

## Aggravated Break and Enter With Intent to Commit Serious Indictable Offence

s.113(2) (NSW) Crimes Act

s.113 (1) break and enter dwelling-house or building with intent to commit serious indictable offence

(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: 14 years

| NAME<br>(age if known)                                      | OFFENCE                                 | CIRCUMSTANCE OF<br>AGGRAVATION | PLEA        | SENTENCE                            | APPEAL                                | RECORD   | FACTS  |
|---|---|--------------------------------|-------------|-------------------------------------|---------------------------------------|--|--|
| <b>Ditfort</b><br>(32)<br><a href="#">[1999] NSWCCA 442</a> | s.113(2) (steal)                        | In company                     | PG          | MT 2y<br>AT 18m                     | AA<br>To vary<br>commencement<br>date | Lengthy record<br>- released to<br>parole nine<br>days prior to<br>offence | Broke into shop with two co-offenders armed<br>with cricket bat and piece of timber - stole<br>money and cigarettes.<br>Aboriginal with deprived upbringing; drug<br>addiction                                       |
| <b>Lord</b><br>(18)<br><a href="#">[2001] NSWCCA 533</a>    | s.113(2) (steal)<br><br>Sched:<br>AOABH |                                | PG          | 12m GBB (no<br>conviction recorded) | Crown AA<br>18m suspended<br>sentence | Nil  | Broke into home of 71y female - pushed past<br>victim in attempt to escape - victim fell on<br>tiles injuring herself - Lesser offender<br>Excellent prospects of rehabilitation –<br>remorse                        |
| <b>Rutter</b><br><a href="#">[2003] NSWCCA 306</a>          | s.113(2) (steal)                        |                                | PG<br>(25%) | 6y<br>NPP 3y                        | AD                                    | Nil  | Waited in car while co-offender entered<br>house brandishing pistol and impersonating<br>police officer – in telephone contact with co-<br>offender<br>Also dealt with for drug offences –<br>Psychological disorder |

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|---------------------------------------|--|------------------------------------|-------------|--|---------------------------|--|---|
| <b>Elmir</b><br>(33)                  | s.113(2)<br>(AOABH)  | Infliction of corporal<br>violence | PG<br>(20%) | <u>Total:</u><br>3y PD<br>NPP 18m                  | Crown AA<br>2y<br>NPP 12m | Lengthy but<br>old   | Forced way into house and chased<br>occupants – assaulted male victim over<br>sustained period of time with punches and<br>pool cue – Minor injuries inflicted<br>Revenge for serious assault on younger<br>brother of Elmir – Elmir principle offender -<br>Remorse  |
| <b>Salami</b><br>(30)                 | s.113(2)<br>(AOABH)  | Infliction of corporal<br>violence | PG<br>(20%) | <u>Total:</u><br>2y 6m PD<br>NPP 12m               | 1y 9m<br>NPP 9m           | Minor – no<br>violence   |   |
| <a href="#">[2003] NSWCCA<br/>192</a> | s.59 AOABH   |                                    |             |  |                           |  |   |
| <b>Lenthall</b><br>(26)               | s.113(2) (steal)   | In company                         | PG<br>(25%) | 5y 3m<br>NPP 2y 6m<br>Compensation order           | AA<br>3y 9m<br>NPP 1y 10m | “appalling”  | Ram-raid in stolen car with 2 co-offenders of<br>service station - \$10,000 damage to service<br>station<br>Remorse – good prospects of rehabilitation –<br>parity  |
| <a href="#">[2004] NSWCCA<br/>248</a> | Sched:<br>3 offences   |                                    |             |  |                           |  |   |
| <b>Pettersen</b><br>(25)              | s.113(2) (steal)   | In company                         | PG          | 3y 9m<br>NPP 2y<br>(6m concurrent)                 | Crown AD                  | Breached<br>parole –<br>significant<br>record                        | Driver of car – four co-offenders broke into<br>club and threatened cleaners with gun –<br>attempt made to break into ATM – police car<br>chase followed by attempt to escape by foot<br>– unaware of handgun – unaware people in<br>club<br>Remorse – Sentences concurrent to revoked<br>parole<br>Co-offenders Bendt and Fell sentenced for<br>s.113(3) |
| <a href="#">[2009] NSWCCA<br/>91</a>  | Dangerous<br>driving<br><br>Sched:<br>Take and drive<br>conveyance           |                                    |             |  |                           |  |   |
| <b>Haydon</b><br>(25)                 | s.113(2) (steal)   | In company                         | PG<br>(25%) | 2y 6m<br>NPP 1y 10m                                | AD                        | Breached<br>parole for<br>similar<br>offences                        | With co-offender attempted to break into<br>shed and steal motorbikes<br>Sentence imposed 13m after<br>commencement of sentence for s.112(1)<br>offence   |
| <a href="#">[2012] NSWCCA<br/>151</a> | Sched:<br>3 offences   |                                    |             |  |                           |  |   |
| <b>Pettersen</b><br>(30)              | Att s.113(2)<br>(steal)  | In company                         | PG<br>(25%) | FT 3y 9m<br><br><u>Total</u><br>7y 3m<br>NPP 4y 3m | AD                        | Lengthy record<br>for dishonesty<br>offences –<br>breached<br>parole | Attempted unsuccessfully to break into<br>commercial premises using crowbar - made<br>preparations to break into warehouse but<br>abandoned attempted when alerted to police<br>presence – stole several car to assist<br>attempts  |
| <a href="#">[2013] NSWCCA<br/>20</a>  | Sched:<br>3 car offences<br><br>Conspiracy to<br>BES in agg<br>circumstances |                                    |             |  |                           |  |   |

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| <b>Bamblett</b><br><a href="#">[2013] NSWCCA 161</a>  | s.113(2) (steal)   | Premises occupied              | PG            | 4y 6m<br>NPP 3y 4m  | AD                     | Lengthy record – breached parole of 10 days for serious offences  | Broke into house at night through window of kitchen – entered bedroom with sleeping couple – apprehended in house but fled<br>Drug addiction  |
| <b>Mitchell M</b><br>(19)<br><br><b>Mitchell P</b><br>(22)<br><br><a href="#">[2013] NSWCCA 318</a><br><br>Co-offender:<br>MITCHELL | s.113(2) (steal)<br><br>Sched:<br>Larceny<br>Carried in conveyance       | In company                     | PG<br>(25%)   | 2y 3m<br>NPP 1y 3m  | AA<br>9m<br>NPP 6m     | Children Court matters dealt with by fines, probation<br><br>Children Court matters dealt with by fines, probation. | Brothers - offenders at night walking past premises of audio-electronics business - entered the yard and drove away in vehicle – later returned and entered premises to steal tools and music equipment - "at the lower end of range" of objective seriousness. Manifestly excessive – young adult offenders - No previous custody. |
| <b>Mitchell</b><br>(40)<br><a href="#">[2014] NSWCCA 63</a><br><br>Co-offenders:<br>MITCHELL<br>MITCHELL                            | s.113(2) (steal)<br><br>Sched:<br>Larceny<br>Take and drive a conveyance | In company                     | PG<br>(25%)   | 3y<br>NPP 2y        | AA<br>1y 10m<br>NPP 1y | Lengthy record  | Brothers - walking past premises of audio-electronics business at night - entered yard and drove away with car – later returned and entered premises to steal tools and music equipment - lower end of range<br>Senior offender   |
| <b>Huynh</b><br><a href="#">[2015] NSWCCA 179</a>   | s.113(2) (steal)<br><br>Sched:<br>Resist arrest<br>Assault police        | In company                     | PG<br>(25%)   | 4y 10m<br>NPP 3y 8m | AA<br>4y<br>NPP 3y     | lengthy   | With co-offender broke into house – ransacked bedroom while co-offender struggled with resident and held knife to neck<br>Difficult childhood – early drug addiction – chronic depression   |
| <b>Fayad</b><br>(45)<br><a href="#">[2017] NSWCCA 81</a>  | s.113(2) (steal)<br><br>Sched:<br>3 offences                             | In company                     | PG<br>(12.5%) | 7y<br>NPP 4y 9m     | AD                     | Minor but breached bail for assault offence   | Drove stolen vehicles into glass doors of shopping centre in early hours of morning – attempting to reach ATM – extensive damage – considerable planning<br>Harsh custodial conditions  |

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| <b>Davison</b><br>(22)<br><a href="#">[2019] NSWCCA 179</a>  | s.113(2) (steal)<br><br>s.154 SMV<br><br>Sched:<br>Larceny |                                | PG<br>(25%) | 2y 9m<br>NPP 18m<br><br>FT 9m<br><br><u>Total:</u><br>3y 3m<br>NPP 2y | AA<br>2y 9m<br>NPP 18m<br><br>FT 9m<br><br><u>Total:</u><br>3y<br>NPP 21m | Yes – not<br>stated.  | With co-offenders stole motor vehicle – ram<br>raid / drove car into shop window to try to<br>access ATM machine – gained entry to shop<br>but unsuccessful in obtaining access to ATM<br>Offence committed to purchase drugs –<br>Aboriginal - deprived background – early<br>exposure to drug abuse – special<br>circumstances<br>On appeal - disparity with co-offender  |
| <b>Isbitzki</b><br>(35)<br><a href="#">[2019] NSWCCA 247</a> | s.113(2)<br>(larceny)<br><br>Sched:<br>Intimidation        | armed with a weapon            | PG<br>(25%) | 6y<br>NPP 4y 6m   | AA<br>6y<br>NPP 3y 9m   | extensive –<br>break and<br>enter offences<br>as a juvenile –<br>drugs, driving<br>and firearms | Occupants of house woke to sound of<br>broken glass – observed broken window and<br>left house – confronted by offender standing<br>at letterbox armed with meat cleaver and<br>screwdriver – threats made by offender and<br>two co-offenders – occupants left to call<br>police and offender entered house – arrested<br>by police in house – financial gain – mid-<br>range<br>Suffered brain injury shortly before offence –<br>drug use – remorse<br>On appeal: SJ failed to properly consider<br>impact of brain injury on moral culpability –<br>special circumstances based on need for<br>rehabilitative support |

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