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

[2024] SGHC 152

Magistrate's Appeal No 9149 of 2023

Between

Seah Ming Yang Daryle

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Road Traffic — Offences — Driving without a licence — Sentencing framework for s 35(1) RTA offences of driving without a licence]

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Seah Ming Yang Daryle
v
Public Prosecutor

[2024] SGHC 152

General Division of the High Court — Magistrate's Appeal No 9149 of 2023
Sundaresh Menon CJ, Tay Yong Kwang JCA and Vincent Hoong J
18 April 2024

14 June 2024

Vincent Hoong J (delivering the grounds of decision of the court):

Introduction

1 Our roads form an essential part of Singapore's infrastructure and are an essential public good. They enable Singaporeans and residents to go about in their daily lives, whether it be travelling to work, school, or for leisure. Many of them also rely on our roads to make their living, be it taxi-drivers, delivery personnel or logistics businesses. It is because Singapore is a city-state with limited land resources that our roads are intertwined with other essential parts of daily life. Schools and residential estates may be located alongside busy roads. Park connectors may be separated by roads. Driving on our roads is thus an inherently communal activity in addition to being an inherently dangerous one. Whatever a driver does on our roads affects other road-users. A driver who drives dangerously places other road-users at immediate risk of hurt and in some cases, it can destroy their lives as well as those of their families. As a result,

there is a collective public interest in ensuring safe driving on our roads because it affects everyone.

2 Our road traffic laws help to govern and uphold this collective public interest. They are meant to protect all road-users, as well as innocent bystanders. Road-users must comply with road traffic laws even if they think it is an inconvenience, or that the risk of getting caught is low. This is for the collective public good.

3 It was against this backdrop that we considered this appeal, which involved the offence of driving without a valid driving licence under s 35(1) of the Road Traffic Act 1961 (2020 Rev Ed) (the "RTA"). In the court below, the District Judge (the "DJ") sentenced the appellant to four weeks' imprisonment as she was of the view that she was bound by the benchmark sentence of four weeks' imprisonment for the archetypal case of an unqualified driver who drives without a licence as laid out by the High Court in *Public Prosecutor v Rizuwan bin Rohmat* [2024] 3 SLR 694 ("*Rizuwan*"). There, the High Court found that the benchmark sentence approach was the appropriate sentencing framework to be adopted for offences of driving without a licence. The court laid down a benchmark sentence of four weeks' imprisonment for the archetypal case of a first-time offender who has *never held* a valid driving licence for the class of vehicle he was caught driving (the "Unqualified Driver"), where no accident has occurred (*Rizuwan* at [38]–[40]).

4 The appellant was dissatisfied with the DJ's decision on two main grounds. First, the benchmark sentence of four weeks' imprisonment for driving without a licence under s 35(1) of the RTA was manifestly excessive. Second,

the benchmark sentence in *Rizuwan* should not be adopted as it was disproportionately crushing.[1]

5 This appeal thus presented an opportunity for us to consider the appropriate sentencing framework for offences under s 35(1) of the RTA, and if the benchmark sentence approach laid down in *Rizuwan* was adopted, the appropriate benchmark sentence for such offences.

6 We appointed Ms Amber Joy Estad ("Ms Estad") as young independent counsel ("YIC") to assist us with the following questions:[2]

> **Question 1:** What is an appropriate sentencing framework for offences under s 35(1) of the RTA and punishable under s 35(3)(*a*) of the RTA?
>
> **Question 2:** Without limiting the generality of Question 1, is the sentencing framework in *Public Prosecutor v Rizuwan bin Rohmat* [2023] SGHC 62 an appropriate one?

7 We heard the appeal and allowed the appeal in part by reducing the appellant's sentence to three weeks' imprisonment. We now set out the reasons for our decision.

Facts

8 The appellant, Mr Daryle Seah Ming Yang, a 27-year-old Singaporean male, pleaded guilty to three charges under the RTA. The first charge was for driving a motor van along the Pan Island Expressway ("PIE") at a speed of 121 kmph, which was in excess of the imposed speed limit of 70 kmph of the vehicle. The second charge was for driving a motor van whilst not being a holder of a Singapore qualified Class 3 driving licence authorising the appellant to

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1 Notice of Appeal at para 2; Record of Appeal ("ROA") at pp 14–17.

2 YIC's written submissions at para 1.

drive a motor vehicle of that class. The third charge was for using a motor van whilst there was no third-party insurance in force. A further charge of taking and driving away a motorcar without the owner's consent was taken into consideration for the purposes of sentencing (*Public Prosecutor v Daryle Seah Ming Yang* [2023] SGDC 183 (the "GD") at [1]–[2]).[3] This appeal only concerned the second charge of driving without a valid driving licence.

9 The appellant operated an events business called Apostle Productions. He was the sole person operating the business, although he had a partner who was not involved in the company's operation. At the material time, the appellant was at The American Club hosting an event. After the event ended at about 11.30pm, the appellant packed his equipment and prepared to depart from the club. According to the appellant in his mitigation plea, he had initially planned for his freelance driver to ferry him from The American Club to his supplier's office (to return his equipment), and thereafter, leave the vehicle there. The appellant was then to make his own way to his office to prepare for the next day's event. However, the driver failed to carry out the agreed plan at the last minute when the event ended. The appellant was unable to get anyone to assist him at the last minute and was unable to book a private hire vehicle because his equipment could not fit in those vehicles. As such, he decided to drive the motor van, which he was not licensed to do (the GD at [18]–[22]).[4]

10 The appellant was arrested whilst driving along the PIE because the traffic police noticed the motor van being driven at a higher-than-average speed. After being pulled over by the traffic police, the appellant was unable to produce a driving licence and subsequently admitted to not having a valid driving

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3 ROA at p 39.

4 ROA at pp 43–44.

licence. The appellant was not a holder of a qualified Class 3 driving licence and was indeed, never a holder of any qualified driving licence. Since the appellant was driving without a valid Singapore qualified Class 3 driving licence, there was no insurance policy for third-party risks. Investigations revealed that the appellant had driven the motor van without the knowledge and consent of his employer whose company was the registered owner of the said motor van (the GD at [5]–[10]).[5]

The decision below

11 The DJ was of the view that she was bound by the benchmark sentence of four weeks' imprisonment for the archetypal case of an unqualified driver who drove without a licence as set out by the High Court in *Rizuwan*. Applying the benchmark sentence set out in *Rizuwan*, the DJ considered the appellant to have fallen within the archetypal case of such an offender. The DJ further considered various factors in calibrating the four-week benchmark sentence (the GD at [30]–[33];[6] see [84] below).

12 Ultimately, the DJ was of the view that a sentence of four weeks' imprisonment and 18 months' disqualification was just and appropriate in the circumstances, and combined the sentencing objectives of punishment, protection of the public and deterrence (the GD at [45]–[49]).[7]

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5 ROA at pp 40–41.

6 ROA at pp 47–49.

7 ROA at pp 52–53.

The *Rizuwan* framework

13 In *Rizuwan,* the accused drove a van without a valid driving licence and was involved in a minor collision with another car. After the collision, when the accused was asked by the other driver for his driving licence, he refused and drove off with his family in the van. A nearby police car was alerted to the collision and gave chase. He then drove to a multi-storey carpark near his home, parked, and ran off to evade arrest (leaving his family behind in the van). He was apprehended shortly thereafter.

14 By the material time of the offence in *Rizuwan*, the RTA had been amended to its present version through the introduction of the Road Traffic (Amendment) Act 2019 (Act 19 of 2019) (the "2019 RTA Amendments"). The 2019 RTA Amendments were made by Parliament with the intention of strengthening deterrence against irresponsible driving (see [48]–[50] below). Charges for offences under s 35(1) of the RTA were also brought frequently. Against this backdrop, the court in *Rizuwan* considered that it would be appropriate to institute a sentencing framework for offences under s 35(1) of the RTA to provide guidance for first-instance judges and ensure consistency in sentencing (*Rizuwan* at [15]–[19] and [33]).

15 The court found that the benchmark sentence approach was the appropriate sentencing framework for offences of driving without a licence. Such s 35(1) RTA offences manifested overwhelmingly in a particular way and were relatively technical offences, as the "substance of the offence [was] non-compliance with a regulatory requirement" (*Rizuwan* at [38]). This was consistent with the statistics put forth by the Prosecution (*Rizuwan* at [39]–[40]):

> 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.

16 The court went on to consider the appropriate benchmark sentence for the archetypal case as described above. The court considered that there was a close connection between the offences under s 35(1) of the RTA for driving without a licence, and s 43(4) of the RTA, for driving while under disqualification (*Rizuwan* at [62]). This warranted a degree "of consistency in the sentences that are meted out". The court considered that the "usual tariff" for s 43(4) RTA offences was between four to eight weeks' imprisonment (citing *Fam Shey Yee v Public Prosecutor* [2012] 3 SLR 927 ("*Fam Shey Yee*") at [12]). As such, the court was of the view that the benchmark sentence for the archetypal s 35(1) RTA case should be set at four weeks' imprisonment. This was also in line "with Parliament's objective of providing for 'stronger deterrence against irresponsible driving' in passing the [2019 RTA Amendments]" (*Rizuwan* at [62]).

17 The court further considered a list of non-exhaustive factors that may be relevant in calibrating the exact sentence to be meted out (*Rizuwan* at [63]). These factors are set out in a later section (see [82] below).

Parties' cases on appeal

The YIC's opinion

18 Ms Estad submitted that the following multiple starting points approach was a more appropriate sentencing framework as compared to the benchmark sentencing approach:[8]

Class of Licence	Range of Fines
Class 2 / 2A / 2B	$2,000–$4,000
Class 3 / 3A / 3C / 3CA	$4,000–$6,000
Class 4	$8,000–$10,000

19 Ms Estad argued that a multiple starting points approach would allow the sentencing framework for s 35(1) RTA offences to mirror the requirements of the driving licencing regime and reinforce the importance of compliance with those requirements. It also reflected the principle that heavier vehicles cause greater damage and pose a higher safety risk to other road users, thus increasing the gravity of the offence.[9] Unlike the benchmark sentencing approach in *Rizuwan*, the multiple starting points approach did not draw a distinction between the Unqualified Driver and drivers who failed to renew or validate their driving licences prior to the offence (the "Qualified Driver"). Such an approach which did not place focus on the offender's perceived driving ability was to be

8 YIC's written submissions at para 61.

9 YIC's written submissions at paras 56–66.

preferred. This was because the approach in *Rizuwan* would ignore the other "competency requirements and regulations which [were] part of the driving licencing regime", such as the requirement to complete a medical examination.[10] Further, Ms Estad argued that a sentencing approach which focused on a driver's competency would introduce significant complexities in the factors that the court had to take into account.[11]

20 As for the starting point for sentencing s 35(1) RTA offences, Ms Estad submitted that a fine, rather than four weeks' imprisonment, was sufficient to achieve the sentencing objective of general deterrence.[12] The 2019 RTA Amendments were an indication for the court to revise its approach to sentencing offences involving driving without a licence, as the sentences imposed under the old regime were generally a fine of around $800, where there was no aggravating factor.[13] However, it was not necessary for a custodial sentence to be adopted as a starting point. Citing *Yang Suan Piau Steven v Public Prosecutor* [2013] 1 SLR 809 ("*Steven Yang*") at [31],[14], Ms Estad submitted that "a custodial sentence should not be lightly or readily imposed as a norm or a default punishment unless the nature of the offence justifies its imposition retributively or as a general or specific deterrent, where deterrence is called for".[15] She argued that a custodial sentence was not appropriate for a first-time offender under s 35(1) of the RTA where "no harm was caused and there [were] no indicators that the offender was an actual or potential danger to

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10 YIC's written submissions at paras 67–69.

11 YIC's written submissions at paras 70–72.

12 YIC's written submissions at para 77.

13 YIC's written submissions at paras 84–87.

14 YIC's bundle of authorities ("BOA") Vol 1 at pp 561–562.

15 YIC's written submissions at para 89.

other road users".[16] Ms Estad further argued that using a custodial sentence as a starting point would mostly exclude the possibility of a fine being imposed, except in rare cases, although this was a sentencing option which Parliament had made available.[17]

21 Moreover, the benchmark sentence of four weeks' imprisonment as per *Rizuwan* was a "drastic increase" from the sentencing precedents of a low fine of around $800 for driving without a licence prior to the 2019 RTA Amendments. Such an increase was disproportionate and beyond what was necessary to achieve Parliament's objective of greater deterrence. A substantial increase in fines imposed on s 35(1) RTA offenders would be the appropriate starting point and would sufficiently address the need for stronger deterrence for unlicenced drivers. A fine of $4,000 or $6,000 was by no means insignificant for many people and adopting a substantial fine would be a balanced approach between ensuring deterrence of unlicenced driving, and the need for proportionality in sentencing the individual offender.[18]

22 Additionally, Ms Estad provided recommendations on how the sentencing approach could be calibrated to the specific aggravating and mitigating factors which were present.[19] She further submitted that the indicative starting point for disqualification should be 12 months.[20]

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16 YIC's written submissions at para 96.

17 YIC's written submissions at paras 94–97.

18 YIC's written submissions at paras 98–99.

19 YIC's written submissions at paras 101–123.

20 YIC's written submissions at paras 124–127.

Appellant's case

23 The appellant's submissions focused on the appropriate benchmark sentence for Unqualified Drivers who fall within the archetypal case where no accident occurred. He submitted that the benchmark sentence should be a fine of $4,500, as it would strike a balance between the principles of deterrence and proportionality. The appellant argued that the custodial threshold is crossed only where there was an accident and harm or damage was involved, with a starting point of one to two weeks.[21] The appellant provided four main reasons in support of his argument that the benchmark sentence of four weeks' imprisonment for the archetypal case of an Unqualified Driver was wrong.

24 First, a benchmark sentence of four weeks' imprisonment for the archetypal case would render it virtually impossible or extremely unlikely for an alternative sentence to be imposed. This was not in line with Parliament's intention to have a minimum mandatory term only for the most egregious offences, and also rendered nugatory the possibility of imposing a fine for s 35(1) RTA offences.[22]

25 Second, the offence of driving without a licence should not be categorised as "irresponsible driving" for which Parliament had intended to provide stronger deterrence against when passing the 2019 RTA Amendments. The appellant argued that the meaning of "irresponsible" in the context of the debates surrounding the 2019 RTA Amendments suggested that the vehicle was driven in an inappropriate or improper manner, rather than simply being driven. It clearly could not pertain to driving without a licence. According to the

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21 Appellant's written submissions at paras 54–55.

22 Appellant's written submissions at paras 17–21.

appellant, irresponsible driving was far more culpable than driving without a licence because the former could have deadly consequences. Driving without a licence, without more, could not sensibly or even remotely result in deadly consequences. As such, the appellant submitted that a benchmark sentence of four weeks' imprisonment for deterrence was not required. A fine would suffice in the circumstances.[23]

26 In this regard, the appellant argued that Parliament had observed that fines and public education had resulted in encouraging results of the number of road traffic accidents dropping. This indicated that fines coupled with education was an effective deterrence against road traffic offences, contrary to what *Rizuwan* had concluded.[24]

27 Third, the usual sentences for s 43(4) RTA offences for driving whilst under disqualification were not applicable to the benchmark sentence for a s 35(1) RTA offence. This was because the culpability and blameworthiness of offenders under s 43(4) of the RTA were higher than that of offenders under s 35(1) of the RTA. Section 43(4) RTA offenders must have committed an offence previously which brought about the disqualification, and subsequently offended again whilst under disqualification. This evinced a blatant disregard of law which could not be likened to a first-time offender under s 35(1) of the RTA.[25]

28 Fourth, reference should be taken from the sentencing framework for drink driving under s 67 of the RTA and the sentencing frameworks for both

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[23] Appellant's written submissions at paras 26–32.

[24] Appellant's written submissions at paras 4, 8, and 33–34.

[25] Appellant's written submissions at paras 43–44.

offences ought to be similar. This was because drink driving posed a real risk of danger to the public. The sentencing framework for s 67 RTA offences was applicable to first time offenders as well. Since a fine was imposed as the starting point for offences under s 67(1) of the RTA, a fine ought to be similarly imposed as the starting point for s 35(1) RTA offences.[26]

Prosecution's case

29 The Prosecution submitted that the benchmark sentence approach was the most appropriate sentencing framework because it was able to effectively deal with the majority of s 35(1) RTA offences which manifested in a very narrow manner, as shown by the data presented by the Prosecution in *Rizuwan*.[27] The nature of s 35(1) RTA offences was also relatively technical and similar to one of strict liability. The Prosecution argued that the court in *Rizuwan* observed that all the 500 s 35(1) RTA cases surveyed between 2019 and 2020 involved offenders who had never held a valid driving licence for the class of vehicles they were driving (*ie*, Unqualified Drivers). It was this statistic which enabled the court to identify the archetypal case for s 35(1) RTA offences. Ultimately, the court in *Rizuwan* held that the benchmark sentence was confined to the archetypal case,[28] and left open the question regarding the appropriate sentencing approach where the offender was a Qualified Driver.

30 The Prosecution argued that Ms Estad's multiple starting points approach was not appropriate because its focus on the class of licence that the offender was required to have to lawfully drive the vehicle was not a primary factor in sentencing s 35(1) RTA offences. There were many factors to be

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26 Appellant's written submissions at paras 45–51.

27 Prosecution's written submissions at paras 28–33.

28 Prosecution's written submissions at paras 21–24.

considered in sentencing, and the class of vehicle was merely one of them.[29] The Prosecution further argued that the principal mischief targeted by s 35(1) of the RTA was the driving of any type of vehicle without a licence by an offender. Such a mischief was not "measurable" by any means, especially by way of a quantitative metric. This was unlike the offence of drug trafficking which aimed to prevent the proliferation of drugs. In those cases, the quantity of drugs was a constituent element of drug trafficking offences, and the weight of the drugs provided a clear quantitative index for assessing the gravity of the offence. The imposition of a multiple starting points approach premised on the class of licence would introduce "unnecessary rigidity into the system" and impede "the court in placing undue weight on that one factor at the expense of other factors that may be equally (or even more) relevant for sentencing"[30]

31 On the appropriate benchmark sentence for the archetypal case, the Prosecution submitted that the benchmark sentence of four weeks' imprisonment in *Rizuwan* was fair and in keeping with Parliament's intent in amending s 35 of the RTA. Since Parliament had significantly increased the maximum sentence for this offence and had stated its express intent to deter "irresponsible driving", it would be contrary to the legislative intent to impose a fine in the archetypal case. This was necessary to deter such offences.[31] The Prosecution also argued that the court in *Rizuwan* had correctly taken reference from the offence of driving under disqualification under s 43(4) of the RTA (usual tariff of four to eight weeks' imprisonment) in determining the benchmark sentence for s 35(1) RTA offences. This was because both offences were similar in nature and purpose and had identical sentencing ranges. Both

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29 Prosecution's written submissions at paras 9–15.

30 Prosecution's written submissions at paras 16–20.

31 Prosecution's written submissions at paras 34–37.

offences also involved non-compliance of a regulatory nature and have been construed as strict liability offences. Both offences involved an offender driving in blatant disregard of the law either because there was a court order banning the offender from driving, or because the law does not permit the offender to drive. In both cases, the offender knew that he was not allowed to drive. Specific deterrence was important for both offences because such offences were difficult to detect.[32]

Our decision

Issues before this court

32 There were two central issues:

(a) the appropriate sentencing framework to be adopted for offences under s 35(1) of the RTA; and

(b) if the benchmark sentence approach was to be adopted, the appropriate benchmark sentence for offences under s 35(1) of the RTA.

The appropriate sentencing framework for offences under s 35(1) of the RTA

33 The prescribed penalty under s 35(3)(*a*) of the RTA for a first-time offender who commits an offence of driving without a valid licence under s 35(1) of the RTA is a fine not exceeding $10,000 or to imprisonment for a term not exceeding three years or to both. As the offence is in connection with the driving of a motor vehicle, pursuant to s 42(1) of the RTA, the court shall make an order disqualifying the offender from holding or obtaining a driving licence for life or for such period as the court thinks fit.

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[32] Prosecution's written submissions at paras 38–43.

34 We first considered the appropriate sentencing framework for the offence of driving without a valid driving licence under s 35(1) of the RTA. Various sentencing approaches have been devised and relied upon to assist in the determination of sentences across a wide range of offences committed by a diverse pool of offenders. The Court of Appeal ("CA") in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [25]–[38] provided a comprehensive summary of the main types of sentencing frameworks available. They include: (1) the "single starting point" approach; (2) the "multiple starting points" approach; (3) the "benchmark" approach; (4) the "sentencing matrix" approach; and (5) the two-step sentencing bands approach.

35 In deciding the appropriate sentencing framework for a particular offence, it is necessary to appreciate the general purpose behind sentencing frameworks. The purpose of a sentencing framework is to "ensure consistency in both outcome and approach" when arriving at a sentence for particular offences. In other words, like cases should be treated alike (*Sue Chang v Public Prosecutor* [2023] 3 SLR 440 ("*Sue Chang*") at [43]). The sentencing framework helps to achieve this goal by serving as an "analytical frame of reference to allow the sentencing judge to achieve a reasoned, fair and appropriate sentence in line with other like cases while having due regard to the facts of each particular case" (*Sue Chang* at [44], citing *Public Prosecutor v Pang Shuo* [2016] 3 SLR 903 at [28]). To be useful as an analytical frame of reference for a particular offence, a sentencing framework must thus be responsive to the particularities of the offence itself.

The benchmark approach to sentencing was appropriate for s 35(1) RTA offences

36 In our judgment, it was noteworthy that s 35(1) RTA offences manifested themselves in a particular manner. As the court observed in *Rizuwan* at [39], the statistics tabled by the Prosecution showed that between 2019 and 2020, there were 500 cases of s 35(1) RTA offences (which were accessible prosecutions on the system). Of these 500 cases, a majority of the offenders (75% in 2019 and 80% in 2020) were caught because of police enforcement action, with a minority of them as a result of an accident. A large majority (around 90%) of cases involved first-time offenders as well. More pertinently, the Prosecution confirmed that all 500 cases involved Unqualified Drivers. In other words, in a large majority of s 35(1) RTA cases, the accused persons were Unqualified Drivers who were first-time offenders and who were caught by police enforcement action (where no accident had taken place) – this was precisely the archetypal case identified by the court in *Rizuwan*.

37 In essence, this meant that *the bulk of* s 35(1) RTA cases which the sentencing court has to deal with would involve the archetypal case. The benchmark approach works well for these types of offences. This is because it defines the factual matrix of the notional case with specificity and is supplemented by further sentencing considerations that can be taken into account when calibrating the sentence that is meted out (*Terence Ng* at [31]). Such a factual matrix coupled with an accompanying benchmark sentence and with further sentencing considerations, would be highly relevant to the sentencing court when it deals with *the bulk of* s 35(1) RTA cases that are archetypal. As the CA observed in *Terence Ng* at [32], "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".

38 For the remaining minority of cases, the statistics suggested that (other than a few outlier cases involving driving to commit other offences, vehicle theft, or high-speed chases) the distinction between these outliers and the archetypal case was the presence of an accident with property damage or hurt. In such cases, and in cases which involve repeat offenders, the benchmark sentence remains effective and consistent because it can simply be adjusted upwards to account for these aggravating factors. These sentencing considerations are discussed below (see [82]–[83]).

39 As for a non-archetypal s 35(1) RTA case involving a Qualified Driver committing a s 35(1) RTA offence (whether due to negligence or otherwise), Ms Estad suggested various hypothetical situations where such a case could occur:[33]

> (a) the offender held a driver's licence but not for the class of vehicle driven (this could involve vehicles in related sub-classes or in completely distinct classes);
>
> (b) the offender failed to convert a foreign driver's licence when required to do so;
>
> (c) the offender failed to renew his driver's licence (*ie*, drivers over the age of 65 and foreigners holding a Singapore driving licence);

[33] YIC's written submissions at para 70.

(d) in respect of Class 4 and 5 vehicles, the offender was above the maximum age of 75; or

(e) the offender's driver's licence was revoked.

40 In our view, these non-archetypal cases should not have a bearing on the adoption of the benchmark sentence approach for s 35(1) RTA offences involving Unqualified Drivers. Although these cases may possibly occur, they were of no practical significance because they were so different from the archetypal case with which we were confronted. Where it involved a Qualified Driver who possessed a driver's licence but who for one reason or another did not maintain its validity, that driver knew how to drive, or at the very least, was previously assessed to be capable of doing so. This was a significant distinction from the archetypal case of a driver who has never been licensed. Such cases can and should be dealt with outside of the benchmark sentence, as the benchmark sentence is meant to provide a touchstone for the archetypal s 35(1) offence.

41 The court should avoid having to assess a driver's skill in the context of sentencing s 35(1) RTA offences because this would introduce significant complexities, though this may be unavoidable in exceptional circumstances.

42 In any event, there have not been any cases involving Qualified Drivers occurring in 2019 and 2020 (based on the statistics available in *Rizuwan*). Given the data available for a large number of s 35(1) RTA offences (500 data points) during that period of time, the lack of s 35(1) RTA offences involving Qualified Drivers would show that such cases were the rare exceptions rather than the norm. As we observed above, cases involving Qualified Drivers can and should

be dealt with outside the benchmark sentence for the archetypal case of Unqualified Drivers.

The other sentencing approaches were not to be preferred

43 In our judgment, the other sentencing approaches were clearly not appropriate for s 35(1) RTA offences. Given the stark differences between s 35(1) RTA offences involving Unqualified Drivers and Qualified Drivers (as explained at [39]–[40] above), we were of the view that it would be difficult to adopt a sentencing matrix approach, which was capable of being applied to both types of offenders in s 35(1) RTA offences.

44 We agreed with the Prosecution that the multiple starting points approach recommended by Ms Estad was also not suitable. The class of vehicle is but one of the many factors that has to be taken into account when calibrating the sentence. There was nothing to suggest that the singular factor of the class of vehicle being driven should be given such primacy over all the other factors so as to justify adopting Ms Estad's recommended multiple starting points approach, instead of simply taking it into account with the other aggravating or mitigating factors present.

45 Although we agreed with Ms Estad that other things being equal, heavier vehicles cause greater damage and pose a higher safety risk to other road users, thus increasing the gravity of the offences, we were of the view that the guiding principle should be the actual or potential harm that an offender causes to other road users, and not the class of vehicle being driven. The class of vehicle being driven was not the sole factor in this inquiry. Many other factors, such as the manner in which the offender was driving, the presence of passengers in the vehicle, the place where the offender drove, and the occurrence of an accident,

all went towards the actual or potential harm analysis as well. It would thus not be appropriate to give primacy to the class of vehicle being driven as a factor, which would be so, if the multiple starting points approach were to be adopted. The degree of importance placed on any particular factor contributing to actual or potential harm that an offender caused to other road users must be assessed based on the circumstances of each case. For instance, in a case where a Class 3 vehicle was driven in a dangerous manner (*ie*, speeding and driving in the wrong direction on the road) and a Class 4 vehicle was driven in a normal manner (that is not unsafe), it would not make sense to give primacy to the class of vehicle as a factor.

46 Moreover, the class of vehicle is not a single quantitative metric that is the particular mischief which the s 35(1) RTA offence is targeted at. This is unlike the paradigmatic examples of drug trafficking and cigarette smuggling where the mischief or harm can be quantified. In s 35(1) RTA offences, the mischief cannot be quantified based on the single metric of the class of vehicle being driven. In this regard, we have explained why a multi-factorial assessment should be taken for s 35(1) RTA offences, and why the class of vehicle driven should not be given primacy as a factor (see [45] above).

The appropriate benchmark sentence for s 35(1) RTA offences

47 We now turn to consider the appropriate benchmark sentence for s 35(1) RTA offences. It was necessary for us to consider the nature of the offence and the harm it seeks to prevent by keeping unlicensed drivers off our roads. We begin by referring to the 2019 RTA Amendments where the present s 35(1) RTA offence was introduced as a standalone provision.

The 2019 RTA Amendments

48 Prior to the 2019 RTA Amendments, offences under s 35(1) RTA were punishable under the catch-all provision, s 131(2) of the Road Traffic Act (Cap 276, 2004 Rev Ed) (the "Old RTA"). Section 131(2) of the Old RTA provided for first time offenders to be sentenced to a fine not exceeding $1,000, or to imprisonment for a term not exceeding three months, or both. The 2019 RTA Amendments introduced the present s 35(3)(*a*) RTA provision which provides for first time offenders to be sentenced to a fine not exceeding $10,000, or to imprisonment for a term not exceeding three years, or both. In our view, such a significant increase in the punishment for s 35(1) RTA offences suggested that Parliament intended the sentences to be enhanced.

49 Parliament had in fact articulated that the 2019 RTA Amendments were made as part of a review of the RTA (Singapore Parl Debates; Vol 94; [8 July 2019] (Mrs Josephine Teo, Second Minister for Home Affairs)). Mrs Josephine Teo ("Minister Teo") explained that "to make [Singapore's] roads safer, [Singapore needed] stronger deterrence against irresponsible driving". This would be achieved by "(a) enhancing the criminal penalties for irresponsible driving; and (b) tightening the regulatory regime against irresponsible driving".[34] Minister Teo went on to explain the need to enhance criminal penalties. Notwithstanding efforts by the traffic police and the land transport authority to step up "enforcement, education and engagement" that had shown encouraging results, "irresponsible driving remains a big concern". She emphasised that irresponsible driving was problematic because it could have deadly consequences. As a result of this, stronger deterrence was needed against

[34] *Hansard* at p 1

irresponsible driving, alongside improvements to enforcement, education and road safety infrastructure.[35]

50 We disagreed with the appellant's submission that Minister Teo's comments on a greater need to deter irresponsible driving did not apply to the offence of driving without a licence (see [25] above), as "irresponsible" suggested that the vehicle was driven in an inappropriate or improper manner, rather than simply being driven. According to the appellant, driving without a licence, without more, "cannot sensibly or even remotely result in deadly consequences".[36] In our judgment, this cannot be correct. *Prima facie*, all instances of an Unqualified Driver driving must fall squarely within the definition of irresponsible driving. The Unqualified Driver is not competent in fact or in law to drive, and in doing, is a hazard to other road users. This is unlike the Qualified Driver who would have been found competent in fact at some point even although he is no longer competent in law to drive.

The nature of s 35(1) RTA offences and the harm it seeks to prevent

51 Although driving is carried out by an individual, it is not an individualistic activity. Our roads are an essential public good. They are connected with the lives of everyone living in Singapore.

52 The harm that s 35(1) of the RTA seeks to prevent is to keep unlicensed drivers off our roads. First, it reduces the risk of harm to other innocent road users. As we have explained, Unqualified Drivers have no basic competence to drive a motor vehicle, as a matter of law and fact. Thus, when an Unqualified Driver drives on our roads, the offender poses a potential danger to other road

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35 *Hansard* at p 1

36 Appellant's written submissions at para 26.

users. This danger is further amplified as the offender who drives without a licence is more likely to cause an accident and result in harm.

53 We found Ms Estad's submissions here to be helpful. She examined several studies conducted in other jurisdictions which consistently showed that unlicensed drivers are more likely than licensed drivers to engage in dangerous driving behaviour, and that unlicensed drivers are more likely to be involved in serious or fatal road accidents.[37]

54 Second, keeping unlicensed drivers off our roads reduces the risk of innocent road users having to suffer without adequate compensation from the unlicensed drivers, who will not be covered by insurance (due to them driving without a licence) when there is an accident. Victims may suffer prolonged periods of pain and suffering and be prevented from continuing with their livelihoods, depriving them of income streams they would need to sustain themselves and their dependents. Worse still, some victims may need continuous caregiving for the rest of their lives. Such financial strains could add on to the pain and suffering the victim is already enduring as a result of the wrongdoer's irresponsible actions.

55 Third, the nature of s 35(1) RTA offences, similar to many other road traffic offences, is that they are difficult to detect. Typically, they are detected when the offender is stopped by police enforcement action or when the offender is involved in an accident. In the former, the traffic police are not omnipresent on our roads. This leaves the onus of compliance with the RTA on the individual drivers themselves. An emphasis on self-compliance with the laws regulating driving is thus required.

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[37] YIC's written submissions at paras 37–38.

Unsuitable approaches to determining the benchmark sentence for s 35(1) RTA offences

Section 43(4) of the RTA for offences of driving whilst under disqualification was limited as a reference point

56 In light of our explanation on the nature of s 35(1) RTA offences and the harm it seeks to prevent by keeping unlicensed drivers off our roads, we found that s 43(4) RTA and s 67 RTA were of limited use as reference points for determining the benchmark sentence for s 35(1) RTA.

57 In relation to offences of driving whilst under disqualification pursuant to s 43(4) of the RTA, we took a different view from the court in *Rizuwan* and found that the usual tariff for s 43(4) RTA offences was of limited value in determining the benchmark sentence for s 35(1) RTA offences. We agreed with the appellant that offenders who commit offences of driving whilst under disqualification pursuant to s 43(4) of the RTA are inevitably repeat offenders. They must have committed road traffic-related offences which caused them to be disqualified before they subsequently drove whilst under disqualification. This was a point which the court in *Rizuwan* did not appear to have considered when adopting the usual tariff for s 43(4) RTA offences in setting the benchmark sentence of four weeks' imprisonment for s 35(1) RTA offences. Indeed, the case of *Fam Shey Yee* which was cited as precedent for the usual tariff, involved an offender who had previously been disqualified from driving for failing, without reasonable excuse, to provide a breath specimen when required to do so. The offender then subsequently drove under disqualification.

58 In our judgment, it is noteworthy that the driver had *persisted in disregarding the law* by driving whilst under disqualification despite having committed a previous traffic offence that warranted a disqualification. This was

made worse because it meant that the driver would have driven without insurance coverage as well. There was escalating criminality which necessitated a heavier sentence. The driver had clearly not learnt his lesson after being punished the first time and displayed a blatant disregard of the law. Moreover, given the importance of self-compliance with the road traffic laws (see [55] above) due to the difficulty of detection, a stiffer sentence is warranted because the driver's recalcitrance invoked the need for specific deterrence.

59 We also found that the usual tariff for s 43(4) RTA offences was of limited value in determining the benchmark sentence for s 35(1) RTA offences because the Unqualified Driver in the archetypal s 35(1) RTA case was not competent to drive a vehicle either in fact or in law (see [50] above).

Section 67 of the RTA for offences of drink driving was not a suitable reference point

60 As for offences of drink driving pursuant to s 67 of the RTA, we disagreed with the appellant and found that the sentencing framework for drink driving offences was not relevant for the purposes of setting a benchmark sentence for s 35(1) RTA offences. General claims that offences of drink driving are similar to offences of driving without a licence because they pose "a real risk of danger to the public and [are] predominantly concerned with keeping accused persons out of the road"[38] were not helpful in this regard. Thought must be given to the finer details of each offence. In our judgment, s 67 RTA offences were not relevant because they are a distinct type of offence targeted at a different group of drivers, using different strategies, as compared to s 35(1) RTA offences. This could be seen from the vastly different legislation for both offences.

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[38] Appellant's written submissions at para 46.

61 Section 67(1) RTA provides that first-time offenders who drive under the influence of drink, a drug, or an intoxicating substance shall be liable to a fine of not less than $2,000 and not more than $10,000, or to an imprisonment term not exceeding 12 months, or both. Section 67(2)(*a*) of the RTA further provides that first-time offenders who drink drive shall be disqualified from holding or obtaining a driving licence for a period of not less than two years In contrast, s 35(3)(*a*) of the RTA provides that first-time offenders who drive without a licence shall be liable for a fine not exceeding $10,000 or to imprisonment for a term not exceeding three years, or to both. There is no mandatory disqualification period.

62 For repeat drink driving offenders, the offender faces a fine of not less than $5,000 and not more than $20,000, and to imprisonment for a term not exceeding two years. Section 67(2)(*b*) of the RTA further provides for repeat offenders to be disqualified for a minimum period of five years. If the repeat offender has two or more earlier convictions, s 67(2A) of the RTA provides that the offender be disqualified for life (unless special reasons exist). In contrast, s 35(3)(*b*) of the RTA provides that repeat offenders are liable for a fine not exceeding $20,000 or to imprisonment for a term not exceeding six years, or to both. Again, there is no mandatory disqualification period.

63 There are two material differences between the offence of driving without a licence and that involving drink driving. First, the former appears to attract harsher imprisonment terms given the higher maximum sentences: three years compared to one year for first-time offenders, and six years compared to two years for repeat offenders. Second, disqualification of an offender's driving licence features prominently as a punishment for the latter – drink driving offenders are given mandatory disqualification orders with a minimum of two years, five years, or a lifetime based on the number of antecedents. In our

judgment, these differences in the sentencing options indicate that Parliament had intended to treat these two offences differently.

64 In fact, in explaining the 2019 RTA Amendments, Minister Teo specifically explained that disqualification was an important part of Parliament's strategy to increase penalties for drink driving). She explained that besides doubling penalties to the current levels, Parliament also raised the existing minimum disqualification periods to the current levels (see [61]–[62] above).

65 In our view, the disqualification order is an important component of the deterrent sentence for drink driving offences. The current sentencing framework laid out in *Rafael Voltaire Alzate v Public Prosecutor* [2022] 3 SLR 993 ("*Rafael Voltaire*") at [31] is reflective of disqualification as a deterrence[39]:

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)

66 The starting point of a fine found in *Rafael Voltaire* cannot be looked at in a vacuum, and the fine is a deterrent sentence only because it is accompanied by a lengthy period of disqualification. Under the *Rafael Voltaire* framework, first-time drink driving offenders would likely be disqualified for two to five

[39] Appellant's bundle of authorities at pp 148–149.

years (or more), depending on the level of alcohol they have consumed, and other aggravating factors. Such periods of disqualification are significant to drivers and potential offenders. This makes s 67 of the RTA an inappropriate reference point for arguing that the benchmark sentence for s 35(1) of the RTA should be a fine. Unlike s 67 of the RTA, s 35(1) of the RTA does not have a minimum disqualification period. It is also sensible that disqualification is not used as the main form of deterrence in punishing s 35(1) RTA offences. After all, the lack of a licence did not stop the offender from driving in the first place. To be clear, it was not our judgment that disqualification has zero deterrent effect on potential offenders that are thinking of driving without a licence. But it was sensible that such offenders would be less deterred as compared to drivers who have the privilege of driving (and would stand to lose this privilege due to disqualification) because they have less to lose.

67 Given the significant increase in penalties available under the newly created s 35(3)(*a*) RTA provision (see [48] above), Parliament's intention to increase deterrence of irresponsible driving by enhancing criminal penalties (see [49]–[50] above), and given the nature of a s 35(1) RTA offence as well as the harms it seeks to prevent by keeping unlicensed drivers off the roads (see [51]–[55] above), it was our judgment that a custodial benchmark sentence in the archetypal case was necessary to deter potential offenders from driving without a licence. A fine was simply an insufficient deterrent.

Steven Yang had to be read in context and was irrelevant to s 35(1) RTA offences

68 For completeness, we should comment on the reliance on *Steven Yang* by Ms Estad and the appellant. They both argued that a fine should be imposed as the benchmark sentence for s 35(1) RTA offences because in general, *Steven*

Yang stated at [31] that "a custodial sentence should not be lightly or readily imposed as a norm or a default punishment". Ms Estad submitted that a fine would be sufficient since no harm was caused and there were no indicators that the offender was an actual or potential danger to other road users.[40] In a similar vein, the appellant submitted that *Steven Yang* stood for the proposition that an imprisonment term was not necessarily the only form of deterrence.[41] In the context of the archetypal s 35(1) RTA case, the appellant argued that a fine was adequate for deterrence without being disproportionately crushing on the offender.[42]

69 In our judgment, *Steven Yang* cannot be read to stand for such a broad proposition that a custodial sentence should not be readily imposed in all types of offences. *Steven Yang* has to be read in the context of its facts, the public policy considerations, and the harm caused in that case. It was a case involving an offence for furnishing false information to an Immigration & Checkpoints Authority officer that the fuel tank of a car was 3/4 full, and that the fuel gauge had not been tampered with (under s 129(1)(*c*) of the then Customs Act (Cap 70, 2004 Rev Ed) (the "Customs Act"). Another charge of attempting to leave Singapore without a 3/4 full fuel tank pursuant to the then s 136(1) Customs Act was taken into consideration for the purposes of sentencing. The district judge sentenced the offender to two weeks' imprisonment.

70 In allowing the appeal and substituting the sentence of two weeks' imprisonment with a fine of $4,000, Chan CJ observed that for certain kinds of offences and certain types of offenders, a prison sentence was not the only

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40 YIC's written submissions at para 96.

41 Appellant's written submissions at para 31.

42 Appellant's written submissions at para 54.

effective deterrence. He explained that in certain cases such as offences of an economic nature, a heavy fine, instead of a custodial sentence, "may equally have the desired deterrent effect in reducing the incidence of an offence". Such economic offences included importing uncustomed goods into Singapore (*Steven Yang* at [34]).[43] Chan CJ observed that the scope of s 129 Custom Acts offences was very wide. He held that a s 129 Customs Act offence committed in relation to a s 136 Customs Act offence as was the case in *Steven Yang* fell within the less serious range of s 129 offences. This was because when a s 129 offence was committed in relation to a s 136 offence, the s 129 offence did not cause a wastage of investigative resources because the offender's car had already been stopped for inspection, and it would take the customs officers very little effort to further inspect the car if needed (*Steven Yang* at [47]).[44] Moreover, Chan CJ observed that the precedents in road traffic cases that related to the furnishing of false information which had resulted in custodial sentences were not relevant for the purposes of *Steven Yang* because they entailed different public policy considerations (*Steven Yang* at [37], [41] and [47]).[45] Unlike road traffic cases, the s 136 offence did not "involve any risk of harm to other persons or damage to property, and does not raise any serious public policy considerations" (*Steven Yang* at [47]).[46]

71 Chan CJ was of the view that courts should "take into account the purpose of punishment in relation to a particular offence". This was fundamentally done by taking into account the harm to society which was

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43 YIC's BOA Vol 1 at pp 563–564.

44 YIC's BOA Vol 1 at p 572.

45 YIC's BOA Vol 1 at pp 565, 567, 572.

46 YIC's BOA Vol 1 at p 572.

caused by the commission of the offence (*Steven Yang* at [50]).[47] He found that in the context of giving false information to the authorities as in *Steven Yang*, the offender would, if successful, have saved himself a small sum of money, whilst at the same time depriving the State of revenue and also hindering the legislative policy of curbing the usage of motor vehicles. To put this into context, the maximum fine of $500 for the s 136 offence, would be around "eight to ten times the loss of petrol duty" of about "$50 to $60 of petrol tax" (*Steven Yang* at [50]).[48] Chan CJ concluded that where "the offender's purpose is to save money in using his car, and to avoid paying a fine of up to $500 by lying to a law enforcement officer", an appropriate deterrent sentence would be "to punish him where it hurts, *ie*, his pocket" (*Steven Yang* at [51]).[49] Chan CJ thus found that the custodial sentence of two weeks' imprisonment imposed on the offender was "inappropriate and disproportionate to the gravity of the s 129 offence committed by him in relation to the s 136 offence". A fine of $3,000, "which is 50 to 60 times the amount of revenue that could have been lost or six times the maximum fine for the predicate offence, [was] sufficient punishment for a first offender" (*Steven Yang* at [53]).[50]

72 Hence, Chan CJ's comments that a custodial sentence should not be readily imposed as a default punishment are more relevant to offences where the offender's motivation and the corresponding harm caused to society is largely of an economic nature and where the imposition of a sufficiently high fine can displace that motivation, or where similar considerations apply.

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47 YIC's BOA Vol 1 at p 574.

48 YIC's BOA Vol 1 at p 574.

49 YIC's BOA Vol 1 at pp 574–575.

50 YIC's BOA Vol 1 at pp 575–576.

A benchmark sentence of two weeks' imprisonment and two years' disqualification was appropriate

73 In our judgment, the s 35(1) RTA offence of driving without a licence was starkly different from the offence of lying to the customs officer in order to get away with leaving Singapore without a 3/4 full fuel tank as in *Steven Yang*. As we have explained, the former involved Unqualified Drivers needlessly endangering other innocent road users where the potential consequences could be very grave. It also involved Unqualified Drivers placing the public at risk of not receiving adequate compensation if an accident eventuated because the Unqualified Drivers would not be covered by insurance whilst driving (due to them driving without a licence) (see [54] above). Section 35(1) RTA offences are difficult to detect, and as such, there needed to be an emphasis on self-compliance with the laws regulating driving. All these factors point towards the imposition of a custodial sentence. A fine was simply not sufficient to deter potential offenders.

74 Without a custodial sentence, offenders without antecedents can choose to run the risk of driving without a licence with the knowledge that the punishment would be a fine if they are caught. The benchmark sentence needs to be severe enough to change this risk assessment.

75 Hence, we were of the view that a benchmark sentence of two weeks' imprisonment was appropriate for the archetypal s 35(1) RTA case which involves a first-time offender, who is an Unqualified Driver who pleads guilty, and who does not cause an accident. Such a benchmark sentence was broadly consistent with the usual tariff of four to eight weeks' imprisonment for s 43(4) RTA offences of driving whilst under disqualification (*Fam Shey Yee* at [12]) considering the similarities and differences between both offences. Both

offences involve offenders who put others around them at risk of not receiving adequate compensation if an accident occurs. Both offences are also hard to detect.

76 However, as we have observed, the s 43(4) RTA tariff applies to repeat offenders. These offenders had been *persistent in disregarding the law* by virtue of them driving whilst under disqualification despite having committed a previous traffic offence warranting disqualification. The escalating criminality required a harsher sentence.

77 This was to be contrasted with s 35(1) RTA offences which is concerned with a first-time offender and there is no question of escalating criminality.

78 In our judgment, it was therefore fair for the benchmark sentence for s 35(1) RTA offences to be at a level below that of the usual tariff for s 43(4) RTA offences. At the same time, given the danger the Unqualified Driver posed to the public at large, and taking into account the other relevant factors (see [75] above), an appropriate benchmark sentence would be two weeks' imprisonment.

79 For completeness, we did not find any merit in the appellant's and Ms Estad's contention that a custodial benchmark sentence would render nugatory the possibility of imposing a fine for s 35(1) RTA offences (see [20] and [24] above). By setting in place a custodial benchmark sentence for the archetypal s 35(1) RTA case, the court was not legislating in place of Parliament by setting a minimum mandatory term. The court was simply deciding on the appropriate sentence for the archetypal case, to promote consistency in sentencing. A fine may still be appropriate in various other situations outside the archetypal case.

80 Additionally, we disagreed that imposing a custodial benchmark sentence would be a drastic and disproportionate increase from the old sentencing precedents of a low fine of around $800 (pre-2019 RTA Amendments) (see [21] above). In our view, the old sentencing precedents of a low fine of around $800 should be wholly discounted. By increasing the range of sentences available for s 35(1) RTA offences, and the strong stance on the need to deter such RTA offences of irresponsible driving, Parliament has made it clear that the old sentencing precedents were no longer relevant. In any event, the fine of around $800 imposed in the past was close to the maximum fine of $1,000 that was permissible under s 131(2) of the Old RTA. This meant that for offences of driving without a licence, fines imposed were already close to the highest end. That would translate to fines of around $8,000 under the current s 35(1) of the RTA, which would not even include the need for greater deterrence under the current RTA as explained by Parliament.

81 As for disqualification, we agreed with Ms Estad that pursuant to s 42(1) of the RTA, the court may impose a disqualification order in addition to the punishment for an offence under s 35(1) of the RTA. We also agreed with Ms Estad that a charge of using a vehicle without insurance pursuant to s 3(1) of the Motor Vehicle (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed) (the "MVA") would usually accompany an offence of driving without a licence, and that this carried a minimum disqualification period of 12 months. In our judgment, an additional two years of disqualification is appropriate to adopt for the s 35(1) RTA benchmark sentence. A total period of three years' disqualification (the two years' benchmark disqualification in addition to the one-year minimum disqualification for driving without insurance) would be proportionate for a first-time offender who drove without a licence.

Factors that can be considered in adjusting the benchmark sentence for s 35(1) RTA offences

82 In *Rizuwan* at [63], the court set out a comprehensive non-exhaustive list of factors that might be considered in calibrating the benchmark sentence in the circumstances of each individual case, which we reproduce:

> (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 which duty was not paid), 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, 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.

83 In our view, this list was helpful and should supplement the benchmark sentence of two weeks' imprisonment and two years' disqualification, save that the situation of an Unqualified Driver who drives in an emergency warrants further consideration. Much will depend on the evidence as to the nature of the emergency, the harm that was sought to be avoided and the basis on which the assessment was made that the risk of the harm to be avoided was greater than the risk posed by the action of driving without being qualified. This is a nuanced evaluation and we do not say more at this stage, save that whereas in the present case, an offender runs a business that relies on transportation, there would likely never be a basis for claiming that the failure of transportation plans constituted an emergency that should exonerate the offender, as business contingencies should have been planned for in the first place.

Applying the benchmark sentence to the facts

84 Given our judgment that the benchmark sentence for the archetypal s 35(1) RTA case has been modified to comprise two weeks' imprisonment and two years' disqualification, the final step was to determine how this benchmark sentence should be calibrated in the circumstances of the present case. The appellant, in his written submissions, argued that the benchmark sentence in *Rizuwan* was erroneous. He did not appear to challenge the DJ's findings on the factors to be considered in calibrating the exact sentence to be meted out, save that at the hearing, he clarified that he had not driven to The American Club, and that he had hired someone to drive him there. Neither did the appellant say that his case was dissimilar to the archetypal one. We were also of the view that there were no reasons to disturb the DJ's findings in this regard, save that there was no reason to disbelieve the appellant that he had not driven to The American

Club prior to the offences being committed. As such, we accepted the rest of the DJ's findings on the relevant considerations to be taken into account for sentencing the appellant (the GD at [30]–[33]):[51]

(a) The appellant had driven the motor van as he needed to manage an event and he was not able to get any driver on that day (the GD at [34]–[36]).[52]

(b) The appellant's driving of a motor van without a licence was an inherently dangerous activity that posed serious risk of harm and had exposed other road users to danger (the GD at [37]–[38]).[53]

(c) The appellant was stopped by the traffic police because he drove at an excessive speed of 121 kmph on the PIE, when his vehicle's speed limit was 70 kmph (the GD at [39]).[54]

(d) The motor van is a heavier vehicle that was larger than the average motorcar and the risk of potential harm was higher (the GD at [40]).[55]

(e) Although the appellant did not have any passengers, he still put other road users at risk whilst driving the motor van (the GD at [42]).[56]

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51 ROA at pp 47–49.

52 ROA at pp 49–50.

53 ROA at pp 50–51.

54 ROA at p 51.

55 ROA at p 51.

56 ROA at p 52.

(f) The appellant had driven for a significant distance before being apprehended (the GD at [42]).[57]

(g) The appellant had driven for his own personal benefit and convenience. The fact he made no monetary gains was not a mitigating factor (the GD at [43]).[58]

(h) The appellant had pleaded guilty, was remorseful, was a first-time offender, and had co-operated with the authorities during investigations (the GD at [44]).[59]

We would add here that the appellant was uninsured whilst driving without a licence.

85 In our judgment, a consideration of the relevant circumstances warranted an upward adjustment of the benchmark sentence to three weeks' imprisonment. This reflected the appellant's overall criminality of driving a motor van (a heavier vehicle), at speeds which significantly exceeded the vehicle speed limit, for a substantial distance, for his own commercial benefit, whilst he was uninsured. It also accounted for the appellant having pleaded guilty, his remorse, and his cooperation with the authorities during investigations.

86 At the hearing, counsel for the appellant argued that since the appellant had already pleaded guilty and had been sentenced for speeding as well as driving without insurance, these factors should not be taken as aggravating

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57 ROA at p 52.

58 ROA at p 52.

59 ROA at p 52.

factors when calibrating the sentence for the s 35(1) RTA offence. We disagreed. All the relevant factors that go towards an assessment of the offender's actual conduct of driving without a licence must be considered when arriving at an assessment of the gravity of the s 35(1) RTA offence. Otherwise, this would lead to road traffic offences being analysed in an artificial manner that would not be reflective of their reality. Consider these two scenarios:

(a) Driver A drove very slowly without a licence on a small road in a school zone; and

(b) Driver B drove at twice the vehicle speed limit without a licence on a small road in a school zone.

If the factor of Driver B's speeding was excluded from consideration because Driver B was charged separately with a speeding offence, this would lead to an absurd result whereby both Driver A and Driver B would be sentenced to the same sentence for their s 35(1) RTA offences of driving without a licence, despite Driver B clearly being a much greater hazard, as compared to Driver A.

87 The nature of road traffic offences is such that they involve an assessment of an offender's conduct on the road, with this assessment usually being multi-faceted. As such, the assessment of the gravity of the offender's conduct in offences like driving without a licence cannot be detached from the other circumstances surrounding the manner in which the offender had driven. For an accurate assessment and a fair decision, the court must consider all the circumstances of the case. This would be a reflection of the totality principle, which entailed a "'last look' at all the facts and circumstances to ensure the overall proportionality of the aggregate sentence" (*Haliffie bin Mamat v Public Prosecutor and other appeals* [2016] 5 SLR 636 at [79]). This focus on the

overall proportionality of the aggregate sentence is to ensure that the overall sentence is neither excessive nor inadequate (*Gan Chai Bee Anne v Public Prosecutor* [2019] 4 SLR 838 at [20]). In other words, in some circumstances, the totality principle is equally capable of "having a boosting effect on individual sentences where they would otherwise result in a manifestly inadequate overall sentence" (*Public Prosecutor v Su Jiqing Joel* [2021] 3 SLR 1232 at [126]).

88 Moreover, this focus on the totality of an offender's conduct whilst driving is sensible because each aspect of an offender's conduct may amplify the potential harm the offender may cause, and thus the gravity of the offence. As an example, an offender's conduct of speeding or driving while under the influence of alcohol is likely to lead to much greater danger in a situation where the offender is an Unqualified Driver, as compared to an offender who is licensed, because the former already lacks the training on proper control of the vehicle, even in the absence of speeding or influence of alcohol. Although such behaviour by the latter is still dangerous, it would be more dangerous if an Unqualified Driver did the same.

89 Therefore, in our judgment, the correct approach to assessing road traffic offences is to consider the totality of an offender's action in its context. This will enable the court to arrive at a fair and just outcome which is reflective of the gravity of the offence. Any concerns on the prejudice to an offender being punished twice for offences arising out of the same act of wrongdoing can be ameliorated by having the sentences run concurrently (see a similar discussion in *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587 at [56]–[60]).

Conclusion

90 In conclusion, we were of the view that the benchmark sentence approach was suitable for the s 35(1) RTA offence of driving without a licence. We also found that the starting benchmark sentence for the archetypal s 35(1) RTA case which involves a first-time offender, who is an Unqualified Driver who pleads guilty, and who does not cause an accident was two weeks' imprisonment, and a disqualification order from holding or obtaining a driving licence for a period of two years.

91 The present case was one in which the benchmark sentence should be applied as a starting point. Having regard to the various aggravating and mitigating factors in the present case (see [84] above), as well as the totality principle, the benchmark sentence of two weeks' imprisonment was adjusted to three weeks' imprisonment. As for the disqualification of 18 months, we did not disturb the DJ's order as there was no appeal against it, even though it was

substantially lower than the new benchmark sentence of two years' disqualification as set out in the present case.

92 Accordingly, we allowed the appeal in part by reducing the appellant's sentence for the s 35(1) RTA offence to three weeks' imprisonment.

93 We record our appreciation to the young independent counsel, Ms Estad for diligently preparing an objective, detailed and comprehensive analysis from which we derived considerable assistance.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Vincent Hoong
Judge of the High Court

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