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

[2023] SGHC 62

Magistrate's Appeal No 9176 of 2021

Between

Public Prosecutor

… *Appellant*

And

Rizuwan bin Rohmat

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Statutory offences — Road Traffic Act]

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Public Prosecutor
v
Rizuwan bin Rohmat

[2023] SGHC 62

General Division of the High Court — Magistrate's Appeal No 9176 of 2021
Kannan Ramesh JAD
25 February, 29 July, 15 November 2022

17 March 2023

Kannan Ramesh JAD:

1 In *Public Prosecutor v Rizuwan bin Rohmat* [2021] SGDC 219, the district judge ("**the DJ**") sentenced the respondent to, *inter alia*, a fine of $8,000, or, in default of that, four weeks' imprisonment, and a period of disqualification from holding or obtaining all classes of driving licences of 24 months for a charge under s 35(1) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("**the RTA**"). I shall refer to this as the "**s 35 Charge**".

2 The Prosecution appealed against sentence in HC/MA 9176/2021 ("**MA 9176**") for the s 35 Charge. The Prosecution argued that (a) a custodial sentence of five weeks' imprisonment ought to be imposed, and (b) a review of the general level of sentences for offences under s 35(1) RTA was justified in view of the increase in sentencing range, for fines and custodial sentences, for first and repeat offenders introduced by the Road Traffic (Amendment) Act 2019 (Act 19 of 2019) ("**the Amendment Act**"), with effect from 1 November 2019.

3 Having considered the parties' submissions, I allowed the appeal and sentenced the accused to five weeks' imprisonment for the s 35 Charge. I did not disturb the disqualification period imposed by the DJ as no appeal was brought by the Prosecution in this regard. I delivered detailed oral grounds on 15 November 2022 and now provide the full grounds for my decision.

Background

Facts

4 The respondent, Rizuwan bin Rohmat, is a 33-year-old Singaporean who runs "1K Enterprise". 1K Enterprise is a company in the business of delivery of parcels. The respondent employed three drivers and rented two vans on behalf of IK Enterprise for its business. One week before the events for which the respondent was charged, all the drivers employed by 1K Enterprise resigned, leaving it with no drivers to undertake deliveries. Notwithstanding this, respondent continued to accept orders from existing customers. However, no orders were accepted from new customers.

5 On 6 September 2020, the respondent left his home at about 10am to deliver several parcels. He drove a van leased by 1K Enterprise. At about 3pm on the same day, the respondent, driving the same van, returned home to fetch his wife and three children for dinner. After picking up his family, the respondent proceeded to deliver a parcel before exiting onto Woodlands Close towards Woodlands Avenue 12. It was about 4:24pm then. As it was raining, the roads were wet.

6 The respondent approached a red-light signal where a car driven by a Mr Chea Seek Kang ("**Mr Chea**") had come to a stop. However, the respondent failed to keep a proper look out and did not come to a complete stop when

forming up behind Mr Chea's car. As a result, there was a minor collision between the van and Mr Chea's car. There was no visible damage to the van and minor damage to the rear of Mr Chea's car. No injuries were suffered.

7 The respondent attempted to settle the accident with Mr Chea. Mr Chea, however, refused and pressed the respondent for his driving licence. The respondent refused, and instead returned to the van and drove off with his family. A police car in the vicinity was alerted to the collision and gave chase. Realising this, the respondent drove to a multi-storey car park near his home and parked. He then ran off in an attempt to evade arrest, leaving his family (*ie*, his wife and three children) behind in the van. When the police located the van, the respondent's family was still inside.

8 Investigations revealed that the respondent only possessed a Provisional Driving License and had in fact failed a Class 3 test (manual transmission) once and a Class 3A test (automatic transmission) twice. In other words, the respondent did not possess a valid driving licence and was unqualified to drive the van. As the respondent did not have a valid driving licence, there was also no motor insurance policy that covered the respondent at the material time.

Proceedings below

9 The respondent faced five charges in relation to the driving offences committed on 6 September 2020. He pleaded guilty on 2 August 2021 before the DJ to the following three charges:

> TP 000120-2021-1 [(the s 35 Charge)]
>
> "You….are charged that, on the 6th day of September 2020, at or about 4.24 p.m, along Woodlands Close towards Woodlands Ave 12, Singapore, did drive a motor van bearing registration number GBE2420H, on a road when you are not a holder of Class 3 Singapore driving licence (unladen weight of 1800 kg),

> and you have thereby committed an offence under Section 35(1) of the Road Traffic Act, Chapter 276 and punishable under section 35(3)(a) of the said Act.
>
> TP 000120-2021-4 [("**the Second Charge**")]
>
> "You…are charged that, on the 6th day of September 2020, at or about 4.24 p.m, along Woodlands Close towards Woodlands Ave 12, Singapore, did drive a motor van bearing registration number GBE2420H, on a road without due care and attention, to wit, by failing to keep a proper lookout ahead and colliding into the rear of motorcar bearing registration number SLV3813T driven by Chea Seek Kang, which was stationary and conforming to the traffic red light signal on the right-most lane, and you have thereby committed an offence under Section 65(1)(a) punishable under Section 65(5)(a) of the Road Traffic Act (Cap 276, 2004 Rev Ed).
>
> TP 000120-2021-05 [("**the Third Charge**")]
>
> "You…are charged that, on the 6th day of September 2020, at or about 4.24 p.m, along Woodlands Close towards Woodlands Ave 12, Singapore, did drive a motor van bearing registration number GBE2420H, whilst there was not in force in relation to the use of the said vehicle by you, such a policy of insurance or such a security in respect of third-party risks that complies with the requirements of the Motor Vehicles (Third-Party Risks and Compensation) Act (Chapter 189, 2000 Rev Ed) ("MVA") and you have thereby committed an offence under Section 3(1) of the MVA, punishable under Section 3(2) read with Section 3(3) of the said Act.

10 The respondent also consented to having the remaining two charges of (a) failing to exchange particulars after the accident under s 84(1)(a) RTA; and (b) failing to make a police report within 24 hours of the accident under s 84(2) RTA taken into consideration for the purposes of sentencing.

11 Before the DJ, the Prosecution sought a custodial sentence of four to eight weeks' imprisonment and a disqualification period of two to three years for the s 35 Charge. The Prosecution submitted, first, that by increasing the sentencing range for offences under s 35(1) RTA pursuant to the Amendment Act, Parliament displayed an intention to strengthen deterrence against irresponsible (including unlicensed) driving, and second, that general deterrence

was essential to protect the public from unlicensed driving. The Prosecution also submitted that specific deterrence was an important consideration in the present case for the following reasons:

(a) the offence was premeditated;

(b) the respondent displayed a high level of incompetence;

(c) the respondent drove for his personal gain and convenience;

(d) the respondent drove a significant distance on a rainy day,

(e) the respondent ferried four passengers (his wife and three children); and

(f) the respondent attempted to escape to evade arrest.

The Prosecution further submitted that the fact that the respondent was a first offender was not a mitigating factor.

12 The respondent was unrepresented before the DJ. In mitigation, he explained that he had left the van "to avoid the penalty that [would] be given to the company that [he] was running". He further explained that he had driven off because there was a "spark of argument during the incident" and he wished to avoid any "fighting". Nonetheless, the respondent conceded that he drove away because he "basically, [did not] have any valid licence to show to [Mr Chea]".

13 The DJ imposed the following sentences on the respondent:

(a) On the s 35 Charge, a fine of $8,000 or, in default, four weeks' imprisonment, and disqualification of 24 months with effect from 2 August 2021.

(b) On the Second Charge, a fine of $1,000 or, in default, five days' imprisonment, and disqualification of three months with effect from 2 August 2021.

(c) On the Third Charge, a fine of $800 or, in default, four days' imprisonment and disqualification of 12 months with effect from 2 August 2021.

The total sentence imposed was thus a fine of $9,800 or, in default, four weeks and nine days' imprisonment, and disqualification from holding or obtaining all classes of driving licences for a period of 24 months with effect from 2 August 2021.

14 In arriving at her decision, the DJ made the following observations that are relevant to MA 9176:

(a) First, the usual sentence for a first offender under s 35(1) RTA (both *before and after* the Amendment Act) was a fine. The fines ranged from $600 to $800 for offences committed prior to the Amendment Act, and $1,500 to $1,800 for offences committed after the Amendment Act.

(b) Second, while the increase in the punishments introduced by the Amendment Act did not necessarily necessitate an increase in sentences, the parliamentary debates during the second reading of the Road Traffic (Amendment) Bill 2019 (the bill upon which the Amendment Act was based) demonstrated Parliament's intention to amend the RTA to more strongly deter against irresponsible driving, including unlicensed driving.

(c) Third, the increase in the sentencing range introduced by the Amendment Act gave the court greater latitude in sentencing. In particular, egregious irresponsible driving, which might not have been sufficiently punished previously, could now be properly addressed. Nonetheless, the increase did not necessarily mean that a custodial term should be imposed. Deterrence need not necessarily take the form of a custodial sentence and a high fine might well be appropriate in the circumstances.

Issues arising at the first hearing of the appeal and appointment of YAC

15 As mentioned at [2] above, the Prosecution only appealed against the DJ's decision to impose a fine of $8,000 for the s 35 Charge. No appeal was brought against the 24-month disqualification period that she imposed.

16 At the first hearing of MA 9176 on 25 February 2022, the Prosecution sought a custodial sentence of between four and eight weeks for the s 35 Charge on the basis that a fine was manifestly inadequate. The Prosecution submitted that a custodial sentence was appropriate in view of the increase in sentencing range introduced by the Amendment Act. The Prosecution further submitted that guidance from this court on when the custodial threshold would be crossed for an offence under s 35(1) RTA would be appropriate. The respondent was unrepresented and made no submissions.

17 The Prosecution, however, acknowledged that following the Amendment Act, there were difficulties in determining a consistent sentencing approach, in particular, the circumstances under which a custodial sentence would be warranted for an offence under s 35(1) RTA. The Prosecution brought to my attention the fact that, despite the increase in the sentencing range for offences under s 35 RTA, the vast majority of sentences continued to cluster

around a fine, with custodial sentences being rare. In view of these precedents, the Prosecution acknowledged its difficulty in justifying its submission that a custodial sentence of four to eight weeks was appropriate in this case.

18 As such, I had difficulty accepting the Prosecution's submission on sentence without further assistance. I decided that the appointment of a young *amicus curiae* ("**YAC**") would be of assistance to the court and adjourned the appeal for this reason. I also mentioned at the hearing on 25 February 2022 that it would be helpful for the respondent to obtain legal representation and the Prosecution kindly agreed to assist with the respondent's application to the Criminal Legal Aid Scheme. Subsequently, on 17 March 2022, Mr Aaron Lee ("**Mr Lee**") was appointed to represent the respondent.

19 Mr Sim Bing Wen ("**Mr Sim**") was appointed as YAC on 7 March 2022. Three questions were posed to him:

(a) Is a sentencing framework appropriate for s 35(1) RTA and, if so, what form should the sentencing framework take? ("**the First Question**")

(b) When would the custodial threshold be crossed for a s 35(1) RTA offence? ("**the Second Question**")

(c) If the custodial threshold was crossed, how should the court calibrate sentence in view of the custodial range prescribed in s 35(3)(*a*) RTA? ("**the Third Question**")

In answering these questions, Mr Sim was requested to consider whether, and if so to what extent, the amendments introduced by the Amendment Act to s 35(3)(*a*) RTA would impact his analysis.

The submissions of Mr Sim and the parties

Mr Sim's submissions

20 Mr Sim filed a detailed brief dated 14 April 2022 that set out his opinion and recommendations on the three questions that were posed to him.

21 On the First Question, Mr Sim submitted that it was timely and appropriate for the court to set out a sentencing framework for s 35(1) RTA. Mr Sim further submitted that the sentencing framework should be based on the five-step "sentencing matrix" approach set out in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("***Logachev***"). Adopting this framework would allow the court to identify the applicable sentence by calibrating across the two axes of harm and culpability. The five-step "sentencing matrix" ("**Mr Sim's Framework**") proposed by Mr Sim involved the following steps:

(a) **Step 1:** Identification of the level of harm and the level of culpability using the following factors drawn from sentencing precedents for offences under s 35(1) RTA pre-the Amendment Act.

(i) The following culpability factors should be considered:

(A) premeditation/degree of planning in order to obtain the vehicle;

(B) the offender's conduct following the offence, such as attempts to avoid detection;

(C) driving when the offender was unfit to drive;

(D) the offender's reasons for driving; and

(E) the manner in which the offender was driving.

(ii) The following harm factors should be considered:

(A) whether an accident was caused and property damage or personal injury resulted;

(B) the potential harm; and

(C) the time and distance driven without a valid driving licence.

(b) **Step 2:** Identification of the applicable indicative sentencing range within the matrix below for a *first offender who claims trial*.

Harm / *Culpability*	**Slight**	**Moderate**	**Severe**
Low	Fine of up to $10,000	Imprisonment of up to 6 months	6 months to 1 year's imprisonment
Moderate	Imprisonment of up to 6 months	6 months to 1 year's imprisonment	1 to 2 years imprisonment
High	6 months to 1 year's imprisonment	1 to 2 years imprisonment	2 to 3 years imprisonment

(c) **Steps 3 to 5:** Identification of the appropriate starting point within the indicative starting range and adjusting thereafter for offender-specific factors and the totality principle.

22 On the Second Question, Mr Sim submitted that the custodial threshold would generally be crossed in any case that *did not involve* slight harm and low culpability.

23 On the Third Question, Mr Sim submitted that the custodial sentence should be calibrated by identifying the indicative starting point of the sentence using his proposed sentencing framework (see [21(b)] above), making appropriate adjustments for offender-specific factors and the totality principle (*ie*, Steps 3 to 5 of Mr Sim's Framework).

The Prosecution's submissions

24 The Prosecution filed reply submissions to Mr Sim's brief on 12 May 2022.

25 On the First Question, the Prosecution agreed with Mr Sim that a sentencing framework was appropriate for the reasons set out in Mr Sim's brief (see [21] above). However, the Prosecution submitted that use of the "sentencing matrix" approach in *Logachev* was not appropriate to the present case, thereby rendering Mr Sim's Framework unsuitable. Instead, the more appropriate approach would be the benchmark approach, which focuses on the sentence for an archetypal case.

26 On the Second Question, the Prosecution submitted that the custodial threshold was crossed in the archetypal case, and the appropriate benchmark sentence ought to be four weeks' imprisonment. The Prosecution's position was that a custodial sentence ought to be imposed as a deterrence against driving without a valid driving licence.

27 On the Third Question, the Prosecution submitted that the custodial sentence should be calibrated based on the specific aggravating and mitigating factors of each case.

28 As regards the present case, the Prosecution fine-tuned its submissions on sentencing. Instead of the original range of four to eight weeks' imprisonment that it sought before the DJ and in its initial submissions before me (see [16] above), the Prosecution revised position was a sentence of five weeks' imprisonment.

The respondent's submissions

29 Mr Lee filed reply written submissions to Mr Sim's brief on 12 May 2022.

30 On the First Question, Mr Lee's position was that a sentencing framework was not necessary at the present time. Mr Lee argued that following the Amendment Act, there was a paucity of reasoned decisions for offences under s 35(1) RTA against which a new framework could be rationalised. Given the absence of a sufficient body of jurisprudence dealing with sentencing following the Amendment Act, there was a real risk that any framework would not properly cater for fact-sensitive nuances, and any benchmarks or indicative starting positions could be set in an arbitrary manner. Mr Lee therefore submitted that the court should allow a sufficient body of jurisprudence dealing with sentencing for offences under s 35(1) RTA to develop before revisiting the question of a sentencing framework in the future.

31 As regards the present case, Mr Lee urged the court to uphold the DJ's decision for the following reasons. First, the non-custodial sentence imposed by the DJ was adequate to achieve both general and specific deterrence. Second, in

arriving at the non-custodial sentence, the DJ had placed proper weight on the harm and culpability factors. Third, the respondent was a first offender under the RTA, had pleaded guilty and at the time of the accident made an offer to Mr Chea to settle the matter privately. Fourth, a non-custodial sentence was not manifestly inadequate as a fine of $8,000 was significantly higher than the usual tariff of between $1,500 to $1,800 imposed for such offences.

Issues

32 Accordingly, the key issues that arose for determination in MA 9176 were:

(a) First, whether it was appropriate for the court to formulate a sentencing framework for offences under s 35(1) RTA;

(b) Second, if the first question was answered in the affirmative, what the sentencing framework should be; and

(c) Third, how the sentencing framework should be applied to the facts in the present case.

My decision

A sentencing framework is appropriate for offences under s 35(1) RTA

33 After considering the written and oral submissions of the parties and Mr Sim, I agreed with Mr Sim and the Prosecution that a sentencing framework for offences under s 35(1) RTA ought to be formulated. It was clear from the data extracted from the Sentencing Information and Research Repository that charges are frequently brought under s 35(1) RTA. Thus, I was of the view that a sentencing framework would provide useful guidance for first-instance judges

and ensure consistency in sentencing: *Sue Chang (Xu Zheng) v Public Prosecutor* [2022] SGHC 176 at [45].

34 While I acknowledged Mr Lee's argument that there was a paucity of reasoned decisions for offences under s 35(1) RTA following the Amendment Act (see [30] above), I agreed with the Prosecution and Mr Sim that this ought not be a bar to the formulation of a sentencing framework. As I had noted in my oral grounds, any sentencing framework that was formulated might be revisited if appropriate when the body of decisions has developed further: *Logachev* at [74]. Indeed, this is not a novel approach. In *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587 ("*Wu Zhi Yong*"), Sundaresh Menon CJ formulated a sentencing framework for offences under s 64(2C)(*a*) read with s 64(2C)(*c*) RTA. In doing so, the Chief Justice acknowledged the paucity of sentencing precedents as the cases that were decided prior to the Amendment Act could not be applied directly due to the significant amendments to the structure of the offending provisions as well as the increase in the corresponding sentences following the Amendment Act (*Wu Zhi Yong* at [38]).

35 I turn now to elaborate on the reasons for my conclusion that the benchmark approach proposed by the Prosecution was more appropriate than Mr Sim's Framework.

The framework for sentencing under s 35(1) RTA

The benchmark approach is appropriate for offences under s 35(1) RTA

36 Before I provide my reasons for preferring the benchmark approach, it is helpful to begin by reiterating the Court of Appeal's observations in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("***Terence Ng***") on the benchmark and sentencing matrix approach at [31]–[35]:

(3) The "benchmark" approach

The benchmark approach calls for the *identification of an archetypal case (or a series of archetypal cases) and the sentence which should be imposed in respect of such a case*. This notional case must be defined with some specificity, both in terms of the factual matrix of the case in question as well as the sentencing considerations which inform the sentence that is meted out, in order that future courts can use it as a touchstone…

… the *benchmark approach is particularly suited for offences which overwhelmingly manifest in a particular way or where a particular variant or manner of offending is extremely common and is therefore singled out for special attention*.

(4) The "sentencing matrix" approach

The sentencing matrix approach is modelled on the approach used by the United Kingdom Sentencing Council. *The court first begins by considering the seriousness of an offence by reference to the "principal factual elements" of the case in order to give the case a preliminary classification (in practice, this is done by locating the position of the case in a sentencing matrix, with each cell in the matrix featuring a different indicative starting point and sentencing range*: see, eg, *Poh Boon Kiat v PP* [2014] 4 SLR 892 ("*Poh Boon Kiat*") at [77]–[78]). Based on this assessment, the starting point and the range of sentences will be identified. At the second stage of the analysis, the precise sentence to be imposed will be determined by having regard to any other aggravating and mitigating factors, which do not relate to the principal factual elements of the offence: see *Poh Boon Kiat* at [79].

The availability of such an approach is crucially dependent on the availability of a set of principal facts which can significantly affect the seriousness of an offence in all cases (see *Koh Yong Chiah v PP* [2017] 3 SLR 447 at [47]). For instance, in *Poh Boon Kiat*, the High Court held that the "principal factual elements" of vice-related offences were (a) the manner and extent of the offender's role in the vice syndicate (which is the primary determinant of his culpability) and (b) the treatment of the

> prostitute (which is the primary determinant of the harm caused by the offence): see *Poh Boon Kiat* at [75]–[76]…
>
> [emphasis added]

37 With these principles in mind, I now explain why I preferred the Prosecution's benchmark approach over Mr Sim's Framework. I make three points.

(1) Offences under s 35(1) RTA manifest themselves in a particular manner

38 The benchmark approach should be adopted when offences in relation to a particular provision "overwhelmingly manifest in a particular way": *Terence Ng* at [32]. I found this to be true of offences under s 35(1) RTA. It was the Prosecution's position that an offence under s 35(1) RTA is a relatively technical one, as the substance of the offence is non-compliance with a regulatory requirement, *ie*, driving without a valid driving licence. Mr Sim appeared to take the same position in describing 35(1) RTA as a "strict liability offence". Accordingly, there is little variation in the way an offence under s 35(1) RTA manifests.

39 Consistent with this, the Prosecution's survey of the 500 cases between 2019 and 2020 demonstrates that the majority of offences under s 35(1) RTA have a similar fact pattern. This suggests an archetypal case. Of the 500 cases surveyed by the Prosecution, some 75% in 2019 and 80% in 2020 of the offenders were caught as a result of police enforcement action. On the other hand, offenders who were caught as a result of being involved in an accident were in the minority. Further, all offenders – whether caught as a result of police action or an accident – were drivers who *never held* a valid driving licence for the class of vehicles they were driving. I refer to such offenders as "**Unqualified Drivers**". *It is significant that none of the offenders were drivers who failed to*

renew or validate their driving licence prior to the offence. I refer to this category of offenders as "**Qualified Drivers**". There is an obvious distinction of substance between the drivers in the two categories. Offenders in the first category never held a valid driving licence, and therefore were unskilled and unqualified to drive. That could not be said of offenders in the second category.

40 As such, I was satisfied that, based on the sentencing data provided by the Prosecution, offences under s 35(1) RTA overwhelmingly presented themselves in a particular manner – an Unqualified Driver caught driving not because of an accident, but because of police enforcement action. This was the archetypal case.

(2) Adoption of the benchmark approach would facilitate consistency between the sentencing approach for offences under s 35(1) RTA and s 43(4) RTA

41 The benchmark approach would also facilitate consistency between the approach taken to sentencing for an offence under s 35(1) RTA and an offence under s 43(4) RTA, which is the offence of driving while under disqualification. A degree of consistency is desirable because both offences (a) share similarities in terms of the mischief that they seek to address (driving when prohibited from doing so because it was unsafe to have them on the roads, albeit for different reasons); and (b) have identical sentencing ranges following the increase in sentencing range for offences under s 35(1) RTA introduced by the Amendment Act.

42 Indeed, it could be said that there are substantive similarities between the nature and purpose of the offences under s 35(1) RTA and s 43(4) RTA. In this regard, while accepting that there are differences, I broadly agreed with the Prosecution's submission that both offences pertain to "non-compliance with a

regulatory requirement" and are "not truly "criminal" offence[s] but … regulatory in nature". More crucially, both offences principally target individuals who are regarded or deemed as not competent to drive, *ie*, it was unsafe for them to handle motor vehicles – the Unqualified Driver in the case of s 35(1) RTA and the driver who had been disqualified (and who was therefore unqualified) from driving in the case of s 43(3) RTA. Both categories of drivers pose risks and danger to road users and the occupants of the vehicle they drive, as well as themselves.

43 The similarity in the nature and purpose of the offences under s 35(1) RTA and s 43(4) RTA finds form in the identical sentencing ranges of both offences set by Parliament. In this regard, it is helpful to briefly outline the legislative history that resulted in both offences sharing identical sentencing ranges.

44 Prior to the Amendment Act, the sentence for first and repeat offenders under s 35(1) RTA was prescribed in s 131(2) RTA. Section 131(2) RTA is a general sentence-prescribing provision meant for offences where specific penalties are not prescribed in the offence-creating provision. In other words, the sentencing range in s 131(2) RTA is not specifically tailored for the purpose and circumstances of an offence under s 35(1) RTA. This changed with the Amendment Act that introduced a new and enhanced sentencing range for first and repeat offenders for offences under s 35(1) RTA.

45 The sentencing range for an offence under s 43(4) RTA was first enhanced in 1993, by the Road Traffic (Amendment) Act 1993 ("**the 1993 Amendments**"). No distinction was made between first and repeat offenders. As noted earlier, the Amendment Act introduced sentencing ranges for first and repeat offenders in breach of s 35(1) RTA. Notably, the sentencing range for

first offenders was in line with the sentencing range that was introduced by the 1993 Amendments for offences under s 43(4) RTA. At the same time, a new sentencing range was also introduced for repeat offenders in breach of s 43(4) RTA, which was also in line with the sentencing range for repeat offenders under s 35(1) RTA. In other words, the Amendment Act aligned the sentencing ranges for first and repeat offenders for both offences under s 35(1) RTA and s 43(4) RTA.

46 Thus, both provisions now provide that a first offender "shall be liable on conviction … to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years or to both" and a repeat offender "shall be liable on conviction …. to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 6 years or both". For ease of comparison, I reproduce the relevant provisions from the RTA:

> **Sections 35(1) and 35(3) of the RTA – Licensing of drivers, etc.**
>
> (1) Except as otherwise provided in this Act, a person must not drive a motor vehicle of any class or description on a road unless the person is the holder of a driving licence authorising him or her to drive a motor vehicle of that class or description.
>
> …
>
> (3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction as follows:
>
> (a) *to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years or to both*;
>
> (b) where the person is a repeat offender, to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 6 years or to both.
>
> …
>
> **Section 43(4) of the RTA – Provisions as to disqualifications and suspensions**

> (4) If any person who is disqualified as mentioned in subsection (3) drives on a road a motor vehicle or, if the disqualification is limited to the driving of a motor vehicle of a particular class or description, the person drives on a road a motor vehicle of that class or description, the person shall be guilty of an offence and shall be liable on conviction as follows:
>
> (a) *to a fine not exceeding $10,000 or to Imprisonment for a term not exceeding 3 years or to both*;
>
> (b) where the person is a repeat offender, to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 6 years or to both.
>
> [emphasis added]

47 In view of the legislative history of the two offences outlined above, decisions on sentences for offences under s 43(4) RTA after the 1993 Amendments are instructive for the purposes of ascertaining the appropriate sentencing approach for offences under s 35(1) RTA. While the Prosecution acknowledged that there was no "explicit judicial endorsement of a benchmark sentence" for an offence under s 43(4) RTA, it highlighted that "reported precedents appear to disclose a range of custodial sentence of around 1 to 2 months' imprisonment": *Chng Wei Meng v Public Prosecutor* [2002] 2 SLR(R) 566 at [42–44]; *Fam Shey Yee v Public Prosecutor* [2012] 3 SLR 927 ("***Fam Shey Yee***") at [12]. I agreed with the Prosecution that the range of sentences imposed suggests that a benchmark approach for such offences was adopted based on an archetypal case.

48 Given my observations at [41]–[44] above on s 35(1) RTA and s 43(4) RTA, I was of the view that it would be appropriate for a benchmark approach to also be adopted for offences under s 35(1) RTA.

(3) There are practical difficulties with Mr Sim's Framework

49 I declined to follow Mr Sim's Framework as challenging outcomes might result from its application to Qualified Drivers in certain circumstances. Primarily, the "sentencing matrix" approach as set out at [21(b)] does not adequately take into consideration the situation of a Qualified Driver who meets with an accident. Applying Mr Sim's Framework would result in a Qualified Driver facing a custodial sentence once moderate or severe harm is suffered (see [22] above), *even if the accident has no connection with the driver's failure to possess a valid driving licence at the material time*. This was significant. Such a driver is quite different from the Unqualified Driver, as noted earlier at [39]. He is not one who cannot handle the class of vehicle in question. Instead, he is qualified to drive the class of vehicle in question but has failed to renew or validate his licence prior to the incident in question, thereby bringing him within the ambit of s 35(1) RTA. The risk and danger he poses to other road users, the occupants of the vehicle in question and himself is not of the same level as the Unqualified Driver. In the case of the Qualified Driver, there may in fact be no nexus between the offence and the accident. In other words, the fact that he did not have a valid driving licence might have no connection with the accident. That is unlikely to be the case with an Unqualified Driver.

50 While s 35(1) RTA applies to both Unqualified Drivers and Qualified Drivers, it appears that it is the Unqualified Driver that is its focus. The mischief s 35(1) RTA seeks to address is the driving of a vehicle by an Unqualified Driver because of the risk and danger it poses: a review of the relevant Parliamentary Debates and previous decisions on offences under s 35(1) RTA makes this clear, and I consider this further at [53]–[59] below. Indeed, the point I have articulated above on the Qualified Driver was specifically raised in the course of the parliamentary debates (see [54] below). At this juncture, it suffices to

state that any framework must adequately cater for the fact that there might be no nexus between an accident involving a Qualified Driver and the fact that he did not hold a valid driving licence at the material time. It seemed to me that Mr Sim's Framework did not cater for that.

51 It was also difficult to see how the policy imperative of s 35(1) RTA is served by imposing a custodial sentence on the Qualified Driver simply because he was involved in an accident that resulted in moderate or severe harm even if the accident had nothing with the fact that he did not hold a valid driving licence at the material time. A custodial sentence would be imposed in such circumstances if Mr Sim's Framework is applied. In my view, this would not be an appropriate outcome. I hasten to add that if the accident was caused by the Qualified Driver's failure to hold a valid driving licence (as opposed to it being merely incidental to the accident), the analysis and conclusion might very well be different.

52 For these reasons, I accepted the Prosecution's submission that the benchmark approach should be adopted for offences under s 35(1) RTA. I turn now to outline the archetypal case that the benchmark sentence would apply to.

The archetypal case

53 In defining the archetypal case, I found it necessary to return to my observations at [39] and [49]–[50] above on the difference between the Unqualified Driver and Qualified Driver. While the Prosecution submitted that its data set disclosed no offenders who were Qualified Drivers (see [39] above), the fact remained that s 35(1) RTA encapsulated both categories of offenders.

54 Indeed, the application of s 35(1) RTA to Qualified Drivers was pointed out by Mr Christopher de Souza (MP for Holland-Bukit Timah) ("**Mr de**

Souza") during the Second Reading of the Road Traffic (Amendment) Bill 2019. Mr de Souza expressed his concern that the enhanced punishment might be "overly harsh on individuals who may have unknowingly driven a vehicle without a licence" such as an individual above 65 who is unaware that his or her licence has expired, or the foreigner who had forgotten to revalidate his overseas driving licence. Mr de Souza's concerns were acknowledged by the Second Minister for Home Affairs, Mrs Josephine Teo, who stated that the police and Public Prosecutor would "look into the specifics of each case to determine the appropriate charge".

55 In my view, this exchange crystalised the question of whether the archetypal case ought to exclude the Qualified Driver. The data and the legislative history of s 35(1) RTA points to this question being answered in the negative. I explain.

56 A review of the parliamentary debates between 1955 to 2019 does *not* show that s 35(1) RTA was enacted with Qualified Drivers in mind. Instead, s 35(1) RTA was enacted by Parliament to prevent Unqualified Drivers from operating classes of vehicles as regards which they did not hold a valid driving licence. This was also the conclusion reached by Yong Pung How CJ (as he then was) in *M V Balakrishnan v Public Prosecutor* [1998] SGHC 416 ("***M V Balakrishnan***"), when he observed at [12] that:

> … The prohibited act [under s 35(1) RTA] was not one which the public could easily protect by its own vigilance but one that *Parliament had legislated in the interests of public safety to prevent* ***untrained hands from controlling classes of vehicles*** to which they held no valid driving licence.
>
> [emphasis added]

57 While Yong CJ did not cite a specific parliamentary debate in *M V Balakrishnan*, the following extract from the Second Reading of the Transport

Ordinance Bill on 7 Nov 1955 by the Minister for Communications and Works Mr Francis Thomas (at col 891) shows that Parliament's intent for requiring a driving licence was to ensure that drivers were *tested* and *qualified* before getting their licences:

> Finally, of course, *licences are not given to people without proper testing*. They are required to pass their test and about 50 per cent of them are failed, *so that these young men and women will have to learn their traffic code and learn their driving very carefully*, because otherwise they will not get their licences from the police.
>
> [emphasis added]

58 In a later parliamentary debate on the 1993 Amendments to increase the penalties for driving under disqualification, the Minister for Home Affairs Professor Jayakumar's response to a member's question on how Parliament would "deal with the cases of those people who *have never obtained a driving licence, were caught driving without a valid licence and punished*, and then go on repeating the offence" was that (at col 441):

> Then he asked what about those who drive without driving licence, in other words, not those who have a driving licence and then were disqualified but *those who may drive without a driving licence at all. The answer to his question is that that is already an offence under our Road Traffic Act.* Perhaps the thrust of his question was whether such offenders should also be dealt with under the ambit of this new provision.
>
> [emphasis added]

While s 35(1) RTA was not expressly cited by Professor Jayakumar, it can be readily inferred that his reference to the "offence" of driving without a licence was in relation to s 35(1) RTA. The Minister's response confirms that the primary mischief Parliament sought to address by s 35(1) RTA was the category of "people who *have never obtained a driving licence*" and yet drive on the road, *ie*, the Unqualified Driver.

59 The upshot of these observations is that the archetypal case should involve the Unqualified Driver only. It does not apply to the Qualified Driver. This is consistent with the fact pattern of the data set of 500 cases that the Prosecution has reviewed involving offences under s 35(1) RTA. Synthesising the common features in the vast majority of the offences in the Prosecution's data with the observations by Parliament as set out above, the archetypal case should thus be one involving the Unqualified Driver who is not involved in an accident when driving.

60 As the archetypal case does not involve the Qualified Driver, I left open the question of the appropriate approach that should be taken to sentencing such offenders. The Prosecution suggested that an appropriate starting point could be a fine but that is best left for consideration in a suitable case in the future. Without being exhaustive, as noted above at [49]–[52], whether the absence of a valid driving licence was a cause or contributing factor to any accident that may have resulted would be a pertinent consideration in calibrating the sentence.

61 I also highlight that the archetypal case, and more broadly the framework formulated in these grounds, only applies to an offence under s 35(1) RTA. It should not be understood as applying to an offence under s 35(2) RTA as I have not heard submissions from the parties or Mr Sim on this point. More importantly, this case is not about s 35(2) RTA. I therefore left open the question of whether a similar approach would be appropriate for an offence under s 35(2) RTA.

The appropriate benchmark sentence

62 Finally, I considered the question of the appropriate benchmark sentence for the archetypal case. As I have already observed at [41]–[43], [47] and [48]

above, there is a close connection between offences under s 35(1) RTA and s 43(4) RTA which warrants a degree of consistency in the sentences that are meted out. The "usual tariff" for an offence under s 43(4) RTA is between four to eight weeks' imprisonment: see *Fam Shey Yee* at [12]. Accordingly, I was of the view that the benchmark should be set at four weeks' imprisonment for the archetypal case. This was in line with Parliament's objective of providing for "stronger deterrence against irresponsible driving" in passing the Amendment Act.

63 As regards the calibration of the exact sentence, the following non-exhaustive factors might be considered:

(a) The offender's reason for driving: Where an offender drove in order to commit an offence (*eg*, to deliver drugs or to smuggle cigarettes on duty was not unpaid), his sentence ought to be significantly higher than the benchmark sentence. On the other hand, where an offender drove in the case of an emergency, the nature and extent of the emergency and the circumstances that caused the offender to resort to driving could be mitigating factors.

(b) The offender's manner and length of driving: Where an offender failed to obey traffic rules (*eg*, speeding or running a red light), an uplift from the benchmark sentence would be warranted.

(c) The consequences that arose from the offender's driving: Where an accident occurred, an uplift from the benchmark sentence would be warranted. The severity of the accident, in terms of damage and injury suffered, and whether the offender contributed or caused it would be relevant in determining the uplift.

(d) Whether there were other occupants in the offender's vehicle: In general, an uplift would be warranted if there were other occupants in the vehicle. However, where the offender drove because of an emergency (see [63(a)] above), the presence of other occupants in the vehicle might be a neutral factor in the calibration of sentence, depending on the reasons for their presence.

(e) The offender's conduct after the offence had been committed: Where an offender attempted to evade arrest, an uplift from the benchmark sentence would be warranted.

(f) The presence of driving-related antecedents: Where the offender has previously committed driving-related offences, considerations of specific deterrence come to the fore and an uplift from the benchmark sentence would be warranted.

(g) Whether other driving-related charges were taken into consideration: Where the offender has other driving-related charges taken into consideration for the purposes of sentencing, an uplift from the benchmark sentence would be warranted.

Application of benchmark approach to the present case

64 Having set out the appropriate sentencing framework above, I applied it to the facts of the present case.

65 The starting point was a custodial sentence of four weeks. I considered that the respondent's offence was generally within the archetypal case as the accident was relatively minor. I bore in mind that the respondent voluntarily made an offer to Mr Chea to settle the matter privately at the outset (see [7] above), has no driving related antecedents and has pleaded guilty at the earliest

opportunity. However, I agree with the Prosecution that there were the following aggravating factors that warranted an uplift:

(a) First, the respondent drove for a significant distance and length of time on a rainy day and endangered four passengers (his wife and three children) (see [5] above) by ferrying them around.

(b) Second, the respondent's driving caused minor damage to Mr Chea's car (see [6] above).

(c) Third, despite being pursued by the police, the respondent's drove away after the accident *with his family* in order to evade arrest (see [7] above).

(d) Fourth, there were two driving-related charges that were taken into consideration for the purpose of sentencing (see [10] above), both of which related to the respondent's culpability in relation to the s 35 Charge.

66 Accordingly, I uplifted the benchmark sentence by a week and imposed a sentence of five weeks' imprisonment in respect of the s 35 Charge. The 24 months' disqualification period that the respondent has been serving since 2 August 2021 remained as there was no appeal by either party on that issue.

Conclusion

67 For all these reasons, I allowed the Prosecution's appeal and sentenced the respondent to a total of five weeks' imprisonment for the s 35 Charge. This was in addition to the 24 months' disqualification period that was imposed by the DJ. I would like to record my appreciation to Mr Sim for his assistance to the court through his detailed brief and thoughtful submissions. I also record my

appreciation to Mr Lee and his team for the pro-bono services that they have rendered for this case in keeping with the finest traditions of the Bar.

Kannan Ramesh
Judge of the Appellate Division

Deputy Attorney-General Tai Wei Shyong, Ng Yiwen and Jonathan Tan (Attorney-General's Chambers) for the appellant;
Aaron Lee Teck Chye, Cheryl Chong, Low Zhe Ning (Allen & Gledhill LLP) for the respondent;
Sim Bing Wen (Drew & Napier LLC) as young *amicus curiae*.