

Aggravated Break, Enter and Steal

Multiple Offences

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

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| 1. | Oliver (31) [2005] NSWCCA 6 [2005] NSWCCA 27 | s.112(2) s.112(1) Sched: 4 offences | In company | PG (25% on appeal) | 5y NPP 3y FT 3y (concurrent) | AA 4y 6m NPP 2y 6m FT 2y 6m (concurrent) | Significant – breached bail | Broke into homes with co-offenders stealing property Drug addiction |

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| 2. | Byrne (31) [2005] NSWCCA 141 | 2 x s.112(2) 2 x s.112(1) s.111(1) s.113(1) Sched: 18 offences | Maliciously inflict ABH | PG (50% with assist) | 6y NPP 4y | AD | Extensive record Breached bail and parole | SNPP 5 years Broke into houses and stole property – Malicious infliction of actual bodily harm on one occupant – Aware occupant home in another offence Difficult childhood with sexual abuse – Drug addiction - Extensive assistance in unrelated matters |
| 3. | Mougin (27) [2005] NSWCCA 146 | 5 x s.112(2) s.113(1) Sched: 7 related offences | | PG | 6y 6m NPP 4y 6m | AD | Substantial record – breached parole | SNPP 5 years Broke into office buildings on weekends with co- offenders - \$87,580 worth of property stolen |
| 4. | Andrews (40) [2005] NSWCCA 199 Co-offender: CONNOR | 6 x s.112(2) | In company | PG (25%) | 5y 4m NPP 4y | AA 4y 8m NPP 3y 6m | Lengthy record for dishonesty | SNPP 5 years With co-offender broke into sporting clubs at night Failure to consider early personal history – insufficient discount for voluntary confession of guilt – poor health |
| 5. | Bellamy (18, 22) [2005] NSWCCA 329 | 2 x s.112(2) Sched: 7 offences | In company | PG (25%) | 3y 11m NPP 3y | AD | Lengthy record for similar offences – breached parole | SNPP 5 years applied to second offence Broke into clothing shop with co-offenders and stole clothes – 4 years later broke into computer shop and stole \$42,500 worth of computer equipment Disturbed childhood leading to early drug addiction – genuine remorse – strong prospects of rehabilitation |

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| 6. | Connor (2005) 158 A Crim R 389 [2005] NSWCCA 431 Co-offender: ANDREWS | 5 x s.112(2) | In company | PG (25%) | 4y 8m NPP 3y 6m | AA 4y NPP 3y | Serious interstate record – breached conditional liberty | SNPP 5 years Broke into Sports Clubs with co-offender and stole money from poker machines Failure to consider personal history |
| 7. | Bern. Morris (20) Br. Morris (19) Snelson (22) [2008] NSWCCA 182 | 2 x s.112(2) s.111(2) Sched: 2 x take & drive conveyance 2 x s.112(2) Sched: 2 x take & drive conveyance 2 x s.112(2) Sched: 2 x take & drive conveyance | In company | PG PG PG | 4y NPP 2y 6m FT 12m <u>Total:</u> 4y NPP 3y 6m 4y NPP 2y 4y 8m NPP 2y 6m | AA 4y NPP 2y 6m FT 12m <u>Total:</u> 4y NPP 2y 9m AD AD | Minor offences – breached bond Very minor - breached bond Minor offences | SNPP 5 years Offenders drove out to property knowing occupants away – broke into two premises and stole property – took two additional vehicles to transport property – very expensive equipment stolen – Bern. Morris returned with 4 juveniles to steal more property – offences below mid-range Aboriginals with derived upbringing – History of drug and alcohol abuse – all in relationship and fathers of children - Br. Morris better prospects of rehabilitation |
| 8. | Donn (23) [2010] NSWCCA 20 | s.112(2) Attempt s.113(2) Sched: 2 x s.112(2) s.112(1) | In company | PG (25%) | 6y 6m NPP 5y | AA 6y 6m NPP 4y 3m | Poor record – breached parole for similar offence | SNPP 5 years Broke into club and stole property at night – broke into same club with three co-offenders using sledge hammer and bolt cutters – broke into another club and pathology premises with co- offenders – attempted unsuccessfully to break into third club Difficult background – drug user – psychotic at time of arrest |

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| 9. | McKillop (37) [2010] NSWCCA 126 | 6 x s.112(2) 9 x s.112(1) Sched: 139 offences | | PG (25%) | 17y NPP 12y | AD | Breached suspended sentence | SNPP 5 years Professional burglar - \$1.9m property found in house – broke into residential properties and ransacked premises – on many occasions residents at home and asleep – stole cars from premises – many victims elderly |
| 10. | Strickland (24) O'Connor (20) [2011] NSWCCA 166 | s.112(2) 3 x s.112(1) s.112(2) 2 x s.112(1) Receiving | In company | PG (15%) | 6y 7m 6d NPP 4y 6m 5y 10m 6d NPP 3y 9m | AA 5y 6m NPP 3y 6m 5y NPP 3y | BES, possess drugs Agg BES, assault | SNPP 5 years S broke into properties whilst O acted as “lookout” – stole jewellery, money and computers - below “mid-range.” S: Aboriginal – troubled background SJ erred in structuring sentence and failed to take into account matters could be dealt with in Local court. |
| 11. | Flick (26) [2012] NSWCCA 170 | 2 x s 112(2) Sched: BE&S; Goods in custody | Knowing person present | PG (25%) | 5y 3m NPP 3y 9m | AA 4y 3m NPP 2y 3m | Lengthy. BE&S, resist police, possess stolen property. | SNPP 5 years Broke into shed, took keys and entered home knowing residents asleep inside – broke into second home through laundry window knowing residents asleep – rummaged through rooms, taking various items. Drug issues. Totality and accumulation on existing sentence |
| 12. | Warner (28) [2013] NSWCCA 10 | 2 x s.112(2) Sched: Receiving s.166: traffic offences | | PG | 4y NPP 2y 6m | AD | Included break and enter offences – breached conditional liberty | SNPP 5 years While intoxicated broke into shops and stole small amounts of alcohol and snack food – smashed front windows with pavers to gain entry Aboriginal – deprived childhood – early drug and alcohol addiction – low intelligence - high risk of re-offending |
| 13. | Vandeventer (18) [2013] NSWCCA 33 | 4 x s.112(2) s.113(2) | | PG (30% with assist) | 5y 6m NPP 3y 9m | AD | Similar offences. | SNPP 5 years Offences committed at locations closed for business at time of break-in - no persons present - cash and property stolen - motive to obtain money, or goods that could readily be sold to buy drugs to feed addiction - degree of planning involved but rudimentary and spontaneous kind. Homeless at age 12y – mental illness caused by drug use – special circumstances |

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| 14. | 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) <u>Total:</u> 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 |
| 15. | Brough (29) [2013] NSWCCA 110 | 2 x s.112(2) | In company | PG (25%) | 3y 8m NPP 2y 2m | AD | Serious record – at liberty 10m of previous 12y – breached parole | SNPP 5 years Broke into pharmacy and retail shop with two co- offenders Drug abuse and institutionalised |
| 16. | Dudgeon [2014] NSWCCA 301 | 2 x s.112(2) | Deprive of liberty Inflict violence | PG (25%) | 7y NPP 5y | AA 5y NPP 3y | Lengthy - armed robbery – breached parole. | SNPP 5 years Two home invasions whilst armed with knife – assaulted occupant Dying of terminal cancer |
| 17. | Ilievski [2014] NSWCCA 321 | 10 x s.112(2) 3 x s.113(2) Dispose property Sched: 6 x s.112(2) / 113(2) | In company | PG / VG (10%) | 16y NPP 10y | AA 10y NPP 6y | | SNPP 5 years With co-offenders broke into commercial properties at night and stole property – offences committed over 8 months – efficient and clearly organised – mid-range offences Intellectual disability |

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| 18. | Avery (18, 20) [2015] NSWCCA 50 | s.112(2) s.112(2) s.154A(1)(b) – carried in conveyance | In company | PG (45% plea and assist) | 13m NPP 9m 3y 10m NPP 2y FT 6m <u>Total:</u> 4y 4m NPP 2y 6m | AD | Similar | SNPP 5 years With 2 co-offenders broke into club through glass doors and stole alcohol – two years later forced entry into residential home with 3 males in early hours of morning – male occupant assaulted until unconscious by co-offender – joint criminal enterprise Aboriginal with deprived background |
| 19. | A103 [2015] NSWCCA 210 | 4 x s 112(2) Sched: 15 offences | In company | PG (40% plea and assist)) | 10y NPP 7y | AA 6y NPP 4y | | SNPP 5 years With number of other offenders broke into licensed premises, usually by smashing or forcing open door or glass panel - offenders worked together to remove cigarette machines, automatic teller machines and a TAB machine - used stolen vehicles which were subsequently damaged or destroyed - amount of property stolen substantial -significant damage caused. Manifestly excessive - offences committed at night when relevant premises were closed and did not involve violence against any person. |
| 20. | Hoskins (36) [2015] NSWCCA 245 | 2 x s 112(2) Sched: 4 x BES Larceny | In company | PG (40% with assist) | 5y NPP 2y 6m | AA 4y NPP 2y | Sexual assault - attempted robbery - violence offences - breach AVO - most offences committed as a juvenile | SNPP 5 years With co-offender broke into funeral parlour stealing television – also broke into home stealing television and other items. Aboriginal background – drug abuse |

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| 21. | Caldwell [2016] NSWCCA 55 | s.112(2) s.112(2) s.112(2) AR Drive stolen conveyance Sched: 3 offences | in company in company in company | PG (25%) | <u>Indicative</u> 5y 3m NPP 3y 7m 4y 6m NPP 3y 2m 3y 5m NPP 2y 4m 4y 3m NPP 2y 11m 18m <u>Aggregate</u> 6y 3m NPP 3y 8m | Crown AA <u>Indicative</u> 5y 3m NPP 3y 7m 4y 6m NPP 3y 2m 4y 6m NPP 3y 4y 3m NPP 2y 11m 18m <u>Aggregate</u> 10y NPP 6y | lengthy record including BES and robbery – breached conditional liberty | SNPP 5 years At 11.00am involved in robbery at bank in city street – drove car and waited while two men entered bank using sledgehammer to smash window - \$42,794 stolen – one month later involved in robbery of supermarket late at night – waited in car while two men smashed door with sledgehammer and threatened staff - \$43,000 taken – waited in car while two men robbed bank of \$350 – car driven on to footpath reversing quickly - waited in car while two men robbed credit union – smashed door with sledgehammer and threatened employee – stole \$38,620 – car used a stolen vehicle – degree of planning – disregard to public safety Aboriginal – history of alcohol and drug abuse – Fernando applied |
| 22. | Carter [2018] NSWCCA 138 | s.112(2) 2 x s.112(2) 2 x s.112(2) 3 x s.112(2) s.113(2) Dispose stolen property Participate in criminal group Sched: 8 x s.112(2) | | PG (25%) | <u>Aggregate</u> 6y NPP 3y | 3y 2y 9m 2y 18m 12m 18m 12m <u>Aggregate</u> 5y NPP 2y 6m | nil | SNPP 5 years Group of offenders targeted schools – researched location of schools then broke in at night stealing electronic equipment – targeted apple products and sold online – offences committed over five months – s.113(2) offence: broke into service station and stole cigarettes Assaulted in custody – hardship on family where two brothers with autism – good prospects of rehabilitation |

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| 23. | Fitzgerald (29) [2018] NSWCCA 170 | 2 x s.112(2) s.112(2) Sched: possess cannabis | in company | PG (25%) | FT 11m 23m NPP 12m (all concurrent) | AD | larceny and motor vehicle offences – breached two bonds | SNPP 5 years Female with male partner broke into nursery on three separate nights – stole plants and equipment – targeted plants – significant degree of planning – low-mid range – small amount of cannabis found at house Difficult background – some evidence of rehabilitation |
| 24. | Twaddell (26) [2019] NSWCCA 116 | s.112(2) 2 x s.112(1) Sched: 3 offences | in company | PG (25%) | 4y NPP 2y 6m 3y <u>Aggregate</u> 5y 6m NPP 3y | AA 3y 6m NPP 2y 2y 6m <u>Aggregate:</u> 4y 6m NPP 2y 9m | bad record – breached bond | SNPP 5 years Broke into wine bar in company and stole money and alcohol – on two separate occasions broke into charity shop and stole money – previously a volunteer and knew where key to safe placed – below mid-range History of drug abuse – intellectual disability |
| 25. | Johan (40) [2019] NSWCCA 126 | 4 x s.112(2) Sched: 3 x s.113(2) | | PG (25%) | <u>Aggregate</u> 6y 9m NPP 5y | AA <u>Aggregate</u> 5y 8m NPP 4y 3m | | SNPP 5 years Part of joint criminal enterprise – with 3 co- offenders broke into eight homes - objective seriousness just below middle of range Contribution - prospects of rehabilitation reasonable – no drug addiction |
| 26. | Layt (49) [2020] NSWCCA 231 | 3 x s.112(2) s.166 Certificate 4 x intimidation Assault Larceny Sched: s.112(2) | Knowing person present | PG | <u>Aggregate</u> 7y NPP 5y | AD | AOABH, drugs, assault, resist police, malicious damage. | SNPP 5 years Repeatedly entered home of victim / ex-partner – assaulted victim - context of domestic violence offences. |

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| 27. | Mendoza (28) [2020] NSWCCA 254 | s.112(2) – BE and damage prop s.112(2) - BES s.112(2) – BES 4 x s.112(1) BES Make false statement Proceeds of crime offence Sched: 5 offences | In company In company In company | PG (25%) | 3y 4m NPP 2y 3y NPP 1y 10m 3y 3m NPP 2y 2m 2y 6m - 4y 9m 18m <u>Total:</u> 8y NPP 4y 9m | AD | Record for similar offences in Chile | SNPP 5 years Made false declaration as to address in Australia on arrival from Chile to avoid detection while committing offences – part of criminal group who broke into homes and stole property and cash – sent \$8,850 back to Chile – found in possession of large amounts of property upon arrest - broke into KFC store and caused damage attempting to open safe Good prospects of rehabilitation On appeal: parity issue |
| 28. | Halloway (22-23) [2020] NSWCCA 292 | s.112(2) – BES Take and drive conveyance 2 x AOABH s.112(2) – BES Sched: s.33B(1)(a) | In company In company | VG PG (25%) | <u>Indicative:</u> 6y NPP 4y 20m 18m 5y NPP 3y 9m <u>Aggregate:</u> 8y NPP 5y 4m | AA <u>Indicative:</u> 4y 6m NPP 3y 15m 15m 3y 9m NPP 2y 6m <u>Aggregate:</u> 6y NPP 4y | Lengthy – breached conditional liberty | SNPP 5 years One of three men who entered house in early hours of morning – co-offenders went upstairs for jewellery – confronted by occupants and adult female and daughter struck – offender found keys and took car – ten months later found by police officer leaving house – jewellery recovered – threatened police officer with crowbar – first offences slightly above mid-range – second offences slightly below mid-range Mental health issues and drug addiction On appeal: error in finding multiple offences aggravated offending – greater weight placed on subjective factors |

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| 29. | Dawson (39) [2021] NSWCCA 53 | 2 x s.112(2) – Intimidation Sched: Assault s.166 Cert: Resist police | In company | PG (25%) | <u>Total:</u> 4y 1m NPP 2y 7m | AD | Lengthy. Possession drugs, damage property, assault, robbery armed with dangerous weapon, destruction of property, alcohol related offences. On parole. | SNPP 5 years Sought revenge for alleged punch to chest of female co-offender – with co-offender threatened victims who lived in apartments below applicant – first victim: forced way into apartment; punched and made threat he would kill first victim; took hold by beard and pulled out clump of hair – second victim: kicked and damaged front door, made verbal threats. Co-offender instigated violence, however, applicant was aggressor and implementer of physical violence – co-offender sought to remove applicant once he became physically violent. Substance and alcohol abuse – ADHD – special circumstances linked to risk of institutionalisation. |
| 30. | Kane (24) [2021] NSWCCA 250 | s.113(2) s.112(2) s.112(2) Sched: 2 x s.112(2) s.154A(1)(b) | In company | PG (25%) | 2y 2y 9m 3y 3m <u>Aggregate:</u> 4y NPP 2y 8m | AD | Breached parole | SNPP 5 years With co-offender broke into five commercial premises at night and stole small amounts of property from four – used stolen car Difficult childhood – extensive substance abuse – domestic violence – foster care – sexual abuse – loss of older brother in car accident – some mental health issues impacting custodial conditions – released to parole five days before offending On appeal: no error |
| 31. | Flick (18) [2023] NSWCCA 197 | 6 x s.112(2) s.114(1)(d) s.60A(1) s.195(1)(b) Sched: 6 x steal motor vehicle (s.154F) | Knew persons inside, armed with weapon | PG (25%) | <u>Aggregate:</u> 9y NPP 5y | AA <u>Aggregate:</u> 8y 9m NPP 4y 10m | Agg BE, assault. On conditional liberty. | SNPP 5 years Offences over period of 16 days – alone or with co-offenders broke into number of houses taking car keys and other items – stole and drove off in owners' luxury cars (Porsche, BMW, Mercedes) – armed with knife – occupants at home on occasion. Multiple environmental risk factors towards criminal offending in formative childhood. CCA: SJ erred in finding offence aggravated by use / threaten weapon or being in company in respect of certain offences. |

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