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

[2024] SGHC 278

Magistrate's Appeal No 9103 of 2024

Between

Fan Lei

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Sentencing — Appeals]
[Criminal Law — Statutory offences — Road Traffic Act 1961]

Fan Lei
v
Public Prosecutor

[2024] SGHC 278

General Division of the High Court — Magistrate's Appeal No 9103 of 2024
Aidan Xu @ Aedit Abdullah J
4 October 2024

30 October 2024 Judgment reserved.

Aidan Xu @ Aedit Abdullah J:

1 These are my brief remarks conveying my decision. In this appeal, there arises the question of the appropriate sentence to be imposed upon conviction of driving without reasonable consideration under s 65(1)(*b*) of the Road Traffic Act 1961 (2020 Rev Ed) (the "RTA").

Applicable framework for an offence under s 65 of the RTA by serious offenders

2 The subject of the appeal is for a charge of careless driving under s 65(1)(*b*), punishable under s 65(5)(*c*) and read with ss 65(5)(*a*) and 65(6)(*i*) of the RTA.

3 The appellant, having also been convicted of drink driving under s 67 of the RTA, is subject to an enhanced punishment regime under s 65 for careless driving. Section 64(8) defines persons who have been convicted of an offence

under s 67 as "serious offenders" for the purposes of ss 64 and 65 of the RTA. Section 65(5) then imposes a heavier punishment where a person is a "serious offender", of an additional fine between $2,000 and $10,000, or imprisonment not exceeding 12 months, or both.

4 No framework has been laid down for careless or inconsiderate driving by serious offenders. A framework has, however, been laid down for reckless or dangerous driving by serious offenders under s 64 of the RTA in *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587 ("*Wu Zhi Yong*"). The framework in *Wu Zhi Yong* was applied with adjustments by the District Judge and adopted by the Prosecution in their arguments on appeal. In *Public Prosecutor v Cheng Chang Tong* [2023] 5 SLR 1170 ("*Cheng Chang Tong*"), the *Wu Zhi Yong* framework was adapted for calibrating the sentence for repeat and serious offenders under s 65(5)(*b*) read with s 65(5)(*c*) of the RTA. This is different from "repeat serious offenders" under s 65(5)(*d*). The inelegant drafting is not an issue taken up before this court.

5 I accept that similar factors as considered in *Wu Zhi Yong* can be considered for serious offenders convicted of careless driving, but I will not be laying these out in the present case. For the present purposes, it is sufficient that parties do not dispute that, applying the framework, the present case falls within the first band. The only issue is really whether the threshold for imprisonment has been crossed.

The decision below

6 Applying the *Wu Zhi Yong* framework, the learned District Judge found that:

(a) Firstly, the appellant's alcohol level was not particularly high; the proportion of alcohol in her breath was 43 microgrammes of alcohol in every 100ml of breath, which fell within the lowest band under the framework in *Rafael Voltaire Alzate v Public Prosecutor* [2022] 3 SLR 993.[1]

(b) Secondly, the property damage caused was not extensive but certainly not minimal. There were scratches to the victim's car and the cover of the side mirror had been ripped off.[2]

(c) Thirdly, there was a significant level of potential harm as: (i) the appellant had travelled a significant distance of about 17 km; (ii) the appellant was travelling at a time when the volume of traffic could be expected to be heavy or moderate and there was a significant amount of traffic on the road; and (iii) video footage showed that the appellant was not driving defensively.[3]

7 The District Judge found that the appellant's culpability was not reduced due to the lack of lane markings in the yellow box,[4] and wholly rejected the Defence's submission that the appellant had a good reason for driving after consuming alcohol as she was rushing to provide urgent assistance to a friend.[5]

8 Considering the facts in the round, the District Judge agreed with both parties that the offence fell within Band 1 of the *Wu Zhi Yong* sentencing framework. However, given that there was some property damage caused and a

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1 Record of Appeal at pp 74–75, Grounds of Decision at paras 41 and 45.

2 Record of Appeal at p 75, Grounds of Decision at para 45.

3 Record of Appeal pp 75–76, Grounds of Decision at paras 46–47.

4 Record of Appeal at p 76, Grounds of Decision at para 48.

5 Record of Appeal at p 77, Grounds of Decision at para 50.

significant degree of potential harm, the appropriate starting point was at the upper end of Band 1, namely, a short custodial sentence of around one to two weeks' imprisonment.[6] The fact that the appellant had made full restitution of the damages caused to the victim's car of $800 and her early plea of guilt warranted a downwards calibration of the sentence.[7] Nonetheless, having also considered the appellant's related antecedents in the form of compounded offences for speeding and failing to conform to red light signals,[8] the District Judge ultimately sentenced the appellant to five days' imprisonment and a disqualification and prohibition period of two years for the s 65(1)(*b*) charge.[9] The District Judge found this to be consistent with the precedent case of *Cheng Chang Tong*. While the offender in *Cheng Chang Tong* was a repeat offender with a much higher level of alcohol and higher cost of repairs for damages caused, he had driven a relatively short distance of about 1.6 km and the collision occurred while he was trying to parallel park his car within a carpark. In comparison, the appellant drove for 17 km and met with an accident while driving on a four-lane carriageway which had many other road users.[10]

The decision

9 An important factor in the learned District Judge's calculus was the potential harm posed by the appellant's careless driving. However, to my mind, the potential harm in the present case was not substantial enough to be a strong factor pointing towards a custodial term, even a short one.

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6 Record of Appeal at pp 77–78, Grounds of Decision at para 51.

7 Record of Appeal at p 78, Grounds of Decision at para 52.

8 Record of Appeal at p 78, Grounds of Decision at para 53.

9 Record of Appeal at p 78, Grounds of Decision at para 55.

10 Record of Appeal at p 79, Grounds of Decision at para 57.

10 The offence here is one of careless driving. While it is true that the appellant drove for a distance of 17 km, the distance travelled did not translate into creating great potential harm. There was no evidence that the appellant was driving in a careless manner over that 17 km. The only characteristic that persisted over that distance of 17 km was her inebriation, which was the subject matter of a separate drink driving charge under s 67 of the RTA. While such inebriation may be a relevant factor under s 65, in examining the degree of potential harm, care has to be taken not to find heightened or increased potential harm too readily and without sufficient basis. Travelling a distance of 17 km is not enough to point to increased potential harm. There was nothing else in the circumstances, including the traffic conditions, that pointed to increased potential harm of such a degree that a substantial sentence of imprisonment should follow. I was therefore not satisfied that there was evidence of significant potential harm before the District Judge and, accordingly, I find that she had misdirected herself on this point.

11 Overall, the factors pointed towards a lower culpability. The amount of property damage was low, of some $800.[11] The alcohol level, while not negligible or borderline, was not that high either.[12] The driving that caused the incident showed carelessness and inattention but was on the less serious end. The antecedents of the appellant were also not particularly serious.

12 A fine would thus be appropriate. I do not think the factors point to a maximum fine, and accordingly impose a fine of $8,000 (in default two weeks'

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[11] Record of Appeal at p 11, Statement of Facts dated 18 January 2024 at para 10.

[12] Record of Appeal at p 9, Statement of Facts at para 6; Record of Appeal at pp 74–75, Grounds of Decision at paras 41 and 45.

imprisonment) in place of the imprisonment imposed below. I thus allow the appeal.

13 The mandatory disqualification period of two years, under s 65(6)(*i*) of the RTA, is also applicable in the present case. Section 47F of the RTA, which allows a prohibition order to be made in relation to a holder of a foreign driving licence, also applies. I therefore impose a disqualification and prohibition period of two years on the appellant for the careless driving charge. This disqualification and prohibition period is to run concurrently with the disqualification and prohibition period of 24 months for the s 67 drink driving charge, which the appellant has not appealed against. As a stay of execution was granted over the disqualification and prohibition orders pending the determination of the appeal,[13] the global disqualification and prohibition period of two years is to take effect from today. For completeness, the appellant has already paid the fine of $3,000 for the separate drink driving charge under s 67 of the RTA.[14]

14 I do want to address a few additional points which, although do not affect the outcome of the appeal, should, to my mind, be carefully considered in the future.

15 Firstly, the appellant adduced a report by an accident reconstruction expert who opined on the road condition at the time. Little or no weight would be placed on such opinions where an accused person has pleaded guilty on the basis of a statement of facts. Where an accused person has pleaded guilty and agreed to the statement of facts, there would have been no contest of opinion

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13 Record of Appeal at p 80, Grounds of Decision at para 60; Record of Appeal at pp 60–61, Notes of Evidence dated 5 June 2024 at page 2 line 5 to page 3 line 5.

14 Record of Appeal at p 80, Grounds of Decision at para 60.

evidence, and little for the court to test the opinion proffered. The mitigation plea is not an appropriate mechanism to introduce such opinion evidence.

16 Secondly, the Defence, relying on *Wu Zhi Yong* (at [36(d)]), argued that there was some excuse for the appellant's driving despite having consumed alcohol as she was driving to attend to a colleague who was experiencing a health emergency.[15] Such an assertion that there were urgent grounds for the appellant's careless and drink driving can only be met by much scepticism. In Singapore, many alternatives would have been available: she could have called an ambulance for the colleague or taken a taxi or a private hire vehicle, or public transport. Indeed, it was not clear what the point was of the appellant herself driving over to the colleague in the way described in the mitigation.

17 In any case, there was no evidence of any immediate medical emergency justifying taking the risk of driving while inebriated. The alleged distress call was received almost one and a half hours prior to the appellant's driving. Although the appellant had adduced a medical report of her colleague, detailing his medical history, the medical evidence was untested. No weight whatsoever could be placed on it. An expert's report should only be relied on if it is made clear that it was properly prepared, and the maker of the report clearly specifies that he or she understands his or her overriding duty to assist the court. The report here fell short. The reason for this is simple. The medical report was not made for the purposes of being adduced to court in support of the appellant's mitigation plea. The appellant's colleague stated that he had obtained the medical report on 14 November 2023, "the day preceding the incident".[16]

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15 Appellant's Submissions on Appeal against Sentence dated 20 September 2024 at para 7; Record of Appeal at p 121, Mitigation Plea dated 24 April 2024 at paras 25–28.

16 Record of Appeal at p 129.

Therefore, the medical report could not have been made for the purposes of showing that the appellant's colleague had an emergency medical condition on the day of the offence itself (*viz*, 15 November 2023). I further observe that although the appellant's colleague alleged that the report was obtained on 14 November 2023, the report is in fact dated an entire year prior, on 14 November 2022. If this is the case, this only serves to reinforce the point that no weight can be placed on the medical report at all. I really cannot understand why this report was even tendered here. I need to underline that in future such inappropriate use of reports cannot go without attracting consequences. I hope this is borne in mind.

Aidan Xu
Judge of the High Court

Sankar s/o Kailasa Thevar Saminathan and Tessa Low Wen Xin (Sterling Law Corporation) for the appellant;
Sruthi Boppana and Clara Low (Attorney-General's Chambers) for the respondent.