IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 107

Magistrate's Appeal No 9070 of 2018

Between

Brandon Ng Hai Chong

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] — [Sentencing] — [Mandatory Treatment Order]

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Introduction

1 The appellant drove against the flow of traffic along the Ayer Rajah Expressway ("AYE") on 5 January 2017. He pleaded guilty in the District Court to a charge under s 64(1) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("the RTA"), for driving in a manner which was dangerous to the public. Upon conviction, the District Judge sentenced the appellant to four weeks' imprisonment and ordered that he be disqualified from holding all classes of driving licenses for a period of five years from the date of his release from imprisonment.

2 The appellant appealed against his sentence. He sought the imposition of a Mandatory Treatment Order ("MTO"), or a high fine and a longer disqualification period. Having considered submissions and the circumstances

of the case, I allow the appeal and substitute the original sentence of imprisonment with a 24-month MTO, which is to run concurrently with a five-year disqualification period.

Facts

3 The facts are set out in *Public Prosecutor v Brandon Ng Hai Chong* [2018] SGDC 120 ("the GD").

4 At around 7.00pm on 4 January 2017, the appellant went drinking at the Arena Country Club in a group of four. He consumed three or four glasses of beer, and drove home at 1.08am.

5 At about 1.24am on 5 January 2017, the appellant was travelling on Clementi Avenue 6 when he missed his left turn into the AYE (City). He instead entered a slip road which merged with the AYE (Tuas), on a unidirectional section of the expressway that comprised three lanes. There were no junctions or openings in the road divider that allowed the appellant to turn back onto the AYE (City).

6 At about 1.26am, the appellant executed a U-turn and entered the rightmost lane of the AYE (Tuas) to go against the flow of traffic. He drove in this lane from 1.26am to 1.28am, traversing about 2km at an average speed of 50km/h. At least three vehicles had to switch lanes to avoid a collision. At 1.29am, he stopped his vehicle, turned on his hazard lights and flashed his high-beam at oncoming traffic. At least four vehicles had to take evasive action. He then executed another U-turn into the leftmost lane of the AYE (Tuas), and filtered into a slip road 20 seconds later.

7 Traffic flow was moderate at the time. Three motorists called the police

to report the appellant's act of driving against the flow of traffic.

8 Upon arriving home, the appellant's wife observed that he smelt strongly of alcohol. The appellant asked his wife about his daughter, who was feverish at the time. He then went to sleep.

The appellant's suitability for an MTO

9 The appellant was referred to the Institute of Mental Health ("IMH") for a psychiatric evaluation to determine his suitability for an MTO. He was examined by Dr Stephen Phang ("Dr Phang"), Senior Consultant at the Department of General and Forensic Psychiatry in the IMH. Dr Phang had previously assessed the appellant to ascertain his fitness to drive and had prepared a report dated 15 February 2017 ("Dr Phang's Report"), which he clarified in a letter dated 27 June 2017 ("Dr Phang's Letter").

10 Dr Phang produced an MTO suitability report dated 4 December 2017 ("the MTO Suitability Report"). He assessed the appellant to have suffered from major depressive disorder ("MDD") at the time of the offence, and opined that a contributory link lay between the appellant's offending behaviour and his mental disorder. As the appellant's psychiatric conditions were treatable, he was recommended for a 24-month MTO.[1]

Decision below

11 The District Judge held that general and specific deterrence were the dominant sentencing rationales: at [16] and [48] of the GD. Also relevant were the appellant's culpability and the harm caused: at [16], citing *Public Prosecutor v Koh Thiam Huat* [2017] 4 SLR 1099 ("*Koh Thiam Huat*") at [41].

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[1] MTO Suitability Report at para 13.

Although the appellant had driven at a moderate speed of 50km/h, any collision would have resulted in serious consequences: he had driven against the flow of traffic on the AYE, which had a speed limit of 90km/h and on which traffic was moderate: at [31]. His culpability was moderate to high and the potential harm, at least medium; the custodial threshold was crossed: at [32].

12 *Public Prosecutor v Tan Yeow Kim* District Arrest Case No 939830 of 2015 ("*Tan Yeow Kim*") was the most relevant sentencing precedent among those tendered by the Prosecution: at [21]. The offender reversed on the leftmost lane of an expressway against the flow of traffic as she missed her intended exit. A taxi collided with the offender's vehicle from the rear when it was stationary. Of the three taxi passengers, one passed away, another suffered a fracture and the last suffered minor injuries. The taxi driver was charged under s 304A(*b*) of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") for causing his passenger's death by failing to keep a lookout ahead and colliding with the offender's stationary vehicle. The offender was sentenced under s 64(1) of the RTA to four weeks' imprisonment and disqualified from driving for five years.

13 The District Judge next considered whether an MTO was appropriate. While the appellant had suffered from MDD for many years and was recommended for an MTO, his MDD did not result in cognitive difficulty or affect his impulsivity: at [50] to [53] of the GD. General and specific deterrence retained their dominance as sentencing considerations, and a sentence of four weeks' imprisonment was imposed, rather than an MTO: at [56].

The parties' cases

14 Parties appeared before me at two hearings. I reserved judgment after the second hearing, and subsequently invited further submissions on the

applicability of *GCX v Public Prosecutor* [2019] SGHC 14 ("*GCX*") to the present case.

The appellant's case

15 The appellant submitted that an MTO was the appropriate sentencing option. The District Judge failed to give sufficient weight to the MTO Suitability Report. He relied on para 10 without placing it in context, when Dr Phang had, at paras 11 and 13, found a contributory link between the appellant's offending behaviour and mental disorder and recommended an MTO. The District Judge failed to sufficiently address why he steered away from Dr Phang's expert opinion in this regard.[2]

16 Applying *GCX*, an MTO could be ordered as a contributory link had been found between the appellant's MDD and his offending behaviour. Rehabilitation was the dominant principle: the appellant's MDD was treatable, he had his wife's support, and he had not committed any other offences since.[3]

17 The District Judge erred in his treatment of the sentencing precedents. The Defence had relied on the unreported case of *Public Prosecutor v Chia Hyong Gyee* Magistrate's Appeal No 1 of 2017 ("*Chia Hyong Gyee*") as being the most relevant sentencing precedent. It was the only case that did not involve a collision as a result of dangerous driving. The offender was sentenced to one week's imprisonment. The District Judge did not refer to this case at all.[4] He also erred in taking the appellant's dissimilar antecedents into consideration.[5]

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2 Appellant's Skeletal Arguments at paras 31–39.

3 Appellant's Further Submissions (*GCX v PP*) at paras 8–15 and 16–21.

4 Appellant's Skeletal Arguments at paras 43–48.

5 Appellant's Skeletal Arguments at paras 49–57.

The Prosecution's case

18 The Prosecution submitted that general deterrence was required as the motor vehicle used was a potentially lethal device and the offence affected public safety. Specific deterrence applied as the appellant was a repeat offender.[6] He had made the conscious choice not to resist the impulse to drive dangerously, and could appreciate the nature and quality of his actions.[7] Rehabilitation was diminished despite the appellant's history and diagnosis of MDD, as any connection between his mental condition and the offence was at best indirect.[8]

19 Applying the High Court's balancing approach in *GCX*, general and specific deterrence outweighed the principle of rehabilitation; at most, the appellant was more prone to distractibility than the average driver. *GCX* was distinguished as involving a first-time offender whose psychiatric disorder substantially contributed to the offence.[9]

20 The Prosecution submitted that the sentence correctly reflected the appellant's culpability, which was medium to high, and the potential harm, which was at least medium. The appellant had driven for 2km at 50 km/h on average, on an expressway with moderate traffic flow on the rightmost lane. The offence was not due to a momentary lapse: he consciously drove in this manner to reach the exit closest to his home; his mental condition bore little mitigating weight; and there was no emergency he was attending to. There was high potential harm: seven vehicles had to take evasive action, and three

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6 Respondent's Submissions at para 18.

7 Respondent's Submissions at para 23.

8 Respondent's Submissions at paras 19–22 and 25–34.

9 Prosecution's Further Submissions on *GCX v PP* [2019] SGHC 14 at paras 7–13.

motorists reported the incident to the police. Further, the appellant had engaged in drink driving, having driven home after a six-hour drinking session. He also had related antecedents, having committed speeding offences in 2007 and 2011.[10]

21 Finally, the Prosecution submitted that the sentence of four weeks' imprisonment was at the "lowest end of the range" established by the precedents. He had posed high potential harm to other road users. He had also consumed alcohol before driving; this was an aggravating factor that distinguished this case from the precedents. The District Judge was therefore correct that *Tan Yeow Kim* was the most relevant precedent.[11]

My decision

22 In my judgment, the District Judge erred in finding that rehabilitation was not the dominant sentencing principle in this case. I find that a 24-month MTO should be imposed and thus allow the appeal. I note, however, that this case turns on exceptional facts. It is further significant that no injury or damage was caused; had this been the case, deterrence and retribution would have overridden the principle of rehabilitation as to render an MTO inappropriate.

23 It is helpful at the outset to lay out the principles that guide the court's decision as to whether an MTO should be ordered pursuant to s 339(3) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC"). An MTO should be ordered where rehabilitation was the dominant sentencing principle on the facts: *GCX* at [32]. The inquiry into an offender's rehabilitative potential is a relative, comparative exercise, balancing the principle of rehabilitation against

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10 Respondent's Submissions at para 38.

11 Respondent's Submissions at paras 40–48.

other principles like deterrence, retribution, and prevention: at [33]. An offender's MTO suitability is assessed at two stages:

(a) The court first engages in a provisional balancing exercise and calls for an MTO suitability report if there is evidence that an offender possesses sufficient rehabilitative potential: at [39].

(b) At the second stage, the court determines if an MTO should be ordered. A higher threshold is applied: at [43]. It is at this stage that the MTO suitability report assists the court in its assessment: at [46].

24 The present appeal concerns the second stage of the *GCX* analysis. I agree with the Prosecution that the ultimate question to be decided is whether the District Judge erred in assessing general and specific deterrence to override rehabilitation as the dominant sentencing principles in this case. The issues before me were:

(a) whether the District Judge attached sufficient weight to the MTO Suitability Report and properly ascertained the appellant's rehabilitative potential; and

(b) whether an MTO should be imposed, having balanced the various sentencing principles that apply to this case.

25 Ultimately, I agree with the appellant that the District Judge failed to properly contextualise and give sufficient weight to the MTO Suitability Report. This would have carried implications as to the court's appraisal of the offender's true rehabilitative potential, which in turn would have affected the balancing exercise between the various sentencing principles. A proper treatment of the MTO Suitability Report would have led to the finding that the sentencing

consideration of rehabilitation came to the fore in the balancing exercise, and that an MTO should be imposed.

The District Judge's treatment of the MTO Suitability Report

26 Before the court orders an MTO, an MTO suitability report prepared by an appointed psychiatrist must be obtained: ss 339(2) and 339(3) of the CPC. The information provided in the MTO suitability report allows the court to "*fully appreciate* the extent to which rehabilitation as a sentencing principle applied on the facts" [emphasis in original] (*GCX* at [40]), by informing the court as to the nature of the disorder, its severity, the extent to which it contributed to the commission of the offence, the likely avenues for treatment, and the offender's potential for treatment: *GCX* at [40] and [46].

27 As a preliminary matter, I note that the District Judge interspersed extracts from Dr Phang's various reports and letter when assessing the appellant's mental condition: GD at [40] to [56]. I observe that the MTO suitability report should be given primacy in this analysis: see s 339(9) of the CPC and *GCX* at [45]. While other psychiatric reports may still be considered, they should be treated as secondary material in the court's overall assessment. That said, the materials cited in the GD did not materially diverge in their opinions and recommendations, and this did not pose an issue in the present case. The consideration of Dr Phang's reports without distinction did, however, lead the District Judge to unnecessarily focus on the appellant's "impulsivity" (GD at [51]) when this was not raised at all in the MTO Suitability Report.

28 The GD showed that the District Judge did consider the MTO Suitability Report at [44] to [47] and at [53]. I understood his takeaways to be two-pronged:

(a) First, the appellant's MDD "**could** have been *one* underlying contribution to distractibility at and around the material time of the offence" [emphasis in bold added in original]: at [45], citing the MTO Suitability Report at para 11. However, "**simple fatigue** from sleep deprivation, and **parental anxiety** over his daughter's medical condition" [emphasis added in original] could also have contributed to the offence: at [46], citing the MTO Suitability Report at para 11.

(b) Second, as the appellant retained the overall cognitive ability to appreciate his manner of driving, general and specific deterrence retained their dominance as sentencing considerations: at [44] and [56], citing the MTO Suitability Report at para 10.

30 The Prosecution agreed with the District Judge's assessment. In its view, the appellant's MDD was only tenuously linked to the offence by two degrees: it just possibly contributed to his distractibility, which in turn was but one of the contributory factors to the offence, alongside simple fatigue and his anxiety over his daughter. In any case, his distractibility did not significantly affect his culpability: he was not so distracted as to have entirely abdicated his ability to be cognisant of the nature of his acts. [12]

31 Having considered the submissions, I agree with the appellant that these conclusions were wrongly drawn. The MTO Suitability Report has to be read in its full context and the appellant's MDD evaluated holistically. The relevant sections of the MTO Suitability Report state:[13]

> 9. [The appellant] had been subject to a multiplicity of stressors at and around the material time of the index offence;

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12 Respondent's Submissions at paras 30, 31 and 34.

13 ROP at pp 1190 and 111.

> most significantly, he had been preoccupied with his daughter's serious illness ([leukaemia]) … [H]e had likely been in a highly distractible state as a result of his subjective sense of distress over his child, on a backdrop of ongoing depressive symptoms, with associated absent mindedness.
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> …
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> 11. … [*I*]*n the broadest sense* the [appellant's] distractibility and relatively poorer concentration would have been ultimately contributorily linked to his depressive disorder. … [MDD] could have been *one* underlying contribution to distractibility … background depressive states may render the individual concerned muddled in his thoughts, and lacking in focus and concentration. [Discussion about other possible contributory factors: his simple fatigue and parental anxiety over his daughter's medical condition.]
>
> …
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> **Opinion and recommendations**
>
> 13 [His] past and ongoing psychiatric history necessarily [categorise] him as an at-risk individual who is vulnerable to stress, has poor coping skills, and therefore would expectedly predispose him to such behaviour as has since resulted in his index traffic offence; therein lies the contributory link between his offending behaviour and his mental disorder, as alluded to above. …
>
> [emphasis in original]

It is clear then that in Dr Phang's view, there was a link between the appellant's mental disorder and the offence, through his vulnerability and predisposition to the type of behaviour that led to the offence.

32 At para 8 of the MTO Suitability Report, Dr Phang referred to the conclusions reached in his earlier Report, which addressed whether the appellant was fit to drive. He stated that his opinion was unchanged. I thus also had reference to the sections of Dr Phang's earlier Report which expanded on the aetiology of the appellant's MDD and how his concern over his daughter was shadowed by the loss of his fourth child due to bronchopneumonia in 2009:[14]

> 15. … The aetiological basis for [the appellant's] depressed mood state, and, most crucially the associated impairments of feeling (inability to experience pleasure in life) and thinking (inefficient thinking and impaired concentration) rests on his overwhelming concern and worry about his daughter's health condition (and to a considerably lesser extent, perhaps on his work-related stress as well). His wife had related that he had been often muddled in his thoughts, lacking in focus and concentration, as if in a state of perplexity, or even confusion at times. This has been described in the psychiatric literature as 'depressive muzziness'. It is manifestly evident that the shades of his earlier tragedy, that is, the untimely demise of his own child back in July 2009 had consequentially resulted in an exaggerated and heightened sense of fear and anxiety presently and in the recent past, in the context of his youngest daughter's current serious illness, all against the backdrop of an already vulnerable personality. ……
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> 17. … Returning to his present alleged offence, I am of the further opinion that the [appellant] was most likely experiencing difficulty in concentration, as well as pulling together and organizing his thoughts as a consequence of a relative degree of distractibility and distress over his daughter's medical condition at the time. In this context, it is not inconceivable that he could have had a lapse in his concentration at and around the material time of the alleged offence … The cogent fact remains that the principle memory he has since retained from the evening in question is that of his enquiring about his daughter's febrile condition, upon arriving home. It is not unsafe to infer, therefore, that he had quite possibly been in a highly distractible state, with unfocused confusion of his thoughts as a result of his subjective sense of distress over his child …

Dr Phang concluded at para 18 that "in the totality of the [appellant's] unique current life circumstances, and on the balance of clinical probabilities", the appellant should avoid driving on the road as the potential danger and risk from further episodes of depressive distractibility and poor concentration remained significant until his clinical condition and personal circumstances stabilised.

33 As regards the appropriate conclusions to be drawn from these reports, I emphasise that the MTO Suitability Report and Dr Phang's Report are not

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[14] ROP pp 390 and 391.

determinative as to whether and to what degree rehabilitation applies as a sentencing principle. This is a legal question for the court to decide: *GCX* at [46] and [82]. However, it is in keeping with the spirit of s 339 of the CPC to take seriously the MTO suitability report as supplying the key facts and expert opinion necessary to the court's determination: see also *GCX* at [42].

34 Considering the medical evidence in its entirety, and the MTO Suitability Report in particular, I disagree with the District Judge's assessment of the link between the appellant's MDD and his offending behaviour. Most significantly, the District Judge's characterisation of the appellant's "parental anxiety" as a separate contributing factor alongside his MDD (GD at [45] and [46]) ignored the manner in which the appellant's stressors interacted with his psychiatric history, which rendered him an at-risk individual who was vulnerable to stress to begin with. That the appellant was not rushing to a medical emergency (see GD at [43]) should not have been determinative, given that it was his subjective sense of distress over his daughter's leukaemia and its effect on his state of mind that were relevant. It was further relevant that this subjective distress was a consequence of "his earlier tragedy" of losing his son in 2009, as processed against the backdrop of an already vulnerable personality. Against this backdrop, the recommendations for treatment would also address his stress-coping skills and vulnerable personality as a whole; it is to be hoped that this treatment would help prevent future incidents. In failing to fully assess the appellant's mental condition in context, the District Judge inadvertently downplayed the appellant's true rehabilitative potential.

The balancing exercise: the dominant sentencing principle

35 I now consider what the dominant sentencing consideration in this case was. The District Judge weighed the principles of general and specific

deterrence against rehabilitation at [55] and [56] of the GD. As the balancing exercise to be undertaken is relative, I first look to whether the need for deterrence in this case was properly calibrated. This follows the approach taken in *GCX*: See Kee Oon J found that general deterrence and rehabilitation applied, given that the offence in that case involved family violence and the victim suffered serious injuries: at [49]. However, he also emphasised that the principles of deterrence and rehabilitation did not apply to the same extent in every case. As noted at [53] to [55]:

> 53 General deterrence may have a lesser role to play where the offender has a mental illness before and during the commission of an offence … [T]his is because general deterrence assumes persons of ordinary emotions, motivations, and impulses who are able to appreciate the nature and consequences of their actions, and who behave with ordinary rationality and for whom the threat of punishment would be a disincentive to engage in criminal conduct.
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> 54 A person suffering from a mental illness that leaves him unable to appreciate the nature and consequences of his actions will not be deterred by the prospect of a custodial sentence. … [T]he IMH Report identified a close contributory link between the appellant's adjustment disorder and his commission of the offence. …

See J then went on to note that deterrence should not apply where the offender could not act rationally:

> [I]t is not the function of general deterrence to make an example of an offender who simply did not possess cognitive normalcy and rationality. Thus, although general deterrence was still relevant given that the offence was one involving family violence, it should not have been given as much weight in the present case.
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> 55 … [As for retribution, the] weight to be given … depends on the culpability of the offender. … Here, the findings of the IMH Report suggested that the appellant bore a lower level of culpability for his actions, although … [h]e was certainly culpable because the IMH Report did find that he was aware of the nature and quality of his actions.
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> [internal citations omitted]

36 I thus find that the District Judge erred in his assessment of the extent to which general deterrence applied: he should not have assessed the appellant's anxiety over his daughter to be a contributing factor independent of his MDD (at [49] of the GD). Instead, it was the appellant's vulnerability to stress and poor coping skills as a whole that predisposed him to behaviour that resulted in his offending behaviour.[15] In this sense, he did not possess "cognitive normalcy", and general deterrence hence featured to a lesser extent.

37 Moreover, the District Judge erred by implicitly considering retribution to be a sentencing consideration in this case. This error manifested in his selection of *Tan Yeow Kim* as the most relevant sentencing precedent. It is crucial to note that the dangerous driving incident in *Tan Yeow Kim* indirectly contributed to the death of a passenger, among other serious harm. The GD at [17] cited *Koh Thiam Huat* at [41] as stating that the potential harm that might result from the dangerous driving incident is relevant. However, applying the "continuum of harm" analysis adopted by Steven Chong J in *Public Prosecutor v Aw Tai Hock* [2017] 5 SLR 1141 ("*Aw Tai Hock*") at [33], I disagree that the potentially medium to serious harm posed in this case could be equated to the very serious harm that was actually caused in *Tan Yeow Kim*. Where hurt and injury results, the court must attribute necessary weight to the retributive principle: see Sundaresh Menon CJ's comments in *Stansilas Fabian Kester v Public Prosecutor* [2017] 5 SLR 755 at [97], albeit in the context of drunk driving. I acknowledge that the retributive principle would apply to a lesser extent where the harm was not solely attributed to the offender: see *Aw Tai Hock* at [55]. But the fact that harm actually eventuated in *Tan Yeow Kim* would have resulted in the application of the retributive principle to some degree. Conversely, retribution does not feature here at all as no actual harm resulted.

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15 MTO Suitability Report at para 13.

38 It follows that the District Judge was wrong to regard the sentence in *Tan Yeow Kim* as the appropriate benchmark. Instead, *Chia Hyong Gyee* was the more appropriate sentencing precedent. This case involved a road rage incident: the offender was frustrated at the complainant's alleged road-hogging, and swerved in and out of traffic to catch up with and overtake the complainant. He also tailgated, straddled lanes, and weaved in between traffic. Three cars had to avoid a collision with the offender. The offender's sentence under s 64(1) of the RTA was enhanced to a week's imprisonment on appeal.[16]

39 The Prosecution distinguished *Chia Hyong Gyee* on the grounds that the appellant had engaged in drink driving and had an antecedent record. It also submitted that *Chia Hyong Gyee* was inconsistent with *Aw Tai Hock*.[17] I disagree that *Chia Hyong Gyee* was completely distinguishable on these bases:

(a) First, there is insufficient evidence regarding the extent of the appellant's alleged intoxication at the material time. The Prosecution cited *Public Prosecutor v Wong Yew Foo* [2013] 3 SLR 1198 at [30] to [32] to state that drink driving is aggravating even absent evidence that alcohol contributed to the index offence.[18] However, it must be highlighted that Chan Seng Onn J also stated at [33] that "the level of alcohol and the degree of loss of control of the vehicle are highly relevant factors", and went on to consider the exact proportion of alcohol in the offender's breath. Similar information is not available in this case.

(b) Second, I acknowledge that the appellant was previously fined twice for speeding and once for failing to wear a seat belt (see GD at

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16 ROP at pp 355–358; Respondent's Submissions at pp 26–28.

17 Respondent's Submissions at paras 46 and 47.

18 Respondent's Submissions at para 38(e).

[54]). The offender in *Chia Hyong Gyee* had a clean record. However, this does not justify a large departure from the sentence imposed in *Chia Hyong Gyee*, especially when I account for the appellant's lowered culpability given the way his mental disorder contributed towards his offending behaviour.

(c) Third, the offender in *Aw Tai Hock* initiated an intentional, deliberate and vengeful pursuit of another driver, and engaged in an "extremely dangerous manner of driving" that resulted in moderate property damage and multiple personal injuries: at [61] to [63]. His sentence was thus enhanced to five months' imprisonment on appeal. I do not consider the sentence in *Chia Hyong Gyee*, which involved significantly less aggravated facts, to be inconsistent with *Aw Tai Hock*.

Accordingly, contrary to the GD at [48], I find that the sentencing options in this case were not between four weeks' imprisonment and an MTO, but rather between an MTO and a sentence of one to two weeks' imprisonment.

40 Finally, I disagree with the manner in which the District Judge balanced the various sentencing considerations. In my view, the District Judge placed too much weight on the fact that the appellant retained his overall cognitive ability to appreciate his manner of driving: GD at [53] and [56]. It does not cohere with the legislative intent behind s 339 of the CPC that an MTO should only be ordered where an offender's psychiatric condition is so overwhelming that he acts purely out of impulse or has such a diminished cognitive ability as to fail to understand the nature of his actions. Indeed, at the second reading of the Criminal Procedure Code Bill 2010 (No 11 of 2010), Mr K Shanmugam, the Minister for Law, explained that community-based sentencing options targeted,

inter alia, offenders with "specific and minor mental conditions": *Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 at col 422.

41 Rather, I am satisfied that the principles of general and specific deterrence receded in significance in this case. The appellant was in unique life circumstances at the material time: he had a history of MDD, and his background depressive state may have rendered him lacking in focus and concentration. His psychiatric history also led him to be vulnerable to stressors. Given the loss of his child in 2009 from illness, he experienced a subjectively heightened state of distress and anxiety over his daughter's leukaemia at the time of the offence. Dr Phang accordingly found that the appellant's MDD had a contributory link to his offending behaviour, that his psychiatric condition is treatable, and that he is a suitable subject for a 24-month MTO. I therefore find that the requirements under s 339(3) of the CPC are fulfilled. The appellant's rehabilitative potential is further supported by his long-time commitment to and compliance with psychiatric treatment, and his wife's supportive attitude towards a prospective MTO.[19]

42 In this balancing exercise, I also considered that while the appellant's dangerous driving could not be condoned, no injury or damage had been caused. This was therefore not such a case where deterrence or retribution would have outweighed the principle of rehabilitation. An MTO is therefore the appropriate sentencing option.

Whether an MTO and disqualification order can be imposed concurrently

43 I uphold the District Judge's order to disqualify the appellant from driving all classes of vehicles for a period of five years (GD at [3]), but will

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19 MTO Suitability Report at paras 7 and 12.

amend the order to take effect from the date this judgment is delivered. I am satisfied that an MTO may be imposed concurrently with a disqualification order under s 42(1) of the RTA, which provides as follows:

> A court before which a person is convicted of any offence in connection with the driving of a motor vehicle may, in any case except where otherwise expressly provided by this Act and shall, where so required by this Act, order him to be disqualified from holding or obtaining a driving licence for life or for such period as the court may think fit.

44 Neither the RTA nor the CPC prohibits community sentences from being imposed alongside disqualification orders. This is unlike the position in respect of probation orders – the imposition of a probation order is not to be considered as a conviction for the purposes of disqualification under any written law: s 11(2) of the Probation of Offenders Act (Cap 252, 1985 Rev Ed); *Public Prosecutor v Abdul Hameed s/o Abdul Rahman and another* [1997] 2 SLR(R) 71 ("*Abdul Hameed s/o Abdul Rahman*") at [12]. A conviction for a crime for which a community sentence (as defined in s 336 of the CPC) is passed remains a conviction for the purposes of s 42(1) of the RTA, notwithstanding the fact that the record in the register of such conviction is rendered spent on the date the community sentence is completed: see s 7DA of the Registration of Criminals Act (Cap 268, 1985 Rev Ed).

45 In the circumstances, disqualification is merited on the grounds of deterrence and the protection of the public. Although rehabilitation is the dominant sentencing consideration in this case, the principles of general and specific deterrence remain engaged; the appellant was culpable in so far as he retained cognitive awareness of the nature of his manner of driving. A disqualification order is in reality a type of punishment: see *Abdul Hameed s/o Abdul Rahman* at [21]. The effect of a disqualification order also aligns with Dr Phang's recommendation that the appellant avoid driving until such time it

is clear that his MDD and personal circumstances stabilise, given the road risks posed by future episodes of depressive distractibility if he were to continue driving.[20]

Conclusion

46 For the reasons set out above, I conclude that a 24-month MTO is the appropriate sentence. I am convinced that the appellant's mental disorder contributed to the offence in such a way as to render rehabilitation the dominant sentencing consideration. I emphasise, however, that the balancing of sentencing principles might have tipped the other way if personal injury or property damage had occurred: in such a scenario, deterrence or retribution might come to the fore instead.

47 Accordingly, I substitute the original sentence of imprisonment with a 24-month MTO. The MTO is to run concurrently with an order disqualifying the appellant from driving all classes of vehicles for a period of five years, which is to commence from the date this judgment is delivered, *ie*, 26 April 2019.

Aedit Abdullah
Judge

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[20] MTO Suitability Report at para 8.

N Sreenivasan SC, S Balamurugan and Partheban Pandiyan (instructed) (M/s Straits Law Practice LLC) and Lee Yoon Tet Luke (Luke Lee & Co) (instructing) for the appellant;
Choong Hefeng Gabriel (Attorney-General's Chambers) for the Prosecution.
