**IN THE GENERAL DIVISION OF**
**THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2023] SGHC 354**

Magistrate's Appeal No 9066 of 2023

Between

Lee Shin Nan (Li Xunnan)

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Motion No 48 of 2023

Between

Lee Shin Nan (Li Xunnan)

… *Applicant*

And

Public Prosecutor

… *Respondent*



Version No 1: 18 Dec 2023 (18:23 hrs)

Criminal Motion No 56 of 2023

Between

Lee Shin Nan (Li Xunnan)

… *Applicant*

And

Public Prosecutor

… *Respondent*

In the matter of District Arrest Case No 917190 of 2022

Between

Public Prosecutor

And

Lee Shin Nan (Li Xunnan)

---

# GROUNDS OF DECISION

---

[Criminal Procedure and Sentencing — Sentencing — Principles]
[Criminal Procedure and Sentencing — Sentencing — Appeals]



Version No 1: 18 Dec 2023 (18:23 hrs)

**This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.**

# Lee Shin Nan
# v
# Public Prosecutor

**[2023] SGHC 354**

General Division of the High Court — Magistrate's Appeal No 9066 of 2023
Sundaresh Menon CJ
21 September 2023

18 December 2023

**Sundaresh Menon CJ:**

## Introduction

1 HC/MA 9066/2023/01 ("MA 9066") was an appeal against the sentence imposed on the appellant, Mr Lee Shin Nan ("Mr Lee") in DAC-917190-2022 ("DAC-917190"). Mr Lee pleaded guilty to a charge of driving while under the influence of drink pursuant to s 67(1)(*b*) of the Road Traffic Act 1961 (2020 Rev Ed) ("RTA") punishable under s 67(1) read with ss 67(2A) and 67A(1)(*a*) of the RTA. He was sentenced by the district judge (the "DJ") to eight weeks' imprisonment and a fine of $10,000, as well as a disqualification from holding or obtaining all classes of driving licences for life (the "lifetime disqualification order"). In MA 9066, Mr Lee appealed against the imprisonment term and the lifetime disqualification order that was imposed upon him.

2 As this was Mr Lee's third conviction under s 67(1)(*b*) of the RTA, the question of how sentencing should be approached for *repeat* offenders under s 67(1) of the RTA presented itself for my determination. This issue arose because the applicable law in this and some related areas dealt with under the Road Traffic Act (Cap 276, 2004 Rev Ed) had been amended by Parliament in 2019. Following the statutory amendments, in *Rafael Voltaire Alzate v Public Prosecutor* [2022] 3 SLR 993 ("*Rafael Voltaire*"), I set down a sentencing framework that applies to *first-time* drink driving offenders (the "*Rafael Voltaire* Framework"). However, the sentencing approach for *repeat* drink driving offences has not been settled and this needed to be addressed so that sentencing in respect of such offences may be guided by a suitable framework that would help secure a principled and consistent approach.

3 MA 9066 was heard on 21 September 2023. I dismissed the appeal and affirmed the sentence imposed by the DJ. I now set out the full grounds for my decision. I also explain my sentencing approach for repeat drink driving offences, which was developed in the light of the parties' submissions.

**The material facts**

4 The facts were not in dispute as Mr Lee admitted to the Statement of Facts for DAC-917190, without any qualification.

5 On 25 June 2022 from 11pm to about midnight, Mr Lee consumed four small glasses of beer at a coffeeshop along Serangoon Road. Around midnight, he received a call from an unidentified person asking that he shift his vehicle. He went to his car intending to drive it to the nearest carpark.

6 Shortly thereafter, at about 12.02am on 26 June 2022, he was stopped at a police roadblock while driving along Petain Road. The police administered a



Version No 1: 18 Dec 2023 (18:23 hrs)

breathalyser test which Mr Lee failed, indicating that he had been driving after consuming more than the permitted quantity of alcohol.

7 Mr Lee was arrested and escorted to the Traffic Police Headquarters, where at about 1.01am, a Breath Analysing Device test was administered. This revealed that the proportion of alcohol in Mr Lee's breath was 89µg of alcohol per 100ml of breath. This was well in excess of the prescribed permitted limit of 35µg of alcohol per 100ml of breath.

8 Mr Lee was charged as follows:

> You,
>
> …
>
> are charged that you, on 26 June 2022, at about 12.02 a.m., along Petain Road, Singapore, whilst driving motorcar SLW9060D, did have so much alcohol in your body that the proportion of it in your breath, to wit, not less than 89 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit of 35 microgrammes of alcohol in 100 millilitres of breath, and you have thereby committed an offence under Section 67(1)(b) of the Road Traffic Act 1961.
>
> And further, that you, before the committing of the said offence, that is to say that you,
>
> a) On 19 March 2009 had been convicted at Court 21 of Singapore, for an offence of Driving vehicle when proportion of alcohol in body exceeds prescribed limit under Section 67(1)(b) of the Road Traffic Act, Chapter 276 vide report no DAC/16389/09
>
> b) On 4 April 2012 had been convicted at the Subordinate Court of Singapore, for an offence of Driving vehicle when proportion of alcohol in body exceeds prescribed limit under Section 67(1)(b) of the Road Traffic Act, Chapter 276 vide report no DAC-1064-2012
>
> which convictions have not been set aside, and you are now liable for punishable [*sic*] under Section 67(1) and read with Section 67(2A) and Section 67A(1)(a) of the Road Traffic Act 1961.
>
> [emphasis in original omitted]



Version No 1: 18 Dec 2023 (18:23 hrs)

9 Mr Lee pleaded guilty to the charge and was sentenced to eight weeks' imprisonment with effect from 21 April 2023 and a fine of $10,000 (in default one month's imprisonment). He was also disqualified from holding or obtaining all classes of driving licences for life with effect from 16 March 2023 (*Public Prosecutor v Lee Shin Nan (Li Xunnan)* [2023] SGDC 66 ("*GD*") at [30]–[33]). This was Mr Lee's third conviction under s 67(1)(*b*) of the RTA.

## The law on drink driving offences

### *The relevant statutory provisions*

10 Section 67(1) of the RTA states:

> **Driving while under influence of drink or drugs**
>
> **67.**—(1) Any person who, when driving or attempting to drive a motor vehicle on a road or other public place —
>
> (*a*) is unfit to drive in that he or she is under the influence of drink or of a drug or an intoxicating substance to such an extent as to be incapable of having proper control of the vehicle; or
>
> (*b*) has so much alcohol in his or her body that the proportion of it in his or her breath or blood exceeds the prescribed limit,
>
> shall be guilty of an offence and shall be liable on conviction to a fine of not less than $2,000 and not more than $10,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a second or subsequent conviction, to a fine of not less than $5,000 and not more than $20,000 and to imprisonment for a term not exceeding 2 years.

11 Section 67(2) of the RTA prescribes the terms of disqualification from driving for persons convicted under s 67(1):

> (2) Subject to sections 64(2D) and (2E) and 65(6) and (7), a court convicting a person for an offence under this section in the following cases is to, unless the court for special reasons thinks fit to not order or to order otherwise, order that the person be disqualified from holding or obtaining a driving licence for a period of not less than the specified period corresponding to



Version No 1: 18 Dec 2023 (18:23 hrs)

> that case, starting on the date of the person's conviction or, where the person is sentenced to imprisonment, on the date of the person's release from prison:
>
> (*a*) for a first offender — 2 years;
>
> (*b*) for a repeat offender — 5 years.

12 Further, s 67(2A) of the RTA provides that unless the court "for special reasons thinks fit to order a shorter period of disqualification", the court is to order that a person convicted on two or more earlier occasions of an offence under ss 67(1), 68 or 67(1) as in force immediately before 1 November 2019, be "disqualified from holding or obtaining a driving licence for life starting on the date of the person's conviction".

13 The RTA also provides for enhanced penalties to be imposed under s 67A where a person has been convicted of two or more "specified offences" and is thereafter again convicted of any one of the "specified offences". The offence of driving under the influence of drink or drugs under s 67(1) of the RTA is a "specified offence" (see s 67A(3) of the RTA). In such cases, s 67A(1) of the RTA gives the court "the power to impose a punishment in excess of that prescribed for the conviction as follows":

> (*a*) where the court is satisfied, by reason of the person's previous convictions or the person's antecedents, that it is expedient for the protection of the public or with the view to the prevention of further commission of any such offence that a punishment in excess of that prescribed for such a conviction should be awarded, then the court may punish the offender with punishment not exceeding 3 times the amount of punishment to which he or she would otherwise have been liable for the conviction except that where imprisonment is imposed it shall not exceed 10 years;
>
> (*b*) despite sections 303 and 309 of the Criminal Procedure Code 2010, if —
>
> (i) the offender causes any serious injury or death to another person when committing —



Version No 1: 18 Dec 2023 (18:23 hrs)

(A) whether before, on or after 1 November 2019 the offence under section 43(4), 47(5), 47C(7), 63(4), 64(1) or 67(1);

(B) on or after 1 November 2019, the offence under section 65(1) or 68(1); or

(C) the offence under section 43(4), 64(1), 66(1) or 67(1) as in force immediately before 1 November 2019; or

(ii) in the case of an offender under section 70(4), the offender had, in driving or attempting to drive a motor vehicle at the time of any accident leading to the offender's arrest under section 69(5), caused any serious injury or death to another person,

the court may also punish the offender, subject to sections 325(1) and 330(1) of the Criminal Procedure Code 2010, with caning with not more than 6 strokes.

### *The Rafael Voltaire Framework for first-time offences under s 67(1) of the RTA*

14 The *Rafael Voltaire* Framework calibrates the sentences for first-time offenders under s 67(1) of the RTA according to four categories of alcohol levels (hereafter referred to as the "Alcohol Level Bands") detected in the offender's breath (*Rafael Voltaire* at [31]):

| **Level of alcohol** (µg per 100ml of breath) | **Range of fines** | **Range of disqualification** |
|---|---|---|
| 36–54 | $2,000–$4,000 | 24–30 months |
| 55–69 | $4,000–$6,000 | 30–36 months |
| 70–89 | $6,000–$8,000 | 36–48 months |
| ≥ 90 | $8,000–$10,000 | 48–60 months (or longer) |

15 The *Rafael Voltaire* Framework applies where no harm to person or property has eventuated, and it provides neutral starting points based on the relative seriousness of the offence having regard only to the alcohol level in the offender's body. As such, regard should still be had to any aggravating or



Version No 1: 18 Dec 2023 (18:23 hrs)

mitigating circumstances, the former of which could result in the custodial threshold being crossed (*Rafael Voltaire* at [32]–[33]).

**The decision below**

16 In arriving at the sentence imposed, the DJ considered offence-specific factors such as the level of alcohol detected in Mr Lee, which was at the second highest Alcohol Level Band of the *Rafael Voltaire* Framework, as well as the fact that there was no injury or property damage. She took the view that "[Mr Lee's] culpability was [at the] lower end of moderate and the level of harm was low". Based on these factors, she determined that the starting point was a sentence of 12 weeks' imprisonment and a fine of at least $15,000. However, as Mr Lee had pleaded guilty and had reoffended ten years and two months after his last conviction, the DJ calibrated the sentence downwards to eight weeks' imprisonment and a fine of $10,000 to fulfil the objectives of punishment, protection of the public and deterrence. The fine of $10,000 represented an uplift from the maximum fine of $8,000 under the third Alcohol Level Band of the *Rafael Voltaire* Framework (*GD* at [30]).

17 Applying s 67(2A) of the RTA, the DJ noted that no special reasons relating to the offence had been provided by the Defence that would warrant the imposition of a shorter period of disqualification, and that it was in line with parliamentary intention and the public interest to remove such a driver from the roads. She hence considered a disqualification for life from the date of conviction to be just and appropriate in the circumstances (*GD* at [31]–[33]).

**The appeal in MA 9066**

18 Mr Lee paid the fine but appealed in the hope of having the term of imprisonment and the lifetime disqualification order reversed or reduced.



Version No 1: 18 Dec 2023 (18:23 hrs)

19 Mr Lee also filed two criminal motions seeking permission to adduce further evidence at the hearing of MA 9066. However, the further evidence he had sought to adduce was not relevant and did not add to the existing evidence or to his case in any way. By HC/CM 48/2023, Mr Lee sought to adduce evidence to the effect that he had on previous occasions engaged valets to drive him home and had engaged a valet, Ms Janice Chua ("Ms Chua"), on the night of 25 June 2022. In HC/CM 56/2023 ("CM 56"), Mr Lee sought to adduce evidence that on the night of 25 June 2022, a friend of his had driven past him and had seen him looking shaken and anxious, but Mr Lee had told his friend to carry on.

20 The further evidence was intended to support Mr Lee's updated account of events, which was that he had all along intended that Ms Chua would drive him home once he was ready. However, when he arrived at his destination, he had parked his car in a way that blocked another car. When he was subsequently confronted by the irate owner of the blocked car (the "Stranger"), Mr Lee became afraid and decided to drive to a nearby carpark. Unfortunately, he was stopped at a police roadblock while he was on his way to the carpark.

21 To establish his intended engagement of Ms Chua as his valet on the night of the offence, Mr Lee furnished screenshots of a WhatsApp conversation between Ms Chua and himself between 9.48pm and 10.37pm on 25 June 2022, where he had asked her if she would be able to drive him home that night. When Ms Chua asked him what time she should do so, Mr Lee had replied saying "let you know in a while" but no confirmation was ever provided. The evidence did not show that he had in fact engaged her services as a valet that night. More importantly, while the evidence, taken at its highest, might have shown that Mr Lee had intended to engage a valet to get home at the end of his planned outing, this was not the issue at hand. It was common ground that when Mr Lee



Version No 1: 18 Dec 2023 (18:23 hrs)

did drive to the carpark, he did not engage and did not even consider engaging a valet. Instead, he drove the car himself and was stopped at the police roadblock while doing so.

22 Further, the evidence in CM 56 did not establish that Mr Lee had been confronted by the Stranger whose car he had blocked, as Mr Lee's friend did not witness the alleged confrontation. In my judgment, there was nothing in any of the further evidence sought to be adduced in either criminal motion to support Mr Lee's account of events. Neither was the further evidence of any relevance to the offence at hand or to any part of Mr Lee's sentence. Notably, when he was queried, counsel for Mr Lee was unable to provide any explanation as to how the further evidence might be of any relevance at all to Mr Lee's case on appeal.

**Submissions of the Young Independent Counsel**

23 Because I was faced with the prospect of developing a sentencing framework for repeat drink driving offences, I appointed a Young Independent Counsel ("YIC"), Ms Tai Ai Lin ("Ms Tai"), to assist me on the following question:

> What would be an appropriate sentencing framework for repeat drink driving offences punishable under s 67(1) of the Road Traffic Act 1961? Without limiting the generality of the question, please consider:
>
> > (a) The sentencing framework applicable to first-time offenders in *Rafael Voltaire Alzate v PP* [2022] 3 SLR 993 and the applicability of that sentencing framework to repeat offenders.
> >
> > (b) How the Court should sentence repeat offenders with two or more previous convictions under s 67(1)(*b*) of the Road Traffic Act 1961.



Version No 1: 18 Dec 2023 (18:23 hrs)

> (c) How the Court should sentence repeat offenders who are liable for enhanced penalties under s 67A(1)(*a*) of the Road Traffic Act 1961.

24 I am deeply grateful to Ms Tai for her assistance. Ms Tai submitted that the *Rafael Voltaire* Framework was not directly applicable to repeat offenders given that the applicable sentencing and disqualification ranges laid down there were based on the prescribed ranges for first-time offences under s 67(1) read with s 67(2) which differed from the ranges for repeat offences under s 67(1) read with s 67(2)(*b*) of the RTA.

25 Therefore, Ms Tai proposed that in place of the *Rafael Voltaire* Framework, the court should apply a three-step approach that would "[interpose] an indicative uplift within the analysis of the *Rafael Voltaire* Framework" (noting that a somewhat similar approach had been taken in *Public Prosecutor v Lai Teck Guan* [2018] 5 SLR 852 in the context of sentencing repeat offenders in possession of diamorphine for the purpose of trafficking under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed)). Her revised framework (the "YIC's Framework") consisted of the following steps:

> (a) First, derive the *indicative starting point sentence* for a notional first-time offender based on the offender's Alcohol Level Band.
>
> (b) Second, apply a *suitable uplift* within the sentencing range on account of the fact that this is a repeat offence, so as to derive an indicative sentence having due regard to the circumstances of the repeat offence.



Version No 1: 18 Dec 2023 (18:23 hrs)

(c) Third, *adjust* that indicative starting point based on the offender's culpability and the aggravating or mitigating factors which had not been taken into account in the analysis up to that stage.

26 Ms Tai also submitted that the starting fine proposed for each Alcohol Level Band should begin $1,000 above and end $1,000 below the statutory minimum and maximum fines for first-time offences under the RTA. She further submitted that the range for the disqualification period should start at a point six months more than the statutory minimum disqualification period for first-time offences, and end at a point six months less than the minimum statutory disqualification periods for repeat offences. This was so as to provide the court with space to adjust the sentence to account for aggravating or mitigating factors.

27 In respect of the indicative uplift at the second step of the YIC's Framework, Ms Tai submitted that the court should determine the extent of the uplift having regard to the *circumstances of the reoffending*, including the nature, timing and duration of the previous offence(s) and the type and duration of sentence imposed for the previous offence(s).

28 As for the term of imprisonment to be imposed, Ms Tai submitted that the range of sentences for imprisonment should tend to be at the lower end of the statutory range of sentences, given that the YIC's Framework had been designed for circumstances where no harm to person or property has eventuated. Where the offender had caused harm to a person or property, Ms Tai submitted that the gravity of the offence would be higher and would be reflected primarily in the form of an increased imprisonment term.



Version No 1: 18 Dec 2023 (18:23 hrs)

29 Finally, at the third step concerning the adjustment of the sentence to account for aggravating and mitigating factors, Ms Tai submitted that the court should also have regard to the offender's antecedents. Where the offender has two or more prior convictions under ss 67(1) and 68 of the RTA, the court should order disqualification for life, unless for special reasons, it thinks fit to order a shorter period of disqualification. The court should also consider at this step whether the offender has been convicted of two or more of the "specified offences" under s 67A(3)(*a*) of the RTA. If so, the court should determine whether or how it should exercise its discretion to impose enhanced penalties on the repeat offender. Where s 67A(1)(*a*) is applicable, the court should consider whether there is a need to further enhance the applicable penalties in order to deter the offender from reoffending, but should balance these considerations of specific deterrence against other sentencing principles such as proportionality, so as to derive a suitable aggregate sentence for the repeat offender.

**The parties' submissions**

***Appellant's submissions***

30 Counsel for Mr Lee submitted that the disqualification order should be set aside because Mr Lee had no real choice but to drive on the night in question. In essence, it was said that Mr Lee had been compelled to move his car to the nearest carpark to avoid a confrontation with the Stranger whose car he had blocked, and that he intended thereafter to call his valet. Moreover, no accident had occurred and no damage to any person or property had been caused. Further, Mr Lee had been capable of handling the vehicle, did not pose a danger to the public, and had only driven for a short distance. Therefore, he submitted that



Version No 1: 18 Dec 2023 (18:23 hrs)

the appropriate imprisonment term should be between four to six weeks instead of eight weeks.

31 No submissions were made on Mr Lee's behalf with respect to sentencing guidelines or the appropriateness of a framework for repeat drink driving offences.

***Respondent's submissions***

32 In relation to the sentencing framework for repeat drink driving offences punishable under s 67(1) of the RTA, the Prosecution agreed with Ms Tai that the *Rafael Voltaire* Framework was not applicable because it did not capture the full spectrum of sentences available in the case of *repeat* offences. However, the Prosecution did not agree with Ms Tai's proposed approach in the YIC's Framework principally because it was not helpful in determining the appropriate term of mandatory imprisonment.

33 The Prosecution instead proposed an alternative framework for repeat offences (the "Prosecution's Framework"), which would apply only to offenders who claimed trial and where no harm to person or property was caused.

34 Unlike the YIC's Framework, the Prosecution's Framework did not begin by determining indicative starting sentences which would apply if the offence had been committed for the first time. Instead, it set out a series of sentencing ranges directly applicable to repeat offenders based on their Alcohol Level Bands. The Prosecution's Framework essentially proposed separate sets of sentencing ranges to be applied to (a) second-time offenders and (b) offenders with two or more previous convictions punishable under ss 67(1)(*b*), 67(2A) and 67A(1) of the RTA (referred to as "subsequent offenders") where the s 67A



Version No 1: 18 Dec 2023 (18:23 hrs)

threshold had not been crossed, and (c) set out guidelines for the sentencing of subsequent offenders where the 67A threshold had been crossed.

35 For second-time offenders, the proposed sentencing ranges spanned the range of possible sentences available but stopped short of the statutory maximum sentence to allow the sentencing judge room to adjust the sentence to reflect the offender's culpability and the presence of aggravating or mitigating circumstances.

36 The Prosecution's Framework also proposed a separate set of sentencing ranges directly applicable to subsequent offenders, where the s 67A threshold had not been crossed. Again, these sentencing ranges were pegged to the offender's Alcohol Level Band. The imprisonment term to be imposed would be based on either a minimum number of weeks or a multiplier of twice the sentence for that offender's last conviction under s 67(1), whichever was higher. The offender would also receive a lifetime disqualification from holding or obtaining a driving licence.

37 For subsequent offenders, the Prosecution's position was that the enhanced penalty provision under s 67A of the RTA may be invoked by the court taking into account the following non-exhaustive considerations, namely whether:

(a) the offence at hand is the offender's fourth or subsequent conviction, which would demonstrate that he is a habitual offender;

(b) further, since a disqualification for life is the presumptive penalty for a third-time offender, such a person would typically



Version No 1: 18 Dec 2023 (18:23 hrs)

have driven despite being under a lifetime disqualification and this should weigh in the analysis; and

(c) if the offender has a long list of driving antecedents, which would show a pattern of persistent delinquent driving despite a lifetime disqualification.

38 The Prosecution proposed the following guidance for the court where s 67A of the RTA is invoked:

(a) *Step 1*: The court should double the sentence (both fine and imprisonment) imposed for the offender's last conviction under s 67 as a starting point.

(b) *Step 2*: The court should then adjust the sentence based on the aggravating and mitigating factors for the current conviction.

39 Finally, on the facts of MA 9066 itself, the Prosecution submitted that the sentence was not manifestly excessive and that the DJ had imposed a fair sentence commensurate with Mr Lee's culpability and antecedents. The Prosecution submitted that the short distance driven by Mr Lee as well as his account of having been confronted by the Stranger did not constitute special reasons warranting a shorter period of disqualification. Further, Mr Lee's sentence fell within the proposed sentencing range in the Prosecution's Framework (with a downward calibration given that he had pleaded guilty and that his last conviction was more than ten years ago).

**Issues for consideration**

40 The following issues arose for my consideration:



Version No 1: 18 Dec 2023 (18:23 hrs)

(a) What sentencing framework should apply in the case of repeat drink driving offences?

(b) Under what circumstances may the court find that there are special reasons warranting the reduction of a term of disqualification?

(c) When should the enhanced penalty provision under s 67A of the RTA be invoked?

(d) Did the DJ err in imposing the sentence of eight weeks' imprisonment, a fine of $10,000 or in default one month's imprisonment, and the lifetime disqualification order?

**Sentencing framework for repeat drink driving offences**

41 It is common ground that the sentencing ranges provided in the *Rafael Voltaire* Framework can only guide the sentencing of *first-time* drink driving offenders under s 67(1) RTA. This is because an increased range of sentences is prescribed for repeat drink driving offences under ss 67(1) and 67(2)(*b*) of the RTA. A separate sentencing framework is therefore required for repeat drink driving offences under s 67 of the RTA which are subject to higher minimum and maximum fines, mandatory imprisonment and a longer minimum period of disqualification.

42 The need for a consistent and principled approach to sentencing for repeat drink driving offences becomes evident from a survey of the sentencing considerations applied in cases concerning repeat drink driving offences after the 2019 amendments to the RTA came into effect. While Ms Tai submitted that generally consistent sentences had been imposed, it seemed to me that this might be true only of the *outcomes* and not the reasoning or methodology by which



Version No 1: 18 Dec 2023 (18:23 hrs)

the various courts had arrived at these sentences. I formed this impression because different approaches had been taken in relation to how the following factors ought to be considered, namely: (a) the offender's alcohol level; (b) the fact that this was a repeat offence; and (c) the mitigating or aggravating factors specific to the offence and offender. I illustrate this with a few examples.

43 In *Public Prosecutor v Kenneth Tham Wei Cheow* [2023] SGDC 190 (at [15]–[24]) and *Public Prosecutor v Sinnathamby s/o Arumoh* [2022] SGDC 261 (at [7]–[15]), the courts appeared to have taken a holistic approach, considering the circumstances surrounding the offence, the offenders' previous drink driving conviction(s) *together* with the offenders' alcohol levels in assessing the overall gravity of the offence and the aggravating and mitigating factors specific to the offenders for the purpose of sentencing.

44 In contrast, in *Public Prosecutor v Vijayan Mahadevan* [2022] SGDC 52 ("*Vijayan*"), the court determined the starting sentence based on the offender's Alcohol Level Band alone, and then assessed an uplift based on the circumstances of the offence (including the fact that the offender had previously been convicted of the offence of drink driving) (at [69]–[75]).

45 And in *Public Prosecutor v Tan Kok Liang, Shawn* [2023] SGDC 141 the court first considered the offender's Alcohol Level Band and because this fell in the upper end of the lowest Alcohol Level Band, a sentence at the lower end of the sentencing range for repeat offences was excluded (at [83]); the court then moved on to consider the various aggravating and mitigating offence-specific and offender-specific factors (such as the increase in potential harm and whether there were extenuating circumstances that might account for the accused person having driven) (at [85]–[86]).



Version No 1: 18 Dec 2023 (18:23 hrs)

46 Finally, in *Public Prosecutor v Song Chee Kiong* [2023] SGDC 129, an upward calibration was applied to the offender's *previous sentence*. It was only in calibrating the uplift to be applied that the court considered the level of alcohol together with factors such as the damage caused to another vehicle and that the offender had not pleaded guilty. It should be noted, however, that that was a case involving an accident that resulted in property damage (at [92]–[93]).

47 In these circumstances, it was clear to me that a framework would be helpful to bring about a consistent approach to the consideration of the key factors, which in this context included the following:

(a) the alcohol level because this is the primary element of the offence;

(b) the fact that the court is dealing with a repeat offender, and the circumstances relevant to assessing the significance and weight to be placed on the fact of the repetition because this is a key factor for the uplift;

(c) the aggravating and mitigating factors in relation to the offence and the offender; and

(d) the assessment of the mandatory term of imprisonment.

48 It seemed to me that each of these factors needed to be addressed in order to ensure that the sentencing courts remain faithful to all the considerations that are reflected in the legislation. At the same time, it was important to ensure that the framework was structured in a way that would avoid the conflation or impermissible double-counting of any of the various factors at play. I was also mindful of the fact that:



Version No 1: 18 Dec 2023 (18:23 hrs)

(a) When comparing the prescribed range of sentences for first-time and repeat offenders, there was a considerable difference between these ranges. This meant that there was potentially a very substantial scope for an uplift to be applied in the case of a repeat offender as compared to a first offender. I considered it desirable that a structured approach should be applied to guide the calibration of the uplift so as to avoid arbitrary or inconsistent outcomes.

(b) Unlike the case of a first-time offender, for whom a term of imprisonment is at the discretion of the sentencing court, for a repeat offender, this is mandatory. This was quite a different aspect of the penal provision applicable to repeat as opposed to first-time offenders.

49 In developing a framework for repeat drink driving offences, I also noted that the *Rafael Voltaire* Framework was designed to apply to situations where no harm to person or property had eventuated (see *Rafael Voltaire* at [32]). As mentioned above at [15], the *Rafael Voltaire* Framework provides only neutral starting points based solely on the level of alcohol in the offender's body, but recognises that the presence of aggravating circumstances could result in the custodial threshold being crossed even for first-time offenders under s 67(1) of the RTA. A preliminary question therefore arose as to whether and how the framework for repeat offenders should take into account the presence of harm to person or property.

50 This in turn raised the anterior question of whether a first or repeat drink driving charge under s 67 would feature harm to person or property. In my judgment, there is nothing to say that s 67 was drafted to *exclude* cases where there is harm to person or property. On the other hand, ss 64 and 65 of the RTA do make provision for a drink driving offender (in cases where hurt has been



Version No 1: 18 Dec 2023 (18:23 hrs)

caused) to be charged with the offences of reckless or dangerous driving or driving without due care or reasonable consideration respectively. This is done through sub-provisions in ss 64 and 65 that apply to "serious offender[s]", which category includes an offender who is convicted of an offence under s 67 for driving under the influence of alcohol (see s 64(8) of the RTA). At the hearing of this appeal, the Prosecution acknowledged that where a drink driving offender had caused harm, the Prosecution would likely proceed with a charge under ss 64 or 65, though it retains the discretion to proceed just under s 67 of the RTA, even in such cases.

51 In my judgment, it was not necessary to develop a framework that can be applied to repeat offenders under s 67 who have caused harm to person or property because it is unlikely to be the case that such offenders would typically be charged under s 67. Indeed, it did not seem to me to be the case that the primary mischief targeted by s 67 was driving under the influence of drugs or alcohol *and* causing harm to persons or property. In most such cases, the offenders are likely to be prosecuted under ss 64 or 65. I therefore approached the present framework in the same way that I did in the *Rafael Voltaire* Framework by setting neutral starting points based on Alcohol Band Levels that apply in cases where no harm is caused, with adjustments to be made in the light of all the circumstances.

52 That said, I was not entirely in agreement with the starting point sentence and adjustments proposed in the YIC's Framework (see above at [26]–[29]), for two reasons. First, Ms Tai proposed that the starting fine and disqualification period (prior to the application of an uplift and subsequent adjustment) should begin at $3,000 and 30 months respectively, which would be $1,000 and six months above the statutory minimum for first-time offenders. While I took Ms Tai's point that the court must be allowed some leeway to account for



Version No 1: 18 Dec 2023 (18:23 hrs)

mitigating and aggravating factors, I was of the view that the starting sentences should begin at the statutory minimum, in accordance with the legislative intention behind the range prescribed in the RTA.

53 Second, with respect to the uplifts proposed at the second step of the YIC's Framework, it appeared to me that it would be more appropriate to calibrate the term of imprisonment separately from the fine and disqualification and the adjustments made thereto. This is because the *Rafael Voltaire* Framework does not provide guidance on imprisonment terms, which is unsurprising given that a custodial sentence is only mandatory under s 67(1) for repeat offences (see *Public Prosecutor v Lee Soon Lee Vincent* [1998] 3 SLR(R) 84 at [38]). It also bears remembering that the impact of custodial sentences (especially the fact that they deprive one of liberty) cannot be understated (*Xu Yuanchen v Public Prosecutor* [2023] SGHC 217 at [5]). As such, while the approach in the YIC's Framework of applying an uplift to sentences for first-time offenders might be appropriate for the purpose of determining the fine and disqualification to be imposed, I took the view that the term of mandatory imprisonment should be separately determined for repeat offences. I was also not persuaded that the imprisonment term for offences under s 67 should be clustered at the low end of the permitted sentencing range, in the absence of harm or damage to persons or property. In my view, there was no basis for coming to this conclusion.

54 As for the Prosecution's Framework, the Prosecution had proposed sentencing ranges which were directly applicable to second-time offenders and to subsequent offenders (whether the s 67A threshold had been crossed or not) (see above at [33]–[38]). In my judgment, more guidance was required as to how the court should approach factors relating to the *repetition* of the offence,



Version No 1: 18 Dec 2023 (18:23 hrs)

that being a key reason for the imposition of harsher sentences for repeat offences as compared to first-time offences.

55 Further, I was not convinced that the Prosecution was correct to peg the proposed sentences for *subsequent* offenders to their Alcohol Level Bands for their *second* offence. To illustrate, under the Prosecution's Framework, a third-time offender whose second offence was committed when his Alcohol Level Band was at the highest range must be meted an imprisonment term that is at least twice that for his second sentence, even if his alcohol level for the third offence was very low. The anchoring of a subsequent offender's sentence to his previous sentence does not accord with the fact that a primary ingredient for an offence under s 67(1) of the RTA is an offender's alcohol level at the time of the particular offence in question and not his previous one.

56 Moreover, as I will elaborate below (at [84]), since the enhanced penalty under s 67A of the RTA would apply only in limited circumstances, the court's inquiry into its application should be undertaken as a separate inquiry from that with respect to sentencing under s 67 of the RTA.

57 In my judgment, in the light of the foregoing considerations, the sentencing framework for repeat drink driving offences should comprise a four-stage process (the "Repeat Offences Framework"), as follows:

> (a) *Stage 1 – Starting sentence range*: The court should first determine the sentence range for the offence based on the offender's Alcohol Level Band as if the offender were a first-time offender, using the sentencing ranges set out in the *Rafael Voltaire* Framework, and then apply an uplift to the range of the fine and the disqualification period taking into account only the level of alcohol for the present conviction.



Version No 1: 18 Dec 2023 (18:23 hrs)

(b) *Stage 2 – Adjustment on account of the repeated offending behaviour*: The court should pay particular attention to the consideration of those factors that pertain to the repetition of the offending behaviour. This will bear on the calibration of the fine and disqualification period and the court should arrive at a provisional assessment of these punishments within the applicable range.

(c) *Stage 3 – Adjustment to account for aggravating and mitigating circumstances*: The court should next consider the aggravating and mitigating circumstances of the offence and the offender and make any further adjustments to the provisional assessment of the fine and disqualification period.

(d) *Stage 4 – Final Adjustment*: The court will finally calibrate the appropriate term of *imprisonment* having regard in particular to the need for deterrence and then finally review the sentence as a whole.

***Stage 1: Deriving a starting sentence range based on the offender's alcohol level***

58 At the first stage of the Repeat Offences Framework, the inquiry is focused on the offender's blood/breath alcohol level, which is the sole ingredient of the offence (both for first-time and repeat offenders) under s 67(1)(*b*) of the RTA.

59 In my judgment, Ms Tai was correct to begin only with the offender's alcohol level when deriving the starting sentence range, which is consistent with the approach taken in the *Rafael Voltaire* Framework. For an offence under s 67 of the RTA, culpability is determined in the first instance primarily by reference to the offender's alcohol level, with a higher alcohol concentration indicating a



Version No 1: 18 Dec 2023 (18:23 hrs)

more flagrant violation of the law (see *Ong Beng Soon v Public Prosecutor* [1992] 1 SLR(R) 453 at [7]; *Vijayan* at [69]; *Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139 at [16]).

60 This is to be differentiated from offences which require a broader consideration of multiple factors at play when determining the starting sentence. Thus, the sentencing framework set out in *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587 ("*Wu Zhi Yong*") for an offence of reckless driving where no injury is caused under s 64(1) punishable under s 64(2C)(*a*) read with s 64(2C)(*c*) of the RTA requires the court, at the first stage of its inquiry, to identify the indicative starting sentence with reference to specific sentencing bands, which in turn are anchored to *both* the offender's alcohol level and other offence-specific aggravating factors present (at [30], [35]–[47]).

61 This is because s 64(2C)(*c*) of the RTA applies to "serious offender[s]", meaning those who commit the offence of reckless or dangerous driving under s 64 of the RTA *as well as* the offence of either drink driving under s 67 or the offence of failing to provide without reasonable excuse a breath/blood specimen under s 70(4). The confluence of two types of offending behaviour that will be present in an offence punishable under s 64(2C)(*c*) means that the level of alcohol cannot be artificially separated from the fact of reckless or dangerous driving (*Wu Zhi Yong* at [33]), and necessitates that the punishment to be imposed under s 64 is to be calibrated by a holistic assessment of all the factors (*Wu Zhi Yong* at [34]). As noted at [59] above, this is quite different from the position where a charge is brought under s 67 of the RTA alone.

62 While the first stage begins with the *Rafael Voltaire* Framework, the starting sentence ranges need to be increased because of the *mandated* uplift for repeat offences. Thus, ignoring any other factor, the minimum sentence for a



Version No 1: 18 Dec 2023 (18:23 hrs)

repeat offender at the lowest end, will generally be a fine that is at least $3,000 higher and a disqualification period that is at least three years longer, than for a first time offender, and this is without considering the mandatory requirement for some term of imprisonment. The potential uplift in terms of the fine and the period of disqualification may be summarised as follows:

(a) The sentencing range for a first-time offender is a fine of between $2,000 and $10,000 and disqualification of not less than two years.

(b) The corresponding range for a repeat offender is a fine of between $5,000 and $20,000 and disqualification of not less than five years.

(c) For an offender with two prior convictions, a further adjustment is made in that the default disqualification period is for life.

(d) Hence, the potential uplift to be applied to the fine imposed ranges from at least $3,000 for a repeat offender at the lowest end and $10,000 for a repeat offender at the highest end, or up to $18,000 in total (which is the difference between the minimum fine of $2,000 for a first-time offender and the maximum fine of $20,000 for a repeat offender). In the case of repeat offenders who were sentenced to the minimum disqualification period of two years for their first offence, there is also an additional uplift in the disqualification period of at least three years, but this again may be extended for a much longer period, and in the case of an offender with two prior convictions, will typically extend to life.

63 In my judgment, in computing the uplift, it is appropriate to consider an uplift of a fine of between $3,000 and $7,500 and a disqualification period of



Version No 1: 18 Dec 2023 (18:23 hrs)

between 36 months and 60 months for the various Alcohol Level Bands. This leaves some headroom for any further adjustments that may be necessary at the next stage. To summarise, I set out the starting ranges as follows:

| **Level of alcohol (µg per 100ml of breath)** | **Under the *Rafael Voltaire* Framework for first-time offenders** | **The initial uplift** | **Indicative band for repeat offenders** |
|---|---|---|---|
| 36–54 | Fine: $2,000–$4,000<br>Disqualification: 24–30 months | Fine: $3,000–$4,000<br>Disqualification: 36 months | Fine: $5,000–$8,000<br>Disqualification: 60–66 months |
| 55–69 | Fine: $4,000–$6,000<br>Disqualification: 30–36 months | Fine: $4,000–$5,000<br>Disqualification: 36–42 months | Fine: $8,000–$11,000<br>Disqualification: 66–78 months |
| 70–89 | Fine: $6,000–$8,000<br>Disqualification: 36–48 months | Fine: $5,000–$6,000<br>Disqualification: 42–48 months | Fine: $11,000 – $14,000<br>Disqualification: 78–96 months |
| ≥ 90 | Fine: $8,000–$10,000<br>Disqualification: 48–60 months (or longer) | Fine: $6,000–$7,500<br>Disqualification: 48–60 months (or longer) | Fine: $14,000–$17,500<br>Disqualification: 96–120 months (or longer) |



Version No 1: 18 Dec 2023 (18:23 hrs)

***Stage 2: Adjustment on account of repeated offending behaviour***

64 At the second stage, the court should calibrate the provisional fine and disqualification period having regard to two factors:

(a) the actual quantity of alcohol within the applicable Alcohol Level Band; and

(b) the circumstances that pertain to the repetition of the offending behaviour.

65 The first factor is obvious. But, in my judgment, the circumstances pertaining to the repetition of the offence are also an important consideration because they constitute one of the primary factors for the higher sentence.

66 In relation to the latter factor, it is appropriate to consider the following:

(a) the interval between the previous conviction(s) and the present one. The longer the interval, the less this will weigh as a particularly aggravating factor;

(b) the number of such offences. The more such offences, the more aggravating this will be;

(c) whether there is a trend of increasing gravity of alcohol consumption and driving. If so, this will be a significant factor in enhancing the sentence; and

(d) whether there is a trend of increasing danger posed to the public with each repeat offence. As with the previous factor, where this is the case, it may further increase the uplift.



Version No 1: 18 Dec 2023 (18:23 hrs)

67 In provisionally calibrating the actual fine and disqualification, the court will begin with the range prescribed by the applicable Alcohol Level Band. But these are only guidelines and it is entirely open to the court to shift to a lower or higher band if both factors, namely the actual amount of alcohol involved and the considerations pertaining to the repetition, point that way.

### *Stage 3: Adjustment to account for aggravating and mitigating circumstances*

68 At the third stage, the court should consider all the aggravating and mitigating circumstances pertaining to the offence and the offender and determine whether the fine and the disqualification it has arrived at requires any further adjustment. Where it considers that there is a need to increase the uplift at the previous stage, it may do so subject to the maximum permitted statutory limits. If it considers it appropriate to calibrate the fine and the disqualification downwards, it may do so subject to the applicable minimum permitted limits. Because imprisonment is a mandatory feature of the punishment imposed for repeat drink driving offenders, I consider that the aggravating factors (which may also be relevant to the determination of the term of imprisonment later, see [70]–[73] below) should be considered at this stage only for any impact that they may have on the *fine* or the period of the *disqualification*.

69 The factors pertaining to *the offender or the particular offence* are not controversial and include:

(a) degree of danger posed to the public (such as the circumstances of driving, the road conditions, the state of traffic and the location);

(b) distance travelled;



Version No 1: 18 Dec 2023 (18:23 hrs)

(c) speed of driving;

(d) manner of driving;

(e) reasons for driving;

(f) whether the offender has pleaded guilty and/or shown remorse;

(g) any other relevant antecedents not yet considered.

***Stage 4: Final Adjustment to determine term of imprisonment***

70 Finally, the court should separately consider what term of imprisonment is appropriate having regard to all the circumstances. A term of imprisonment is mandatory for repeat offenders and arises from the parliamentary intent to deter recalcitrant drink driving and to prevent accidents, injury and death that can needlessly arise from drink driving. As such, its length will be determined primarily by the need for deterrence (both general and specific) and the need to punish especially culpable behaviour (see *Singapore Parliamentary Debates, Official Report* (28 March 1990) vol 55 at cols 960–961, 964–965 and 974 (Prof S. Jayakumar (Minister for Home Affairs), Dr Arthur Beng Kian Lam, Mr Chng Hee Kok); *Chong Pit Khai v Public Prosecutor* [2009] 3 SLR(R) 423 at [14]). Where the aggravating factors considered at the previous stage warrant a custodial term, they should be considered again at this stage when assessing the term of imprisonment. Such factors include: (a) the manner and circumstances of driving and road conditions; (b) the nature and number of relevant antecedents; (c) the recency of antecedents; and (d) the actual and potential danger posed to others. These appear to be the key factors that are relevant to deterrence (both general and specific) and to why imprisonment was made mandatory for this class of offenders. I do not consider that this reflects an impermissible instance of double-counting aggravating factors because the



Version No 1: 18 Dec 2023 (18:23 hrs)

overall sentence *must* include a fine, a disqualification period *and* a term of imprisonment. There would have been nothing objectionable at all if the sentencing judge were to consider these factors for their effect on all three components of the sentence at one and the same stage in the sentencing analysis. I have, however, separated the consideration of these discrete components of the sentence into separate stages of the sentencing analysis just to make the sentencing framework easier to apply. Indeed, these factors ultimately go towards assessing the overall gravity of the offence which bears on how each component of the sentence is to be derived. Further, in the way I have developed the sentencing framework the relevance of the aggravating factors will typically be somewhat *attenuated* in their application when considering the sentence of imprisonment because regard is had primarily to those factors that point to the need for deterrence.

71 At this stage of the analysis, when considering the term of imprisonment, the court should categorise the offence in overall terms having regard to its overall gravity and the nature and all the circumstances of the offending and re-offending behaviour into three broad classes with the following indicative sentencing bands:

(a) serious: 1–6 months’ imprisonment;

(b) more serious: 6–12 months’ imprisonment; and

(c) most serious: 12–24 months’ imprisonment.

72 Generally, if zero to two of the factors identified at [70] above are present and operating at a relatively low level, the offence would fall into the first sentencing band, that is, the classification of a “serious” case. If there are two to three factors (or if there are fewer but these operate at a more pronounced



Version No 1: 18 Dec 2023 (18:23 hrs)

level), the "more serious" sentencing band would apply. And if all factors are present (or if there are fewer factors but most of them are operating at a pronounced level), the offence would fall into the "most serious" sentencing band.

73 The sentencing court should then take a final look at the sentence to assess whether the fine and disqualification order need to be adjusted, whether there is a basis and need to consider invoking the power to further enhance the punishment under s 67A (as to which see below at [80]–[89]), and whether the overall punishment is proportional and condign.

**Issue 2: Special reasons for reducing a lifetime disqualification order under s 67(2A) of the RTA**

74 I next considered the provision on disqualification under s 67(2A) of the RTA. Section 67(2A) provides that the court is to order that persons convicted on two or more occasions of an offence under ss 67(1), 68 or 67(1) as in force before 1 November 2019, be "disqualified from holding or obtaining a driving licence for life starting on the date of the person's conviction" unless the court "for special reasons thinks fit to order a shorter period of disqualification". The default starting point for a third-time offender like Mr Lee is thus a lifetime disqualification from driving, unless special reasons apply.

75 Similarly, s 67(2) of the RTA provides for the minimum stipulated periods for which a first-time and second-time offender under s 67(1) should be disqualified from holding or obtaining a driving licence respectively "unless the court for special reasons thinks fit to not order or to order otherwise".

76 It has been established in case law that "special reasons" are: (a) extenuating or pressing circumstances; and which (b) relate to the offence itself



Version No 1: 18 Dec 2023 (18:23 hrs)

and not to the offender. The legislative intent behind these provisions is that those who choose to drink and drive contrary to the law must be prepared to suffer the stipulated period of disqualification, but the Legislature has recognised that certain circumstances may prevail upon the driver to risk driving despite being unfit to drive (*Rafael Voltaire* at [38]; *Public Prosecutor v Balasubramaniam* [1992] 1 SLR(R) 88 ("*Balasubramaniam*") at [21]; *Roland Joseph George John v Public Prosecutor* [1995] 3 SLR(R) 562 ("*Roland Joseph*") at [5]). In so far as "special reasons" are circumstances that allow the court in its discretion to depart from the statutorily provided default disqualification, they should be narrowly construed as exceptional circumstances which warrant such a departure. Further, after considering whether there exists a special reason, the court must then consider whether it ought in the circumstances to exercise its discretion in favour of the offender (*Rafael Voltaire* at [39]; *Balasubramaniam* at [13]). In *Rafael Voltaire*, I noted that the following factors referred to in *Cheong Wai Keong v Public Prosecutor* [2005] 3 SLR(R) 570 ("*Cheong Wai Keong*") are useful factors that the court should have regard to as part of a broad and holistic inquiry in determining whether special reasons existed in each case (at [39]):

(a) how far the vehicle was driven;

(b) the manner in which the vehicle was driven;

(c) the state of the vehicle;

(d) whether the driver intended to drive any further;

(e) the road and traffic conditions prevailing at the time;

(f) whether there was any possibility of danger by contact with other road users; and



Version No 1: 18 Dec 2023 (18:23 hrs)

(g) the reason for the vehicle being driven.

77 In *Roland Joseph* (at [6]–[9]), it was suggested that an inebriated man who decided to drive so as to rush his seriously ill wife to hospital would very likely be able to show special reasons in light of the "urgent and critical circumstances leading to his driving whilst under the influence", but this would not be the case if he then decided to drive himself home after sending his wife to the hospital even though he was over the limit. *Whittall v Kirby* [1946] 2 All ER 552 also suggests (at 555–556) that ignorance of the fact that a drug had been administered to oneself would be a special reason (see also *Balasubramaniam* at [22] citing *Adams v Bradley* [1975] RTR 233 at 236, which states that while it is the duty of a driver to observe the quantity and quality of drink he consumes, a situation where he was induced to take a stronger drink that he normally would, by reason of someone having misled him or given false information, may constitute a special reason). On the other hand, special reasons would not include financial hardship, having driven for many years without complaint, being required to drive by one's job, being pressured to drink with friends or the offender's remorse. These do not in any way diminish the wrongful act.

78 In *Muhammad Faizal bin Rahim v Public Prosecutor* [2012] 1 SLR 116, the court noted the narrowness of the existing interpretation of "special reasons" (albeit in the context of the offence of using a motorcycle without valid insurance coverage under s 3(1) Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed)). In my judgment, this is aligned with the concerns undergirding s 67(2A) of the RTA and can be applied to disqualification orders for drink driving offences. It was noted there that in "exceptional circumstances peculiar to the offence", if the offender can "show that there was no alternative but for him to drive and that he had explored every



Version No 1: 18 Dec 2023 (18:23 hrs)

reasonable alternative before driving" (at [31]), then this would constitute a special reason.

79 Having regard to the existing case law, it seemed to me that the unifying principle to be distilled with respect to s 67(2A) of the RTA is this: that special reasons will generally be found only if the court is satisfied that the offender drove in circumstances that reasonably suggest:

(a) it was necessary to do so in order to avoid other likely and serious harm or danger; and

(b) there was no reasonable alternative way to achieve this end.

If these criteria are met, the court will then also consider other factors, including those listed at sub-paragraphs (a)–(f) of [76] above in coming to its eventual decision as to the length of the disqualification.

**Issue 3: Enhanced penalty provision of s 67A of the RTA**

80 Finally, I considered the application of s 67A of the RTA (see [13] above) which may be invoked for third-time (or subsequent) offenders under s 67(1) of the RTA to allow for the imposition of even more enhanced penalties. It may be noted that Mr Lee was a third-time offender. It is clear that this power exists in order to secure the objectives of general and specific deterrence in circumstances where the default provisions are thought not to be sufficient (*Singapore Parliamentary Debates, Official Report* (18 January 1993) vol 60 at cols 426–431 (Prof S. Jayakumar, Minister for Home Affairs)).

81 However, it is a matter for the court's discretion as to whether this should be invoked.



Version No 1: 18 Dec 2023 (18:23 hrs)

82 Having regard to the text of the provision, it may be noted that:

(a) Section 67A empowers the court to *further* enhance the punishment to be accorded in excess of whatever is already prescribed under the sub-provisions in s 67. This is an enabling provision which is only to be invoked if the circumstances warrant. In particular, it is *not* the case that s 67A applies whenever an offender is convicted for the third time.

(b) As to when the court may invoke it, s 67A provides that the court must first be satisfied, by reason of the person's previous convictions and antecedents, that: (i) it is expedient for the protection of the public; or (ii) with the view to the prevention of the further commission of any such offence that a punishment in excess of the prescribed punishment should be imposed.

(c) Where that is the case, the punishment imposed can be increased by up to three times the prescribed punishment for the offender's present conviction, subject to a maximum of ten years' imprisonment.

83 In my judgment, if the court decides that it is necessary and appropriate to enhance the punishment, the baseline from which to compute the limit of the applicable enhanced punishment is the sentence to which the offender would otherwise have been liable, which should then be multiplied by three. This means in the context of the offence of driving under the influence of drugs or drink under s 67(1) of the RTA, the relevant maximum threshold with respect to the enhanced penalties which can be imposed are a fine of up to $60,000 and an imprisonment term of up to six years.



Version No 1: 18 Dec 2023 (18:23 hrs)

84 The fact that the enhancement under s 67A is only to be applied in limited circumstances, leads me to conclude that the inquiry as to whether it is warranted in a given case, is one that should be undertaken as a separate inquiry *after* the court has considered the punishment that the offender would be liable for without regard to s 67A. Therefore, the court should first consider whether the initial punishment (without regard to s 67A) is sufficient to secure the objectives of deterrence and prevention. Only if it concludes that the punishment so derived is not sufficient, should it then consider the application of s 67A. It follows that the question of any possible enhancement is examined at the end of the sentencing process.

85 The next question concerns the circumstances under which the court may be satisfied that "it is expedient for the protection of the public or with the view to the prevention of further commission of any such offence", such that an enhanced sentence should be imposed pursuant to s 67A. In the present case, it was common ground that s 67A did not arise on the facts. It was therefore not necessary for me to come to a view on this in order to dispose of the appeal. I therefore confine myself to some provisional observations.

86 The Prosecution submitted that one consideration to be taken into account by the court as to whether enhanced punishment is warranted under s 67A should be whether the offence at hand is the offender's fourth or subsequent offence. It was said that this would indicate that the offender was a habitual offender because in such a case, the offender would likely have been subject to a lifetime ban and would nonetheless have driven. With respect, I did not think that a requirement that the offence be at least the offender's *fourth* one should be read into s 67A when the legislative provision expressly indicates that it can be applied to third-time offences and beyond. Nor did I think that s 67A should apply whenever an offender was convicted of a fourth offence.



Version No 1: 18 Dec 2023 (18:23 hrs)

87 The Prosecution also submitted that it would be unusual for the enhanced penalty provision under s 67A to be invoked in a situation where the offender's multiple convictions all fell under s 67(1) of the RTA – for instance, where the offender's breath or blood alcohol levels had been found to exceed the prescribed limit on multiple instances of being stopped at police roadblocks. This seemed sensible to me because the exceptional nature of the provision and the fact that it is being applied to penalties that have already been increased, would suggest that something more would usually have to be found before an offender's pattern of re-offending warranted the invocation of s 67A. In practice, one expects this would usually apply to cases involving a plethora of the various offences covered under s 67A and/or where the offender has shown a cumulative buildup in the seriousness of his offences.

88 This has been borne out in previous cases preceding the legislative amendments, which have generally considered whether an offender's actions demonstrated a lack of regard for road safety or other road users, or a lack of respect for the law and authority of the courts, and/or was undeterred by his past sentences (*Public Prosecutor v Muhammad Nurashik Bin Mohd Nasir* [2017] SGDC 261 at [17]; *Public Prosecutor v Ng Peng Han* [2009] SGDC 307 at [22]–[24]; *Public Prosecutor v Lim Teck Leng Roland* [2004] SGDC 104 at [29]; see also *Public Prosecutor v Ng Yeow Kwang* [2007] SGDC 130 at [6]).

89 Having regard to the existing case law, I outline some considerations to guide the court's assessment of when an enhanced sentence under s 67A of the RTA may be invoked:

(a) whether the offender's antecedents reflect a cavalier disregard of the law;



Version No 1: 18 Dec 2023 (18:23 hrs)

(b) whether the offender's antecedent sentences come close to the maximum sentences prescribed for the relevant offences; and

(c) whether the duration and frequency of reoffending suggests the need to go well past the maximum sentences prescribed for the relevant offences.

**Issue 4: The sentence imposed on Mr Lee should be upheld**

90 Finally, I proceeded to consider the facts of MA 9066 and the application of the Repeat Offences Framework in this case.

91 As mentioned above, the DJ had sentenced Mr Lee to eight weeks' imprisonment, a fine of $10,000 (in default one month's imprisonment), and a disqualification for life from the date of conviction. In my judgment, the application of the Repeat Offences Framework that I have set out above would not have provided for a more favourable outcome.

***Stage 1: Starting sentence range***

92 Mr Lee had been convicted of driving while under the influence of drink, pursuant to s 67(1)(*b*) of the RTA, with 89µg of alcohol per 100ml of breath detected. Applying Stage 1 of the Repeat Offences Framework, the indicative starting range of fines under the *Rafael Voltaire* Framework would have been in the range of $6,000 to $8,000 (see above at [63]) had he been a first-time offender. The present offence being a repeat one, after applying the initial uplift, the indicative band would hence be a fine in the range of $11,000 to $14,000.



Version No 1: 18 Dec 2023 (18:23 hrs)

***Stage 2: Adjustment on account of repeated offending behaviour***

93 Turning next to Stage 2 of the Repeat Offences Framework, I considered the actual quantity of alcohol within the applicable Alcohol Level Band and the factors that pertained to the repetition of Mr Lee's offending behaviour. Mr Lee's alcohol level was more than twice the prescribed limit and placed him at the very top of the second highest Alcohol Level Band. Further, this was the third time Mr Lee had been convicted under the same offence of drink driving, although I recognised that he had not reoffended for a significant period of time following his previous conviction.

94 As such, in light of the quantity of alcohol that Mr Lee had in his breath on this occasion and having regard to the number and nature of his antecedents, I agreed with the DJ that at this point of the analysis, an upward adjustment to a fine of $15,000 would have been appropriate (see *GD* at [30]). Further, as this was Mr Lee's third offence, a lifetime disqualification order was prescribed under s 67(2A) of the RTA.

***Stage 3: Adjustment to account for aggravating and mitigating circumstances***

95 Stage 3 of the Repeat Offences Framework required me to consider all the aggravating and mitigating circumstances pertaining to the offence and the offender and determine whether the fine and the disqualification needed any further adjustment. I noted that no harm was caused and the evidence did not suggest that Mr Lee had posed much danger to the public or that he had been driving in a particularly unsafe manner, at an unsafe speed or for an unsafe distance. Further, Mr Lee had pleaded guilty to the offence. In my judgment, the DJ's calibration downwards to arrive at the final quantum of $10,000 for the fine to be imposed was hence entirely fair.



Version No 1: 18 Dec 2023 (18:23 hrs)

96 As for the lifetime disqualification from driving, the DJ had concluded that there were no special reasons in this case to order a shorter period of disqualification and in my judgment, she was correct to do so. The special reason on which Mr Lee appeared to rely to contest his lifetime disqualification order was that he had been pressured by an aggressive Stranger to shift his car.

97 As mentioned earlier, I did not think the evidence sufficed for him to establish that he had indeed come under such pressure. The Prosecution was also correct in highlighting that a short distance driven would not constitute a special reason warranting a shorter disqualification period (*Cheong Wai Keong* at [16]–[17]). In any event, the fact remained that he had opted to drive his car and the reason given for doing so (namely, that he had to make way for a car which he was blocking), even if proven, was not sufficient to constitute a special reason that justified the reduction of his disqualification. Mr Lee could have pursued multiple alternative courses of action once the alleged confrontation occurred, such as calling his valet on the spot, asking the friend whom he alleged to have met for help, asking the Stranger to help him to shift his car just enough so that the Stranger could manoeuvre his own vehicle or at the very least, leaving his car behind and exiting the scene if he was truly so afraid of the Stranger. Instead, Mr Lee, knowing full well that drink driving was an offence of which he had been twice convicted already, opted to get into his car and drive. This dangerous and irresponsible decision to drive after consuming alcohol (and despite prior drink driving convictions) could not be justified by a desire to avoid unpleasant encounters, especially where there was an abundance of alternative measures which Mr Lee could have taken before and during the encounter in question.

98 Even if Mr Lee's account of events was to be taken as its highest, he had not established that it was necessary to drive in order to avoid other likely and



Version No 1: 18 Dec 2023 (18:23 hrs)

serious harm or danger or that there was no reasonable alternative way that he could have pursued to achieve this end. I hence did not think that there was any special reason warranting a shorter disqualification.

***Stage 4: Final adjustment to determine term of imprisonment***

99 Finally, I considered the term of imprisonment that would be appropriate in the present case.

100 Given that no harm was caused, a long period had passed since Mr Lee's last conviction, he had pleaded guilty and there were no particularly aggravating factors, I classified this case in the "serious" category. I note that Mr Lee had previously been imprisoned for two weeks for his last offence under s 67(1)(*b*) in 2012 (and this was in the context of the then-prevailing sentencing range which allowed for a maximum imprisonment term of 12 months; the present s 67(1) provides for twice that length with a maximum imprisonment term of two years). In the circumstances, I was satisfied that the DJ had adequately taken account of the long lapse between Mr Lee's present conviction and his previous conviction to moderate the sentence down from an initial indicative figure of 12 weeks' imprisonment.

101 In my judgment, applying the Repeat Offences Framework, the sentence imposed by the DJ of eight weeks' imprisonment, a fine of $10,000 (in default one month's imprisonment), and a disqualification for life from the date of conviction was fair and should be upheld.



Version No 1: 18 Dec 2023 (18:23 hrs)

## Conclusion

102 For the foregoing reasons, I dismissed the appeal and affirmed the sentence imposed in the court below. I once again record my appreciation to Ms Tai for her helpful submissions.

Sundaresh Menon
Chief Justice

Narayanan Vijya Kumar (Vijay & Co) for the appellant;
John Lu and J Jayaletchmi (Attorney-General's Chambers) for the respondent;
Tai Ai Lin (Allen & Gledhill LLP) as young independent counsel.



Version No 1: 18 Dec 2023 (18:23 hrs)