

Aggravated Break and Enter and Commit Serious Indictable Offence Not Stealing / Larceny s.112(2) (NSW) Crimes Act

s.112 (1) (a) break and enter dwelling-house or building and commit serious indictable offence

(b) commit serious indictable offence in dwelling-house or building and break out

(2) Commit offence under subsection (1) in circumstances of aggravation

s.105A (1) circumstances of aggravation means:

armed with an offensive weapon, or instrument,
in the company of another person or persons,
uses corporal violence on any person,
intentionally or recklessly inflicts actual bodily harm on any person,
deprives any person of his or her liberty,
knows that there is a person or persons, in the dwelling house or building

Maximum Penalty: 20 years

Standard Non-Parole Period (offence committed on or after 1.2.2003): 5 years

NAME (age if known)	OFFENCE	CIRCUMSTANCE OF AGGRAVATION	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
Dechellis [20] [2002] NSWCCA 88	Agg BE commit malicious damage	Knowing persons present	PG (25%)	3y NPP 2y	AD	Lengthy record including assault	Forced way into house and assaulted male occupant - aware young children in room - continued attack outside house - became involved in fight with neighbours Girlfriend alleged victim involved in sexual assault upon her - drug and alcohol problem - health problems

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Flavell (32) [2002] NSWCCA 220	Agg BE commit AOABH Agg BE commit affray Sched: Mal damage	Armed with offensive weapon Armed with offensive weapon	PG	6y 5m NPP 3y 6m	AA 6y 5m NPP 2y 6m	Assault, mal damage	Smashed window of sister and brother-in-law's home - hacked at security door with large knife - stabbed brother-in-law. Severe depression.
Zibelnik (33) [2002] NSWCCA 317	Agg BE commit mal damage Sched: 2 x Assault	Armed with offensive weapon	PG (25%)	5y NPP 3y 8m	AD	Record not serious. No previous custody.	Armed with baton and axe, broke into house with brother terrorising occupants and damaging property - grievance over sale of drugs to offenders.
Timu (32) [2002] NSWCCA 421	Agg BE commit AOABH	Knowing person in house	PG (25%)	2y 3m NPP 9m	AD	Minor juvenile record - conviction for assault in NZ not revealed to court on sentence	Forced entry into home of former girlfriend and assaulted her - Pushed head against wall, slapped and punched to face, punched to stomach
Petrie (51) (2003) 141 A Crim R 396 [2003] NSWCCA 208	Agg BE commit AOABH Sched: 2 x assault	Armed with offensive weapon	PG (25% on appeal)	5y NPP 3y	AA 4y 6m NPP 2y	Lengthy - crime and alcohol free for 6y prior to offence	Broke into victim's home disguised with balaclava – Attacked two victims with jemmy – Subdued by third resident. Insufficient discount for guilty plea.
Shillingsworth [2003] NSWCCA 272	Agg BE and sexual Assault		VG	7y NPP 4y	AD	Lengthy	Entered house of acquaintance and had intercourse with female asleep in bed next to husband – Drinking with complainant and others earlier in night – Deliberately entered house to have intercourse Unfortunate and deprived background – Chronic alcohol problem
Millar (38) [2005] NSWCCA 202	Agg BE and AOABH	Aware victim in house	PG	2y 6m NPP 1y 3m	AA 18m NPP 10m	Extensive record but no violence	SNPP 5 years Broke into unit and assaulted daughter's de facto – punch to head – provoked by continuing assaults on daughter

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Price (24) [2005] NSWCCA 285	Agg BE commit AOABH	Aware victim in house	PG (20%)	2y 8m NPP 1y 6m	AA 16m NPP 9m	Prior for AOABH – s.10 bond and no conviction recorded	SNPP 5 years Broke into home and assaulted male occupant with wooden stick–upset by fight between complainant and applicant's father Impressive subjective case – strong prospects of rehabilitation – genuine remorse
J.Tory (23) L.Tory (30) [2006] NSWCCA 18	Agg BE commit serious ind offence Agg BE commit serious ind offence Sched: Common assault	Armed with golf club In company Used corporal violence Knew persons present	PG (25%) PG (25%)	2y GBB 2y GBB	Crown AA 10m NPP 4m (suspended) Crown AA 14m NPP 7m (suspended)	Nil Minor	SNPP 5 years With father forced entry into house – male occupant punched and assaulted with golf stick– angered by improper relationship between victim and 14y sister – temporary loss of control – intent to frighten – not revenge JT – impressive character evidence – restrictive bail conditions LT – impressive character evidence
Leese (42) [2007] NSWCCA 108	Agg BE and intimidate with intent Sched: Mal damage	In company	PG (25%)	2y NPP 1y	AD	No gaol – breached bond	SNPP 5 years With co-offender forced entry into front door of female acquaintance – co-offender threatened V's fiancé and smashed TV – V made complaint about offender to DOCS – lesser offender Remorse
Ngati [2008] NSWCCA 3	Agg BE and AOABH	In company	VG	3y 9m NPP 2y	AD	Nil significant	SNPP 5 years Broke into home of neighbour with wife and two sons – female occupant assaulted by co-offenders – 4 children present in house – response to earlier altercation between complainant and friend of offender's son - minor injuries – spontaneous offence – aided and abetted – below mid-range

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Shaw (38) [2008] NSWCCA 58	Agg BE commit AOABH Mal damage		PG (25% on appeal)	6y NPP 4y 3m concurrent	AA 4y NPP 2y 6m	Various breaches of restraining orders - 2 charges of assault (one of these against the victim) and on a bond for this matter at time of offence	SNPP 5 years After breakdown of relationship been denied access on son's birthday - entered house at 6am armed with hammer - smashed windows and kicked doors before gaining entry by striking rear door - grabbed de facto by hair and punched to shoulder and head several times - cut above eye required several stitches - 9 children present - picked up son and walked out – pursued by de facto –knocked de facto to ground and kicked her to head. Waited outside for police - very intoxicated Error in assessment of objective seriousness.
Morris (41 at sentence) [2008] NSWCCA 115	Agg BE commit AR s.112(1) BES Sched: AR 3 x BES	Knowing person present	PG (20%)	6y 6m NPP 3y 6m <i>Total:</i> 7y NPP 4y	Crown AD	Lengthy record for BES offences	Entered house at night and threatened female occupant and daughter with knife – stole property – four years later broke into home during day and stole property Drug addiction – delay in charging
Truss [2008] NSWCCA 325	Agg BE and commit affray	In company	PG (25%)	4y 6m NPP 3y 4m	AA (to backdate sentence)	Breached bonds for assault including assault on same victim	SNPP 5 years Argument with neighbour in housing commission area – forced entry with co-offenders by smashing window with chair – occupant punched and kicked to head and torso, repeatedly struck with broom and chair – threats to kill - extensive injuries to mouth, teeth and neck, cuts to scalp, neck and face, 2 stitches to face and fractured cheekbone – appellant present encouraging and ready to assist – intoxicated – low-mid range Backdated to take into account period in rehabilitation
Terkmani (19) [2009] NSWCCA 142	Agg BE and commit AOABH		VG	4y NPP 2y	Crown AD	Assault offences	SNPP 5 years Demanded entry to house then smashed window with brick – entered house through window armed with knife – second assailant let in through door and both assaulted male occupant

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Zammit (20) [2010] NSWCCA 29	Agg BE AOABH	In company	PG (25%)	6y NPP 3y	AA 5y NPP 2y 6m	Traffic, mal damage	SNPP 5 years With co offender assaulted male victim who was in company of co offender's ex-girlfriend – punched victim about head after breaking into unit - offence in lower end of mid-range. Youth - little criminal record with no violence – good rehabilitation prospects – alcohol and drug issues. Special circumstances.
YS (16) [2010] NSWCCA 98	Agg BE and commit sexual assault	Deprivation of liberty	PG (10%)	8y NPP 5y	AD	Significant subsequent offending	SNPP 5 years Forced entry into home of complainant in mid-twenties – series of sexual assault on complainant in her bed including digital penetration, cunnilingus and forced fellatio Aboriginal with troubled history and drug abuse – significant social, psychological and psychiatric problems – mental illness
Ali (24) [2010] NSWCCA 184	Agg BE and intimidating	Knowing person present	PG (15%)	20m NPP 10m	AD	Traffic offences	SNPP 5 years Broke into cousin's home with brother-in-law by ripping fly screen on lounge room window – brother-in-law struck male occupant with stick and forced wife to car – lost self-control when saw sister's unfaithfulness to husband – offence committed in presence of three young children Remorse
Andrews [2011] NSWCCA 24	Agg BE and commit indecent assault	Knowing person present	PG (10%)	5y NPP 2y 6m	AD (Minor adjustment to commenceme nt date only)	PCA – breached GBB.	SNPP 5 years Broke into female victim's home while V was asleep – pretended to be V's boyfriend - assault and sexual comments to V – knew V socially and knew V home alone. Intellectual disability – poor impulse control
Martin [2011] NSWCCA 188	Agg BE and cause actual bodily harm		PG (15%)	6y NPP 3y (Partially accumulated on another sentence so that A will serve 2 years referable to this offence)	AD	Violence - agg BES	SNPP 5 years Kicked down the door of former partner and caused actual bodily harm by kicking her and causing severe bruising to her legs - at or just below mid-range Distressed by relationship breakdown and separation from children – drinking heavily - special circumstances.

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Bolt [2012] NSWCCA 50	Agg BE and AOABH	Knowing person present	PG (25%)	5y NPP 3y 6m	AA 4y NPP 2y 6m	Breached AVO and bond in relation to same victim	SNPP 5 years Former partner alone and 7 weeks pregnant - broke into home at 2am and assaulted her causing unconsciousness - 3 bones in nose broken, nausea, vomiting and severe headaches Violent childhood at hands of father and grandmother – drug user – mental illness
Thompson-Davis [2013] NSWCCA 75	Agg BE and commit indecent assault Sched: Act of indecency, Stalking		PG (10%)	7y 6m 12d NPP 5y 7m 24d	AA 6y 2m NPP 3y 10m	Lengthy.	SNPP 5 years Broke into V's home at night alone with 12 year old daughter - had met V briefly earlier in day but otherwise did not know V – knocked on door asking V if he could come in – V refused - broke in through front door – indecently assaulted V in kitchen – not aware V's daughter at home. Other offences involved approaching women he did not know and following them. Aboriginal – difficult background – institutionalised.
Langbein (22) [2013] NSWCCA 88 [2013] NSWCCA 100	s.112(2) BE Mal Damage s.112(2) BES Drive disqualified Sched: 2 similar offences		PG (25%)	4y 6m NPP 3y 3y NPP 2y 3m <u>Total:</u> 6y NPP 4y 6m	AA (to adjust degree of accumulation) Total: 4y 9m NPP 3y 3m	Breached bond – poor record for property offences	SNPP 5 years Broke into café, caused \$23,847 damage and stole property – broke into wine cellar and caused damage – attempted to break into bottle shop – broke into second café and caused damage and stole property Some evidence of rehabilitation – father to three small children
Eckermann (26) [2013] NSWCCA 188	Agg BE and AOABH Sched: s.61 Assault	Knowing person present	PG	2y suspended	Crown AA 2y NPP 14m	Assault police, AOABH.	SNPP 5 years Breakdown in relationship with victim due to domestic violence - V in new relationship – struck V on face previous afternoon - broke into V's home at about 3:30am in highly agitated state and grabbed V around throat and face – threatened new boyfriend - pushed V down hallway and onto bed - punched face with closed fist – three young children present at home – mid-range Alcohol abuse – employed – good rehabilitation prospects – loving father

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Smith (38) [2013] NSWCCA 209	Agg BE and intimidate Breach of two GBB Sched: Breach AVO Property damage	Knowing person present	PG (25%)	4y 2m NPP 2y 9m (10m concurrent)	AD	Record including violence – breached bonds for violence against same victim	SNPP 5 years Attempted to break into home of ex-partner at night through bedroom window – victim's new partner left to get help – broke into house through front door – broke internal door causing wood to hit victim – threatened to stab victim – caused property damage to house and car parked in driveway Aboriginal – good work record – substance abuse
Peters [2013] NSWCCA 324	Agg BE and detain for advantage		PG (25%)	13y 6m NPP 10y	AD		SNPP 5 years Entered home of HSC student through unlocked front door – secured black box around neck of Victim with two page document referring to explosives – box confirmed to have no explosives after ten hours – extortion attempt Suffering mental illness but not significantly causally related
HJ (17) [2014] NSWCCA 21	2 x Agg BE and AOABH	In company	PG (25%)	2y 1m NPP 12m	AA 2y 1m NPP 6m	nil	Female - broke into home of sister's de facto's 14y daughter with male co-offender – male occupant knocked unconscious by co-offender – sustained assault by offender on female victim – threats made prior to coming to house – instigator - intoxicated Difficult childhood – low intelligence – sexually assaulted - gave birth to baby boy three weeks before sentence – separation due to absence of facilities in juvenile detention
Wallace (25) [2014] NSWCCA 54	Agg BE and destroy property by fire Common assault	Knowing person present	PG	5y 3m NPP 3y (FT 3m)	AD	Minor	SNPP 5 years After drinking with victim took offense to racial comments and attempted to choke victim – later broke into Victim's unit and set fire to curtains – returned to rescue victim – substantial damage – grave risk of death – extreme recklessness Aboriginal - Genuine remorse – pleaded local court
Bennett (32) [2014] NSWCCA 197	Agg BE Intimidation	Knowing person present	VG	5y NPP 2y	Crown AA 5y 9m NPP 3y 3m		SNPP 5 years Knew V through drug connection - banged on V's door - broke into V's home – dragged V and punched him number of times – V's children present in home.

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Corda (40s?) [2014] NSWCCA 281	Accessory before the fact - Agg BE and destroy property by fire		PG (25%)	5y NPP 3y 6m	AD	Breached bond – subject to AVO	SNPP 5 years In long running dispute with neighbour – paid two young co-offenders to break in and burn down house – provided petrol and information – destroyed house – well above mid-range
Mueller (52) [2015] NSWCCA 292	Agg BE and indecent assault Indecent assault Sched: Indecent assault Act of indecency		PG (25%)	24m Suspended	Crown AD	1992 sexual offence	SNPP 5 years Entered house of former neighbour and attempted to kiss female occupant – exposed penis and testicles – forced entry a second time and indecently touched female occupant – on same day approached house next to father's house and grabbed breast of female occupant Suffering psychotic episode
Meatuai (27) [2016] NSWCCA 42	2 x Agg BE AOABH	Use corporeal violence	PG (10%)	5y NPP 3y 6m	Crown AA 6y 6m NPP 4y 6m	Substantial record including violence	SNPP 5 years With co-offender entered home of victims through unlocked front door - Assaulted male V by punching repeatedly to face and body with great force, continued to punch to head when he fell to ground – Punched female several times to face, pushed her backwards into glass wardrobe with such force it shattered, dragged across room by hair and continued to kick and punch as she lay on floor – both V's required surgery for serious injuries - well above mid-range. Difficult background – ingested “ice” on day of offences - little insight into what triggers violent conduct, including drug use - little impulse control.
Hayek (52) [2016] NSWCCA 126	Agg BE and rob Sched: 3 drug offences s.166 6 drug offences	Aware persons present	PG (25%)	6y NPP 4y	AD	Long history – breached parole	SNPP 5 years Followed female pharmacist into unopened pharmacy – demanded drugs and money – threatened victim not to go to police – mid range offence – additional offences related to drug taken from pharmacy Long history of drug abuse – under influence of drugs at time of offence

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Warwick [2016] NSWCCA 183	Agg BE AOABH		PG (25%)	3y NPP 18m	AA 2y NPP 1y	BES - agg BES - steal property - damage property	SNPP 5 years 2010 offence - Stealing items from victims' car parked in garage – male tried to stop offender – hit V on head with object believed to be a torch – arrested 4 years later. CCA - totality
SS [2016] NSWCCA 197	Agg BE AOABH AOABH	Knowing person present	PG (10%)	9y NPP 4y 2y 9m NPP 2y <u>Total:</u> 10y NPP 5y	AD		SNPP 5 years Assault upon female ex-partner due to ending of relationship - broke into V's home and strangled V until she passed out - emptied entire contents of fire extinguisher into V's throat and around her mouth - pulled down V's pants and underpants then left premises. From troubled country – witnessed murder of father aged 6 – refugee.
McIlwraith (34) [2017] NSWCCA 13	Agg BE with intent to intimidate s.33B possess weapon with intent to intimidate	Armed with weapon	VG PG	4y NPP 3y 22m NPP 14m (concurrent)	AD		SNPP 5 years Victim came upon offender emerging from alcove under house wearing property belonging to victim – chased victim next door and broke into laundry Drug affected
Chung [2017] NSWCCA 48	Agg BE Intimidation	Knowing person present	VG	6y NPP 3y 6m	AD	Minor assault matter in 1991 - no conviction recorded.	SNPP 5 years Offender's girlfriend claimed to victim's brother owed her \$300,000 - trying to help recovery of debt – rang doorbell, entered without permission and demanded to know where V's brother was - assaulted V, kicking in stomach and punching to face - led to fight and produced knife - mid-range objective seriousness. Rehabilitation prospects – good character.

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DH (41) [2017] NSWCCA 64	Agg BE with intent to Intimidate 2 x Assault Breach AVO	Knowing person present	PG (25%)	<u>Indicative BE</u> 4y 6m <u>Agg</u> 5y NPP 3y	AD	Breached bonds – otherwise relatively limited	SNPP 5 years Drove up behind ex-partner driving daughter – during subsequent discussion shouted at ex-partner and hit her arm with car door – refused to let door shut forcing ex-partner to drive off with door open - five days later kicked glass sliding door at ex-partner's house aware her mother and three children in house – smashed door, two windows, assaulted mother and threatened children – mid-point of range of seriousness Alcohol addiction
BB (31) [2017] NSWCCA 189	Agg BE and commit indecent assault	Knowing person present	PG (25%)	7y NPP 4y	AD	Breached bail for driving offences – record for driving and violence offences including indecent assault	SNPP 5 years Entered house of female acquaintance at night and indecently assaulted 15y daughter sleeping in bed – kissed forcefully and repeatedly – touched breast and vagina outside clothing – placed hand over mouth to stop screaming – exposed penis – intentional offence – no mistake as to house – mid-range offence Mental health issues – assaulted in custody – drug problems
Kerwin (32) [2018] NSWCCA 23	Agg BE and commit rob	In company	PG (25%)	5y 3m NPP 3y 6m	AA 4y NPP 2y 6m	Malicious wounding, AOABH, rob in company, steal from person and assault officer, common assault, stalking or intimidating, armed with intent, escape police custody	SNPP 5 years With 2 co-offenders broke in through back door of victims' home, using considerable force – offender took mobile phone out of V1's hand as she attempted to dial 000 - offender and co-offenders rummaged through the two victims' belongings and ransacked home searching for drugs - filled garbage bags with various items - electronic equipment, including two mobile telephones were stolen. Highly dysfunctional background – Aboriginal - mild range of intellectual disability - long-term addiction to drugs and alcohol - grew up in circumstances of profound deprivation.

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Baradi (23) [2018] NSWCCA 143	Agg BE and Detain Assault Breach bond for assault	Knowing person present	PG (25%)	4y 6m NPP 1y 6m 9m 8m <u>Total:</u> 5y NPP 2y	AD	record for violence including breach AVO – breached conditional liberty	SNPP 5 years Attended hotel where partner staying for work and entered room by breaking down door – took phone from victim and told her to get up – yelled at second female in room – grabbed victim by wrist and pulled her to lift
Adams (23) [2018] NSWCCA 139	Agg BE and commit serious indictable offence (offence not stated)	not stated – in company?	PG	4y 10m NPP 2y 10m	AD	affray and assault	SNPP 5 years Attended home of female acquaintance uninvited late at night – armed with wooden bat and threatened others at house – phoned two male friends to come to house – arrived armed with axe and wooden mallet – smashed windows and glass in door – forced open door and struggled with female victim
Bickley (36) [2018] NSWCCA 153	Agg BE and AOABH Sched: Assault	Not stated	PG (25%)	3y NPP 1y 9m	AD	Extensive - mainly dishonesty and minor drugs. On bail for violence offence.	SNPP 5 years Broke into uncle's home and assaulted uncle following dispute - lower end of middle range. Drug and alcohol issues - dysfunctional, tragic and disadvantaged background a significant mitigating factor – support of family – remorse.
Singh (26) [2019] NSWCCA 110	Agg BE and Rob in company	In company	PG	4y 6m NPP 3y	AD	Nil	SNPP 5 years With co-offender, followed 95y male home from casino – knocked on victim's door, pushed victim over and took \$6250 - returned to casino and gambled money. Substance use disorder (alcohol, drugs) - severe gambling disorder.

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Pham (29) [2019] NSWCCA 211	Agg BE and AOABH Assault Sched: Damage property Assault	Intentionally inflict actual bodily harm	PG (25%)	6y 1m NPP 4y 6m 9m NPP 6m <u>Total:</u> 6y 4m NPP 4y 9m	AA 4y 7m NPP 3y 6m FT 4m <u>Total:</u> 4y 8m NPP 3y 7m	record – assault, intimidation, damage property and drugs	SNPP 5 years Forced entry to unit through front door and assaulted female cousin of estranged wife – threw bottle at victim, punched her to back of head several times and made threat – pushed victim's brother – damaged property in unit and punched 54y female neighbour to eye – lower end of mid-range Migrated from Vietnam as a child – drug user
Cheraghi (27) [2020] NSWCCA 70	Agg BE and AOABH	Aware of presence of person	VG	5y 6m NPP 3y 7m	AD	nil	SNPP 5 years With co-offender entered home of male acquaintance in early hours of morning armed with knife and wearing mask – stabbed victim in arm and made threats – co-offender stole property – offence aggravated by use of weapon and presence of co-offender - towards but not at mid-range Refugee from Iran – mental and physical health issues – drug user and gambling problem – suicide attempts
Branagan (39) [2020] NSWCCA 158	Agg BE and s.61I s.61L s.61N(2)	Aware of presence of person	VG	<u>Indicative</u> 5y NPP 3y 15m 11m <u>Aggregate:</u> 5y 6m NPP 3y 3m	AD		SNPP 5 years After spending night with acquaintance in granny flat entered adjoining house through open window to retrieve phone at 6am – entered room of sleeping victim, took off clothes and put flaccid penis in mouth for several seconds – victim awoke and objected – touched naked victim on arms and torso and sought kiss – masturbated in presence of victim – effectively a stranger – short duration – spontaneous – no force or violence – first offence around on under mid-range Out of character – under influence of cocaine – unlikely to re-offend – reasonable prospects of rehabilitation – family interstate No appeal – no error in objective seriousness – not manifestly excessive

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Ebsworth (28) [2020] NSWCCA 229	Agg BE and AOABH 2 x s.33B(1)(a) s.166: 5 x contravene AVO Sched: 5 offences	Aware of presence of person	PG (15%)	<u>Indicative:</u> 4y 6m NPP 3y 2y 6m 2y 2 x 8m, 10m, 12m, 15m imprisonment <u>Aggregate:</u> 5y 6m NPP 3y 6m	AD	AOABH, affray, assault, damage property. On bond.	SNPP 5 years Domestic violence offences against former partner – entered victim's home – punched, kicked, choking, dragged down street - threats to kill with a knife; threaten to stab victim's cousin (s.33B offences). Aboriginal – childhood lived with mother in a neighbourhood with significant psychosocial dysfunction.
Yaman [2020] NSWCCA 239	Agg BE and AOABH s.166: Contravene ADVO	Aware of presence of person	PG (25%)	6y 10m NPP 4y 6m 7m (concurrent)	AD	Domestic violence offences against same victim; ongoing supply drugs, possess drugs, assault, armed with intent, breach ADVO, drive with illicit drug.	SNPP 5 years Domestic violence against former partner – pushed victim into her apartment as she was unlocking her door – attended victim's home in breach of ADVO – put foot to victim's head – took knife from kitchen drawer, directing victim to sit – inflicted minor injuries.

Last Updated: September 2020

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