

15.1/83**SUPREME COURT OF SOUTH AUSTRALIA (CRIMINAL APPEALS)*****R v SEWELL and WALSH*****Mitchell, Zelling and Cox JJ****23 December 1981 — (1981) 29 SASR 12; (1981) 5 A Crim R 204****SENTENCING – ASSAULT OCCASIONING ACTUAL BODILY HARM – ACCUSED ACTED UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUG – EFFECT ON SENTENCING.**

The South Australian Supreme Court (Criminal Appeals) made observations as to the effect upon sentencing for assault occasioning actual bodily harm, of the fact that the offender acted under the influence of intoxicating liquor or drug.

ZELLING J: (at p15) said:

"... in crimes of violence one may have some hope of putting rational arguments to deter a sober could-be assailant. That chance is much diminished if the assailant is under the influence of drink or drugs. Certainly an assault by a person under such influence is more frightening to the average person. Bray CJ said in *Birch v Fitzgerald* (1975) 11 SASR 114 at pp116-117:

"Nevertheless there are offences in which, as it seems to me, the deterrent purpose of punishment must take priority. When people act under the influence of liquor, passion, anger or the like so as to constitute themselves a physical danger or potential physical danger to other citizens it may well be that a sentence of imprisonment will be appropriate, even in the case of a first offender of good character, in order to impress on the community at large that such behaviour will not be tolerated."

I entirely agree with respect with the observations of Bray CJ in this matter..."
