

Specially Aggravated Break and Enter and Commit Serious Indictable Offence

Not Stealing / Larceny

s.112(3) (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

(3) Commit offence under subsection (2) in circumstances of special 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

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

wounds or intentionally or recklessly inflicts grievous bodily harm on any person,
is armed with a dangerous weapon.

(amended on 21.6.2012)

intentionally wounds or intentionally inflicts GBH on any person
inflicts GBH on any person and is reckless as to causing ABH to any person
is armed with dangerous weapon

Maximum Penalty: 25 years

Standard Non-Parole Period (offence committed on or after 1.2.2003): 7 years

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	NAME (age if known)	OFFENCE	CIRCUMSTANCE OF AGGRAVATION	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
1.	Leach (37) [2000] NSWCCA 247 Co-accused: BRIDGES	Sp Agg BE - armed robbery	Inflict GBH	PG	MT 4y 6m AT 3y	AA 6y 9m NPP 4y	firearms, drug	With four co-offenders broke into country home assaulting owner - tied victim's hands, placed paper bag over head - took cannabis and rifle - victim suffered broken ribs and leg
2.	Bridges (38) [2001] NSWCCA 92 Co-accused: LEACH	Sp Agg BE - armed robbery	Inflict GBH	PG	MT 4y 6m AT 3y	AD	drugs, property	With four co-offenders broke into country home assaulting owner - tied victim's hands, placed paper bag over head - took cannabis and rifle - victim suffered broken ribs and leg
3.	Kelly (50) [2007] NSWCCA 357	Sp agg BE - intimidate Mal damage property	Armed with dangerous weapon	PG	4y NPP 2y 3m (concurrent)	AD	Nil relevant	Borrowed gun from friend – approached house of estranged wife and threatened occupants including wife – smashed windows and glass door – in blind rage No evidence of domestic violence – prior good character
4.	Smith (33) [2009] NSWCCA 17	Sp Agg BE - mal wound		PG (25%)	6y NPP 3y 6m	AA 5y NPP 2y 6m	Extensive record including similar offences	SNPP 7 years Entered house of acquaintance after asking children on veranda for blade of knife – assaulted female occupant with knitting needle causing puncture wounds – minor injuries – spontaneous offence – well below midrange Voluntarily attended police station – developmentally and intellectually disabled
5.	Micklesson (18) [2009] NSWCCA 61	Sp Agg BE - AOABH	Armed with shotgun	PG	9y NPP 6y	AD	No significant record - mal damage - on bond.	With co offenders entered home – armed with baseball bat – co offender armed with loaded firearm – four victims – struck victim with baseball bat – co offender discharged firearm (not at victims).

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6.	Cheh (33) [2009] NSWCCA 134	Sp Agg BE - assault Breach bond Sched: Deemed supply	Knew persons present Wounding	PG (20% on appeal)	5y NPP 3y 9m FT 6m (concurrent)	Crown AD	Limited included violence	SNPP 7 years Broke into home of ex-partner at night – intended to say goodbye to son before committing suicide – assaulted male occupant – dragged ex-partner into kitchen and stabbed twice in chest with kitchen knife – threat to kill – cut complainant’s hand in attempt to cut throat – aware young child nearby – spontaneous offence Suffering depression and intoxicated at time of offence as result of death of older child – remorse – good prospects of rehabilitation
7.	Dole (20) Nguyen (21) [2010] NSWCCA 101	Sp Agg BE - reckless wounding		PG (15%)	20m NPP 5m	Crown AA 3y 4m NPP 2y		SNPP 7 years Four males forced entry into home unit and assault male occupant with metal bar – claimed assault was payback for sexual assault of N’s sister – planned offence N – suffered violent abuse at hands of father – affected response to assault of sister D – depressive illness
8.	Sheen (41) [2011] NSWCCA 259	Sp Agg BE - wound with intent to do GBH BES	Wounding	VG	10y NPP 7y 4y NPP 3y <u>Total:</u> 12y NPP 9y	AA 7y NPP 5y 3m 4y NPP 3y <u>Total:</u> 8y NPP 6y 3m	Lengthy – including violence – breached bond and bail	SNPP 7 years Broke into home of acquaintance and stole property – ten days later forced entry into home and attack same victim – smashed vase and used pieced to cut throat and face – threats to kill – stabbing in back

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9.	Srikantharajah [2012] NSWCCA 209	2 x Sp Agg BE - intimidate Sched: Property damage	In company Intentional infliction of GBH	PG (25%)	10y NPP 6y 6m	AD	Affray and driving – breached conditional liberty	SNPP 7 years Group of Tamil males from Sri Lanka forced entry into unit armed with cricket stumps, steel bar, knife and bottle of caustic soda – assaulted two male occupants and caused extensive property damage – one male suffered serious burns to face from caustic soda – second male suffered broken ankle – victims from different ethnic Sri Lankan group – offender not involved in planning – spontaneous involvement – unaware of caustic soda – lesser role than others – mid-range offence Reasonable prospects of rehabilitation
10.	Aslett [2012] NSWCCA 235	Sp Agg BE - damage property Assault	Knowing person in house Armed with taser	PG (25%)	5y 7m 14d NPP 3y 4m 14d FT 12m (concurrent)	AD	Prior convictions for violence	SNPP 7 years Offender walked into home in early evening and threatened female occupant with taser and knife in presence of two teenage girls – punched hole in wall twice and kicked television
11.	Wootton (27) [2014] NSWCCA 86	Sp Agg BE – armed robbery	Armed with rifle.	PG (10%)	10y 9m NPP 7y	AD	Criminal record – breached bond	SNPP 7 years One of three offenders involved in home invasion on residential premises – armed with firearms and wearing masks – shots fired – drugs demanded – occupant struck to back of head – offences committed in presence of infant – above mid-range – pre-mediated Violent childhood led to early drug abuse
12.	Campbell (35) [2014] NSWCCA 102	Sp Agg BE - intimidate AOABH	Armed with dangerous weapon	PG (25%)	3y NPP 1y 10m FT 9m (concurrent)	Crown AA 5y NPP 3y FT 9m Total: 5y 3m NPP 3y 3m	Minor	SNPP 7 years Broke into home of estranged wife – obtained gun and threatened wife and partner when they returned – during struggle wife injured – gun discharged bullet into floor – degree of planning Motivated by concern for welfare of children

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13.	McDonald (26) [2014] NSWCCA 127	Sp Agg BE - inflict ABH		PG (25%)	6y 9m NPP 3y 3m	AD	On parole for Armed Robbery. Dishonesty, AOABH.	SNPP 7 years Female offender – Jealous of ex-boyfriend and his female companion (victim) – broke into ex-boyfriend’s home with co-offender – picked up scissors in house - threatened victim with scissors and demanded victim hand over her phone – stabbed victim with scissors in shoulder blade – wounds superficial but required stitches - punched ex-boyfriend in face – co-offender picked up knife and threatened ex-boyfriend – motivated by jealousy. Ongoing mental health issues – drug abuse – difficult upbringing
14.	O’Grady [2015] NSWCCA 168	Sp Agg BE - armed robbery		VG	9y NPP 5y 6m	AD	Yes (offences not indicated). On bond.	SNPP 7 years With 2 co-offenders broke into drug dealer’s home wanting to rectify drug deal – V badly assaulted - V unconscious – stole various items from V’s home. “Muldrock” appeal.
15.	Harper [2017] NSWCCA 159	Sp Agg BE - damage property	In company and armed with dangerous weapon	PG (12.5%)	5y 3m NPP 3y 3m	AD	Nil	SNPP 7 years Broke into a unit in company of five men - armed with stun gun – offender under impression one resident had mistreated offender’s sister - intruders shot a victim with stun gun, yelled abuse, and smashed property. Good character.

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16.	Robinson (18) [2017] NSWCCA 315	Sp Agg BE - rob in company s.111(3) – rob in company	Armed with dangerous weapon	PG (45% plea and assist)	4y 6m NPP 2y 6m FT 2y <u>Total:</u> 5y 3m NPP 3y 3m	AD	Nil	SNPP 7 years One of four men who forced entry into house of alleged drug dealers – one co-offender armed with sawn off shot gun – offender armed with bladed weapon or baton – left without proceeds after confrontation with occupants – two months later involved in similar offence on second house of alleged drug dealers – entered shut but unlocked door – offender armed with steel bar – after search of house and confrontation with occupants left with small amount of property – co-offender shot at one occupant – offences planned but poorly executed Out of character – remorse – significant rehabilitation – significant assistance
17.	Mansaray (22) [2018] NSWCCA 16	Sp Agg BE - robbery	Knowing person inside and armed with dangerous weapon	PG (10%)	5y 9m NPP 3y 5m	AD	Possess drug. On bond and bail.	SNPP 7 years With co-offenders broke into unit demanding items from victim – one co-offender armed with rifle – obtained drugs and money Substance abuse – supportive family – violent childhood in Africa
18.	CA (12) [2019] NSWCCA 93	Sp Agg BE - wounding		PG (25%)	3y 9m NPP 2y	AA 3y NPP 1y 8m	Extensive - assault law officer - on 12m probation order.	Victim 78y old female living alone – offender and 17y co-offender smashed sliding glass door with bricks – entered victim's home - both offenders threw bricks striking victim in face – victim hit with piece of timber – took handbag. Indigenous - highly dysfunctional upbringing - subject to domestic violence and drug and alcohol abuse by parents - cognitive functioning in extremely low range

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19.	Primmer (20) [2020] NSWCCA 50	Sp Agg BE – discharge firearm Sched: Conceal AR	use of firearm by co-offender		3y NPP 18m	AD (discretion)	offences of violence against girlfriend – breach three bonds	SNPP 7 years Part of group of four men who attended home of drug dealer armed with guns – shots fired – offenders fled in car – poorly planned offence for financial gain – well above mid-range – youngest and least culpable of group Troubled childhood – parents heroin addicts – parental incarceration – homelessness – exposure to domestic violence – early drug abuse – PTSD – <i>Bugmy</i> and <i>Millwood</i> applied On appeal – sentence manifestly inadequate but evidence of rehabilitation justifies exercise of discretion
20.	Ford (42) [2020] NSWCCA 99	Sp Agg BE - AOABH	wounding	VG	6y NPP 3y 6m	AA 4y NPP 2y 9m	Driving offences, affray.	SNPP 7 years (2011) with co-offender broke into victim's residence – repeatedly struck victim's head with glass beer bottle and bedside lamp - spontaneous offence – offenders intoxicated and under influence drugs CCA: judge erred in finding appellant principal offender - reduction in objective seriousness on basis of liability in joint criminal enterprise
21.	Hunter (48) [2020] NSWCCA 285	Sp Agg BE – AOABH Sched: Common assault	wounding	PG (25%)	6y NPP 4y	AD	Record for less serious offences	SNPP 7 years Attended home of female partner at 7.30am – heard presence of male and broke down door with axe – attacked male with axe, hammer and piece of wood causing fracture of arm and finger – dragged female out of bathroom by hair – mid range offence History of drug abuse and gambling – anger management issues – no remorse
22.	Musa [2022] NSWCCA 221	Sp Agg BE in company –rob with wounding Sp Agg BE – inflict GBH	Wounding GBH	PG (not stated)	<u>Indicative</u> Each: 11y 3m NPP 7y 6m <u>Aggregate</u> 15y NPP 10y	AD	Limited. Goods in custody, drive PCA, drive disq.	SNPP 7 years Facts not stated.

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23.	Gavellas [2022] NSWCCA 229	Sp Agg BE - AOABH Sched: Damage property s.195	Wounding	PG (25%)	5y 3m NPP 3y	AD	Possess drug, driving offences, common assault.	SNPP 7 years Mistaken identity – believed victim was ‘Shane’ – home invasion - with co-offender smashed victim’s window, climbed inside - punched victim repeatedly to head and body – one offender struck victim’s head with rubber mallet causing 6cm wound - victim saw third male outside gesturing offenders to leave – offender apologised when realised victim was not ‘Shane’ - one offender returned phone to victim’s wife. Difficult background – ADHD – drug abuse. Remorse. CCA: factual error as to number of children present – no lesser sentence warranted in law.
24.	Ward (23) [2022] NSWCCA 290	Sp Agg BE Sched: Intentionally damage prop Assault Intimidate	Wounding	PG (25%)	8y NPP 4y 9m	AA 5y 6m NPP 3y 3m	Breached AVO and ICO – history of domestic violence ad drink driving offences	SNPP 7 years Broke into home of estranged partner and assaulted her over two hours in presence of young baby – assault included suffocating, punching to head and chest and smashing head against metal bed post – threatened with knife – shattered TV screen – left with baby in pram – history of violence against victim – under influence of drugs and alcohol at time of offence – importance of specific deterrence History of family violence – untreated ADHD – early substance abuse – mental health issues – special circumstances On appeal: sentence manifestly excessive

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25.	Carreno (19 at offence; 42 at sentence) [2023] NSWCCA 20	Sp Agg BE - AOABH 2 x s.61J (in company) Sched: s.148, 2 x s.61J	Armed with dangerous weapon; in company	PG (10%)	<u>Indicative</u> 12y 7m 13y 6m 11y 8m <u>Aggregate</u> 16y NPP 12y	AD	Robbery, firearms, driving.	(1988) Home invasion with two co-offenders – stole various items - armed and wearing balaclavas - violent assault of male occupant - violent sexual assault of female occupant; digital and penile-vaginal penetration by applicant who was the first to assault complainant; further sexual assault by co-offender using barrel of gun; firearm pointed at head, head covered, hit to head number of times - both victims threatened with death unless they handed over money – victims' hands and ankles tied with electrical cord; mouths gagged – 2017 DNA linked to offence. Gratuitous, opportunistic – intention on entering home was to steal. Guarded as to genuineness of remorse and prospects of rehabilitation. CCA: Applicant sought to establish manifest excess ground by reference to indicative sentence for s.112(3) offence.

Last Updated: Dec 2022