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

[2024] SGHC 161

Magistrate's Appeal No 9035 of 2024

Between

Muhammad Nurashik bin
Mohd Nasir

… *Appellant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

[Criminal Law — Statutory offences — Road Traffic Act — Driving while disqualified]
[Criminal Procedure and Sentencing — Appeal]

Muhammad Nurashik bin Mohd Nasir
v
Public Prosecutor

[2024] SGHC 161

General Division of the High Court — Magistrate's Appeal No 9035 of 2024
Vincent Hoong J
26 June 2024

26 June 2024

Vincent Hoong J:

Introduction

1 The Appellant was charged with the commission of 17 theft and traffic offences. He pleaded guilty in the court below to nine charges and gave his consent for the remaining eight charges to be taken into consideration for sentencing. The global sentence imposed by the District Judge ("DJ") was an enhanced sentence of 206 days' imprisonment, 65 months' imprisonment and disqualification from holding or obtaining all classes of driving licences for life with effect from his date of release ("disqualification for life").

2 Two of the proceeded charges, namely the 1st and 13th charges (DAC-925519-2020 and DAC-900125-2023 respectively), are the focus of the present appeal against sentence. These charges concerned separate offences of driving a motor vehicle while disqualified under s 43(4) of the Road Traffic Act (Cap

276, 2004 Rev Ed) and Road Traffic Act 1961 ("RTA"). The DJ sentenced the Appellant to: (a) an enhanced sentence of 60 days' imprisonment, 27 months' imprisonment and disqualification for life for the 1st charge; and (b) 30 months' imprisonment and disqualification for life for the 13th charge. The sentences for the 1st and 13th charges were ordered to run consecutively (see *Public Prosecutor v Muhammad Nurashik Bin Mohd Nasir* [2024] SGDC 60).

Appellant's case on appeal

3 The Appellant's case on appeal comprises three main prongs:

(a) First, the Appellant submits that his conviction on the 13th charge should be set aside. This is because he only rode the motorcycle on a footway and this is not a "road" within the meaning of the RTA.

(b) Second, in the alternative, the Appellant submits that his imprisonment terms for the 1st and 13th charges should be reduced from 27 and 30 months to 20 and 24 months respectively. He does not challenge the enhanced sentence of 60 days' imprisonment for the 1st charge or the orders of disqualification for life for the 1st and 13th charges.

(c) Third, again in the alternative, the Appellant submits that his sentences for the 1st and 13th charges should be ordered to run concurrently instead of consecutively.

My decision

Whether to set aside the Appellant's conviction on the 13th charge

4 I begin with the Appellant's submission that his conviction on the 13th charge should be set aside. Preliminarily, I agree with the Prosecution that, under s 375 of the Criminal Procedure Code 2010 ("CPC"), the Appellant, having pleaded guilty to the 13th charge, is only entitled to appeal against the extent or legality of the sentence. His submission is effectively an application for the court to exercise its revisionary powers under s 400 of the CPC and should not be raised in an appeal against sentence. Nonetheless, in fairness to the Appellant, I shall consider the correctness of his conviction on the 13th charge having regard to the record of proceedings.

5 According to the Statement of Facts ("SOF"), on 2 April 2022, the Appellant rode the motorcycle out of the carpark located at Blk 429A, Choa Chu Kang Avenue 4 (the "Carpark") and along the footway of Choa Chu Kang Avenue 4 (the "Footway"). The subject of the 13th charge is the Appellant's riding of the motorcycle "along Choa Chu Kang Avenue 4". The Appellant interprets this as a reference to the Footway and submits that no offence under s 43(4) of the RTA is made out because a footway is not a "road" under the RTA. He also adds that he did not ride the motorcycle along the "main road" of Choa Chu Kang Avenue 4. The Prosecution clarifies that the 13th charge is referring not to the Appellant's riding of the motorcycle *along the Footway* but *inside the Carpark* (which, per the 13th charge, is located "along Choa Chu Kang Avenue 4"). It further observes that the driveway of a HDB carpark has been held to be a "road" under the RTA: *Teo Siong Khoon v Public Prosecutor* [1995] 1 SLR(R) 435.

6 I am satisfied that the Appellant's conviction was correct in law. The SOF is clear that the Appellant rode the motorcycle inside the Carpark, and it is undisputed that that the driveway of the Carpark is a "road" under the RTA. I further accept that this is the subject of the 13th charge. Contrary to the Appellant's assertion, the 13th charge nowhere states that he rode along the "main road" of Choa Chu Kang Avenue 4, and the SOF likewise contains no such allegation. In addition, as the Appellant acknowledges, his riding of the motorcycle along the Footway was already the subject of the 16th charge (DAC-900128-2023) under r 28(1) of the Road Traffic Rules, which was taken into consideration. Thus, when read alongside the SOF and the 16th charge, the 13th charge can only be reasonably interpreted as referring to the Appellant's riding of the motorcycle inside the Carpark. I am constrained to add, however, that the 13th charge could have been more clearly drafted. As the Prosecution concedes, it could simply have referred to "the carpark located along Blk 429A, Choa Chu Kang Avenue 4" to eliminate any possible ambiguity. Nonetheless, for the reasons I have given, I am satisfied that the Appellant was not misled or otherwise prejudiced by the manner in which the 13th charge was drafted.

7 In his additional submissions, the Appellant denies riding the motorcycle out of the Carpark and avers that he had merely pushed it from the Carpark to the Footway. This assertion contradicts the SOF to which he had admitted without qualification below. The Appellant claims that he did not think it necessary to dispute this part of the SOF because he was unaware that it formed the subject of the 13th charge. I do not accept this. As I have explained above, the 13th charge could only have been reasonably interpreted, in context, as referring to the riding of the motorcycle inside the Carpark. Further, the SOF is on any view a document of legal significance and the Appellant, who was represented during the proceedings below, must have appreciated this. In this

regard, I place no weight on the Appellant's passing allegations of "unsatisfactory service" against his former counsel. These allegations are unsubstantiated and do not in any event raise concerns about the validity of his plea. For example, even if the Appellant's counsel did not provide him with a physical copy of the SOF or the amended charges, the fact remains that these were read out to and accepted by him during the proceedings below. Likewise, even if it is true that the Appellant was "rushed" to plead guilty, there is no suggestion, even by him, that his voluntariness of his plea was thereby vitiated.

8 I therefore decline to set aside the Appellant's conviction on the 13th charge.

Whether to reduce the imprisonment terms for the 1st and 13th charges

9 I turn next to the Appellant's submission that his imprisonment terms for the 1st and 13th charges should be reduced to 20 and 24 months respectively.

10 First, the Appellant submits that the DJ erred in failing to attach mitigating weight to his mental condition of post-traumatic stress disorder and major depressive disorder. He asserts that these contributed to his offences because they caused him to feel overwhelmed and anxious in crowded places, including on public transport. I reject this submission. The medical report is unequivocal that there was no contributory link between the Appellant's mental condition and his offences because he could have opted to take private transport. There was simply no need to ride a motorcycle while under disqualification. Further, the law is clear that, in determining the mitigating value to be attributed to an offender's mental condition, the key question is whether the nature of the mental condition is such that the individual retains substantially the mental ability or capacity to control or refrain himself when he commits the criminal

acts. If the individual's ability to refrain himself is not impaired, and he instead chooses not to exercise his self-control, then the presence of the mental condition will be given little or no mitigating value: *Ang Zhu Ci Joshua v Public Prosecutor* [2016] 4 SLR 1059 at [3]. According to the medical report, the Appellant was aware of his actions, knew that they were wrong and maintained full control of them. It follows that no mitigating weight can be attributed to his mental condition.

11 Second, the Appellant submits that a long imprisonment term will cause dysfunction in his family by preventing him from caring for his aging parents and three children. However, it is settled law that, except in very exceptional or extreme circumstances, hardship to the offender's family has very little, if any, mitigating value: *Chua Ya Zi Sandy v Public Prosecutor* [2021] SGHC 204 at [11]–[12], referring to *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [10]–[11]. The facts adduced by the Appellant do not rise to anything approaching such exceptional or extreme circumstances.

12 Third, the Appellant submits that the offences, being traffic offences, are "not very serious". I categorically reject this submission. In *Muhammad Saiful bin Ismail v Public Prosecutor* [2014] 2 SLR 1028, Sundaresh Menon CJ accepted the propositions that "[d]riving while under a disqualification order is as serious an offence as a motorist can commit, and evinces a blatant disregard for the law". It "is to be punished robustly because of the danger posed to the public and the offender's complete disregard for the earlier disqualification order" (at [11], referring to *Public Prosecutor v Lee Cheow Loong Charles* [2008] 4 SLR(R) 961 at [29] and [31]). Troublingly, this submission reveals that the Appellant has yet to grasp the egregiousness of his conduct.

13 Fourth, the Appellant draws attention to the fact that neither of the offences resulted in any accident, damage or injury. I agree with the Prosecution that this is a neutral factor. It would certainly have been an aggravating factor if the offences had resulted in any accident, damage or injury. Their absence cannot, however, be regarded as a mitigating factor.

14 Fifth, the Appellant has raised several arguments against the 30 months' imprisonment term imposed for the 13th charge in particular.

(a) He asserts, first, that the DJ failed to consider that he was merely conducting a "dry run" of the motorcycle after repairing its in-vehicle unit ("IU"). His intention was apparently to restore the motorcycle to his daughter's boyfriend and not to ride it to any destination. I agree with the Prosecution that this account is incredible. As the Prosecution observes, the motorcycle's IU has nothing to do with its motor functions and it is inexplicable that a dry run should have required the Appellant to ride the motorcycle. If his intention was to bring the motorcycle to the gantry of the Carpark so that he could test the IU's functionality, it is similarly hard to understand why he went on then to ride the motorcycle out of the Carpark and along the Footway.

(b) The Appellant also asserts that the DJ erred in regarding it as an aggravating factor that he committed the offence while on bail. However, this is a well-established aggravating factor because, among other things, it may indicate that an offender is not genuinely remorseful and warrants greater attention being placed on the need for specific deterrence: *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 at [63].

15 In the final analysis, having regard to the aggravating factors, the charges taken into consideration and the Appellant's antecedents, I am satisfied that the imprisonment terms imposed for the 1st and 13th charges are not manifestly excessive. The Appellant's prior convictions for driving under disqualification on *four* prior occasions bring the sentencing consideration of specific deterrence to the fore. In this regard, it is entirely unsurprising that these imprisonment terms are longer than the 24 months meted out to the Appellant in 2017 for the same offence. In view of the Appellant's escalating pattern of offending, the principle of escalation was clearly relevant.

16 I therefore uphold the imprisonment terms of 27 and 30 months for the 1st and 13th charges respectively.

Whether the sentences for the 1st and 13th charges should be ordered to run concurrently

17 I turn finally to the Appellant's submission that the sentences for the 1st and 13th charges should be ordered to run concurrently. I reject this submission. The two offences, which were committed two years apart and at different locations, clearly did not form part of the same transaction. The Appellant has not identified any valid reason to depart from the general rule of consecutive sentences for unrelated offences: *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [41]. The case of *Public Prosecutor v Raj Kumar s/o Bala* (SC-907077-2022) ("*Raj Kumar*") does not assist him. It suffices to note, first, that unreported decisions are of limited precedential value because they are often bereft of crucial details concerning the facts and circumstances of the case and lack detailed reasoning behind the sentences imposed: *Toh Suat Leng Jennifer v Public Prosecutor* [2022] 5 SLR 1075 at [51]. Further, *Raj Kumar* involved the distinct offence of driving without a valid licence under s 35(1) of the RTA. As the High Court recently observed in *Seah Ming Yang Daryle v*

Public Prosecutor [2024] SGHC 152, offenders who commit offences of driving whilst under disqualification pursuant to s 43(4) of the RTA are inevitably repeat offenders who must have committed road traffic-related offences which caused them to be disqualified before they subsequently drove whilst under disqualification (at [57]). It follows that no useful comparisons can be drawn between *Raj Kumar* and the present case.

18 I also do not agree with the Appellant that the consecutive running of his sentences for the 1st and 13th charges has produced a "crushing" global sentence. In my view, having regard especially to his multiple prior convictions for driving under disqualification, the global sentence is wholly in keeping with his past record. I also observe that the DJ had initially been minded to impose longer imprisonment terms of 36 and 42 months for the 1st and 13th charges but, mindful of the totality principle, had calibrated these sentences downwards.

19 I therefore uphold the DJ's decision to order the sentences for the 1st and 13th charges to run consecutively.

Conclusion

20 For completeness, I see no reason to interfere with the sentences imposed by the DJ in respect of the other charges, which the Appellant has not challenged in any event.

21 For the reasons above, I dismiss the appeal against sentence.

Vincent Hoong
Judge of the High Court

The appellant unrepresented;
Charlene Tay Chia and Tay Zhi Jie (Attorney-General's Chambers)
for the respondent.