

# CASE NOTES

Gorey v Winzar

Supreme Court No. JA14/2001

Judgment of Martin CJ delivered 4 April 2001

## CRIMINAL LAW - MANDATORY SENTENCING - MITIGATING CIRCUMSTANCES

On the evening of 14 July 1998 in Alice Springs, the appellant was given by an unknown person a \$50 jacket which had a short time earlier been stolen from a motor vehicle. He was then 18 years of age, intoxicated, unemployed and without prior convictions. He put the jacket on and admitted to Police a short time later that he had been told that the jacket was stolen. The appellant pleaded guilty to being in possession of property reasonably suspected of being stolen or unlawfully obtained.

The magistrate considered s78A(6C) of the *Sentencing Act* but imposed a

mandatory 14 day sentence, holding that the offence was not trivial and that there were no mitigating circumstances because the appellant was intoxicated.

### HELD

1. Appeal allowed; 14 day sentence set aside; appellant discharged.

In discharging the appellant, Martin CJ took account of the fact that the appellant spent 12 days in custody, on remand for this matter alone, prior to being sentenced in the Court of Summary Jurisdiction.

His Honour accepted, as mitigating circumstances significantly reducing the appellant's blameworthiness, the unplanned nature of the offence, the fact that the jacket was received for personal use rather than profit, the appellant's age and the fact that the appellant did not disguise or damage the jacket. The other preconditions for the application of s78A(6C) were also found to have been made out by the appellant.



Mark Hunter

Martin CJ noted that intoxication does not under the section exclude the possibility of *any* mitigating circumstances. His Honour further observed that, under the section, blameworthiness and aberrant offending behaviour are distinct concepts, each to be assessed by reference to the mitigating circumstances.

### Appearances

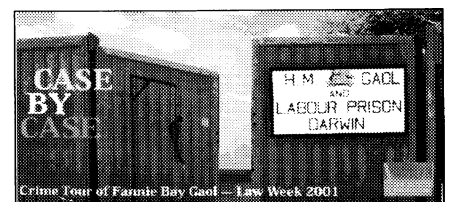
Appellant - Conidi / CAALAS

Respondent - Noble / DPP

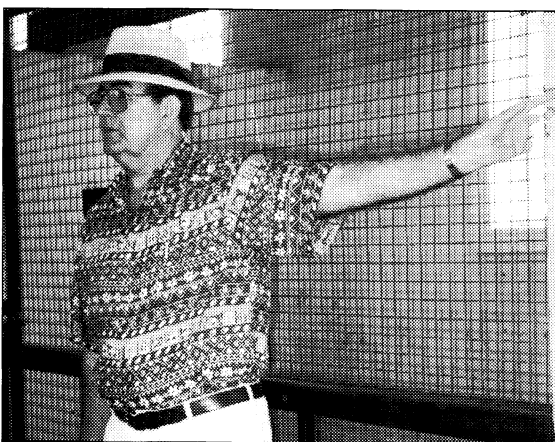
## CASE BY CASE CRIME TOURS A HIT

About eighty people joined the Case by Case Crime Tours of Fannie Bay Gaol during Law Week this year to hear local historian Dr Bill Wilson talk about the gaol's more famous inhabitants who were imprisoned within its walls and the conditions they endured.

It is the second year the crime tours have been hosted by the Law Society during Law Week, and they have proved to be immensely popular amongst Territorians and tourists to the Top End.



Crime Tour of Fannie Bay Gaol - Law Week 2001



Dr Bill Wilson in front of the gallows describing the last hanging at Fannie bay Gaol



Tour participants experiencing the solitary confinement quarters where mentally disabled people were often kept at the Gaol