

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 (age if known) | OFFENCE | CIRCUMSTANCE OF AGGRAVATION | PLEA | SENTENCE | APPEAL | RECORD | FACTS |
|----|--|---|--------------------------------|-------------|--|---------------------------------------|--|--|
| 1. | Ditfort (32) [1999] NSWCCA 442 | s.113(2) (steal) | In company | PG | MT 2y AT 18m | AA To vary commencement date | Lengthy record - released to parole nine days prior to offence | Broke into shop with two co-offenders armed with cricket bat and piece of timber - stole money and cigarettes. Aboriginal with deprived upbringing; drug addiction |
| 2. | Lord (18) [2001] NSWCCA 533 | s.113(2) (steal) Sched: AOABH | | PG | 12m GBB (no conviction recorded) | Crown AA 18m suspended sentence | Nil | Broke into home of 71y female - pushed past victim in attempt to escape - victim fell on tiles injuring herself - Lesser offender Excellent prospects of rehabilitation – remorse |
| 3. | Rutter [2003] NSWCCA 306 | s.113(2) (steal) | | PG (25%) | 6y NPP 3y | AD | Nil | Waited in car while co-offender entered house brandishing pistol and impersonating police officer – in telephone contact with co-offender Also dealt with for drug offences – Psychological disorder |

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| 4. | Elmir (33) Salami (30) [2003] NSWCCA 192 | s.113(2) (AOABH) s.59 AOABH s.113(2) (AOABH) s.59 AOABH | Infliction of corporal violence Infliction of corporal violence | PG (20%) PG (20%) | <u>Total:</u> 3y PD NPP 18m <u>Total:</u> 2y 6m PD NPP 12m | Crown AA 2y NPP 12m 1y 9m NPP 9m | Lengthy but old Minor – no violence | Forced way into house and chased occupants – assaulted male victim over sustained period of time with punches and pool cue – Minor injuries inflicted Revenge for serious assault on younger brother of Elmir – Elmir principle offender - Remorse |
| 5. | Lenthall (26) [2004] NSWCCA 248 | s.113(2) (steal) Sched: 3 offences | In company | PG (25%) | 5y 3m NPP 2y 6m Compensation order | AA 3y 9m NPP 1y 10m | “appalling” | Ram-raid in stolen car with 2 co-offenders of service station - \$10,000 damage to service station Remorse – good prospects of rehabilitation – parity |
| 6. | Pettersen (25) [2009] NSWCCA 91 | s.113(2) (steal) Dangerous driving Sched: Take and drive conveyance | In company | PG | 3y 9m NPP 2y FT 6m (concurrent) | Crown AD | Breached parole – significant record | Driver of car – four co-offenders broke into club and threatened cleaners with gun – attempt made to break into ATM – police car chase followed by attempt to escape by foot – unaware of handgun – unaware people in club Remorse – Sentences concurrent to revoked parole Co-offenders Bendt and Fell sentenced for s.113(3) |
| 7. | Haydon (25) [2012] NSWCCA 151 | s.113(2) (steal) Sched: 3 offences | In company | PG (25%) | 2y 6m NPP 1y 10m | AD | Breached parole for similar offences | With co-offender attempted to break into shed and steal motorbikes Sentence imposed 13m after commencement of sentence for s.112(1) offence |
| 8. | Pettersen (30) [2013] NSWCCA 20 | Att s.113(2) (steal) Conspiracy to BES in agg circumstances Sched: 3 car offences | In company | PG (25%) | FT 3y 9m 6y NPP 3y <u>Total</u> 7y 3m NPP 4y 3m | AD | Lengthy record for dishonesty offences – breached parole | Attempted unsuccessfully to break into commercial premises using crowbar - made preparations to break into warehouse but abandoned attempted when alerted to police presence – stole several car to assist attempts On appeal: error in regarding the conspiracy offence as breach of s.112(2) instead of common law offence – no lesser sentence warranted |

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| 9. | Bamblett [2013] NSWCCA 161 | s.113(2) (steal) | Premises occupied | PG | 4y 6m 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 Drug addiction |
| 10. | Mitchell M (19) Mitchell P (22) [2013] NSWCCA 318 Co-offender: MITCHELL | s.113(2) (steal) Sched: Larceny Carried in conveyance | In company | PG (25%) | 2y 3m NPP 1y 3m 2y 3m NPP 1y 3m | AA 9m NPP 6m 9m NPP 6m | Children Court matters dealt with by fines, probation 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. |
| 11. | Mitchell (40) [2014] NSWCCA 63 Co-offenders: MITCHELL MITCHELL | s.113(2) (steal) Sched: Larceny Take and drive a conveyance | In company | PG (25%) | 3y NPP 2y | AA 1y 10m 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 Senior offender |
| 12. | Huynh [2015] NSWCCA 179 | s.113(2) (steal) Sched: Resist arrest Assault police | In company | PG (25%) | 4y 10m NPP 3y 8m | AA 4y NPP 3y | lengthy | With co-offender broke into house – ransacked bedroom while co-offender struggled with resident and held knife to neck Difficult childhood – early drug addiction – chronic depression |
| 13. | Fayad (45) [2017] NSWCCA 81 | s.113(2) (steal) Sched: 3 offences | In company | PG (12.5%) | 7y 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 Harsh custodial conditions |

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| 14. | Davison (22) [2019] NSWCCA 179 | s.113(2) (steal) SMV Sched: Larceny | | PG (25%) | 2y 9m NPP 18m FT 9m <u>Total:</u> 3y 3m NPP 2y | AA 2y 9m NPP 18m FT 9m <u>Total:</u> 3y NPP 21m | Yes – not stated. | With co-offenders stole motor vehicle – ram raid / drove car into shop window to try to access ATM machine – gained entry to shop but unsuccessful in obtaining access to ATM Offence committed to purchase drugs – Aboriginal - deprived background – early exposure to drug abuse – special circumstances On appeal - disparity with co-offender |
| 15. | Isbitzki (35) [2019] NSWCCA 247 | s.113(2) (larceny) Sched: Intimidation | armed with a weapon | PG (25%) | 6y NPP 4y 6m | AA 6y NPP 3y 9m | extensive – break and enter offences as a juvenile – drugs, driving and firearms | Occupants of house woke to sound of broken glass – observed broken window and left house – confronted by offender standing at letterbox armed with meat cleaver and screwdriver – threats made by offender and two co-offenders – occupants left to call police and offender entered house – arrested by police in house – financial gain – mid-range Suffered brain injury shortly before offence – drug use – remorse On appeal: SJ failed to properly consider impact of brain injury on moral culpability – special circumstances based on need for rehabilitative support |
| 16. | Kuruppu (50) [2021] NSWCCA 261 | s.37(1) s.113(2) s.166 Certificate Contravene AVO Breach s.9 bond (for assault) | Knowing person inside | PG (25%) | <u>Indicative:</u> 4y 6m 5y 3m 18m 6m <u>Aggregate:</u> 7y NPP 4y 3m | AD | Violence towards same victim; mid-range PCA. On bail, bond, ADVO. | In context of domestic violence – threw paver through window of home of former partner – twisted victim's head from side to side - victim struggled and screamed finding it harder and harder to breathe - pushed onto bed and pushed fingers into victim's mouth and down throat - victim began to pass out - continued to squeeze throat tighter - victim fell off bed and offender let go – threatened to kill victim, children and himself - offence in presence of child. Severe alcohol use disorder, moderate persistent depressive disorder - persistent lack of insight into what constitutes domestic violence - decline in mental health in months preceding |

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