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

[2024] SGHC 262

Magistrate's Appeal No 9065 of 2023/01

Between

Agustinus Hadi

… *Appellant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

[Road Traffic — Offences — Reckless driving]

Agustinus Hadi
v
Public Prosecutor

[2024] SGHC 262

General Division of the High Court — Magistrate's Appeal No 9065 of 2023/01
Vincent Hoong J
16 October 2024

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Vincent Hoong J:

1 The appellant, Mr Agustinus Hadi (the "Appellant"), pleaded guilty in the court below to an offence of dangerous driving under s 64(1) punishable under s 64(2C)(*a*) of the Road Traffic Act (Cap 276, 2004 Rev Ed) (the "RTA"). The District Judge (the "DJ") sentenced him to seven months' imprisonment and disqualified him from holding or obtaining all classes of driving licences for 36 months with effect from his date of release: see *Public Prosecutor v Agustinus Hadi* [2023] SGDC 50 ("GD").

2 In the present appeal, the Appellant submits that the sentence is manifestly excessive, focusing particularly on the imprisonment term imposed.

Whether to establish a sentencing framework for offences punishable under s 64(2C)(*a*) of the RTA

3 As a preliminary issue, I decline the Prosecution's invitation to establish a sentencing framework for offences punishable under s 64(2C)(*a*) of the RTA. In 2022, the High Court observed in *Kwan Weiguang v Public Prosecutor* [2022] 5 SLR 766 ("*Kwan Weiguang*") that there was a dearth of reported cases for such offences after the enactment of the Road Traffic (Amendment) Act 2019 (Act 19 of 2019) (the "2019 RTA Amendments"). Citing the scarcity of cases from which to draw guidance, the court concluded that it would not be appropriate in the circumstances to lay down a sentencing framework: *Kwan Weiguang* at [46]. I respectfully agree with this view, although I am conscious that the lack of a large corpus of case law does not form an absolute bar to the promulgation of a sentencing framework: see *Kwan Weiguang* at [47] and *Sue Chang v Public Prosecutor* [2023] 3 SLR 440 at [48]. Further, although I acknowledge that several further lower court decisions concerning offences punishable under s 64(2C)(*a*) have been published in the time since then, I do not consider that they suffice to allay the concern identified in *Kwan Weiguang*. For completeness, I also acknowledge that an additional difficulty in *Kwan Weiguang* was that, as the appeal was only against the disqualification order, the court would only be able to pronounce on the framework for the disqualification order but not the main punishment to be imposed under s 64(2C)(*a*): *Kwan Weiguang* at [48]. This additional difficulty admittedly does not arise in the present case. Even so, as the insufficient body of case law remains an unresolved issue, I nonetheless decline to lay down a sentencing framework for offences punishable under s 64(2C)(*a*).

4 That having been said, I make two general comments. First, as a matter of statutory construction, I agree with the DJ that s 64(2C) only applies to

non-personal injury cases of dangerous or reckless driving. This comports with the plain wording of s 64(2C), which relates to "any other case", *ie*, any case other than a case in which death, grievous hurt or hurt is caused to another person (see ss 64(2)–(2B)). It is also consistent with the view recently expressed by the High Court in *Chen Song v Public Prosecutor and other appeals* [2024] SGHC 129 ("*Chen Song*"). In *Chen Song*, which concerned offences of careless or inconsiderate driving under s 65(1) of the RTA, the court described s 65(5) as a punishment provision concerning "no hurt" and as reflecting an exclusive category of harm distinct from the "hurt", "grievous hurt" and "death" categories: *Chen Song* at [66]. As s 64(2C) is worded similarly to s 65(5), I consider that the same conclusion must apply. The significance of this reading of s 64(2C) is that egregious non-personal injury cases of dangerous or reckless driving can attract a substantial imprisonment term of up to 12 months' imprisonment, this being the maximum punishment under s 64(2C)(*a*).

5 Second, in my judgment, the relevant offence-specific and offender-specific factors for offences punishable under s 64(2C)(*a*) can be uncontroversially distilled, with suitable modifications, from guideline judgments concerning offences under s 64(1) generally. Relevant cases in this regard include *Kwan Weiguang*, *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587 ("*Wu Zhi Yong*"), *Public Prosecutor v Aw Tai Hock* [2017] 5 SLR 1141 ("*Aw Tai Hock*") and *Public Prosecutor v Koh Thiam Huat* [2017] 4 SLR 1099 ("*Koh Thiam Huat*"). To illustrate, the harm and culpability factors identified in *Aw Tai Hock* and *Koh Thiam Huat* remain generally relevant in determining the severity of an offence punishable under s 64(2C)(*a*), subject to the caveat that the extent of personal injury is irrelevant because offences resulting in personal injury are now punishable instead under ss 64(2)–(2B). Similarly, the offence-specific aggravating factors identified in *Wu Zhi Yong* at

[36] for offences punishable under s 64(2C)(*a*) read with s 64(2C)(*c*) will largely also apply to offences punishable under s 64(2C)(*a*) *simpliciter*, save that the level of alcohol found in the offender's blood or breath may not be relevant given that s 64(2C)(*a*), unlike s 64(2C)(*c*), is not concerned with a "serious offender" as defined under s 64(8).

The level of harm

6 I now turn to the substance of the appeal, beginning with the DJ's assessment of the level of harm. The DJ took the view that the level of harm in the present case was high, having regard to: (a) the significant degree of potential harm; (b) the significant damage to Yap Soon Leong ("Yap")'s car; and (c) the alarm caused to Yap and other drivers: GD at [38]–[41]. The Appellant takes issue with the DJ's conclusion as well as each of his reasons.

7 First, in assessing the degree of potential harm, the DJ identified as one relevant consideration that the other vehicles on the road were travelling at speed: GD at [39]. The Appellant asserts that this finding was unsupported by any objective evidence. This contention is entirely unsustainable. The video footage obtained from Yap's in-car camera indicated his speed at each moment in time. The Appellant does not dispute the accuracy of these indications, which are also consistent with the references to Yap's speed in the Statement of Facts ("SOF") which the Appellant admitted to without qualification below. Using Yap's speed as a benchmark, the DJ could readily have approximated the speed at which the other vehicles were travelling. If nothing else, it was certainly open to him to find that these vehicles were travelling at speed. No accident reconstruction expert was necessary. Indeed, having viewed the video footage, I would add that I entirely agree with the DJ.

8 Second, the DJ noted the damage caused to Yap's car as well as the ensuing repair cost of $13,296.88: GD at [40]. The Appellant first complains that there was no evidence, in the form of photographs or a vehicle damage report prepared by the Traffic Police, allowing the DJ to objectively assess the extent of damage. This argument is unmeritorious because the SOF sets out details concerning the damage to Yap's car, such as the type and location of the damage. The Appellant's other complaint is that the repair cost of $13,296.88 may have been inflated by the repair workshop and therefore does not accurately reflect the extent of damage. This is an entirely speculative submission which, I would add, was not advanced during the proceedings below despite the repair cost likewise being set out in the SOF. In my judgment, the cost of repair was plainly one relevant consideration on which the DJ was entitled to rely in assessing the extent of damage. In any event, leaving aside the repair cost, the SOF's description of the damage sustained by Yap's car amply bears out the DJ's conclusion that this damage was significant. I should add also that, contrary to the Appellant's submission, the DJ nowhere characterised the extent of damage as "spectacular".

9 Parenthetically, I accept that the DJ was in error when he stated that the Appellant's car had been scrapped: see GD at [5(b)]. As the Appellant observes, this information is nowhere to be found in the SOF and was not otherwise tendered during the proceedings below. In oral arguments before me, the Prosecution confirms that the Appellant's car was not scrapped but was impounded. However, there is no suggestion that the DJ had therefore assumed that the Appellant's car "was a total wreck and beyond repair". More fundamentally, as the DJ placed no reliance on the damage to the Appellant's car when determining the level of harm (see GD at [40]), the Appellant cannot be said to have been prejudiced by this.

10 Third, the DJ considered that Yap and other drivers who had witnessed the Appellant's aggression would have felt alarmed and concerned for their own safety: GD at [41]. The Appellant argues that this finding should not have been made by the DJ because it was unsupported by any evidence, for instance in the form of victim impact statements. I reject this argument. These feelings of alarm and concern would have been an entirely natural reaction to the Appellant's conduct. The DJ was entitled to infer that they had been so felt, especially considering the observable reaction of other drivers such as the driver of the dark-coloured car who stopped suddenly, reversed slightly, and switched on his hazard lights to warn other drivers of the danger ahead. I consider this to have been true even in respect of Yap, even if he was the original aggressor, given the disproportionate nature of the Appellant's retaliation.

The level of culpability

11 I next turn to the level of culpability. The DJ was of the view that the Appellant's level of culpability was high because he had deliberately driven in a dangerous manner with absolute disregard for the law and for the safety of other road users, including Yap. His vehicular assault was also relentless and perpetrated over a long distance: GD at [42]. Further, the DJ placed no mitigating weight on the psychiatric report adduced on the Appellant's behalf (the "Psychiatric Report") or on the fact that he had been provoked by Yap's own dangerous driving: GD at [43]–[46].

12 In respect of the Psychiatric Report, the DJ expressed doubt about the reliability of the diagnosis that the Appellant was suffering from adjustment disorder with mixed anxiety and depressed mood at the time of the offence: GD at [44(a)]. The Appellant submits that the DJ was wrong to do so. He disagrees that this diagnosis was substantially based on self-reported symptoms, pointing

out that it also made use of diagnostic criteria in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Association Publishing, 5th Ed, 2013) ("DSM-V"). This submission fails to meet the difficulty identified by the DJ. Even if the DSM-V was used to evaluate the relevant facts, it remains the case that those underlying facts were largely provided by the Appellant himself. Another concern expressed by the DJ was that the Psychiatric Report was also based, in part, on another forensic report (the "Forensic Report") which was not tendered before him and therefore constituted hearsay evidence. The Appellant misunderstands the DJ as saying that the Psychiatric Report "[parroted] or [echoed]" the Forensic Report and therefore itself amounted to hearsay evidence. This was not the DJ's point. He was instead making a comment about the probative value of the Psychiatric Report given the unavailability of the Forensic Report on which it was partly based. Further, the DJ identified other reasons, which the Appellant has not challenged, for doubting the reliability of the diagnosis. These included the fact that the relevant interviews and tests were conducted more than two years after the offence. In view of these glaring defects, the DJ was entitled to cast doubt on the diagnosis without summoning its maker to give evidence or obtaining an independent medical report from the Institute of Mental Health. In any event, as the DJ observed, the Psychiatric Report is unequivocal that there was no contributory link between the Appellant's mental condition and his offence: GD at [44(b)]. Even if the diagnosis should have been accepted without reservation, the Psychiatric Report could not have lowered the Appellant's culpability.

13 Before leaving this point, I strongly deprecate any suggestion that the DJ "did not keep an open mind" or "shut his mind completely" to the Psychiatric Report. It is one thing to disagree with the substance of the DJ's conclusion and

quite another to insinuate that he had pre-judged the matter. From the DJ's written grounds, it is clear that he had carefully considered the Psychiatric Report and, although he ultimately declined to give it mitigating weight, this was for reasons that were clearly identified and articulated. There is simply no suggestion that the DJ had fallen short of the requirements of natural justice. Allegations of this nature are "extremely serious and should only be employed with great circumspection and care": *Soh Rui Yong v Liew Wei Yen Ashley* [2021] SGHC 96 at [48], citing *BOI v BOJ* [2018] 2 SLR 1156 at [141]. They most certainly should not be made lightly and without basis, as the Appellant has done here.

14 Next, the Appellant repeats the argument that his offence was committed under provocation by Yap. He characterises Yap as the "first aggressor", whose act of abruptly braking when driving ahead of him was highly provocative because it could have resulted in a collision. I entirely agree with the DJ that Yap's provocation did not lower the Appellant's culpability: GD at [46]. The law is clear that provocation by other road users does not entitle an offender to react disproportionately: *Kwan Weiguang* at [71], citing *Teo Seng Tiong v Public Prosecutor* [2021] 2 SLR 642 at [120]. Here, the Appellant's behaviour was wholly disproportionate to Yap's initial provocation.

The offender-specific factors

15 The Appellant then submits that the DJ gave no or inadequate consideration to the offender-specific mitigating factors, alleging that they took "second place" to his focus on developing a new sentencing framework. Apart from the Psychiatric Report, which I have addressed above, the Appellant highlights his plea of guilt. However, the DJ had expressly cited this as a mitigating factor, while concluding that it was counter-balanced by the

compelling evidence of his guilt and his related antecedents: GD at [61]–[62]. I see no reason to disagree with the DJ's reasoning on this point, which the Appellant has not challenged.

Parity with Yap

16 Next, the Appellant submits that the DJ erred in regarding Yap's dangerous driving as "clearly less egregious" than his own. He appears to accept that Yap's level of culpability was lower but submits that their offences are indistinguishable in terms of the level of harm. The Appellant's position would thus seem to be that a sentence closer to the $4,000 fine imposed on Yap would be appropriate in his case. I unhesitatingly reject this submission. In the first place, I agree with that the DJ that the principle of parity is inapplicable because the Appellant and Yap were charged with distinct acts of dangerous driving, with Yap's offending behaviour taking place before that of the Appellant: GD at [49(a)]–[49(b)]. If, instead, the Appellant is citing Yap's case as a sentencing precedent, I further agree with the DJ that limited weight should be given to it as it is an unpublished decision (see *Toh Suat Leng Jennifer v Public Prosecutor* [2022] 5 SLR 1075 at [51]): GD at [49(d)]. In any event, I agree with the DJ that the Appellant's offence was more serious than Yap's not only in terms of culpability but also in terms of harm. To say nothing else, the offending acts were far greater in number and committed over a far longer duration. The level of potential harm was therefore much higher, as was the level of actual harm in the form of the damage caused to Yap's car. In my judgment, a significant enhancement of the sentence imposed on Yap was entirely warranted.

17 I also do not accept that the Appellant should have been sentenced by the same district judge who had earlier passed sentence on Yap. There is no

strict requirement for co-offenders to be sentenced together before the same judge. Although this may be "ideal", it will not always be possible or convenient and, in such situations, it suffices for the Prosecution to tender to the sentencing court all relevant material pertaining to any sentences that have already been meted out to any co-offenders: *Chong Han Rui v Public Prosecutor* [2016] SGHC 25 at [44], citing *Lim Bee Ngan Karen v Public Prosecutor* [2015] 4 SLR 1120 at [56]–[58]. Here, the DJ was adequately apprised of the relevant material pertaining to Yap, such as his charge and eventual sentence.

The relevant precedents

18 I now turn to the precedents. The Appellant relies primarily on *Aw Tai Hock* and *Public Prosecutor v Ryan Asyraf Bin Mohammad A'zman* [2022] SGDC 15 ("*Ryan Asyraf*"). According to him, the DJ was wrong to regard his offence as more egregious than the offences in those cases.

19 I begin with *Aw Tai Hock*. This case does not assist the Appellant. In the first place, I see no reason to disagree with the DJ's conclusion that the Appellant's offence was more serious than the offence in *Aw Tai Hock*: GD at [52(c)]. It is true that there were aggravating factors in *Aw Tai Hock* which were absent in the present case. Equally, however, there were aggravating factors in the present case which were absent in *Aw Tai Hock*. Holistically comparing the two cases, it is significant in my view that the Appellant's conduct exposed more road users to danger and took place over a longer duration and distance: GD at [52(c)]. More fundamentally, *Aw Tai Hock* pre-dated the 2019 RTA Amendments. As the Appellant himself concedes, the offender in *Aw Tai Hock* would today be punished under ss 64(2A)(*a*) or 64(2B)(*a*) of the RTA and subject to a maximum punishment of five or two years' imprisonment respectively. A higher sentence than the five months' imprisonment meted out

in *Aw Tai Hock* would almost certainly be imposed today. Thus, even if the present case was less aggravated than *Aw Tai Hock*, it does not follow that a lower sentence is in order.

20 I next consider *Ryan Asyraf*. One of the offences in *Ryan Asyraf* involved the offender driving a car out of a carpark in a bid to evade arrest, injuring several police officers and damaging multiple cars in the process. The Appellant cites this incident at length in comparing his case with that of *Ryan Asyraf*. The comparison is entirely misconceived because the proceeded charge arising from this incident, for which the offender was sentenced to nine months' imprisonment, was framed under s 337(*a*) of the Penal Code (Cap 224, Rev Ed 2008) and not s 64(1) of the RTA. *Ryan Asyraf* is only relevant to the extent that the offender also faced a separate proceeded charge of dangerous driving. This arose from an unrelated incident during which he made an abrupt illegal U-turn on a motorcycle while trying to evade a traffic police officer. This caused an unknown car travelling along the same road to apply its emergency brakes to avoid a collision with the offender's motorcycle. I agree with the DJ that this offence was clearly less serious than the Appellant's offence. Among other things, there was no evidence to suggest that it had carried a high level of potential harm or resulted in property damage: GD at [56]. Furthermore, in my view, the sentence of one week's imprisonment imposed in *Ryan Asyraf* was extremely lenient, considering that it was committed while the offender was on bail, disqualified from driving and attempting to evade arrest.

Conclusion

21 For the reasons above, I dismiss the appeal against sentence. For completeness, I have also considered the length of the disqualification order and am satisfied that it is not manifestly excessive.

Vincent Hoong
Judge of the High Court

Rakesh s/o Pokkan Vasu (Gomez & Vasu LLC) and Paul (Cross Street Chambers) (instructed) for the appellant;
Hui Choon Kuen and Krystle Chiang (Attorney-General's Chambers) for the respondent.