

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

[2024] SGHC 297

Magistrate's Appeal No 9082 of 2023

Between

Ching Kelvin

... Appellant

And

Public Prosecutor

... Respondent

BRIEF REMARKS

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

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**Ching Kelvin
v
Public Prosecutor**

[2024] SGHC 297

General Division of the High Court — Magistrate's Appeal No 9082 of 2023
Aidan Xu @ Aedit Abdullah J
1 November 2024

25 November 2024 Judgment reserved.

Aidan Xu @ Aedit Abdullah J:

1 In these brief remarks, focussing on the appeal against imprisonment, I will outline the main reasons for my decision. Having considered the arguments raised, I have concluded that the appeal against imprisonment should not be allowed. The threshold for imposing imprisonment has been crossed. However, I am satisfied that there was a misdirection on the part of the district judge as to one aspect of sentencing, and accordingly I reduce the sentence of imprisonment to three weeks' imprisonment.

2 The appellant was charged with and pleaded guilty to two charges, one for drink driving under s 67 of the Road Traffic Act 1961 (2020 Rev Ed) (the “Road Traffic Act”), and one of serious careless driving, under s 65(1)(a) punishable under s 65(5)(c) of the Road Traffic Act. A fine of \$9,000 was imposed for the charge of drink driving and four weeks’ imprisonment for the

serious careless driving charge. Four years' concurrent disqualification was also imposed.

3 The district judge, adapting the framework in *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587 ("Wu Zhi Yong"), imposed the four weeks' imprisonment in light of the manner of the offence, the high alcohol level found, serious potential harm, and the serious property damage. She took into account that he was a first offender who had pleaded guilty early, and was remorseful. She found however, that there was no restitution to the car owner, BlueSG, for the property damage, which she found to be some \$19,456.13, the amount stated in the statement of facts.

4 The appellant's counsel took issue with the framework applied by the district judge, arguing that it was inappropriate to adapt the framework in *Wu Zhi Yong*. It was also argued that the alcohol level could not be a determinative factor. It was also put forward that the district judge essentially double counted the weight to be accorded to the level of intoxication as there was a separate charge for drink driving. The level of potential harm, taking into account the various circumstances, was extremely low. The only property damage was to the vehicle driven by the appellant. It was explained that the appellant had been corresponding with the owner of the vehicle, BlueSG, on the amount of the loss. But in any event, the absence of restitution should not be a factor. It was emphasised that the appellant had been cooperative and had pleaded guilty early. It was asserted that his background and prospects should be taken into account.

5 The Prosecution argued that the district judge had applied the appropriate framework and that the conclusion was correct that the custodial threshold had been crossed as the appellant's alcohol level was a significant

aggravating factor, there was serious potential harm, the substantial property damage, and the manner and mode of the offence. Appropriate weight was given to the mitigating factors raised. Rehabilitation was not in the circumstances a dominant factor. Finally, there was no double counting between drink and careless driving, as was considered in *Wu Zhi Yong*. The sentence of a fine for the drink driving charge and imprisonment for the serious careless driving was expressly endorsed in *Wu Zhi Yong*.

The Decision

6 The primary factors pointing towards a substantial sentence was the large amount of alcohol detected, the degree of careless driving exhibited, and the potential harm from that careless driving while inebriated. I do not consider that the damage to the vehicle hired by the appellant material in this case. Against these factors there was little of mitigatory weight, and any rehabilitative response was overshadowed by the need for both punishment and deterrence.

The sentencing approach

7 I have no issue with the framework adapted by the district judge here. As noted in both my own decision in *Fan Lei v Public Prosecutor* [2024] SGHC 278 (“*Fan Lei*”) and by See Kee Oon JAD in *Chan Chow Chuen v Public Prosecutor* [2024] SGHC 294, the adaptation of the framework laid down in *Wu Zhi Yong* for reckless driving to offences for serious careless driving is appropriate.

8 However, this judgment is not an endorsement or adoption of that or of any other framework. This decision is concerned with whether the sentence is condign in light of the relevant factors engaged here. I will leave the question of the details of the sentencing framework that should be adopted to another

time and place, which would probably require an appropriate range of cases to have been determined by the High Court.

9 I should mention that following the hearing, having given notice to the Prosecution, appellant's counsel sent in a letter, referring to a number of State Courts' decisions. Whether or not any of these decisions were correct was not in issue before me, and I make no further comment on them.

The relevant factors

10 The relevant factors that go to the sentence would be the amount of alcohol detected, the manner of the careless driving, and the potential harm posed. The amount of property damage, being harm caused to property hired by the appellant himself, was irrelevant. Rehabilitation was not a consideration here, and nothing was raised in mitigation that would reduce the sentence further.

Amount of alcohol

11 Contrary to the arguments of the appellant, neither the application of the district judge's framework nor the consideration of the amount of alcohol in the context of the charge of serious careless driving leads to any double counting. The statutory regime in fact stipulates that drink driving be considered: careless driving coupled with drink driving is treated as a separate offence from plain careless driving, meriting a heavier punishment range under s 65(5)(c) of the Road Traffic Act. That stipulation thus means that the degree of inebriation or alcohol content is a relevant consideration in sentencing. Disregarding it would mean that the court was not paying heed to a legislative requirement.

12 Here, the amount of alcohol detected was 95 µg per 100 ml of breath. This was very high. As noted by the district judge this would be at the highest end of the drink driving sentencing framework in *Rafael Voltaire Alzate v Public Prosecutor* [2022] 3 SLR 993. It would be just shy of three times the limit of 35 µg prescribed under the Road Traffic Act. On any basis, the amount of alcohol was very high, pointing to the need for substantial punishment. The fact that other drivers in previous district court cases may have had higher amounts of alcohol is immaterial to the punishment that should be imposed on this appellant.

The manner of the careless driving

13 The careless driving showed a significant degree of absence of care and caution. The car went over the road divider, crossing into the lanes going in the opposite direction and only stopping when the car hit the guard rail. The fact that the car ended up travelling in this way showed a clear lack of proper control of the vehicle that was appalling, and it is fortunate no other harm arose. The potential harm, as will be examined below, was substantial.

Potential harm

14 Potential harm was a relevant factor, and made out here, in contrast to the case of *Fan Lei*. The accident occurred in a residential area, at about 8.50am, when others, would be expected to be out and about, both in vehicles and on foot. The degree of risk posed was substantial and not merely conjectural.

Damage to the appellant's own vehicle

15 The damage to the vehicle driven by the Appellant should not be treated as an aggravating factor, going to an increase in the sentence imposed. The

district judge appears to have taken the cost of repairs into account. The Prosecution argued on appeal that this property damage was relevant and substantial.

16 Damage to the property of others would be a type of harm that is relevant in calibrating the sentence. It is an adverse consequence to others that flows from the criminal act of the offender, and affects the degree of his responsibility for his actions. It thus goes to the level of the culpability of the offender. The greater the degree or quantum of damage, the greater the culpability usually. Generally, harm to the offender himself would not be relevant. Certainly, the offender's loss from the offence would not be an aggravating factor usually. Whatever loss the appellant had caused himself is for him to bear. Generally, this should extend to property, or items rented or leased by the offender, and in his use; such property would have sufficient connection to the offender to not be regarded, for the purposes of criminal law, as being harm accruing to others and coming within the protective scope of the criminal law. The offender may indeed be liable for civil damages to the lessor or owner, but that is another question. In the road traffic context, in the absence of any other indication in the statute, I would take the relevant property damage to be that of other road users or persons or entities owning property along the road. I should note that according to the statement of facts there was no visible damage to the rail. There was thus no evidence of any other person or entity suffering property damage.

17 Counsel for the appellant referred to remarks by Vincent Hoong J in *Agustinus Hadi v Public Prosecutor* [2024] SGHC 262, seemingly for the proposition that damage to the offender's own vehicle should not be taken into account. It is clear that Hoong J in that case was looking at the question of whether the district judge had erred in finding that the vehicle there had been

scrapped. I do not read the judgment as going into the question of relevance of damage to the offender's own property.

Rehabiltiation

18 Here, rehabilitation is outweighed by the need for deterrence and retribution given the gravity of the offence. Plain careless driving captures a range of behaviour, and it may be that some instances may still be covered by a primarily rehabilitative response; similarly, reckless driving, when youth or immaturity is a factor, may also merit rehabilitation over all other considerations. But here, the appellant committed a serious careless driving offence, subject to a heavier sentencing regime, within the framework laid down by the legislature. The risks and consequences flowing from careless driving while inebriated or drunk above the prescribed limit have been determined by the legislature to be of a degree higher than that of plain careless driving. Much of this heightened seriousness comes from the potential harm or damage that could arise from careless driving while drunk: the response must be to deter such behaviour generally, and to punish those who do commit these offences, both as an example to others and as retribution for their disregard of a law protecting crucial interests. Probation is not at all an appropriate response where other factors point to higher culpability or harm. Given the various aggravating factors applicable here, probation is simply outweighed.

Other mitigatory factors

19 The appellant pointed to his prospects, and lack of antecedents. The absence of antecedents cannot outweigh the factors calling for punishment and deterrence, given the high level of alcohol, the manner of the careless driving and the potential harm posed.

20 Any apparent prospects were not relevant here either. An offender's prospects would be material, if at all, when considering the benefits of rehabilitation. As noted above, rehabilitation is not in play here. What prospects a person has does nothing in respect of reducing either the harm caused by the criminal act or his culpability.

Calibration of sentence

21 The most substantial factor was the high level of alcohol. The careless driving itself was quite serious, and there was indeed potential harm here. These factors clearly pointed to the imposition of a sentence of imprisonment. On the other hand, there was no evidence of property damage, once the damage to the vehicle driven by the appellant was left out. Thus, while the imprisonment threshold has been crossed, the absence of any relevant property damage meant the sentence below had to be calibrated downwards. I thus find that the district judge had misdirected herself on this factor. Taking the material factors in play here, I substitute three weeks imprisonment in place of the four weeks' imprisonment originally imposed.

Conclusion

22 I would emphasise that careless driving while inebriated is a serious offence. There is simply no excuse in Singapore for drink driving. Drink driving coupled with careless control of the vehicle is to be strongly deterred. Terms of imprisonment will be imposed where the circumstances show potential harm,

serious damage, and the careless driving resulted in a substantial mishap or involved a substantial departure from good, safe driving.

Aidan Xu
Judge of the High Court

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