

12/76

SUPREME COURT OF SOUTH AUSTRALIA

BRATZ v SAMUELS

Mitchell J

13 November 1975 — (1976) 69 LSJS 26

SENTENCING – MOTOR TRAFFIC – DRIVING UNDER THE INFLUENCE – MITIGATION OF SENTENCE – DEFENDANT CLAIMED TO HAVE BEEN UNDER STRESS AT THE TIME OF THE COMMISSION OF THE OFFENCE – WHETHER PERIOD OF DISQUALIFICATION SHOULD HAVE BEEN REDUCED – WHETHER FINE SHOULD HAVE BEEN REDUCED.

The appellant was convicted of driving under the influence and sentenced to a fine of \$180 and a period of two years' disqualification. He had pleaded in mitigation of the penalty that at the time he was under considerable matrimonial stress. This was accepted by the magistrate. He appealed against the penalty on the grounds that the magistrate had not taken into account this mitigating factor.

HELD: (1) As there was no indication that the stresses which had operated upon the appellant had ceased to operate after the commission of the offence, the magistrate had not erred in not regarding the stress as being a reason to reduce the period of disqualification. In the circumstances a substantial period was required for the protection of the public, and the appeal against the length of the disqualification should be dismissed.

(2) The stress and the acceptance of that stress as being a reason for the appellant's over-indulgence in alcohol and his driving in that condition, should however have called for a reduction in the monetary penalty. The magistrate did not appear to have so treated it, and the monetary penalty should be reduced to \$120.