premises. A total of $80,949 taken. Oxy-acetylene equipment was used to open safes.

Background:
Aged: 21 and 23
Employment record good, both come from stable homes. Cox lived with parents; Formby married and lived with wife. No history of childhood deprivation or emotional hardship.

Mitigating Circumstances:
1. Long sentence since these are their first offences.
2. They pleaded guilty and co-operated with police.

Aggravating Circumstances:
Extraordinary contrast between the seriousness of the criminality on one hand and the subjective circumstances on the other (those being the stable and crime-free past of the appellants)

Result:
Appeal dismissed.  
Head sentence - 7 1/2 years  
Non-parole period - 4 years
Circumstances of Offences:

Appellants pleaded guilty to 2 charges of break enter and steal and 2 other offences of break enter and steal on a schedule.
1st charge - 6 years.
2nd - 4 years.
Head sentence 10 years.
Non-parole period - 3 years - for both men.
Break, enter and steal involved commercial premises.

Background:

Crowe - 22 years, record of offences of dishonesty.
Sanderson - 21 years. Armed robbery.

Mitigating Factors:

Provided assistance to police.

Result:

Appeals fail.
Head sentence - 10 years.
Non-parole period - 3 years.
Peter Thomas Darby

Appeal dismissed for Head Sentence
Appeal allowed non-parole period

N.S.W.C.C.A.
No 103 or 1980
24 October 1980

Circumstances of Offences:

Appeal against severity on plea of guilty to 2 break, enter and steals. There were also 3 similar matters listed on a 9th schedule taken into account.
Sentenced to 2 1/2 years on each of the charges; to be served concurrently, but to commence at the expiration of a term of imprisonment the appellant was serving. Non-parole period fixed to expire on 10 February 1983. Broke into motel rooms stole money, travellers cheques and the like.

Background:

Prior record going back to 1969 involving possession of heroin and using unlicensed pistol.

Aggravating Factors:

Past record
Committed crime while on parole.

Result:

Head sentence to remain the same - 2 1/2 years (added to 1 years 11 months remaining).
Non-parole period reduce to expire on pre-existing remission release date - 25th August 1981. Technical adjustment because of change in law governing computation of remission release date.
Non-parole period - 2 years, 9 months - new npp 1 year, 3 months.
Steven Max Davis

Appeal Dismissed

N.S.W.C.C.A.
No 306 of 1983
13 April 1984

Circumstances of Offence:

Appellant applies for leave to appeal against sentences imposed on him.
1st charge took into account 15 matters - 3 1/2 years.
2nd charge - 2 1/2 years cumulative upon the 1st
3rd and 5th charges - 2 years concurrent with each other and 1st charge.
4th charge - 15 months concurrent with 1st.
6th charge - 3 years to commence at expiration of sentence of 2nd charge.
Non-parole period - 3 years.
Stole tools and equipment valued at $5,000. Another charge involved breaking into a private home stealing jewellery - $4,000. On another occasion another house was broken into and jewellery worth $4,800 was stolen. Possession of weapon and charge of possessing explosives with intent to cause malicious injury.

Background:
Aged 20, has regular employment. Has no record of substance.

Aggravating Factors:
Committed offences whilst on bail.
Used explosives during offences and when arrested took explosives in his pocket for the purpose of blowing out the side of the cell.
Said that 1st group of offences (break, enter and steal in private homes) were for a joke.

Mitigating Factors:
Pleaded guilty.
Cooperative with police.

Result:
Appeal dismissed.
Head sentence - 6 1/2 years.
Non-parole period - 3 years.
Circumstances of Offences:

Appeal from a sentence passed on the appellant for larceny and break, enter and steal. Was sentenced to 18 months penal servitude with non-parole period of 9 months. Originally given a good behaviour bond for 4 years and ordered to pay compensation at $1,159 with monthly instalments at rate of $25 per month. Appellant made one payment only of $25 but otherwise complied with the terms of the bond. Inability to make payments. Received $128 per fortnight in social services and paid out $94 per fortnight in rent alone.

Mitigating Factors:

Had not broken good behaviour bond. Been in jail already for 2 months. It was felt that he should be sentenced only on original offence and not punished by additional imprisonment for the fact that he had broken a term of the bond requiring him to pay a certain sum of money.

Result:

Appeal allowed. Reduced period of imprisonment - appellant discharged forthwith having served 2 months 15 days in gaol. Ordered to pay $20 per month. Kept on good behaviour bond.
John James Donley

Appeal Dismissed

N.S.W.C.C.A.
No 347 of 1981
30 April 1982

Circumstances of Offences:

Appeal against severity of sentences
Pleaded guilty to 3 charges of break, enter and steal and 2
crimes of car stealing.
4 + 4 + 3 + 3 years = 4 years. This 4 years was divided to
commence at the expiration of the sentence then being served by
the appellant.

Background:
Age 26. Heroin addict - used money gained from stealing
property to buy drugs.
Has history of prior offences extending back to Children's
Court.
Left school at 16. Works well and has had a number of
spasmodic unskilled positions.

Mitigating Factors:
Early life overshadowed by some degree of domestic and
emotional deprivation and hardship.

Aggravating Factors:
Committed offences while on parole.
Substantial and constant involvement with crimes of dishonesty.
Probation and Parole Service reported that his response to
supervision had been unsatisfactory.

Result:
Appeal dismissed.
Head sentence - 4 years to commence at expiration of sentence
being served - (1st sentence = 2 1/2 years)
Wayne Henry Doolan

Appeal Dismissed

N.S.W.C.C.A.
No 80 of 1980
No 104 of 1980
1 August, 1980

Circumstances of Offence:

Appeals against 2 concurrent terms of 18 months on plea of guilty to 2 break, enter and steals. Broke into motels - stole $650 goods. Plus cumulative 2 years on plea of guilty to break, enter and steal. Appellant at the time serving aggregate of 3 1/2 years for other offences. Non-parole period of 4 years 3 1/2 months.

Background:

Age 22.
Prior record and committed to an institution (childrens) in 1972 1973 break, enter and steal.
1975 back in institution for assault and robbery.

Aggravating Factors:

Substantial record which court viewed as wholly unsatisfactory, weakness for alcohol and tends to commit nuisance offences when affected.
Few family ties or emotional support.
Work history unsatisfactory.
Committed offences while on bail.

Result:

Appeal dismissed.
Head sentence - 7 years
Non-parole period - 4 years 3 1/2 months.
Trevor John Dray

Appeal Dismissed - Head Sentence
Appeal allowed non-parole period

N.S.W.C.C.A.
No 205 of 1979
11 December, 1979

Circumstances of Offences:

Appeal against severity - plea of guilty to 4 charges of break, enter and steal, 2 larceny of a motor vehicle and 1 attempted stealing of motor vehicle with 24 similar offences on a schedule. Broke into commercial premises - amount stolen $6,610.
Head sentence - $3 + 6 x 2 = 5 years.
Non-parole period - 31 1/2 months

Background:

Young offender. Prior record - involving being committed to an institution.

Aggravating Circumstances:

Failure to accept the supervision of the Adult Probation Service as was required of him on a previous good behaviour bond.
Long record.

Mitigating Circumstances:

Good attitude - wanting to try and change his lifestyle, co-offender given shorter non-parole period, court found no reason why they should be treated differently - in interests of conformity appellant's non-parole period should correspond with that of co-offender.

Result:

Head sentence - unchanged i.e. 5 years.
Non-parole period - reduced to 1 year 11 1/2 months.
Neville Edward Duncombe

Appeal Dismissed

N.S.W.C.C.A.
No 28 of 1982
18 March 1983

Circumstances of Offence:

Appeal against severity on plea of guilty to break, enter and steal, and larceny of motor vehicle - 2 + 2 = 4 years, to commence at expiration of current 10 1/2 year sentence.
Circumstances of offence: - March 1982 broke into private home and stole a colour television set. Also stole a car and falsified the number plates on it.

Background:

Age 31 years.
Record described as bad - including 3 armed robberies.
Chequered employment history.

Aggravating Factors:

Committed offences while on parole.
History of serious offences.

Result:

Head sentence - 4 years (commencing after = 10 1/2 years).
Non-parole period = 6 years.
Louis Ekes

Appeal Dismissed

N.S.W.C.C.A.
No 371 of 1981
15 April 1982

Circumstances of Offence:

Appeal against severity of sentence. Appellant pleaded guilty to 3 charges of break, enter and steal, into private homes - small amounts involved. Larceny and possessing of implements capable of being used to enter a conveyance.
Head sentence = 5 + 1 + 1 = 5 years.
Non-parole period = 2 years.

Background:

Age 20 years.
Educated to age 15 years.
Low average intelligence.
Unemployed.
Prior record - commencing age 11 years.

Aggravating Factors:

Criminal record long and unsavoury.
Associate of criminal class.
Disregard for property.

Mitigating Factors:

Deprived background.
Fact that co-offender was given a lesser sentence by another judge - 3 year head sentence, 17 months non-parole.

Result:

Court said that even though the sentence is high 'it felt that it is not for an appellant court to interfere with the sentences imposed by his Honor merely because they may be thought to be high by other judges'.

Result:

Head sentence - 5 years
Non-parole period - 2 years to remain.
Circumstances of Offences:

Appeal against severity of sentences, appellant pleaded guilty to 2 groups of offences.
1st group consisted of:
1. a larceny 1980
2. 2 break, enter and steals 1981
2nd group comprised:
- 2 armed robberies 1981
- robbery 1981
First group committed with juvenile girl in private homes.
Second group involved obtaining money from service station in company of 2 other males.
Violence and threat of violence was used in all 3 robberies.
The amounts stolen were not large.

Background:

Age 20 years.
Long record with appearances in Children's Court between November 1975 and July 1980.
Left school aged 15 years.
Parents separated while young.
Used drugs.

Aggravating Factors:

Violence used during robberies.
Has had no gainful employment.
Committed robberies while on bail 'freedom on bail which is abused as an opportunity to commit further offences will necessarily result in the court taking a serious view'.

Result:

Appeal dismissed.
Head sentence - 12 years.
Non-parole period - 4 years.
Stephen John Evans  
Garry Allan Threlfo

Leave to Appeal Dismissed

N.S.W.C.C.A.
No 261 of 1983
No 276 of 1983
2 February 1984

Circumstances of Offences:
Application for leave to appeal against severity of sentences.  
Appellants broke into Shire Council Chambers and stole  
electronic equipment and car.  
Three days later broke into school and stole Apple  
Microcomputers, other electronic equipment and a car. Then on  
the same evening stole cassettes and a car radio.  
Appellants had knowledge of technological equipment.  
Local community concerned over robberies which took place over  
a period of three days.

Backgrounds:
Evans, aged 16 years.  Threlfo, aged 17 years. Evans has  
prior record, 14 charges of break, enter and steal and spent  
time in children's home.

Mitigating Factors:
Age.

Aggravating Factors:
Offences caused concern to smaller community.
Fact that they used sophisticated techniques.
Bad report on Evans from an officer of the Department of Youth  
and Community Service - he feels that Evans has an obvious  
lack of understanding of his obligations to the community and  
has himself to come to the view that the applicant has to  
learn that he has to observe the rules of the community.

Result:
Lease to appeal dismissed.
Evans - head sentence - 3 3/4 years.
Non-parole period - 1 year and 3 months.
Threlfo - head sentence - 3 3/4 years
Non-parole period - 1 year.
Colin John Ferguson

N.S.W.C.C.A.
No. 303 of 1975
21 May 1976

Circumstances of Offences:

Appeal by Attorney-General against original sentence - a four year good behaviour bond conditioned upon his placing himself under the supervision and guidance of the Probation and Parole Service, and further, upon his paying a total of $3,159 as compensation.

Respondent had a long record of criminal activity. Has had previous terms of imprisonment. In 1967 before the court for 4 counts of break, enter and steal, 1 count of larceny, and 17 further matters on a schedule. Given 4 1/2 years head sentence. Non-parole period 2 years. Released March 1969, less than a month later broke into factory, stole property valued at $457. Was arrested later in April, granted bail then absconded. In May 1969 committed further crimes of break, enter and steal.

In August 1969 sentenced to 3 1/2 years with a non-parole period of 2 years 3 months for above crimes and another 4 break, enter and steals and another of larceny on a schedule. Released from custody December 1971 - lived within the law for next six months.

In January 1974 arrested on present charges - these had been committed on dates from beginning of June 1972 to December 1973. 5 break enter and steals - involved private homes. Over $3,000 stolen. The learned judge, when these matters came before him, was influenced by the fact that there appeared to be a prospect of the respondent changing his way of life. He had married recently and his wife was shortly to bear him a child, influenced judge's decision to give him a bond and compensation payment.

The court saw fit to intervene - 'the decision to release this respondent upon a four year good behaviour bond fell so far short of what was an appropriate order to be made in the circumstances that it attracts the appellate intervention of this Court'.

Aggravating Factors:

Respondent's past history.
Serious nature of crimes.
Period over which they extended.
Felt that 'criminal law must be administered with due regard to the interests of the community at large'.

Mitigating Factors:

Personal tragedy affecting the respondent's wife. However Court felt that the personal consideration of particular
criminals who came before the court cannot be permitted to outweigh the primary duty of the court towards the community at large.

Result:
Appeal allowed. Court ordered that the decision of the District Court be quashed. Compensation paid so far to be returned to respondent. Sentenced to 1 year for each of 5 charges, i.e. Head sentence - 5 years. Non-parole period - 3 years, to date from 21 May 1976.
Circumstances of Offences:

Appeal against conviction and sentence on three convictions of receiving - sentenced to 18 months with non-parole period of 6 months. Also, indicted for 3 counts of break, enter and steal and found not guilty on three receiving counts.

Applicant apprehended outside home and after searching his car police found a television and stereo and in his garage a television receiver and 2 stereophonic speakers.

No real issue at trial that these were stolen goods.

Appellant carried on retail business (second-hand electronic equipment) in building that he owned.

Appellant argued that he had bought the stolen goods from a man for $440, that a receipt had been signed, and denied any knowledge that they were stolen goods. Little evidence to associate appellant with break, enter and steal charged so jury had to decide whether they regarded explanation given by the appellant for this possession of these goods as one that might reasonably be true.

Background:

Age 32. Left school at 17 years, obtained tertiary technical qualifications. Worked hard and was successful in building a flourishing business.

Married - stable domestic background.

Mitigating Factors:

First offence.
Age that first offence took place i.e. - 32 years.
Admirable work record.
Stable domestic background
Maintained innocence.

Aggravating Factors:

At the time was on bail for similar offences.
'Those who deliberately deal in stolen goods must expect the criminal law to take a serious view of their conduct'.

Result:

Appeal dismissed.
18 + 18 + 18 months = 18 months head sentence. Non-parole period - 6 months. The period 9 November 1983 - 8 March 1984 is not to count as part of the sentence. The period 29 September - 9 November 1983 is to count as part of the sentence.
John Ellis Flanders

Appeal Dismissed

N.S.W.C.C.A.
No 362 of 1983
11 May 1984

Circumstances of Offences:

Appeal against severity of sentence. Breach of 4 year good behaviour bond. Pleased guilty to break, enter and steal. Head sentence to be served at the expiration of sentence now serving (3 years) and non-parole period - 18 months extension on top of 12 months presently serving.

Background:

Age 27. Prior record of offences of dishonesty. Prospects of rehabilitation slight.

Result:

Head sentence - 3 years.
Non-parole period - 18 months.
Mark Ian Fowler
Steven Michael Fowler

Appeal Dismissed

N.S.W.C.C.A.
No. 379 of 1982
No. 380 of 1984
5 May 1983

Circumstances of Offences:

Appeal against severity of sentences for 8 charges of break enter and steal to which the appellants pleaded guilty. Mark Fowler disclosed a further 88 offences of break enter and steal. Steven Fowler disclosed a further 8 matters on a schedule - 4 of break, enter and steal, 3 of break and enter with intent to steal and 1 of housebreaking implements in possession.

Mark Fowler was sentenced on 1st charge (and matters on a schedule) to 10 years. On the 7 remaining counts to 5 years. 10 + 5 = 10 years, head sentence.
Non-parole period 5 years 3 months.

Steven Fowler sentenced on first charge to 8 years. On remaining 7 counts to 5 years each concurrent, i.e. head sentence - 8 years. Non-parole period - 4 years and 3 months.
4 offences carried out on pharmacies. Period covered by 96 offences of break enter and steal ran from November 1980 to September 1982.

Backgrounds:

Both brothers were drug addicts, and lived in stable emotional relationships with young women.

Ages - Mark - 24 years. Steven - 22 years. Both had records of appearances before Children's Courts.

Aggravating Factors:

Steven - had two previous 2 year good behaviour bonds and had committed offences during their currency.
Types of premises broken into - 'breaking into pharmacies should be viewed seriously even if it is done by drug addicts. The onslaught on these shops, which exist to help people who are in need of legitimate medication, is a serious matter'.

Number of offences. Length of time over which these offences were committed. Court agreed that the sentences were lengthy but felt they were justified bearing in mind the very significant degree of criminality.

Result:

Appeal dismissed.
Mark Fowler - head sentence - 10 years.
Non-parole period 5 years and 3 months
Steven Fowler - head sentence - 8 years.
Non-parole period - 4 years and 3 months.
Richard John Charles Gibson

Appeal Dismissed

N.S.W.C.C.A.
No 295 of 1978
6 April 1979

Circumstances of Offences:

Appeal against severity of sentence - four years for break, enter and steal. Also appellant asked if a further break, enter and steal with intent listed on the schedule be taken into account. No non-parole period specified.
Broke into bowling club - stole $120, October 1978.

Background:

Age 28.
Long prior record - appeared in Children's Court - committed to an institution.
Prior convictions include - 3 years prison in February 1971 for stealing a car.
3 years in May 1971 for break, enter and steal.
5 years for assault with intent to rob whilst armed.
4 years for malicious wounding.
2 years for damaging good property and buildings.

Aggravating Factors:

Confirmed recidivist. Judge declined to specify a non-parole period by reason of the antecedent character of the present appellant.

Mitigating Factors:

Cumulative effect of present four year term on top of the usual balance of the appellant's previous sentence results in an unduly lengthy period of imprisonment stretching ahead of him. Still has 5 years and 8 months to serve + 4 years = 9 years and 8 months. No non-parole period specified.

Result:

Appeal dismissed.
Head sentence - 4 years. (+5 years and 8 months of previous sentence).
No non-parole period specified. 11 weeks of the time served is to count.
Appeal Dismissed

Christine Lesley Gleeson

N.S.W.C.C.A.
No 241 of 1982
3 March 1983

Circumstances of Offences:

Appeal against severity of sentence. Appellant pleaded guilty to 4 charges of breaking and entering, entering and stealing and disclosed a further 69 similar offences on a schedule. Sentences to 9 years on 1st charge. On remaining charges, 2 years each concurrent.

Non-parole period 3 years.

When appellant came before Judge Martin in August 1982 she came carrying a charge of manslaughter committed in December 1980. It was anticipated that her manslaughter sentence would expire on 8 December 1982. There was an overlap of some 3-4 months of the old sentence with the new sentence.

Background:

Age 30 years, lengthy record since 1976. Left school at 17 years and became a nurse. When 22 father died, divorced 1973. Had a motor bike accident and spent time in hospital after which she became involved with drugs and then with prostitution. By 1980 deeply involved in heroin usage. Manslaughter conviction resulted from an occasion when the appellant and 2 others injected themselves with heroin. One of the 3 died either as a result of morphine poisoning or as a result of allergic reaction. After released on parole from the sentence for manslaughter, returned to the drug scene and had 73 counts of break, enter and steal to obtain money to purchase drugs.

Aggravating Factors:

Number of offences.
Felt that it was not a mere incidental lapse into criminality, but a sustained period of criminal activity.
Returned to crime in order to obtain money to buy drugs, after being convicted of drug related offences previously. No sign of attempting to change her lifestyle.

Result:

Appeal dismissed.
Head sentence - 9 years.
Non-parole period - 3 years.
Leigh Anthony Gleeson

Appeal Dismissed

N.S.W.C.C.A.
No. 216 of 1980
11 December 1980

Circumstances of Offence:

Initially appealed against conviction and sentence - then abandoned his appeal against conviction but has indicated that he wished to proceed with his appeal against sentence. Plead guilty to break, entering and stealing. Stole drugs and hypodermic syringes and needles from doctor's surgery. Sentenced to 2 years to commence at the expiration of the sentence he was serving and fixed a non-parole period of 21 months.

Background:

Aged 24 years.
Record of drug related offences.
Reasonably good worker as builder's labourer.

Aggravating Factors:

Been given numerous chances by the courts.

Mitigating Factors:

No record of violence.
At one time broke drug habit for 2 1/2 years after receiving treatment at Wisteria House.
Looking at subjective side, case is a tragic one.

Result:

Appeal dismissed.
Head sentence 2 years to commence at the expiration of existing sentence.
Non-parole period - 21 months.
Douglas Owen Goddard

Appeal Dismissed

N.S.W.C.C.A.
No 247 of 1980
6 March 1981

Circumstances of Offence:

Appeal against severity of sentences. Appellant pleaded guilty to 4 charges of break, enter and steal and 1 charge of attempted larceny of a motor vehicle. A further 4 break, enter and steals listed on a schedule were taken into account. Sentenced on 1st charge (including those listed on a schedule) to 4 years, to commence at the expiration of a sentence he was serving. Sentenced on 3 remaining charges to 3 years - served concurrently. Sentenced on attempted larceny - 2 years served concurrently, i.e. $4 + 3 + 3 + 3 + 2 = 4$ years commencing at expiration of current sentence. Non-parole period expires 2 years and 2 months after pre-existing remission release date. Offences involved breaking and entering principally of dwelling houses but also including a shop and hotel in order to obtain money for readily disposable goods for the purpose of conversion into money.

Background:

Age 33.
Prior record - sentenced to 2 1/2 years for stealing and larceny in 1969. Sentenced to 12 months for stealing. June 1970 sentenced to 10 1/2 years for kidnapping, assault and 3 larcenies of a motor vehicle. Assault and robbery with striking and escape from lawful custody. Paroled in July 1976, obtained employment and kept out of trouble during the early part of his parole. March 1978 - committed the present offences during period March - September 1978.

Mitigating Factors:

Early life interspread with some worthwhile employment - including 3 years in the Army. Non-parole period and remission release dates are very close - non-parole period 2 January 1983, remission release date 22 March 1983. However, the result 'looked at objectively the non-parole date does not exceed what was justifiably open to his Honour'.

Result:

Appeal dismissed.
Head sentence - 4 years to commence at expiration of current sentence.
Non-parole expires January 1983.
Circumstances of Offence:

Applications for leave to appeal against sentences. Appellants pleaded guilty to a charge of breaking, entering and stealing from a dwelling house and stealing property worth $50,000. A large amount of this property has been recovered approximately $40,000.

Goldberg - Head Sentence - 3 years
Non-parole period - 15 months

Trottermant - Head sentence - 3 years and 9 months
Non-parole period - 21 months

Goldberg - Background:

Age 42. Native of France. Completed an apprenticeship in building trade when 18 years. Came to Australia and was naturalised in 1973. At time of arrest was employed as a waiter at restaurant owned by Trottermant's mother.

Mitigating Factors

Previous good character. Record includes only one involvement with the courts - fined $120 for possessing heroin - argued that he played a minor part in the offence by only providing the truck (had no part in the planning). Trial judge did not feel his part was minor '... it is said you only played a minor role in the crime. I am not so sure of the latter as your production of the vehicle and participation thereof cannot, in my mind, be regarded as minor'. Felt sentence too severe when compared with the sentence of Trottermant.

Result:

Appeal dismissed. Appeal Court felt intervention was not warranted. Felt appellant's good record was taken into account in original sentence as it was the minimum time that he should serve before looking forward to release.
Head sentence - 3 years
Non-parole period - 15 months.

Trottermant:

Seeking leave to appeal - Court notes that his notice of appeal wasn't received until 22 December 1981 - 10-11 weeks beyond the time of lodging prescribed under the Act.

Court felt other reasons for delay were not sufficient to warrant allowing the appeal. Court referred to Tyrell (C.C.A. 31 May, 1974). However, judge felt that even though he had refused the application for leave to appeal, he would briefly review the submission 'lest there be thought to be any injustice done to the applicant Trottermant'.

**Aggravating Circumstances:**

Prior record.
Committed robbery while on 3 year good behaviour bond for previous break enter and steal.
Associates with criminals.

**Result:**

Court felt that even if it were necessary to consider this appeal it would be dismissed.
Head sentence 3 years and 9 months
Non-parole period 21 months.
Allan Barry Goodwin

Appeals Allowed

N.S.W.C.C.A.
No 20 of 1980
23 April 1980

Circumstances of Offence:

Appeal against severity of sentence. Appellant pleaded guilty to 3 charges of break, enter and steal, 1 of larceny and asked if 5 offences (3 of larceny, 1 break, enter and steal, and break enter and intent to steal) listed on a schedule could be taken into account. Sentenced to 6 years imprisonment on 1st charge - (which took into account scheduled offences) 6 years + 18 months + 3 years = 7 1/2 head sentence. Non-parole period = 2 years and 9 months.

3 break, enter and steal offences involved entering suburban dwellings and stealing of contents principally television sets.

The break, enter with intent to steal involved a large jewellery shop.

Background:

Age 24 years. Prior record - involving Children's courts - had been previously in prison last time in 1974 - received 12 months penal servitude for 9 shoplifting charges. After release from this sentence the appellant lived within the law and became emotionally attached to a young woman, also had gainful employment. Regrettably, both became addicted to heroin in 1979; need for ready money to purchase drugs induced the appellant back into criminal activities.

Mitigating Factors:

His good attempt at going straight.

Length of time the attempt lasted - 4 years.

Crimes regarded as a single lapse back into criminal conduct.

Result:

Court ordered that the sentences should be served concurrent with the 1st charge.

Head sentence - 6 years + 18 months + 3 1/2 years = 6 years.

Non-parole period - shortened by 9 months = 2 years.
Darrell Ross Goullet
Paul Mark Baldwin

Appeal Dismissed

N.S.W.C.C.A.
No 11 of 1981
No 10 of 1981
22 May 1981

Circumstances of Offence:

Appeals against severity of sentences. Appellants pleaded
guilty to 4 charges of break, enter and steal, one charge of
having possession of a motor vehicle, and asked if 4 further
break, enter and steal charges listed on a schedule to be
taken into account. Break, enter and steal involved private
homes. Property (jewellery, clothing) stolen and sold later.

Baldwin - Head sentence 3 years dating from pre-sentence custody.
Non-parole period - 12 months.

Goullet - Head sentence 3 years dating from pre-sentence custody.
Non-parole period - 15 months.

Backgrounds:

Baldwin - aged 17 came from England. Prior record 1979
committed to care of relevant institution. 1980 committed to
care of relevant institution for 2 charges of break, enter
and steal.

Goullet - aged 17 - attended school until 14 years of age in
Queensland. Criminal record more extensive than Baldwin's.
1980 for such offences as: stealing and receiving; unlawfully
using a motor vehicle; assaulting police and driving under
the influence.

Aggravating Factors:

No sign of appellants trying to improve their
records.
Extent of prior records
Number of offences.

Result:

Appeal dismissed.

Baldwin - Head sentence 3 years dating from pre-sentence
custody.
Non-parole period 12 months.

Goullet - Head sentence 3 years dating from pre-sentence
custody.
Non-parole period 15 months.
Circumstances of Offence:

Appeal against severity of sentence. Appellant pleaded guilty to 5 charges of receiving, and one charge of break enter and steal.
1st 4 charges 2 1/2 years concurrent - receiving
6th charge 3 years cumulative - break, enter and steal.
5 years + 2 1/2 years + 3 years = 8 years.
No non-parole period specified. 1st 4 receiving offences - the appellant when arrested had stolen property in his flat. Appellant bought stolen goods and would dispose of the property later by such means as was open to him.
5th receiving offence involved a ring worth $20,000. Broke and entered into a private home and personal property was stolen.

Background:

Aged 30 years. He has a record going back to 1970.
1970 - 2 charges of break, enter and steal. Sentenced to 3 years.
1973 - break, enter and steal, 18 months.
1975 - 4 charges of break, enter and steal, 3 years sentence, escaped from custody.
1976 - sentenced to 3 years for escaping and break, enter and steal, released with remissions in December 1978.

Aggravating Factors:

Systematic business-like approach to crime.
Number of offences on prior record.
Committed offences while on bail.
Previous breach of parole in 1970.

Result:

Appeal dismissed.
Head sentence = 8 years.
No non-parole period specified.
Circumstances of Offence:

Appeal against severity. Appellant pleaded guilty to break, enter and steal and housebreaking implements in possession. Sentenced to 9 + 5 years = 9 years. Sentence concurrent with 3 years unserved balance of previous sentence. Non-parole period 5 years. Break, enter and steal - private dwelling, housebreaking implement - screwdriver.

Background:


Aggravating Factors:

Bad earlier record.

Mitigating Factors:

Good parole report. Night of offence appellant confronted with some personal, emotional stress, had been drinking with old associate. Nine year term for this break, enter and steal (notwithstanding the bad record of the appellant), exceeds what was called for.

Result:

Court feels nine year sentence excessive for this offence. Head sentence 3 + 1 year = 3 years to commence at expiration of unserved balance of previous sentence. Non-parole period - 3 years.
Leighton Robert Green

Appeal Dismissed

N.S.W.C.C.A.
No 272 of 1978
23 February 1979

Circumstances of Offence:

Appeal against severity of sentence. Appellant pleaded guilty to a charge of break, enter and steal and a charge of larceny of a motor vehicle.
Given 2 years for break, enter and steal.
3 years for larceny.
Head sentence 3 years + 2 years = 5 years.
Non-parole period 2 1/2 years.
Offences took place in motor dealers yard - broke into office and took 30 sets of key rings and $450 - used one set of keys to drive away a car worth $3,000 - car later found burnt.
Appellant originally denied charge of stealing $450 or of damaging the car but later admitted to both these charges.

Aggravating Factors:

Judge took a serious view of the stealing and subsequent total destruction of the car.

Result:

Court felt that there can be no justifiable challenge to His Honour's opinion.
Appeal dismissed.
Head sentence - 5 years.
Non-parole period 2 1/2 years.
Barbara Griffiths

Head Sentence Appeal Dismissed
Non-Parole Period Appeal Allowed

N.S.W.C.C.A.
No 185 of 1980
27 November 1980

Circumstances of Offence:

Appeal against severity of sentence. Appellant pleaded guilty to 2 charges of break, enter and steal, a charge of forgery and a charge of uttering, and asked if a further 10 offences on a schedule.
Sentenced to aggregate 2 1/2 years with non-parole period of 15 months.
Break, enter and steal involved private homes + bank book stolen, forging and uttering a bank passbook.

Background:
Aged 27 years, heroin addict, 5 year old child. Pension of $133 per fortnight. Suffered significant trauma at the hands of her father in her childhood years. Record of 2 prior convictions - 1973 - stealing clothes - 1980 - possession of heroin.

Mitigating Factors:
Court was significantly influenced by the subjective circumstances insofar as they related to the non-parole period.
Appellant achieved some degree of success in breaking herself of the drug habit.
Felt she would benefit more from longer parole period than a prison sentence, the consequences of the parole being to provide her with some support to help her reshape her life.

Result:
Head sentence remained unchanged i.e. 2 1/2 years.
Non-parole period quashed. New Non-parole period - 8 months to be served from today. Period commencing 19 September and ending today is to count as part of the sentence, the remaining period whilst the appellant was at large on bail will not count.
Circumstances of Offences:

Appeals against the severity of sentences. Appellants pleaded guilty - Thomas charged with break, enter and steal and larceny of a motor vehicle. For 1st charge + 10 matters listed on a schedule given 3 1/2 years. 2nd charge - 1 year cumulatively with 1st charge. i.e. Head sentence 3 1/2 + 1 = 4 1/2 years.
Non-parole period - 15 months.
The 10 matters listed all involved stealing motor vehicles. Break and enter involved Thomas and companions entering a motor cycle store and stealing 2 motor cycles, taking them joy riding, one was written off and one damaged, amounting to $750.
Haddon charged with break, enter and steal, being an accessory after the fact to break enter and steal (this relates to the break enter and steal that Thomas was charged with).
1st charge given 3 years.
2nd charge given one year i.e. Head sentence = 4 years.
Non-parole period - 14 months. All charges involved other young men - question of leadership regarded as an open issue. Break, enter and steal involved forced entry into a chemist shop - stock was stolen and safe was placed onto a trolley and loaded onto a vehicle. It contained dangerous and addictive drugs.

Backgrounds:

Thomas - aged 17 years - prior record - before Children's Court for stealing. Last time in 1976 - released on 2 year probation on 8 charges of stealing, 2 of break enter and steal, and one of using a firearm in a public place.

Aggravating Factors:

Seen as having fallen in with a hoodlum element.
Offences seen as serious by reason of the anti-social elements involved in them.

Haddon - aged 20 years. Insignificant prior record. Drug involvement from which he has been attempting to break free.
110.

Aggravating Factors:

Also belongs to hoodlum element.
Offences seen as containing serious anti-social overtones.

Result:
Appeals dismissed. His Honour seen as right in giving heavy sentences which reflected an element of general deterrence.
Thomas - head sentence - 3 1/2 + 1 = 4 1/2 years.
Non-parole period - 15 months.
Haddon - head sentence - 3 + 1 = 4 years.
Non-parole period - 14 months.
Circumstances of Offences:

Appeal against severity of sentence. Plead guilty to break, enter and steal. Sentenced to 3 years to date from 7 January 1983. Non-parole period - 18 months.

Offence involved appellant and companion being observed acting suspiciously near block of flats. Police were called and appellant and companion became alarmed and ran from scene. The appellant was later arrested. Police found suitcase with electronic equipment from the unit that the appellant and companions had broken into.

Background:

Aged 25, prior record involving a period of imprisonment of 6 months, released 3 months earlier. Drug addict.

Mitigating Factor:

Has made significant efforts to obtain treatment in order to break his addiction.

Aggravating Factor:

Committed present offence having been released from sentence of 6 months for similar offence.

Result:

Appeal dismissed.

Head sentence - 3 years - to date from 7 January 1983.

Non-parole period - 18 months.
Myrse Harambasic

Appeals Dismissed

N.S.W.C.C.A.
No 144 of 1981
No 324 of 1981
19 February 1982

Circumstances of Offence:

Appeals against 1) conviction
2) severity of sentence
Convicted on 5 November 1981 of 3 offences
1) attempted break enter and steal with intent
2) possession of homebreaking instrument
3) larceny of a motor vehicle.
Sentenced to 2 + 1 + 1 = 3 years.
Non-parole period - 18 months.
Various notices of appeal - 1 May 1981, 19 May 1981, 21 October 1981. Appeal against conviction - appellant argues that injustice has been done because the learned trial judge refused to allow jury to have access to a street directory. The applicant says that because of this failure, there was a real issue for the jury as to the direction in which he was going before he was apprehended.
However, court felt that as he was represented by counsel at his trial and there is no record in the proceedings of the trial of any objection by his counsel, it is difficult to see how any injustice could have been done to the appellant by any use the crown prosecutor might have made of the directory.

Result:

Appeal against conviction dismissed.
Appeal against severity - Applicant submits that the trial judge fell into error in not taking into account a period of 8 months during which he was in custody after his arrest and before he came on for trial. However, in checking his records it is revealed that he was being held on other charges at the trial. The period of eight months was a period in which he was already in gaol and relates to the sentence which he was called upon to serve for the previous offences.

Result:

Appeal dismissed.
Head sentence - 3 years
Non-parole period - 18 months
Joseph Hasson

Appeal Dismissed

N.S.W.C.C.A.
No. 185 of 1981
12 November 1981

Circumstances of Offences:

Appeal against severity. Appellant pleaded guilty to five charges.
1st - stole motor car, sentenced to 2 years.
2nd - maliciously set fire to Spotwell Wireworks - 3 years.
3rd - broke and entered factory - 3 years p.s.
4th - Set fire to Rockdale laundry - 5 years.
5th - stole motor car + one matter on a schedule - 3 1/2 years.
Head sentence - 7 years.
Non-parole period 3 1/2 years.
Not much damage done at Spotwell Wireworks - but fire at Rockdale laundry completely destroyed building - $250,000. Building and contents were only insured for $128,000 and as a consequence the company has gone out of business and 30 employees with long service entitlements lost their livelihood. Compensation sought by various persons affected amounted to $255,423.55.

Background:

Aged 24, prior record 6 previous convictions. Born in Britain. At the time of arrest was employed as a glass bender.

Mitigating Factors:

Addicted to alcohol. He referred to lack of adequate love and death of father. Was in a relationship with a young woman whom he wished to marry and believed that this would be the turning point of his life. Psychiatrist report said that the applicant had a psychopathic anti-social personality which was aggravated by the consumption of alcohol. Report suggested that certain answers in the record of interview indicated a diminished responsibility on his part or, more particularly a failure to fully to appreciate the nature of the conduct in which he was engaged.

Result:

Appeal dismissed - Court was unable to see that the sentences which were imposed fell outside the limits of discretion available to the sentencing judge.
Head sentence - 7 years
Non-parole period - 3 1/2 years.
Circumstances of Offence:

Appeal against severity of sentence. Appellant pleaded guilty to 4 charges of break, enter and steal and in addition disclosed a further 30 offences of break enter and steal. On 1st charge of break enter and steal and 30 offences on schedule given - 13 years penal servitude to commence from 7 September 1983. On remaining 3 charges sentenced to 4 years to be served concurrently with 1st charge. Head sentence - 13 years + 4 + 4 + 4 = 13 years. Non-parole period - 8 years. Offences involved appellant breaking into private homes and stealing personal property such as jewellery, electronic equipment and other goods that might have been expected to command some resale value. Total worth of the property involved in the 4 offences = $10,030. Property recovered = $2,714. Total worth of property stolen in the 30 offences listed = $37,808 of which nothing was recovered. Offences took place over the period between August 1982 and April 1983. Appellant arrested on 27 April 1983.

Background:

Aged 24 - unemployed throughout time of committing present offences. Left school in form 3 and obtained work as a welder for 12 months but thereafter has a spasmodic work record. Record extends back to 1975 when at age 16 was committed to a boys' home for stealing a motor bike. In 1976 and 1977 again before courts and received fines. 1978 - another fine, 1979 - 9 months periodic detention, 1979 and 1980 - fines. The significant entry is in March 1981 where he was sentenced to a total of 3 years on 3 break, enter and steals, non-parole period expiring 4 July 1982. Released on parole 5 July 1982 and commenced committing the present offences in August 1982.

Mitigating Factors:

Co-operated with police - volunteered information and in fact travelled with the police to various sites and physically identified the premises involved. In relation to other break, enter and steal cases it was contended that 'the aggregate sentence and this non-parole period fall outside the current sentencing pattern to such a degree as to expose a manifest error on the part of the sentencing judge'.
Aggravating Factors:

Committed offences whilst on parole for his previous sentence for break, enter and steal offences.
Nature of offence - judges spoke at length on the rising number of break, enter and steal offences being committed and the need 'for a hardening in the policy of criminal courts when sentencing for this offence'.
Pointed to the fact that the maximum penalty for this offence is 14 years and this brings out the conclusion 'that the legislature marks down break, enter and steal as a serious crime. It behoves the court in consequence to treat it with corresponding seriousness when sentencing'.

Result:

Appeal dismissed.
Judges agreed that the aggregate sentence and the non-parole period were undoubtedly lengthy, but they were designedly and properly lengthy.
Head sentence - 13 years.
Non-parole period - 8 years.
Appeal Allowed

N.S.W.C.C.A.
No. 191 of 1983
No. 192 of 1983
14 November 1983

Circumstances of Offence:

Crown Appeal against inadequacy of sentences. Johnston pleaded
1. guilty to break, enter and inflicting grievous bodily harm (12 years).
2. maliciously inflicting grievous bodily harm with intent to do grievous bodily harm (10 years concurrent)
3. robbery with striking and wounding (10 years concurrent)
4. sexual intercourse without consent (3 concurrent 3 year terms cumulative upon the earlier sentences).
Head sentence - 15 years.
Non-parole sentence - 4 years.

Johnston:
Non-parole sentence - 6 years.

Holder:
1. Break, enter and inflict grievous bodily harm - 10 years
2. Robbery with striking and wounding - 10 years concurrent
3. Sexual intercourse without consent - 1 year cumulative.
Head sentence - 11 years
Non-parole period - 4 years.

Background:


Crown's challenges based on
1. manifest inadequacy of sentences
2. error in evaluation of significance of unexpired portion of prior sentences
3. giving of undue weight to element of contrition.
Court spoke at length of the job an appellant court is expected to do - 'An appellant court interferes only if it be shown that the sentencing judge was in error in acting on a wrong principle or in misunderstanding or in wrongly assessing some salient feature of the evidence. The detection of error of principle is straightforward - but evaluating whether the error is manifested by an excessive or inadequate sentence is more difficult.'

'Disparity of sentencing standards is a very serious deficiency in a system ... it is the task of a Court of Criminal Appeal to minimise disparities of sentencing standards yet still recognise that perfect uniformity cannot be attained and that a fair margin of discretion must be left to the sentencing judge'.


Looking at the first and second challenge, that of manifest inadequacy of sentences - there was some evidence to suggest that His Honour was under the impression that the remission release date (9 March 1984 and December 1983 respectively) was in fact the expiry dates of the pre-existing sentences and in result Johnston, instead of receiving an accumulation of about 14 years 4 months on top of his pre-existing sentence, received only 11 years 10 months. Holder instead of receiving an accumulation of 10 years 7 months on top of his pre-existing sentenced, received 7 1/2 years. Second challenge by Crown is that His Honour gave undue weight to the presence of the element of contrition. Court said that all accused persons can ordinarily expect to receive the benefit of some credit in the matter of sentence when proffering a plea of guilty.

Looking at this case the Court felt that His Honour may have given too much weight to this factor and that this may have contributed to the inadequacy of the sentences. The Court felt, especially regarding Holder, that he realised that he should plead guilty and hope for the best.

Result:

Appeal allowed.
Sentence was in each case manifestly inadequate. Court attached significance upon the fact that the attacks were committed in what ought to have been the safety of the home. Johnston - sentenced on first charge to imprisonment for life. Sentenced on each of the 2nd and 3rd charges to imprisonment for 15 years. To be served concurrently and for 3 remaining charges to aggregate of 9 years.

Holder:

Even though the totality of his criminality was less than that of Johnston, still called for life sentence. Sentenced to prison for life. On 2nd charge imprisonment for 15 years. On 3rd charge imprisonment for 4 years.
Appeal Upheld

N.S.W.C.C.A.
No. 7 of 1980
No. 8 of 1980
2 May 1980

Circumstances of Offences:

Appeals against severity of sentences. Each given 2 year head sentence. No non-parole period specified. Both pleaded guilty to break, enter and steal from a chemist shop. Stole drug safe and contents.

Aggravating Factors:

Offence was planned and both had prior criminal records. The Court also noted their failure to take advantage of the chances that had been given to them previously.

Result:

Appeal upheld - both sentenced to 1 year cumulative on the sentences presently being served.
Non-parole period not specified.
George Thomas Howlett

Appeal Allowed

N.S.W.C.C.A.
No 136 of 1982
16 September 1982

Circumstances of Offences:

Application for leave to appeal against the severity. Pleaded guilty to break, enter and steal. Head sentence - 2 years. Non-parole period - 1 year and 4 months. Offences took place in private homes - $1,000 stolen.

Background:

Lengthy record.

Mitigating Factors:

Non-parole period expires 6 weeks after remission release date.

Result:

Appeal against non-parole period allowed and given non-parole period of 10 months. Head sentence - 2 years. Non-parole period - 10 months.
Circumstances of Offences:

Application for leave to appeal against the severity of sentences. Plead guilty to 2 charges of break, enter and steal, 1 charge of larceny of a motor vehicle and 1 charge of maliciously setting fire to a building. Sentenced to 4 years on first charge + 1 on scheduled matters 2nd 1 + 1 + 1 = 5 years. Non-parole period 2 1/2 years which will date from April 1982.

Offences of break enter and steal took place in commercial premises. Arson charges - appellant rented premises and then set light to them - damage amounting to $11,000 was done. The appellant later claimed under an insurance policy that he had lost goods to the value of $12,500 in the fire - the insurance claim did not succeed.

Background:

Aged 25, unsatisfactory employment record.

Aggravating Factor:

Committed offences whilst on parole.

Mitigating Factors:

It was argued that the sentencing judge erred by making the present sentences cumulative upon the previous sentences. Appeal Court felt that this line of arguing overlooks the seriousness of the committing of offences whilst on parole, an element which plainly justifies an accumulation of sentences in the manner followed by the sentencing judge.

Discussion of application of s.4A(a) of Parole of Prisons Act where the non-parole period is being specified in conjunction with an accumulated sentence. In the present case judge specified non-parole period of 2 1/2 years which will date from today - this form of order was inconsistent with s.4A(a) but it indicated the judge's intention regarding the new terminal date of the non-parole period.

Result:

Appeal dismissed against head sentence.
Quash the non-parole period specified as expiring October 1984.
Head sentence - 5 years.
George Jason Jackson

Appeal Dismissed

N.S.W.C.C.A.
No. 171 of 1980
30 October 1980

Circumstances of Offences:

Appeal against severity of sentences. Pleaded guilty to 3 charges of break, enter and steal plus 25 matters on a schedule. Broke into commercial premises.

Background:

Aged 16 years. Childhood of disrupted nature. Academically a low achiever.

Mitigating Factors:

Seen as minor, and had no earlier involvement with the criminal law.

Aggravating Factors:

Offences cannot be simply dismissed as negligible.

Result:

Appeal dismissed.
Committed to an institution for 12 months and placed on a 2 year good behaviour bond.
Circumstances of Offence:

Appeal against severity of sentence. Appellant pleaded guilty to 3 charges of break, enter and steal. Sentenced on 1st charge to 12 months; 2nd charge - 2 years and on the 3rd to 3 years. Head sentence $1 + 2 + 3 = 3$ years. Non-parole period - 18 months. All 3 charges involved break and enter into hotels 1st charge stole $500 2nd charge stole $5,000 3rd charge stole stock from bottleshop.

Background:

Appellant came from N.Z. in 1978 having been in stable employment for some years prior. Was not successful in obtaining employment in this country and it was then that he drifted into criminal activities. Has had no prior record.

Aggravating Factors:

Provided leadership and inspiration Crimes premeditated.

Mitigating Factor:

No prior record.

Result:

Head sentence unchanged i.e. 3 years Non-parole period reduced to 12 months.
John Henry Kavanagh
James Thomas Kavanagh

Appeals Dismissed

N.S.W.C.C.A.
No 188 of 1981
No 189 of 1981
1 September 1982

Circumstances of Offence:

John Kavanagh and James Kavanagh were charged with break and entering 2 unfurnished residences and stealing certain fittings, fixtures and carpets. Offences took place in January 1980.
John Kavanagh was further charged with receiving a motor vehicle. John Kavanagh was sentenced to 4 years on each of break, enter and steal to be served concurrently and to 1 year 6 months on receiving charge to be served cumulatively 4 + 4 + 18 months = 8 years. Non-parole period approximately 2 1/2 years. No data on James Thomas.
The appeals are many; 19 grounds of appeal for John Henry and 17 for James Thomas. However, before the appeal case came up, 12 of the grounds were withdrawn and the Court referred to this matter in its summary (see result).
Counsel for the appellants sought a finding from the Court that there was a miscarriage of justice in the trial because of
a) alleged misdirections by the trial judge
b) alleged omission to give certain necessary and proper directions to the jury and
c) an alleged improper interruption by the trial judge during the giving of his statement by the appellant John Henry Kavanagh.
Also there was an appeal against sentence on the grounds of disparity.

Backgrounds

John Henry Kavanagh - aged 48 years. Prior convictions with terms of imprisonment.
James Thomas Kavanagh - aged 45 years. Prior convictions with terms of imprisonment.
An additional ground of appeal was as follows - 'The trial judge erred in law in that, having excused a member of the jury on the grounds of personal inconvenience, he made an order that the trial should proceed with 11 jurors without inviting counsel to make submissions concerning this last order if they so desired'. Court pointed out that the trial took place over a year ago (June 1981) and the matter was first raised before us on 30 July 1982. Also quoted (Jury Act 1978 section 2) which refers to minimum number required ...
'the jury should be considered as remaining for all the purposes of that trial... properly constituted if
a) in the case of criminal proceedings, the number of its members is not reduced below 10...'. In this case the members fell from 12 to 11 members. The Court concluded that no error on the part of the trial judge had been shown.

Alleged Misdirection:

It was contended that the direction of the learned trial judge on the subject of recent possession was defective and he submitted that the jury could have been misled into thinking that there was an onus of proof on the accused. The Court pointed out that no complaint about this alleged misdirection was made at the trial by learned counsel. It considered the trial judge's summing up in detail and was quite satisfied that the jury were told frequently that the burden of proof lay on the Crown from the beginning to end. It concluded that this ground of appeal should fail.

Non-Direction:

Alleged that trial judge failed to give adequate instruction to the jury in a joint trial, about considering charges against individuals accused separately and to consider only the evidence which was admissible against each of such accused persons. However, the Court quoted the judges from summing up where he said to the jury 'you have already been told that you must consider the charges separately'. The Court was not persuaded at all that his Honour need have said anything further to this particular jury upon this subject.

This ground failed

Alleged improper interruption by the trial judge during the giving of his statement by the appellant John Henry Kavanagh

- it was argued that a statement by the judge was an irregularity and was almost a question which is prohibited by s.405 of the Crimes Act. Again the Court felt that the statement referred to was not a question for the Court nor could it be constructed as one, it saw no miscarriage of justice had been shown.

On the appeal against severity of sentence because of alleged disparity, the Court said the following. 'The learned judge was entitled to take the view that neither of these 2 appellants were entitled to leniency and that this is not a case... in my view which calls for the intervention of this Court on the ground of disparity or any other ground'.

Result:

Appeal dismissed. The Court also felt that it was its duty to pass censure on the solicitor for the appellants. The Crown prosecutor in his written submissions to this court has strongly criticised the solicitor's conduct in persisting with the grounds which bordered on the vexatious and which obviously resulted in a considerable amount of waste of
obligation to their clients not to prejudice their clients by obscuring whatever merit there might be in the appeal, as well as an obligation to the court to ensure that grounds are properly and validly drawn and that they do not contain what cannot unfairly be described as rubbish in some of these grounds'.
Allen Donald Keenan

Appeal Dismissed

N.S.W.C.C.A.
No 347 of 1982
9 March 1983

Circumstances of Offence:

Application for leave to appeal against sentences. Pleaded guilty to break, enter and intent to steal (18 months) - for supplying a prohibited drug to 7 years and 2 years for break, enter and steal. 3 sentences to be served concurrently i.e. $1 1/2 + 7 + 2 = 7 years with 2 1/2 years non-parole period.
1st offence arrested on roof of warehouse.
2nd offence supplying heroin.
3rd offence committed while on bail - value $13,500.

Background:

Aged 26 - prior record. Heroin addict.

Aggravating Factors:

Committed offences while on bail.
Crime described as grave because of:
- nature of offence
- committed in company
- extent of gain by appellant.

Offence of a very similar kind to that for which he was currently on bail.

Result:

Sentences held not excessive.
Head sentence - 7 years.
Non-parole period - 2 1/2 years.
Eric George Kennaway

Appeal Dismissed

N.S.W.C.C.A.
No 167 of 1982
1 October 1982

Circumstances of Offence:

Appeal against severity. Appellant pleaded guilty to 4 break
enter and steals with 9 similar offences on a schedule.
Sentenced to 1st charge (taking into account matters on
schedule) 3 years 9 months.
3 years 9 months + 18 months + 4 years = 3 years 9 months.
Non-parole period = 2 years 2 1/2 months.
In addition made orders under s.437 for appellant to pay
compensation to victims. Offences committed in ordinary
suburban dwellings.

Background:

Aged 25. Record of drug offences. Came to Australia in 1961
from Scotland, left school at 15 years.

Aggravating Factors:

Was on 4 year good behaviour bond at time he committed
offences.
Response to supervision (for good behaviour bond) reported
as unsatisfactory.
Appellant expressed no remorse for his repeated violations
of other people's property rights.

Result:

Felt no case was made for justifying this Court interfering
in case.
Head sentence - 3 years 9 months.
Non-parole period 2 years 2 months.
Circumstances of Offence:

Appeal against severity of sentence.
1. Charged with break, and enter with intent to steal and rape - 6 years.
2. Charged with break, enter and steal (stole rifle) then used it to assault occupant of flat - 5 years.

Head sentence - 11 years.
Non-parole period - 5 years 4 months.

Aggravating Factors:

Committed offences while on bond (for previous sexual offence).
Appellant showed regrettable lack of response to rehabilitation.
Prior record seemed to point to the appellant associating sex with violence.

Result:

Appeal dismissed.
Court conceded that the non-parole period was long but felt this was warranted.
Head sentence - 11 years.
Non-parole period - 5 years 4 months.
Dennis James Kent

Appeal Dismissed

N.S.W.C.C.A.
No 273 of 1978
23 February 1979

Circumstances of Offence:

Appeal against severity - pleaded guilty to 2 charges of break enter and steal. Also asked if 4 matters listed on schedule be taken into account (these scheduled matters took place on same day).
Sentenced to 4 years on one charge + matters on schedule and to a concurrent 3 years on other
Head sentence 4 + 3 = 4 years.
Non-parole period = 2 years.
Crimes committed in company - appellant not seen as leader - took property from private dwellings.

Background:

Has limited mental status - attended opportunity school for slow learners until leaving school at 14 years. Cannot read or write and well below average intelligence. Gained employment aged 17 as builder's labourer but hurt his back and since then has been an invalid pensioner. Married with 2 children aged 1 and 2, however the family unit has broken up in consequence of his imprisonment. Prior record.

Aggravating Factors:

Has been given lenient treatment at the hands of criminal courts on many occasions.

Mitigating Factors:

Not associate of criminal element.
Court gave full account of the domestic tragedy which had overtaken him in his imprisonment.

Result:

Head sentence is well within the ultimate statutory maximum for this crime. Appeal fails.
Head sentence - 4 years.
Non-parole period 2 years. Seven weeks is to count.
Roger Allan King

Head Sentence - Appeal Dismissed
NPP - Appeal Allowed

No 46 of 1980
29 May 1980

Circumstances of Offences:

Appeal against severity.
2 charges of break, enter and steal, 1 larceny of a motor vehicle and 1 larceny. Sentenced to 3 1/2 + 3 + 1/2 + 2 = 3 1/2 years, with effective non-parole period of 1 year 9 months.
First break, enter and steal - involved office and substantial amount of personal property stolen.
Second break, enter and steal involved suburban home.

Background:

Aged 23, came from N.Z. in 1977. Had prior record in N.Z. for which he received fines. Has been living with parents in Sydney, has apparently led a comparatively stable life.
Challenge to non-parole period as it bears a proportionate relationship of about 50 per cent to the head sentence which is on the heavier side of what the reported statistics indicate to be the median non-parole period namely 33 per cent of the head sentence.

Result:

Allowed the appeal as it related to the non-parole period - and reduced it to 1 year 5 months, i.e.:
Head sentence = 3 1/2 years.
Non-parole period 1 year 5 months.
Wayne Denis Kirkman

Appeal Dismissed

No 18 of 1982
15 July 1982

Circumstances of Offences:

Appeal against severity of sentence. Pleaded guilty to
stealing from employee of small business - snatched while
victim on route to bank, then jumped into car - police car
happened to be in area, gave chase and apprehended appellant.
Amount stolen $2,642 - recovered after chase.

Background:

Aged 22. Left school at 17 years. Satisfactory employment
record and was well regarded by project manager.

Mitigating Factors:

Appellant had not previously served a term of imprisonment.
Non-parole period of 18 months exceeded what was called for.

Aggravating Factors:

Committed offences while on good behaviour bond.
Crime itself seen as serious.

Result:

Appeal failed.
Head sentence - 3 years.
Non-parole period - 18 months.
Kenneth John Knight

Appeal Dismissed

N.S.W.C.C.A.
No 197 of 1978
30 November 1978

Circumstances of Offence:
Appeal against severity of sentence. Plead guilty to break, enter and steal. Sentenced to 2 years which was directed to commence at the expiration of 3 1/2 year sentence passed on appellant in May 1978 on another charge of break, enter and steal. A further four matters of break, enter and steal were listed on a schedule and taken into account when his client was sentenced in May 1978. His Honour has refused to specify a non-parole period. Break, enter and steal was carried out on a flat and a quantity of furniture was stolen – total value $2,200 and $2,020 was later recovered.

Background:
Aged 20. Record going back to 1971.
1971 - before Children's Court on 7 charges of break, enter and steal.
1975 - Children's Court for 30 charges of break, enter and steal, 2 charges of stealing from a dwelling and one charge of entering a dwelling. Result – committed to an institution.
1977 - 3 year good behaviour bond - while on this bond did another break, enter and steal - received 3 1/2 years.
1978 - committed present crime.

Aggravating Factors:
Long prior record.
Offence committed while on good behaviour bond.

Result:
Sentence held not excessive.
Head sentence - 2 years.
Non-parole period not specified.
Circumstances of Offences:

Appeal against severity of sentence. Lambert charged with possession of housebreaking implements. Williams charged with larceny of a motor vehicle. Broke into car sale yard. Judge satisfied on evidence that the applicants were at the time of their arrest on their way to commit one or more burglaries. Lambert - head sentence - 4 years. Non-parole period due to expire in October 1986. Williams - head sentence 4 years - non-parole period expires October 1986.

Backgrounds:

Lambert - age 21 years. Record extends back to age 13 years. Williams - age 24 years. Criminal career described as 'lamentable' commencing age 13. On licence at time of conviction.

Mitigating Factors:

Legal considerations - appellant Williams had licence revoked in his absence - Appeal Court felt 'that a District Court Judge may lawfully revoke a licence in the absence of the licensee, upon proof in a summary way of the appropriate breach'. They failed to see any denial of natural justice to the appellant in the procedures adopted by His Honour.

Result:

Lambert - head sentence - 4 years. Non-parole period 6 years. Felt that it was appropriate that both appellants have the benefit of roughly the same aggregate non-parole period and that there be some reduction. Non-parole period - 6 years, commencing August 1981. Williams - appeal allowed. Head sentence 3 years and non-parole period 10 1/2 years commencing November 1977.
Richard Paul Langley

Head Sentence - Appeal Dismissed
NPP - Appeal Allowed

N.S.W.C.C.A.
No 372 of 1982
9 June 1983

Circumstances of Offences:

Appeal against severity of sentence. Ten counts - 3 of break, enter and steal; 1 of larceny as a servant; 2 charges of larceny; 1 charge of forgery; 1 charge of uttering; 1 charge of accessory before the fact; 1 charge of accessory after the fact. Also 2 offences of forging and uttering (involving $2,015, none of which has been recovered). Head sentence - 6 1/2 years.
Non-parole period - 3 years, 10 months short of the remission date. Break and enter mainly involved his own family's homes - grandmother's, father-in-law's and father's - stole such goods as television sets, cheque books; and video gear. Value of property stolen from father's house - $4,500, from Grandmother $600.

Background:

Age 22. Married with one child (although now separated) and was unemployed at the time of arrest. Heroin drug addict. Prior record going back to 1978 - included in these records are offences for 3 counts of stealing, driving at dangerous speeds, 2 on driving whilst disqualified, cultivating Indian hemp, driving while under the influence.

Mitigating Factors:

Was argued on his behalf that 6 1/2 years is excessive for a young offender sentenced to imprisonment for the first time; that the non-parole period specified was excessive in the circumstances. That the appellant's co-operation and plea of guilty were not taken into account along with subjective factors being. He had been in custody in all for 1 1/2 months prior to sentence.

Aggravating Factors:

Many of the offences were committed whilst on bail, and all were committed whilst on probation. Crimes themselves seen as mean and contemptible. Non-acceptance of drug rehabilitation program (remained in the Odyssey House program for 24 hours).

Result:

Held that head sentence was an appropriate one. Non-parole period - expires close to remission release date.
and thus offers no incentive to the appellant to embark upon a course of rehabilitation. As a first offender it was felt that he could benefit from a reduced course on release to parole. It was held that the non-parole period was disproportionate to head sentence. Head sentence - 6 1/2 years. Non-parole period - changed from 3 years to 2 years.
Appeal Dismissed

Stephen Frederick Thomas Lawson

N.S.W.C.C.A.
No 275 of 1980
7 May 1981

Circumstances of Offences:

Appeal against severity on plea of guilty to break, enter and steal, larceny and stealing, with 2 scheduled offences. Sentenced to 5 + 5 + 5 = 5 years head sentence. Non-parole period - 2 1/2 years. Offences involved appellant breaking and entering into homes on one offence of his grandfather and on another occasion friends whom he knew to be out. Stole stamps ($300), television and camera.

Background:

Had been drug addict, but had made progress towards conquering that addiction. Record goes back to when he was aged 11 - came before Children's Court in September 1975 for uttering and stealing. July 1977 - 12 months for break, enter and steal - record of constant involvement in crimes of dishonesty. Tragic earlier life. Father killed in road accident in 1978 - parents had previously separated when he was 10. Left school at 15 - his work record was described as not impressive. He married in 1977 whilst serving a sentence of imprisonment - had one child - but both wife and child were killed in a road accident in June 1980. Presently suffering from hepatitis, which he got from heroin addiction activities.

Aggravating Factors:

Not able to present himself as a man in respect of whom there can be a great deal of confidence in his determination to rehabilitate himself.

Result:

Appeal dismissed.
Head sentence - 5 years
Non-parole period - 2 1/2 years.
Tony Raymond Leonard

N.S.W.C.C.A.
No 292 of 1981
5th May 1982

Circumstances of Offences:

Appeal against severity of sentences. Plead guilty to break, enter and steal, attempting to obtain money by false pretence, stealing from a dwelling, 3 false pretences, malicious injury with 33 false pretences on a schedule. Head sentence - 5 years. Non-parole period - 2 years. Break, enter and steal from a private house involved the taking of valuable property for subsequent sale. False pretence charges concerned misuse of credit cards.

Background:


Aggravating Factors:

- Offences committed while on bail.
- Bad record.

Result:

Sentences not seen as excessive. Head sentence - 5 years. Non-parole period - 2 years.
Circumstances of Offences:

Appeal against conviction. Plead not guilty to 3 charges of receiving and to 3 charges of break, enter and steal. Jury found appellant guilty on 3 receiving charges and not guilty to the 3 break, enter and steals. Appellant appeared for himself. Sentenced to 2 years on 2 of the counts and 6 months for the 3rd one = 2 years to be served, $2 + 2 + 1/2 = 2$ years cumulatively upon a sentence already being served. New Non-parole period expires 1 September 1978.

Essential thread of his argument - weight of evidence called on his behalf coupled with what he contends to be the defects in the Crown evidence, is such as to point to the failure on the part of the Crown to discharge its burden of proving his guilt. Then Appeal Court pointed out that the criminal laws of this State place upon the jury the responsibility for determining guilt or innocence within the field of disputed questions of fear that may be litigated during the course of the trial. It was not the province of this Court of Criminal Appeal to re-try the question of fact.

The appellant raised specific points and contends that these amount to error of law and that they constituted material demonstrating that there was a miscarriage of justice such as to require the intervention of this court.

First of these points concerns - admissibility in evidence and validity of police records - argued that the judge failed to warn the jury that one question they must consider was the identity of the appellant's signature purporting to appear on the documents - that the evidence did not disclose that the appellant was in possession of the goods. However the Court felt that these points were not such as to justify intervention, being as they are, all matters which were essentially within the province of the trial judge. They felt that no basis was made out for concluding either that there was any error of the law made in the proceedings in the course of the trial or that there was any miscarriage of justice.

Result:

Head sentence unchanged - 2 years
Non-parole period - court felt it should have expired on 1 September 1977 rather than 1978.
Salvatore Lo-Lacono

Appeal Dismissed

N.S.W.C.C.A.
No 236 of 1983
17 February 1984

Circumstances of Offence:

Appeal against sentence. Appellant pleaded guilty to 4 charges of break, enter and steal. A further 6 similar offences were listed on a schedule. Appellant sentenced on 1st matter to 4 1/2 years to date from August 1983. Sentenced on each remaining 3 charges to 3 year terms and 4 to be served concurrently. Head sentence - 4 1/2 years.
Non-parole period 1 year 9 months.
All offences involved the breaking and entering of suburban homes and stealing of articles of value, particularly jewellery and electronic articles. Substantial amount of property compensation claimed being some $15,000 - for 4 months and $7,700 for matters on schedule.

Background:

Aged 24. Drug user. Prior record - 4 months before the 1st present 10 offences was sentenced to 300 hours community service and ordered to pay $669 in compensation for an offence of break, enter and steal.

Aggravating Factors:

Committed offences while on 2 year good behaviour bond for causing grievous bodily harm, an offence that arose out of a motor vehicle incident.
Committed series of 10 similar offences - in a period of 5 months.
Caused significant consequential loss to the persons from whose home he stole goods.

Result:

Court did not hold that sentence was excessive.
Appeal dismissed.
Head sentence - 4 1/2 years.
Non-parole period 1 year 9 months.
Peter Bruce Lowe

Appeal Dismissed

N.S.W.C.C.A.
No 249 of 1979
18 December 1979

Circumstances of Offences:

Appeal against severity of offence. Plead guilty to break and enter with intent, accessory after break, enter and steal and to break, enter and steal with 2 similar offences on a schedule. 4 + 1 + 1 = 5 years.
Head sentence = 5 years.
Non-parole period - 18 months.
All offences committed on night of 21-22 August 1979. All were committed on commercial premises in company with 2 other men. Stole $120 from caravan park, stole cash register from service station contained only $20.00 but the register which was destroyed was worth $1,200.

Background:

Age 23. Obtained a qualification through correspondence course that he undertook during a period of imprisonment.
Bad prior record - extends back to age 10 - runs on with 23 separate entries, some for more than one offence and one which incurred a prison sentence.

Aggravating Factors:

Prior record "... denies to the appellant any claim for leniency".
All offences carried out over one night.

Result:

Appeal fails.
Head sentence - 5 years.
Non-parole period - 18 months.
Wayne Robert Lulham

N.S.W.C.C.A.
No 173 of 1980
18 September 1980

Circumstances of Offences:

Appeal against severity. Plead guilty to 2 break, enter and steals - 1 1/4 + 1 1/2 = 2 1/2 years.
Non-parole period - 10 months.
Break, enter and steals involved appellant and friend breaking into commercial premises, sports shop and butchers shops - total value of good stolen $3,840, $3,000 later recovered.

Background:

17 years. No earlier record of relevant significance.
Weakness for alcohol. Work history - satisfactory. Stable family background.

Aggravating Factors:

Serious view taken of break, enter and steal in country towns
Offences seen as anti-social.
Family background being stable (seen as benefit which does not excuse behaviour).

Result:

Felt that the length of sentences exceeds those called for by the whole of the circumstances.
Head sentence - 2 years.
Non-parole period - 6 months.
Appeals Dismissed

Talbot Mark
Stephen Francis Mills

N.S.W.C.C.A.
No 274 of 1982
No 284 of 1982
15 April 1983

Circumstances of Offences:

Appeals against severity on 6 break, enter and steal with other similar offences on schedules. Both appellants sentenced to 5 1/2 years with non-parole periods of 2 1/2 years. All offences involved break, enter and steal from private homes. A total of $47,000 was stolen and $45,000 has not been recovered. Jewellery, electronic goods, household goods.

Background:

Mills - age 26, lengthy record. Tragically deprived childhood, drug addict.

Mitigating Factors:

Contended that the non-parole period expires too closely to the anticipated remission release date.
Significant reliance placed on psychiatric reports (these reports amplified the domestic and emotional background of a tragically deprived childhood).

Aggravating Factors:

Both had benefit in the past of a significant degree of trust and neither has responded to that by conforming with the law.
Ward was on a good behaviour bond at time of offences.
Mills was on parole at time offences were committed.

Result:

Court felt that no criticism could be made of the trial judge's decision. Appeal dismissed.
Ward - head sentence - 5 1/2 years. Non-parole period 2 1/2 years.
Mills - head sentence - 5 1/2 years. Non-parole period 2 1/2 years.
Appeal Dismissed

N.S.W.C.C.A.
No 174 of 1976
No 173 of 1976

Circumstances of Offences:

Appeal against severity of sentence. Pleaded guilty to stealing from the person. Planned to overpower a middle-aged man whom they knew to be in the habit of attending at a bank at a particular time and take from him a bag which they assumed would be carrying money. They found they did not need to use violence as the man let the bag go as soon as he was seized.

Background:

Kelly Martin aged 24. Prior criminal record to 1968 - from this point onwards his record runs on with repeated appearances before Children's Courts and later Courts of Quarter Session for crimes of stealing, break enter and steal, larceny of a motor vehicle, possessing firearms etc. Paul Martin aged 18 - prior record going back to Children's Courts.

Aggravating Factors:

Kelly - led younger brother and his friend into venture - seen as leader. Bad prior record. Did not use violence but were prepared to. Felt sentence of 4 years for Kelly marks a proper measure of punishment as well as deterrence.

Result:

Both appeals fail. Kelly - head sentence - 4 1/2 years. Non-parole not specified (no directions as to time). Paul - head sentence - 2 1/2 years. Non-parole period - 9 months. Whole of time to count.
Allan Stephen Mason

N.S.W.C.C.A.
No 375 of 1981
8 April 1982

Circumstances of Appeal:

Appeal against severity. Pleaded guilty to break, enter and steal. Sentenced to 2 years with 13 months NPP. Ordinary dwelling house, stole video recorder, later returned and stole other property - overall value $5,000.

Background:

Age 22 - from N.Z. said to be on working holiday. Prior record in N.Z.

Aggravating Factor:

Clearly major offender in this break, enter and steal.

Result:

Appeal dismissed.
Head sentence - 2 years.
Non-parole period - 13 months.
Robert Lindley Matthew

Head Sentence - Dismissed
NPP - Appeal Allowed

N.S.W.C.C.A.
No 55 of 1982
2 July 1982

Circumstances of Offences:

Appeal against severity on 2 break, enter and steal and one car stealing with 6 scheduled offences. Sentenced to 3 1/2 + 2 + 1/2 = 6 years with 2 1/2 year non-parole period.
Appellant charged with 2 break, enter and steals, released on bail and committed car stealing and 6 scheduled offences whilst on bail.
Break, enter and steal took place on commercial premises and there was nothing remarkable in the circumstances of either break enter and steal.

Background:

Age 18 years - bad earlier record going back to Children's Courts. Stable family background. Has had previous employment.

Aggravating Factors:

Offences committed whilst the appellant was on bail and under the restraint of a two year good behaviour bond. "Gravely troubling criminal record".

Result:

Head sentence not excessive - 6 years.
Non-parole period found excessive and was reduced from 2 1/2 to 1 1/2 years.
Circumstances of Offences:

Appeal against severity on plea of guilty of break, enter and steal with 3 false pretences on a schedule - appellant at time serving balance after revocation of parole in April 1980. Sentenced to 4 years imprisonment to be served on top of sentence now serving 13 years. Non-parole period - 5 years. Offences involved breaking and entering private homes and stealing property valued at $7,700 - $4,100 has not been recovered.

Background:

Drug addict. Long criminal record - starts in 1971 for break, enter and steal and extends to 1974 when he was convicted of armed robbery with striking and wounding - received 12 years.

Mitigating Factors:

Asserts an intention to reform his life. Court felt that the period of 5 years exceeds what was called for in all the circumstances. Felt the appellant would benefit more from longer period under supervision, than one in jail.

Aggravating Factors:

Committed offences whilst on parole. Viewed with seriousness, fact that appellant did not succeed in leading a law-abiding life after release to parole.

Result:

Head sentence - not challenged - 4 years to be served on top of 13 year sentence. Non-parole period reduced to 3 years (from 5 years).
Brian Kenneth McDonnell
Christopher John Hincksman

Appeals Dismissed

N.S.W.C.C.A.
No. 251 of 1982
No. 253 of 1982
17 February 1983

Circumstances of Offences:

Appeals against severity on plea of guilty to series of break, enter and steals.
McDonnell pleaded guilty to 5 charges of break, enter and steal and disclosed a further 11 substantial matters on a schedule.
Head sentence - 12 years
Non-parole period - 5 years.
Hincksman pleaded guilty to 4 charges of break, enter and steal and a further 4 substantially similar matters on a schedule.
Head sentence - 9 years.
Non-parole period - 4 years.
All offences involved non-residential clubs, cutting open safes within those clubs with oxy-acetylene equipment and stealing contents of safe - total amount stolen $43,000 - $9,500 recovered.

Backgrounds:


Aggravating Factors:

Repetition of similar offence
Professionalism of break and enter styles - use of oxy-acetylene equipment.
Sheer accumulation of number of offences and period over which the offences were committed.
Amounts of money stolen and the fact that a substantial amount had not been recovered.

Mitigating Factors:

First offence.
Nothing in the background to indicate the origin of this course of criminal conduct.
Result:

Appeal dismissed. Court held that sentences lengthy but not excessive.
McDonnell - head sentence = 12 years
Non-parole period 5 years
Hincksman - head sentence = 9 years
Non-parole period 4 years.
Mavis Irene Melmeth

Appeal Dismissed

N.S.W.C.C.A.
No 23 of 1981
21 October 1981

Circumstances of Offences:

Application for leave to appeal against the severity of sentences. Pleaded guilty to 3 charges of break, enter and steal and a charge of larceny. A further 14 charges of false pretences. 3 + 3 x 2 = 5 years. Non-parole period 2 1/2 years. No further mention was made as to details of offences.

Background:

Embarked upon present offences in company with her daughter, for the presence of enabling them to obtain money on which to live and upon which to support the child while they sought to concede the child's whereabouts from her father.

Mitigating Factor:

Circumstances sad.

Aggravating Factors:

Committed offences whilst on parole. Totality of criminality involved.

Result:

Appeal fails. Head sentence - 5 years. Non-parole period 2 1/2 years.
Kevin Percy Middleton

Appeal Allowed

N.S.W.C.C.A.
No 324 of 1982
31 March 1983

Circumstances of Offences:

Appeal against severity. Pleased guilty to robbery, break, enter and steal, larceny of a motor vehicle and receiving with 23 scheduled matters. Sentenced to 7 years with non-parole period of 4 years 7 months. Robbery charge involved appellant knocking down a girl and snatching her purse, the break enter, and steal took place in a chiropodist's, and he took some surgical equipment.

Background:

Age 24, uses drugs - L.S.D. Came from N.Z. and was unemployed at the time of his arrest.

Aggravating Factors:

Has not been previously sentenced to a term of imprisonment. pleaded guilty - contrition shown. Felt 7 years exceeded what was appropriate.

Result:

Appeal allowed. Head sentence - 5 years (formerly 7 years). Non-parole period - 3 years (formerly 4 years 7 months).
151.

William Russell Moore

Appeal Dismissed

N.S.W.C.C.A.
No 236 of 1978
7 December 1978

Circumstances of Offence:

Appeal against severity. Appeal of guilty to 15 charges of break, enter and steal and conviction on 16th $3,000 involved. Offences involved office or businessman premises - and $4,000 stolen in all.

Background:

18 years. Prior record before Children's Court at 13 years.

Aggravating Factors:

Present offences were committed very shortly after his last appearance before Children's Court. His Honour took the view that there were no mitigating elements. Found no real sign of contrition on the part of the appellant.

Result:

Appeal dismissed.
2 weeks of the time is to count.
On 15 matters committed to institution for 18 months.
On convicted matter - released on 3 year good behaviour bond.
Gordon John Moran

Appeal Allowed

N.S.W.C.C.A.
No 124 of 1979
11 October 1979

Circumstances of Offences:

Appeal against severity of non-parole period. Pleaded guilty to break, enter and steal with 6 similar crimes on a schedule. Supplying heroin and entering land with intent to commit a felony.

Sentenced 5 + 6 1/2 + 2 = 6 1/2 years.

Non-parole period - 4 years.

Break, enter and steal - suburban home of sister and stole cassette radio.

Background:


Mitigating Factor:

If non-parole period shortened would afford the benefit of the support that parole provides.

Result:

Non-parole period lessened to 3 years. Appeal allowed.
James Dennis Murphy

Appeal Dismissed

N.S.W.C.C.A.
No 343 of 1982
5 May 1983

Circumstances of Offence:

Appeal against severity. Pleased guilty to break and enter with intent to steal. Sentenced to 2 years with non-parole period of 1 year. Broke into flat with intent to steal - disturbed.

Background:


Mitigating Factor:

Has taken positive steps to rid himself of the heroin addiction.

Aggravating Factor:

Appellant's past record.

Result:

Head sentence - 2 years.
Non-parole period - 1 year.
Patrick Michael Murphy

Appeal Dismissed

N.S.W.C.C.A.
No 217 of 1978
15 December 1978

Circumstances of Offences:

Appeal against severity. Plea of guilty to 7 break enter and steals and 2 stealings from the person. 12 further break, enter and steals on a schedule. Sentenced to 8 years to commence at the expiration of the pre-existing sentence. Non-parole period - 7 years or date at which pre-existing sentence would have expired on remission. Crimes committed between April and July 1978. Offences involved breaking and entering into homes and stealing furniture, televisions, 2 charges of stealing were bag snatching.

Background:

Age 26 years. Prior record going back to 1970 in the Children's Court - offences involved stealing motor vehicles and break, enter and steal. In 1972 sentenced to 10 years for robbery. Released on parole in May 1976 and during the period of this parole committed the 19 crimes of break enter and steal, and 2 of stealing. Had deprived childhood.

Aggravating Factors:

Committed offences while on parole.
Not just one isolated lapse, but a sustained venture into criminality over a period of 6 months.
Was considerable debate regarding the non-parole period. Originally it was ordered that the NPP should expire 3 1/2 years after the appellant commenced serving his 8 year term i.e. NPP to expire February 1989. However further submissions were made to His Honour regarding the non-parole period and it was contended that there were practical and perhaps statutory difficulties in connection with the specification of a new non-parole period. Reduced back to August 1985 - the pre-existing remission release date. His Honour commented that he had had trouble with this case, but the Appeal Court found it hard to see what the difficulties were and added 'the law is plain that a sentence is passed cumulatively with a pre-existing sentence, then the sentencing judge must ordinarily specify a new non-parole period'. It was contended that allowing for remission, the extension of the non-parole period was longer than the practical extension of the head sentence. This submission was rejected and in the course of the reasons given in that case it was stated 'a judge's task in specifying a new non-
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parole period is to fix a minimum period which must be served, bearing in mind all the criminality reflected in the sentences being served at the time. He is not limited merely to some added increment proportion in a relative sense to the particular new sentence then being passed'.

Result:

Appeal fails - 7 weeks to count.
Head sentence - 8 years to commence at expiration of pre-existing sentence.
Non-parole period - 7 years.
Circumstances of Offences:

Appeal against severity of sentences. Appellant pleaded guilty to 3 charges of break, enter and steal and one charge of break, and enter with intent to steal. Also, a further offence of break enter and steal was listed on a schedule. Sentenced to concurrent terms of 6 years commencing at expiration of re-existing sentence. Non-parole period expired 2 May 1982 i.e. it expires 20 months after pre-existing remission release date. Offences involved breaking and entering suburban homes and stealing household goods.

Background:

Age 23. Prior record dating back to 1970. Was drug addict but has now broken the habit.

Mitigating Factors:

Co-operated by disclosing some of the earlier offences for which he came forward for sentence.
The woman he is living with is a drug addict and this was a factor which contributed to the appellant resorting to crime. Sentences exceed what was called for.

Aggravating Factors:

Crimes were committed within a short period after his release to parole.

Result:

Appeal allowed.
Head sentence reduced from 6 years to 4 years.
Non-parole period reduced from 2 years 4 months to 1 year 7 months - expires on 21st August 1981.
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Dean William Nolan

Appeal Dismissed

N.S.W.C.C.A.
No 274 of 1979
11 April 1980

Circumstances of Offences:

Application for leave to appeal against sentence. Application was made out of time by 1 month but court considered that time should be extended. Appellant pleaded guilty to 4 charges of break, enter and steal. On first charge appellant asked if 57 other offences on the schedule could be taken into account - (31 for break enter and steal; 21 for break and enter with intent to steal; 1 for stealing and 3 for stealing from a dwelling house). The break, enter and steal involved private dwelling houses and stealing such items as jewellery, money ($1,500) and property ($1,145), one involved a chemist shop and one was stealing a .22 calibre revolver. Sentenced to 5 + 1 + 1 + 1 = 6 years.

Non-parole period - 2 years.
For total 61 offences of which 34 were for break, enter and steal, total property or money stolen and not recovered amounted to $8,222.

Background:

Age 17 years. Will serve his time in an institution and not a goal. Prior conviction for break, enter and steal. Appeared in 1978 in Children's court. Has been subjected to emotional problems of substance.

Aggravating Factors:

Offences seen as involving sustained criminality. Considered amount of property lost to persons who owned it. Appellant seen as someone who is in need of "stiffing up" - impressed upon him (even to the extent of providing him with a copy of the judgement so he could read it) that this was his last chance - next time he would be sentenced for good. Being sentenced to an institution was done so to provide him with an opportunity to avoid finishing up with a miserable life in goal. Court was not convinced that the appellant had showed remorse. Comments on carrying revolver - the offence on the chemist shop involved the appellant in possession of the .22 revolver. The weapon was not capable of being fired. However His honour regarded the taking of the weapon there, even though it would not fire, as seriously affecting the degree of criminality of the appellant.
Mitigating Factor:

Not an associate of the criminal class.

Result:

Appeal dismissed.
Head sentence - 6 years.
Non-parole period - 2 years.
Circumstances of Offences:

3 appeals by the Attorney-General under provisions of s.5D of Criminal Appeal Act.
The 3 respondents were charged with break, enter and stealing $30,000 in cash, jewellary and gold ingots.
His Honour in each case deferred passing sentence upon the respondents on their entering into recognisances in the sum of $300, conditioned upon their being of good behaviour for a period of 3 years from that date.
Appeals by Attorney-General are on the basis that the sentence was inadequate.

Mitigating Factors:

Plead guilty.
Prior criminality was not great at all.
Expressions of desire to work.

Aggravating Factors:

Premeditated break and enter.
Calculated crime.
Substantial amount of money involved.

Result:

Appeal allowed.
Orders made by District Court Judge quashed.
Three respondents given head sentence - 3 years.
Non-parole period 12 months.
Ordered that the respondents Noonan, and Portus be taken into custody forthwith and a warrant be issued for the apprehension of Ryan.
Kenneth John Norris

Appeals Dismissed

N.S.W.C.C.A.
No 364 of 1983
No 38 of 1984
1 June 1984

Circumstances of Offences:

Application for leave to appeal against two sentences
1) for break, enter and steal
2) conviction for escape from custody.
Break, enter and steal involved premises of a commercial firm
- stole quantity of property therein including a cheque book.
Made purchase from stolen cheque book.
Escape involved applicant escaping from Emu Plains training
centre 2 1/2 months after he was sent there. It was alleged
that the appellant was raped by two men who threatened him
with a knife if he said anything. He refused to name the two
men involved at any time during the trial.

Background:

Age 19 years. Prior record - commencing in 1977 - includes
20 convictions for break enter and steal.

Result:

Appeal was made on grounds that appellant was raped by two
men in shower which is why he escaped - he found adult gaol
was very different from the child welfare institution and it
was a great shock to him. The Court felt that the trial
judge was in a far better position than it was in being able
to evaluate the truth or otherwise - of the story which the
appellant gave. As this was the only ground upon which it
was asked to interfere it dismissed both appeals.
Head sentence - 12 months.
Non-parole period - no non-parole period specified for break
enter and steal.
From escaping from custody - given another 12 months and a
non-parole period which expires on 16 August 1985 i.e. 12
months.
Brian Patrick O'Connor

N.S.W.C.C.A.
No 19 of 1982
3 December 1982

Circumstances of Offence:

Appeal against severity on plea of 2 break, enter and steal, 2 larcenies and 15 offences on a schedule. Sentenced to 6 years. Non-parole period of 4 years. Details of offences not stated - noted as unremarkable.

Background:

Age 31. Bad record and has had a number of comparatively lengthy prison sentences.

Aggravating Factors:

Record reflects a lifestyle of crime.
Instability of work and domestic background.

Mitigating Factors:

Proximity of non-parole period and remission release date.

Result:

Court felt that the non-parole period could not be said to be too long for the 19 offences by a man with the record of the appellant. Appeal dismissed.
Head sentence - 6 years.
non-parole period - 4 years.
Donald Maxwell Parsons (alias Allan Horne)

Appeal Dismissed

N.S.W.C.C.A.
No 49 of 1982
4 August 1982

Circumstances of Offences:

Appeal against severity of sentence. Plead guilty to break, enter and steal and break and enter with intent. Sentenced to $5 + 2 = 5 years. Commencing at expiration of pre-existing sentence. Non-parole period 2 years after pre-existing remission release data. Effective head sentence - 5 years. Non-parole period 3 years 2 months. Offences involved a clothing warehouse - stole clothing - value of property $27,000 - sold it for $500.

Background:


Aggravating Factors:

Was on good behaviour bond and on parole.

Mitigating Factors:

Disparity at time offences were committed in sentences between appellant's and companion's sentences. It was pointed out however that neither of his companions were on good behaviour bond or parole at the time of the offences.

Result:

Court did not consider that the trial judge exceeded the legitimate grounds of discretion open to him. Appeal dismissed. Head sentence - 5 years to be added on to 2 years existing sentence. Non-parole period 3 years 2 months.
Lindsay John Perry

Appeal Dismissed

N.S.W.C.C.A.
No. 89 of 1981
23 October 1981

Circumstances of Offence:

Appeal against severity. Pleaded guilty to 3 charges of break, enter and steal, sentenced to 1 1/2 + 1 1/2 + 1 1/2 = 4 1/2 years, with no non-parole period. Offences took place in clubs - safes and contents stolen. Seen as professional jobs.

Background:

Age 52. Served 5 1/2 years in the army. Record noted as extraordinarily long.

Aggravating Factors:

Totality of criminality involved.
Offences committed whilst on bail.
Lengthy criminal record - involving a sentence of 14 years penal servitude for shooting with intent to prevent apprehension.
Gross repudiation of parole.

Mitigating Factors:

Contention that appellant had been prejudiced by present offences not having come forward at the same time as other contemporaneous offences. May have reached a stage in his life where he may have ultimately decided to abandon a criminal career.

Result:

Appeal dismissed.
Head sentence - 4 1/2 years
Non-parole period not specified.
Rodney James Poole
George Arthur Prest

Appeals Dismissed

N.S.W.C.C.A.
No. 390 of 1983
No. 383 of 1983
18 May 1984

Circumstances of Offences:

Application by 2 prisoners for leave to appeal against sentences. Charges of break, enter and steal from commercial premises.
Prest - head sentence 6 + 4 = 10 years.
Non-parole period = 3 years 6 months
Poole - head sentence 5 + 3 + 1 = 9 years.
Non-parole period = 3 years.
Offences included breaking and entering the premises: of a bowling club (South Wagga) and stealing $2,331 and commercial premises (Waltons Stores Limited) and stealing a quantity of property valued at $15,928.

Background:

Prest - 24 years of age. Prior record involving gaol sentences.
Poole - 24 years of age. Prior record but not as bad as Prest. Seen as a person of low intelligence.

Aggravating Factors:

Prest - on parole at time offences were committed.
Bad record.
Probation and parole report referred to the fact that he had not shown any willingness to co-operate.
Associate of criminal element.

Mitigating Factors:

Poole - not associative of criminal element.
Obvious that he would be easily led.

Result:

Appeal dismissed.
Court felt that sentences were entirely appropriate.
Prest - head sentence - 10 years.
Non-parole period - 3 years 6 months.
Poole - head sentence - 9 years.
Non-parole period - 3 years.
Christopher Patrick Reidy

Appeal Dismissed

N.S.W.C.C.A.
No 42 of 1981
19 June 1981

Circumstances of Offences:

Appeal against severity. Plead guilty to 4 break, enter and steals, 1 larceny of a motor vehicle and 20 break, enter and steals on a schedule. Sentenced to $4 \times 2 + 4 = 6$ years with 3 years non-parole period. Offences involved breaking and entering of homes and taking property with a view to its resale in order to provide money to enable the appellant to purchase drugs. Property stolen amounted to $16,900.

Background:


Aggravating Factors:

Committed offences whilst on bail.

Result:

Court felt that sentences not excessive.

Appeal dismissed:

Head sentence - 6 years.
Non-parole period - 3 years.
Graeme Charles Resse

N.S.W.C.C.A.
No 185 of 1978
28 August 1979

Circumstances of Offences:

Appeal against sentences - plea of guilty to 3 charges of break, enter and steal plus further a 6 charges on a schedule.
Sentenced to $6 + 6 + 6 = 6$ years.
Non-parole period 3 years.
Offences involved breaking and entering suburban homes and stealing the contents therein, television, jewellery etc.
The value of the goods was described as considerable.

Background:

Age 22. Had not previously been in serious trouble. Drug addict.

Mitigating Factors:

Was completely co-operative with the investigating police officer - not only sorry for his own offences but also as to the source of his drug supplies.
Minor nature of previous record of the appellant - prior to his arrest had not been in gaol.

Aggravating Factors:

Fact that they sold valuable property for the purpose of re-selling it at ridiculously low prices.
Showed disregard of the feelings and property of persons whose homes he had entered.

Result:

In the Court's opinion the trial judge did not give full weight to all the circumstances and in particular to the minor nature of the previous record of the appellant.
Sentences and non-parole period should be quashed.
Head sentence now 5 years.
Non-parole period 2 years.
Lehema May Richards

Appeal Dismissed

N.S.W.C.C.A.
No 55 of 1981
9 July 198

Circumstances of Appeal:

Appeal against sentence on plea of guilty to 3 charges of break, enter and steal and one of receiving, with 25 matters on a schedule. Sentenced to $5 + 4 + 4 + 1 = 5$ years. Non-parole period 2 1/2 years. Break, enter and steal involved suburban dwellings.

Background:

Age 21. Prior record - extends back to age 15 when she was committed to the care of the Director of the Child Services Department for stealing.
1976 - before Children's Court for break, enter and steal, assault and robbery and assaulting police.
1977 - fined for unlawfully using a vehicle.
1978 - imprisoned for 11 charges of break, enter and steal and 30 charges of break and enter with intent to steal.

Aggravating Factors:

Committed offences whilst on bail. Court took serious view and spoke at length on this point. 'The community must be protected as far as possible from further criminal activities by persons who take advantage of their liberty on bail to commit further crimes'.

Result:

Appeal dismissed.
Head sentence - 5 years.
Non-parole period 2 1/2 years.
Christopher Richardson

Appeal Dismissed

N.S.W.C.C.A.
No 176 of 1979
11 December 1979

Circumstances of Offences:

Application for leave to appeal against severity of sentences for convictions of break, enter and steal. Sentence to head sentence - 2 years and a non-parole period of 8 months. Offence involved stamp shop - stole 15 folders with $7,000. Originally denied stealing and was charged with receiving but was later found to have the balance of the proceeds of the robbery and admitted his guilt.

Background:

20 years. Lives with grandparents in what is described as a substantial home in good suburb. At time of offences he was unemployed. Prior record - first offence in 1973 for break, enter and steal. 1974 - 3 assault and robberies - sent to an institution where he continued his secondary education and on his release attended a high school and obtained his HSC in 1977. In 1978 convicted of stealing - received fine, 3 weeks later committed present offences.

Aggravating Factors:

Rebellious attitude.
Crime demonstrated real criminality and a measure of expertise.
Has good home.
Friends described as undesirable.

Mitigating Factors:

Trial judge made report when he commented on the appellant and his shock at being given a term of imprisonment for the current crime - judge commented 'I believe that he would be much more likely to respond to probation now if given such an opportunity.' He also pointed out that while he has been in custody he would have suffered because of the recent industrial trouble. He concluded 'I now feel from any observation of this shock on the passing sentence and the period spent is removed, further sentencing options could be considered.'

Result:

Appeal Court felt 'if the sentence was correct, and the learned judge does not concede it to be otherwise, then it is none the less so because the applicant did not expect it or because he would in the ordinary course be confined thereafter. Certainly industrial trouble in the prison system has no relevance.'

Appeal Dismissed.
David Arthur Ridgeway

Appeal Dismissed

N.S.W.C.C.A.
No 18 of 1981
22 May 1981

Circumstances of Offences:
Appeal against severity on plea of guilty to 2 break, enter and steals and 4 larcenies of motor vehicles, with 9 matters on a schedule. Sentenced to 4 years. Non-parole period 1 1/2 years. Committed in company and one of the other men who was sentenced on exactly the same offences as the appellant received head sentence 3 1/2 years and non-parole period 1 year. Offences took place in car yards and involved cars being taken and stripped and their parts sold.

Background:
Age 18 years. Prior record commenced at age 10 for 2 break, enter and steals and continued with numerous break, enter and steal charges.

Mitigating Factors:
Tragic background and the inevitable effect this had on his life style.
Other sentenced passed on other offender disclosed a disproportion to those passed upon the appellant.
Appellant giving evidence in a trial which is currently underway against some other persons.

Aggravating Factors:
His past extensive criminal record - other offenders had no record of any substance.
Court felt (as regards appellant's willingness to give evidence) that it is not practicable for this Court, whose function is simply to pronounce whether or not the sentencing judge erred in the material before him, to give effect to this particular factor.

Result:
Appeal dismissed.
Head sentence - 4 years.
Non-parole period - 1 1/2 years.
Stephen Allen Roberts

Appeal Dismissed

N.S.W.C.C.A.
No 128 of 1976
19 November 1976

Circumstances of Offences:

Appeal against severity of sentence. Plead guilty to 2 charges of break, enter and steal + 5 on a schedule. Value of property stolen was of modest proportions.
Head sentence - 2 1/2 years.
Non-parole period - 1 year.

Background:

18 years. Prior record.

Aggravating Factors:

Appellant has had some opportunity of facing the reality that a life of crime will bring him no profit, but that he has nevertheless chosen to commit crimes of the nature mentioned.

Result:

In the Court's view there was no basis for questioning the justification for the 2 sentences imposed.
Appeal dismissed.
Head sentence - 2 1/2 years.
Non-parole period - 1 year.
Christopher John Rogers

Appeal Dismissed

N.S.W.C.C.A.
No 289 of 1980
1 May 1981

Circumstances of Offences:
Application for leave to appeal against severity of sentence. Pleaded guilty to 3 charges of break, enter and steal and one of larceny of a motor vehicle.
1st charge of break, enter and steal sentenced to 3 years - cumulative on sentence being served.
2nd and 3rd charge - 2 years each.
4th charge - 1 year.
Head sentence $3 + 2 + 2 + 1 = 4 years.
Non-parole period - 2 years.
Offences involved private dwellings total value stolen - $9,000 of which approximately $2,500 was recovered.

Background:
Young man (only reference to age). Prior record - while not bad, begins at very early age. Early years spent in orphanage and from age 11-14 years resided alone or alternatively with alcoholic mother. Was forced to work at a very early age in the markets to earn some money to keep himself. Drug addict.

Aggravating Factors:
Committed offences whilst on parole.
Seen by Court as disregarding the chances it gave him.

Result:
Court agreed that the sentences were long but were well within the range of the sentencing judge.
Appeal dismissed.
Head sentence - 4 years.
Non-parole period - 2 years.
Appeal against severity of sentence. Pleased guilty to armed robbery, larceny of motor vehicles and break, enter and steal along with 26 matters listed on a schedule. Sentenced to 14 years, head sentence. Non-parole period - 6 years. The major offence took place in suburban dwelling, appellant wearing a balaclava. Used weapon (long barrel replica rifle) and caused injury to victim - stole $60 in cash and some jewellery. A ninth schedule listed 13 matters. Total value of property stolen approximately $12,000. Robbery whilst armed - 1 year; larceny for motor vehicles - 2 years; break, enter and steal including matters on a schedule - 5 years. Head sentence - 14 years. Non-parole period - 6 years.

Background:

Mitigating Factors:
Expressed contrition.
Unprofessional way offence was committed.
Under influence of drugs at time of offence.
Good prospects for rehabilitation.

Aggravating Factors:
Number of offences on schedule of break, enter and steal.
Seriousness of offence of armed robbery referred to the fact that:
'crimes of this nature are carried out by drug addicts in order to obtain money with which to feed their addiction' provides no justifiable basis 'for regarding the criminality involved as diminished so as to lead to more lenient sentences being passed than would otherwise be proper'.
Prevalence of crimes.
Trauma of having home broken into considered - 'the invasion of people's homes and the plundering of their property is a social evil from which the community looks for protection to the criminal courts'.
Spate of similar offences.
Result:

Appeal allowed.
After considering all relevant subjective and objective factors, the Court held that 'the totality of the sentences imposed so far exceeds that appropriate to the overall degree of criminality involved that a review is called for'.
Head sentence - from 14 years reduced to 10 years penal servitude.
Non-parole period - from 6 years reduced to 5 years.
Richard Kenneth Schmidt

Appeal Dismissed

N.S.W.C.C.A.
No 260 of 1982
3 December 1982

Circumstances of Offence:

Appeal against severity. Pleaded guilty to 3 break, enter and steals, 3 larcenies of motor vehicles with 15 offences of dishonesty listed on a schedule. Sentenced to 4 years with non-parole period 18 months. Break, enter and steals described as not of a remarkable character.

Background:

Age 20. Has not had any prior convictions. Has had irregular employment history since leaving school. States that there is no reason in his background to understand these criminal activities in which he was engaged in earlier part of the year.

Mitigating Factors:

Argued on behalf of the appellant that these sentences were excessive.

Result:

Court felt that 4 years was not excessive for this series of offences. Appeal dismissed.
Head sentence - 4 years.
Non-parole period - 18 months.
Mark William Shaw

Appeal Dismissed

N.S.W.C.C.A.
No 283 of 1982
17 March 1983

Circumstances of Offences:

Appeal against severity on plea of guilty to escape and 2 break, enter and steals, 2 car stealings, with 6 additional charges on a schedule. Appellant was committed to a child welfare institution for 2 1/2 years and placed on 4 year good behaviour bond i.e. appellant in custody since 28 June 1982 will remain in an institution until 22 December 1984. Thereafter will be at liberty under the restraints of the bond until 18 August 1986.

Background:

Age 20 years. Prior record described as extremely bad. Commences at 11 years - record involves break, enter and steal and also 2 malicious injuries and one other arson matter.

Result:

Court felt that trial judge made fair allowances for the age of the appellant and extended to him the opportunity of serving time in an institution other than an adult prison. Appeal dismissed. Head sentence - 2 1/2 years to child welfare institution. 4 year good behaviour bond.
Mark Steven Smelcher

Appeal Dismissed

N.S.W.C.C.A.
No 62 of 1982
5 August 1982

Circumstances of Offences:

Appeal against severity on plea of guilty to 4 break, enter and steals with 44 scheduled offences. Sentenced to $4 \times 5 = 5$ years, with a 2 year non-parole period. All offences involved breaking and entering domestic premises, in almost all of them money was taken.

Background:

Age 23 years. Record going back to 1971, when he was placed on a recognizance by a Children's Court for stealing - the following other charges in 1977, 1979 and 1980 were for break enter and steal offences. Involvement in drugs and in gambling.

Mitigating Factors:

Appellant in custody for 4 months before sentencing hearing and 5 year sentence dated back accordingly. Contention on appeal that 2 year non-parole period should also take account this 4 months pre-sentence custody. Court felt that it was clear that it had been taken into account, and commented on the desirability in general of specifying a terminal date for a non-parole period rather than specifying a period of time as this avoids the risk of misapprehension on the part of the prisoner.

Result:

Court felt sentence and non-parole period not excessive.
Appeal dismissed.
Head sentence - 5 years
Non-parole period - 2 years
Appeals Dismissed

N.S.W.C.C.A.
No 43 of 1981
No 34 of 1981

Circumstances of Offences:

Appeal against severity. Smith pleaded guilty to 3 break, enter and steals and 1 larceny of a motor vehicle with 19 scheduled offences. Sentenced to head sentence - 5 years. non-parole period 2 1/4 years.
McGrath pleaded guilty to 4 break enter and steals and 2 larcenies of motor vehicles. Sentenced to 2 years with non-parole period 1 year.
Offences were carried out in shop premises and a very substantial amount of property was obtained in one of them in particular.

Background:

Smith - age 21, record of earlier involvement in crimes of dishonesty. Unemployed at time of offence. Heroin user.
McGrath - age 17, significantly less serious record. Left school aged 13 years - mixed with older men and easily led by them.

Mitigating Factors:

Contended on behalf of both appellants that the subjective circumstances are such as to indicate that the sentences and non-parole periods are excessive.

Return:

Court found that His Honour did not error in his determination of the head sentences and non-parole periods.
Smith - head sentence = 5 years.
Non-parole period = 2 1/4 years, whole of time is to count.
McGrath - head sentence = 2 years.
Non-parole period = 1 year, 48 days is to count.
John David Sobey

Appeal Dismissed

N.S.W.C.C.A.
No. 119 of 1980
19 September 1980

Circumstances of Offences:

Appeal against severity. Pleadied guilty to 4 charges of break, enter and steal with 92 matters on a schedule. Sentenced to $8 + 3 \times 4 = 8$ years. Non-parole period $= 3$ years. Offences involved clothing shops, shops and post office - of the scheduled offences, 84 were false pretences by misuse of a stolen bankcard. Offences committed between May and October 1979 with over $40,000 involved.

Background:


Mitigating Factors:

Argued that appellant would benefit from a shorter period of time on parole. Because of home life an unserved balance of a sentence hanging over him in all probability ensures that he does not offend again. Offences motivated by weakness for gambling.

Aggravating Factors:

Number of crimes committed. Equipping stolen car with false plates.
Value of property taken calls for 3 years minimum sentence.

Result:

Appeal dismissed.
Court stated that it was its job to 'determine whether the judge was wrong and it was not able to reach that conclusion.'
Head sentence - 8 years.
Non-parole period 3 years.
John Desmond Springer

Appeal Allowed

N.S.W.C.C.A.
No 150 of 1981
11 September 1981

Circumstances of Offence:

Appeal against severity on plea of guilty to break, enter and steal. Originally sentenced to 3 years and ordered to pay compensation. Breached this and sentenced to 1 year. Stealing involved private dwelling and property was worth $1,750.

Background:

Age 25. Record of little significance. Left school at 15 years. Drug user.

Aggravating Factors:

Appellant's cavalier attitude towards his obligations.
His failure to respond to the opportunity of rehabilitating himself which had been extended to him.

Mitigating Factors:

Appellant's absence of any prior involvement in crimes of dishonesty.
Hopes held out for him when he was originally granted the bond may still have some foundation.

Result:

Court formulated an order for him to spend some time in custody and some time spent under parole supervision.
Increase sentence 15 months and fixing a non-parole period of 6 months.
Head sentence increased from 1 year to 15 months.
Non-parole period - 6 months
Kenneth John Squires

Appeal Dismissed

N.S.W.C.C.A.
No 17 of 1979
27 July 1979

Circumstances of Offences:

Plea of guilty to 2 charges of break, enter and steal.
Appellant at time of sentence serving 7 years - this sentence imposed for 3 charges of armed robbery, 2 of larceny of a motor vehicle and one of assault. For 2 charges of break enter and steal given 2 years.
Head sentence - 6 months non-parole period to commence at expiration of previous sentence. Altogether head sentence - 8 years with 4 1/2 years non-parole period. Offences committed in suburban houses. Household goods taken, amongst which was a .22 rifle. No background of appellant stated.

Aggravating Factors:

Overall criminality involved in offences.
Violence involved in appellant's prior record.

Result:

Felt that the sentences do not attract the intervention of the Court of Criminal Appeal.
Appeal dismissed.
Head sentence - 2 years to begin at expiration of previous sentence - 9 years.
Non-parole period - 6 months to begin at expiration of previous sentence - 4 1/2 years.
John Edward Stacey

Appeal Dismissed

N.S.W.C.C.A.
No 362 of 1981
28 May 1982

Circumstances of Offences:

Appeal against severity on plea of guilty to break, enter and steal and larceny. Sentenced to $2 + 1 = 3$ years, with non-parole period 18 months.
First break enter and steal involved private house - charged with this offence, and whilst on bail the larceny. This involved 185 railway sleepers.

Background:

Age 36. Prior record existing back to 1964. Left school at young age, had series of occupations. Alcoholic.

Aggravating Factors:

Committed offence whilst on bail.

Result:

Appeal dismissed.
Head sentence - 3 years.
Non-parole period - 18 months.
Circumstances of Offences:

Appeal against severity. Charged with break, enter and steal and possession of housebreaking implements. Found not guilty of break, enter and steal but charged with the possession of housebreaking implements (screwdriver and long socks). Sentenced to 18 months to begin at the expiration of the sentence he was then serving. No non-parole period specified. Head sentence increased by 18 months to 5 years.

Background:

Aged 23. Prior record commencing in 1974. Not intellectually bright. Comes from stable home. Heroin addict. Employment history had been reasonably satisfactory - entered into a partnership with friends but it collapsed and thereafter was unable to obtain employment.

Aggravating Factors:

Prior record. Trial judge refused to give non-parole period. 'From what I have heard today and the overall picture of his persistant criminality, I am not prepared to grant him a non-parole period...'

Mitigating Factors:

Court felt that the appellant should have the benefit of a non-parole period. Quoted Mesdaghi (1979) 2 N.S.W.L.R. 68 at 71. Street C.J. said 'a prisoner has by s.4(ii) of the Act an expressed statutory right to have a non-parole period specified.'

Result:

Court felt that it had to decide whether the learned sentencing judge had fallen into error in refusing to specify a non-parole period. Held that there was a case for giving the prisoner the benefit of a non-parole period. Head sentence - 18 months to commence at expiration of previous sentence - 5 years. Non-parole period specified to expire on 4 May 1982 - i.e. 1 year.
Circumstances of Offences:

Appeal against severity. Plead guilty to break, enter and steal. Released on 3 year bond and fined $1,000. Offence committed by the appellant at the request of a physically incapacitated young woman - he accompanied her to the home of a man with whom she had previously had an intimate association. She had a key and the appellant carried $4,000 worth of electronic equipment to her car.

Background:

Age 36 years. Came from Canada to Australia in 1970 - no prior record (had 2 fines for possession of drugs).

Mitigating Factors:

Disparity of sentence between appellant and the co-offender i.e. the physically incapacitated young woman. She was released upon a 3 year $250 good behaviour bond.

Result:

Upon the grounds of this disparity between sentences the Court decided to quash the fine ($1000). The 3 year good behaviour bond stands.
Mark Andrew Sullivan

Head Sentence - Appeal Dismissed
Non-Parole Period- Allowed

N.S.W.C.C.A.
No 52 of 1982
1 July 1982

Circumstances of Offences:

Appeal against severity. Plead guilty to break, enter and steal. Sentenced to 2 1/2 years with non-parole period 15 months. Appellant and companion broke into club to steal coins from poker machines - $226 in all.

Background:

Age 20. Earlier record of offences of dishonesty, on good behaviour bond at the time of committing the offences. Comes from stable family background. No background of family deprivation. Got school certificate - was unemployed for six months prior to present offences.

Mitigating Factors:

Contended that there was a degree of disparity between sentenced imposed upon appellant and his companion.

Aggravating Factors:

Appellant has not previously served a period of imprisonment. Committed offence whilst on good behaviour bond.

Result:

Court felt that the sentences do not exceed the legitimate scope of the trial judge's discretion. Dismissed appeal insofar as it extends to the head sentence. Non-parole period - court felt that the period of 15 months does exceed what was called for in association with the head sentence of 2 1/2 years.
Head sentence - 2 1/2 years.
Non-parole period - 9 months.
Warren Alexander Sutton

Appeal Dismissed
Non-parole period - not specified

N.S.W.C.C.A.
No 72 of 1978
13 December 1979

Circumstances of Offence:

Appeal against conviction of sentence - 3 charges of break, enter and steal and 1 of break, and enter with intent to steal. Sentenced to $1/2 + 2 + 2 1/2 + 2 1/2 = 5 years, with no non-parole period specified. Offences took place in commercial premises and stealing contents took oxy-acetylene burning set. $519 in cash stolen. Break and enter with intent involved tennis club.

Background:

Age 25 - prior record including 2 1/2 years for offences of assault occasioning actual bodily harm. Labourer by occupation. This is all that was offered to the judge concerning the appellant's background.

Appeal regarding conviction:

Pressed on basis that appellant had evidence of an alibi. He felt that through no fault of his own - witnesses be wanted called were not. An order was made out under s.475 requiring a magistrate to have the alibi witness called before him. The inquiry was called, and the magistrate concluded that the evidence of the alibi witnesses '... is not properly capable of being accepted by a jury and would not have been likely to produce a different verdict'.

Result:

Appeal against conviction failed.

Appeal against sentences:

No non-parole period was specified.

Aggravating Factors:

Minimal background upon which to assess the subjective situation. Prior record which disentitles him to any particular leniency. Fact that the prisoner had twice been admitted to parole on the same sentences and twice had his parole revoked. The sentencing judge noted that it is incumbent on the courts
to assist in the working of the (parole) system by letting it be known that when a prisoner fails, and in particular when he deliberately rejects as this prisoner did, the opportunity given him by the grant of parole he can expect very little in the way of leniency'.

Result:

Court felt that the approach by His Honour was entirely well-founded.
Appeal dismissed.
Head sentence - 5 years.
Non-parole period - not specified.
R v Svacha

Appeal Dismissed

N.S.W.C.C.A.
No 232 of 1975
10 December 1976

Circumstances of Offences:

Appeal against conviction, sentence and non-parole period be dismissed.
Indicted on 11 charges - 1st charge break, enter and steal, 2nd charge receiving, 3rd, 4th, 5th, 6th, 7th, 8th and 9th, were charges of receiving. 10th charge one of break, enter and steal, 11th receiving.
Jury returned not guilty on first charge of break, enter and steal but guilty on second charge of receiving. Found guilty 3rd - 9th offences. 10th charge found guilty and was no verdict on 11th charge. 6 + 3 + 3 = 9 years - 3 year non-parole period. Offences took place in private home - video sets stolen.

Appeals:

First 'the verdicts of guilty were against evidence and the weight of evidence' September 1975, second there was no evidence of receiving and I was wrongly convicted on these grounds'.
Court felt that there was adequate evidence in the crown case supporting all the counts of receiving.
November 1975 - ground 1 - argued that His Honour erred in 'allowing the accused to be indicted on the 11 counts as set out in the indictment.'
Court felt that indictments frequently contain charges in respect of more than one crime, and it could see no basis of prejudice for the appellant in this defence.
Dealt with ground 5 - (dealt with this first as all grounds relate to same matter) - described as 'fresh evidence' - court said had it been pursued it would not have agreed to the admission of the fresh evidence in the light of the well known requirements of cogency, reliability and probative value in respect of such evidence.
Other grounds of appeal - relate to his Honour summing up. Based on claims of misdirection, non-direction and inadequate direction. Court pointed out

1) after a trial lasting several days, brevity in the summing up is one of the best means of preventing confusion in the minds of the jury.
2) evidence of lengthy dissertation assists the jury.
3) appropriate line to raise matters which it is alleged could have wrongly affected the jury's deliberations is
at the close of the summing up, and not some months later.

The court felt that none of the above grounds were established. Consideration of severity of sentence and seeks reduction of the non-pardon period.

Background:

46 years - pleaded guilty to 2 counts of break, enter and steal.

Aggravating Factors:

No sign of remorse or contrition exhibited by appellant at any stage of the trial. Crimes of break, enter and steal are serious ones and they are much too prevalent in the community. Treated leniently in 1974 and given opportunity to reform – took advantage of freedom and committed present offences.

Result:

Appeal in respect of conviction and the appeal in respect of sentence and non-parole be dismissed. Head sentence - 9 years. Non-parole period - 3 years.
Circumstances of Offences:

Appeal against sentence - pleas of guilty to charges of (a) break, enter and steal (b) break and enter with intent to steal and (c) housebreaking implements in possession. Sentenced to 4 + 4 = 9 year head sentence 3 year non-parole period.

Background:

Age 48. In 1974 2 charges of break, enter and steal - Probation in August 1974 March 1975 - 5 crimes of break, enter and steal and receiving + 4 more of receiving for these 9 crimes - sentenced to aggregate 9 years - 3 year non-parole period. Committed present crimes in April 1975. After he was convicted for these 3 crimes given 4 years head sentence on top of 9 years sentence 2 year extension of non-parole period to extend the existing 3 years. Overall result for the whole series of crimes committed between August 1974 and June 1975 he is serving head sentence of 13 years - non-parole period 5 years.

Mitigating Factors:

Need to evaluate whether this 4 year extension of the head sentence and 2 year extension of the non-parole period exceeded what was called for in all the circumstances.

Result:

In the Court's view the extension of the 9 year period to 13 years for 12 crimes of this character did exceed what was called for in all the circumstances. Felt the crimes 'should be regarded in their context within the continuing series of criminality' and that both the head sentence and the non-parole period be reconsidered. Appeal Allowed. Head sentence - 10 years. Non-parole period - 4 years.
Jacek Edward Szerszenowski

Appeal stood over to permit investigation of deportation

N.S.W.C.C.A.
No 177 of 1977

Circumstances of Offences:

Appeal against severity - 2 charges of break, enter and steal - sentenced to 3 years + 18 months cumulative = head sentence 4 1/2 years. Non-parole period - 2 years. Offences involved private dwellings and stealing personal property.

Background:

Born in Poland age - 33 years. Came to Australia 1970. No consistency in employment. Stated that in consequence of having had his car stolen, manifested anti-social sentiments and then anti-social behaviour. May 1972 - 4 break, enter and steal - 9 months on each charge with 6 more taken into account. Released - September 1972 but in November bought back on 5 similar charges. Sentenced to 3 years head sentence and his deportation was recommended. Released November 1976 and 3 1/2 months later was arrested on present charges - March 1977 for 5 years.

Psychiatric evidence:

Since age 7 in Poland he was under psychiatric treatment for paranoid schizophrenic illness. Report from Sydney doctor indicated that this appellent is not likely to be effected in any way for the better by his period in gaol. His psychiatric condition was such as to indicate that he was virtually not able to control himself, but not so extreme as to result in his being eligible for admission to a mental hospital as a compulsory patient. Doctors felt that he did not need supervision.

Result:

Court felt that this case should be regarded as a very special one and would justify a decision by the Commonwealth authorities to deport him. 'It is undoubtly both in his own interests and the interests of this country that he be deported at the earliest possible time.' Court being unsure of what attitude the Commonwealth authorities would take decided to adjourn the appeal for 2 months to allow its consideration. Appeal to stand over to 7 April 1978 with liberty to restore in the meantime.
Allan William Talbott

Appeal Allowed

N.S.W.C.C.A.
No 12 of 1984
7 June 1984.

Circumstances of Offences:

Appeal against sentence - Pleaded guilty to break, enter and sexual intercourse. Sentenced to 8 year with non-parole period - 3 years. Appellant had previously filed notice of abandonment in reliance on erroneous advice from Corrective Services Officer. Appellant given leave to withdraw notice of abandonment. Offence took place in private home. Gone to victim's house, got in, walked through the house and got into bed with the victim and had sexual intercourse with her. She awoke and did not struggle for fear of reprisals. Afterwards, they had got up and she let him our the door.

Background:

Age 25 record goes back to 1971, 1975, 1976 and 1979 - crimes of dishonesty. In August 1982 (3 weeks before present offence) was given an 18 month good behaviour bond for malicious injury - rose out of domestice dispute between appellant and de facto wife. Unemployed, addicted to intoxicating liquor.

Aggravating Factors:

Associate of the criminal element. Seriousness of crime.

Mitigating Factors:

Absence of any prior record of violence or sexual offences by the appellant.
Genuine manifestation of contrition from the time that the appellant was interviewed by police through to plea of guilty.
Behaviour affected by alcohol.
Total absence of any physical, or it seems emotional, damage to the victim.

Result:

Challenge to head sentence well founded - reduced from 8 year to 6 1/2 year non-parole period. Court felt that there was no case made for reducing non-parole period - stayed at 3 year.
Head sentence - 6 1/2 years.
Non-parole period  - 3 years.
Skye Maree Tasker

Appeal Dismissed

N.S.W.C.C.A.
No 264 of 1983
28 October, 1983.

Circumstances of Offences:

Appeal against severity. Pleaded guilty to 2 charges of break, enter and steal. Sentenced to 2 years, non-parole period 9 months. Committed with younger female companion. Involved private houses. Stole video recorders - $1400, cash $200, dress ring $50.

Background:

Age 20 years. Record commences age 14 committed to care of Salvation Army until 18 years of age. In 1981 charged with possessing Indian Hemp. One of the younger members of a family comprising in all 12 children. Had spasmodic employment since leaving school. At the time of her arrest she was living on a country property with a de facto husband - (he had been charged with receiving the goods she stole).

Mitigating Factors:

Appellant's mother very sick - felt that appellant should be forced to look after her. Put forward that Community Service Order would be more appropriate.

Result:

Court felt that sentencing judge would have taken into account these considerations and they felt he had not erred in this regard.

Appeal Dismissed:

Head Sentence - 2 years.
Non-parole period - 9 months.
Stephen John Thornberry

Appeal Dismissed

N.S.W.C.C.A.
No 125 of 1979
1 November 1979.

Circumstances of Offences:

Plea of guilty to 4 charges of break, enter and steal with 17 similar offences on a schedule, and call up of earlier break, enter and steal. Sentenced to 1 year on call up 7 + 3 + 2 = 8 years, non-parole period - 3 1/2 years. Offences took place in suburban houses and a total of $5,000 was taken and of this amount $370 was recovered.

Background:


Aggravating Factors:

Seen as leader.
'lapsed into a life of consistent criminality a few weeks after he had been granted the benefit of the 2 year bond'.

Result:

Appeal Dismissed.
Head Sentence - 8 years.
Non-parole period - 3 1/2 years.
Neville Brian Tween

Appeal Allowed

N.S.W.C.C.A.
No 61 of 1976
17 December, 1976.

Circumstances of Offences:

Appeal against conviction of break, enter and steal. Offence involved an Army Store and amongst other things 7 sub-machine guns, 26 sub-machine gun bolts, 8 bayonets, 53 magazines. Some of this property was found in a garage that was under the appellant's control. Appellant denies having taken part in the steal but admitted to realising that the property had passed unlawfully from the Army and he claimed to have bought it.

In pursuance of its case, the crown relied on the doctrine of recent possession - found in possession of two machine guns September 1971. Break, enter and steal committed February 1971.

Appeal based on 3 matters:

1) that the evidence at the trial was sufficient in law to enable the jury to conclude beyond reasonable doubt that the appellant had broken and entered the Army Store.

2) and 3) other grounds have been argued, but having formed a conclusion upon the 1st of these grounds, it was not necessary to canvass these matters.

Mitigating Factors:

The case for doctrine of recent possession was not appropriate. Court felt that this case lay outside permissible scale:

i) appellant was found in possession of only a comparatively minor fraction of the totality of the property stolen.

ii) he was found in possession of it some 7 months after the stealing.

iii) he was found with it in Adelaide, whereas the property had been stolen from a store in Sydney.

iv) appellant always maintained that he had bought the property from another man.

Result:

Court felt that it would be quite impossible to accept that the jury could properly have concluded beyond reasonable doubt on this evidence that the appellant himself had been party to the actual break and enter. Court felt that an
alternate charge of receiving was a more appropriate one. But pointed out that, the court cannot bring a charge of receiving as the offence took place in a different state - further stated that 'there is a need for the Commonwealth legislature to look into the matter to see whether there is not a serious gap in the law'.
Conviction quashed.
Appeal Allowed.
196.

Steven John Walsh

Appeal Dismissed

N.S.W.C.C.A.
No 241 of 1981
14 September 1984.

Circumstances of Offences:

Leave to appeal against sentence. Comes forward in unusual circumstances and in a context far from free of complication. Sentenced for 8 break, enter and steal (with 64 similar matters on a ninth schedule taken into account) larceny of a motor vehicle and escape. Sentenced to 6 years head sentence. Non-parole period 1 1/2 years.

In November 1980 appellant escaped from custody. Re-arrested on 17 March 1981. Whilst he was at large committed a number of other offences. On 14 August 1981 appellant sentenced for escape to 1 year to be served at the expiration of the sentence presently being served.

Pleaded guilty to a charge of forgery and a charge of uttering and received concurrent terms of 3 years i.e. head sentence 10 years, non-parole period - 6 years. On same occasion he pleaded guilty to 12 charges and in addition a further 36 offences of a similar character that had been listed on a schedule. Given 4 + 2 = 4 years. Non-parole period expires August 1989.

In 1981 he appealed against these sentences. Court was informed that the minimum date to expire 3 January 1989. After the matter had been dealt with in this court it was discovered the appellant's anticipated remission release date was considerably earlier than the date the Appeal Court had relied upon. He then applied to the High Court for special leave to appeal, not only against the date but also to challenge the legitimacy of Judge Ward having taken into account matters listed on a schedule and also to challenge the technical regularity of the form of His Honour's sentencing order.

High Court informed the remission release date was 10 May 1987 and remitted case back to Appeal Court. Appeal Court looked at three matters:

1) the legitimacy of Judge Ward having taken into account when sentencing for the Commonwealth offence of forgery the 36 other Commonwealth officers listed on a schedule.

2) the legitimacy of Judge Ward having sentenced first for the State Offences, fixing a non-parole term in conjunction therewith, and then for the Commonwealth offences, fixing a minimum term in conjunction therewith.
3) the ultimate merits of the challenge to the aggregate head sentence and aggregated non-parole period and minimum term fixed by Judge Ward on the grounds that they were excessive.

1 - Court felt that there was no basis for refusing to recognise 5.447B as being available in proceedings by the Commonwealth on criminal charges in the court of this state - first challenge is not made good.

2 - Court felt it was not able to discern any ground for concluding that His Honour erred in the approach that he took. 'There is no expressed statutory prescription of the sequence to be adopted by a sentencing judge confronted at the one hearing with Commonwealth charges and State charges! Court felt that His Honour proceeded in a straightforward and common sense manner to integrate the 2 aspects of the sentencing order one Commonwealth and one State - into a totality that was regarded by His Honour as appropriate for the whole of the circumstances placed before him for his evaluation. He then passed a State sentence and fixed a State non-parole period. He then passed a Commonwealth sentence directed to commence at the expiration of the non-parole period. Court felt that all the sentences passed on the appellant were regular and meaningful and that there was no element of invalidity. Final matter of challenge to head sentence and non-parole period. Sentenced to Head Sentence 14 years. This Court forshortened the minimum term January 1989. Judge Sinclair's order extended the aggregate Head Sentence to expire February 1992 and specified a new global non-parole period expiring on 4 April 1989. Head Sentence - 12 years 5 months, 7 days. Non-parole Period - 9 years 6 months, 29 days. Remission release date - 7 years, 8 months 4 days. In order to achieve the result Judge Ward intended (head sentence expiring August 1991) the Commonwealth terms should be ordered to be cumulative on the pre-existing State terms and shortened to 1 year 11 months. Non-parole period April 1989.

Non-parole period - Change in law bought about by the Probation and Parole Act 1983 - this Act came into force 24 February 1984 - day after the order made in the High Court remitting the present appeal to this Court. Under this Act - non-parole periods are to be reduced by periods that are directly proportioned to remissions operating to reduce the practical length of head sentences.

Result:

In appeal again Judge Ward's order - sentences and associated directions for the State offences are confirmed; non-parole period is quashed; the sentences and associated directions for the Commonwealth offences and the minimum term are quashed substituted for - first offence and schedule - 1 year 11 months to commence at the expiration of the sentences for
the State offences; for each of the remaining 11 offences - 1 year 11 months concurrent. In appeal against Judge Sinclair's order: sentence and associated directions are confirmed; the non-parole period is quashed and instead a non-parole period of 9 years and 6 months (pursuant to s.24 (2)(a)(ii) of the Probation and Parole Act 1983) is substituted.

Head sentence - 12 years, 11 months.
Whole of the time served is to count.
Allan John Waterhouse

Appeal Dismissed

N.S.W.C.C.A.
No 36 of 1979
20 September 1979

Circumstances of Offences:

Application for extension of time to appeal against conviction for break, enter and steal.
Charged on 15 November, 1978 with break, enter and steal in commercial premises near Wiseman's Ferry. Safe was stolen and the money removed. Sentenced to 10 years to be served concurrently with a sentence that the appellant was then serving - practical effect was to extend head sentence by 18 months. A non-parole period was not specified.
On 28 February, 1979 - appellant appealed against severity of conviction and for an extension of time. The grounds stated for extension of time were 'had other court cases which I thought would be dealt with first'.

Background:

Only information offered - very bad earlier criminal record.

Aggravating Factors:

Appellant was aware that he had a limited time in which to lodge his appeal, and this is confirmed by his action - he seems to have made a deliberate decision to allow other court cases to be dealt with before proceeding to appeal against the present conviction.

Result:

Application for extension of time is dismissed.
Head sentence 10 years (+18 months).
Non-parole period not specified.
Barry Graham Wells

Appeal Dismissed

N.S.W.C.C.A.
No 47 of 1980
8 May 1980

Circumstances of Offence:

Appeal against severity. Pledged guilty to 4 break, enter and steals with 15 similar offences on a schedule. Sentenced to $6 + 3 x 3 = 6 years.
Non-parole period 3 years.
Offences carried out in company and involved private homes.
Property taken was valued at $13,692 - personal possessions, most of total not recovered.

Background:

Age 22. Prior record extends back to Children's Court. Sentenced to institution at 18 years for break enter and steal offences. 1976 - good behaviour bond. 1978 - 6 months for break, enter and steal. 1979 - drug related offences, was on drugs since 16 years. Childhood of emotional deprivation.

Mitigating Factors:

Co-operated with police.
Stated he wanted to clear the record in the hope of being able to make a fresh start in life.
First occasion that the appellant had come before an adult (criminal) court.

Aggravating Factors:

Lengthy prior record.

Result:

Appeal fails - Court felt that no error had been made by the trial judge in determining sentences.
Head sentence - 6 years.
Non-parole period - 3 years.
Circumstances of Offences:

Appeal against severity on 3 break, enter and steals, 1 larceny and further offences on schedules. Not told what sentence was passed on appellant. The appellant informed investigating police that he had been born on 3 June 1961. However, these were filed in the appeal court that the appellant's actual birth date was 3 June 1965. Thus he was 15 at the time the offences were committed and should not have been convicted in the criminal court.

Result:

Court felt that the appropriate course would be to grant leave to the appellant to withdraw the Notice of Abandonment of Appeal against conviction and to exercise the powers of this Court under s.8A of the Criminal Appeal Act. The Court quashed the conviction and the sentence and ordered that proceedings continue at the court of petty sessions. It also directed that the appellant be kept in a Children's shelter until the case was heard before the court of petty sessions.
Steven Ralph Wilson

Appeal Dismissed:

N.S.W.C.C.A.
No 130 of 1981
25 September 1981

Circumstances of Offences:

Appeal against severity on plea of guilty to 3 break, enter and steals, 1 stealing and 1 car stealing. Sentenced to $3 + 1 \times 3 \times 1 = 4$ years, with non-parole period 1 1/2 years. Offences involved motor vehicle accessory shop - compensation totalling $5,000 was sought by the proprietor of the shop. Another of the break, enter and steal offences involved another motor accessory shop.

Background:

Age 20 years. Record going back to Children's courts.
1975 - five charges of stealing motor vehicles.
1977 - placed on probation for malicious damage.
1979 - 2 year good behaviour bond for break, enter and steal.
Pre-sentence report describes him as having an emotional development which was less than normal for his age.

Aggravating Factors;

Offences committed whilst on bail. 'Persons who take advantage of their liberty on bail to commit further crimes must necessarily expect to suffer severely deterrent sentences'.

Result:

Appeal fails.
Head sentence - 4 years.
Non-parole period - 1 1/2 years.
Peter John Winstanley

Appeal Dismissed

N.S.W.C.C.A.

No 130 of 1976

10 December 1976

Circumstances of Offences:

Appeal against severity. Plead guilty to 3 charges of break, enter and steal and a charge of larceny. In addition 19 offences of break, enter and steal or larceny were listed on a schedule.

Head sentence - 7 1/2 years.

Non-parole period - not specified. Offences involved motels and televisions were stolen.

Background:

Age 28, tragic childhood. Prior record extends back to 1961.

Mitigating Factors

Very unfortunate childhood.

Relationship with young woman and imminent birth of a child - worried about the effects upon their child.

He provided a substantial amount of the information that in the due course gave rise to the charges.

Aggravating Factors:

Substantial amount of property stolen.

Offences took place over a sustained period of time.

Result:

Court saw no basis for justifying this court in interfering with his decision.

Appeal dismissed.

Head sentence - 7 1/2 years.

Non-parole period - not specified.

Directed that 13 weeks of the time served shall count as part of the sentence.
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