IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 315

Magistrate's Appeal No 9192 of 2017

Between

Public Prosecutor

… *Appellant*

And

Teo Chang Heng

… *Respondent*

JUDGMENT

[Criminal Law] – [Offences] – [Mischief]

[Criminal Procedure and Sentencing] — [Sentencing] — [Community-based sentencing options]

TABLE OF CONTENTS

Public Prosecutor
v
Teo Chang Heng

[2017] SGHC 315

High Court — Magistrate's Appeal No 9192 of 2017
See Kee Oon J
3 November 2017

8 December 2017 Judgment reserved.

See Kee Oon J:

Introduction

1 The respondent pleaded guilty before a District Judge to a charge of mischief, an offence punishable under s 426 of the Penal Code (Cap 224, 2008 Rev Ed). He had caused damage to a vehicle ("the car") belonging to his spouse which was being driven by his spouse's boyfriend ("the driver").

2 The prosecution has appealed against the District Judge's decision to impose a 10-day Short Detention Order ("SDO") and 120 hours Community Service Order ("CSO"). It seeks a two-week imprisonment term on the basis that general deterrence and retributive principles warrant such a sentence.

Material facts and considerations

3 I begin by summarising the material facts and aggravating factors, much of which is apparent from the Statement of Facts ("SOF"). As disclosed in the charge, the respondent had deliberately used his vehicle to inflict damage on his spouse's car. It is not disputed that the respondent had agreed for her to use rental income from their flat to pay for part of the outstanding car instalment payments. He had also previously helped pay for the cost of repairing the car. Although the driver had neither contributed to the instalment payments for the car nor to its maintenance costs, the car was used primarily by him.

4 The respondent and his spouse were separated at the material time but he was hopeful for a reconciliation. Consumed by anger and frustration on happening to chance upon the driver driving his spouse's car on 19 August 2016 near Jurong Point, the respondent impulsively followed and tailgated the car. He rear-ended it when he could not brake in time as he was following it closely along Boon Lay Way. He then decided to drive past it and side-swipe it. Not content after having done so, he proceeded to make two U-turns as he saw that the driver had stopped the car alongside the road and stepped out onto the pavement to inspect the damage. The respondent then collided into the car from behind again, causing the front left wheel of the car to mount the kerb. According to the SOF, the driver was standing at the pavement away from the car when this took place.

5 The prosecution conceded that there was no in-vehicle camera video footage and no photographs of the damage to the car were produced below. The only evidence relating to the extent of damage to the car was the repair cost of $2,980 which was reflected in the charge. While this is not a nominal sum, it cannot be said to be unduly large or substantial. There was also no evidence of

the traffic conditions or the number of pedestrians who might possibly have been exposed to danger that day. In fact, it was only through the candour of the respondent that it came to light that the driver was not the only person standing at the pavement. The respondent disclosed in the course of the appeal hearing that the driver was standing there talking to another person, but the prosecution evidently did not previously have such information at its disposal.

6 The prosecution's submission of potential danger to other road users and pedestrians did call for a fair measure of speculation. While I would not entirely dismiss it, it is not a clear and convincing aggravating factor in the absence of further evidence that the respondent had caused particularly serious property damage and might have endangered others through his actions. At any rate, no personal injuries resulted and no other vehicles were affected.

7 Turning to the mitigating factors, the respondent is a first offender. He has a spotless record. Apparently, he does not even have a record of any compounded traffic offence to his name. No evidence of any such infractions was tendered below or on appeal. Next, making this case quite distinct from many if not most others, the respondent "pleaded guilty" at the scene of the crime. He was the one who immediately called the police to report the incident and turn himself in. He remained at the scene until the police arrived. He realised the magnitude of what he had done and had also paid for all the repair costs to the car – quite ironically it was almost as if he had wilfully caused damage to his own property since the car belonged to his spouse and he had helped to maintain it. He explained that he did not drive very fast when bumping into the car from behind, but the impact was clearly sufficiently forceful to push the car's front left wheel up onto the kerb. He remains married to his spouse and she was agreeable for the charge to be withdrawn and had forgiven him.

"Road rage"?

8 The prosecution has rightly sought to highlight the specific aggravating features. Among these are the respondent's deliberate use of violence on the road, using his own vehicle as an offensive weapon against the driver out of vindictiveness. It submits that this therefore brings the case within the categorisation of a "road rage" case. While I do not condone the respondent's inexcusable conduct, labelling a particular case as a "road rage" case should not be a convenient heuristic to justify a decision to impose a custodial sentence. The textures and nuances of each case remain to be carefully considered.

9 Crucially, there is no compelling evidence to suggest that the respondent was potentially a menace to *other road users* and had inflicted or sought to inflict physical harm or bodily injury on them. The sentencing precedents cited by the prosecution which involved "road rage" cases are therefore not wholly apposite. Equally, reliance on cases such as *Public Prosecutor v Muhammad Haikal bin Zoraimi* (Magistrate's Appeal 9109 of 2017) which involved a drunken assault on a public transport worker is not appropriate, given the weight of sentencing jurisprudence stemming from *Wong Hoi Len v Public Prosecutor* [2009] 1 SLR(R) 115. In *Public Prosecutor v Joachim Gabriel Lai Zhen* (Magistrate's Appeal 20 of 2015), I had made it clear that in the context of such assaults on public transport workers, the benchmark sentence of imprisonment should not be readily displaced unless it was truly an exceptional case. Hence I had allowed the prosecution's appeal against a 14-day SDO and substituted it with a four-week imprisonment term.

10 The present scenario may be loosely characterised as a manifestation of "road rage" because the respondent was provoked into a rage on seeing the driver in his spouse's car. He did not vent his anger or frustration on other

random road users for their perceived provocations. He did not resort to using physical violence on the driver or anyone else on the road. His aggression was targeted specifically at the driver and mostly if not primarily at the car. There is nothing in the SOF apart from the facts pertaining to the offence to suggest that he had driven dangerously or recklessly, woven in and out of traffic, sped, made illegal U-turns, beaten red lights, tailgated any other cars or infringed any other traffic rules. It would appear that no one else had filed any police report against him making any such allegations. In this regard, I note that he did not face any other charges involving bad driving and had, after all, a perfectly clean record.

Appropriateness of Community-Based Sentencing options

11 In relation to Community-Based Sentencing ("CBS"), emphasis is often placed on the following passage in the *Singapore Parliamentary Debates*, *Official Report* (18 May 2010) vol 87 at col 422 (K Shanmugam, Minister for Law and then Second Minister for Home Affairs)):

> CBS gives more flexibility to the Courts. Not every offender should be put in prison. CBS targets offences and offenders traditionally viewed by the courts to be on the rehabilitation end of the spectrum: *ie* regulatory offences, offences involving younger accused persons and persons with specific and minor mental conditions. For such cases, it is appropriate to harness the resources of the community. The offender remains gainfully employed and his family benefits from the focused treatment.

12 As I had noted in *Sim Wen Yi Ernest v Public Prosecutor* [2016] 5 SLR 207 ("*Sim Wen Yi Ernest*") (at [33]), CBS options were introduced to allow greater flexibility in balancing the various sentencing principles *in individual cases*. The primary focus of CBS is rehabilitative and the above passage should be understood in that context. The Minister's statement makes it clear that not

every offender should be imprisoned and community resources should be harnessed in appropriate cases. However the palette of CBS options also caters for cases which call for short imprisonment terms in the form of SDOs, which are "less disruptive and stigmatising than a longer prison stay" (at col 426). Such cases are not premised purely on a rehabilitative philosophy involving community resources. Moreover, combinations of certain CBS options can be considered.

13 The Minister also recognised that community sentences are ultimately punitive and avoidance of moral stigmatisation is not their primary objective (at col 568). This was noted by Sundaresh Menon CJ in his recent keynote address delivered on 26 October 2017 at the Sentencing Conference 2017 (at [12]).

14 The facts of this case are unusual and possibly quite exceptional. The respondent snapped and acted rashly and impulsively, in hot blood and without actual planning or premeditation. But he had acted consciously and deliberately. Within a matter of moments, he immediately sought to atone for what he had done – he called the police to surrender himself. His act of self-reporting his offence was demonstrably spontaneous, reflecting genuine remorse and palpable contrition. This strongly indicates his potential for rehabilitation and reintegration into society.

15 I do not agree that considerations of general deterrence dictate that an imprisonment term must be imposed, trumping any CBS options. As I had observed in *Sim Wen Yi Ernest*, and as the District Judge had also noted (at [19] of her Grounds of Decision – *Public Prosecutor v Teo Chang Heng* [2017] SGMC 47), a SDO does carry a punitive element and is inherently also capable of serving to deter. I accept that a SDO and a sentence of imprisonment are intended to serve different purposes in principle, and I would not go so far as to

suggest that they should be viewed as being totally indistinguishable. Nevertheless, a SDO should not be perceived as a soft option. After all, the consequence is that the accused person will be incarcerated pursuant to a SDO and will be deprived of his liberty.

16 It is further pointed out by the prosecution that the District Judge had erred in considering that the respondent ought to benefit from having a spent conviction, as she had failed to consider that a mischief offence under s 426 of the Penal Code is a non-registrable offence. With respect, the argument can be readily turned on its head. It would arguably be equally unnecessary to insist on the imposition of a two-week imprisonment term since the conviction is for a non-registrable offence, and thus ought not to be regarded as ranking among the more serious offences generally. Indeed, it is precisely because a s 426 Penal Code offence is not a particularly grave offence that might attract punishment higher than imprisonment for one year that it is among the class of offences for which CBS options may be considered. In any event, even accepting that the District Judge had erred in this regard, it is of no consequence to the outcome.

17 The custodial threshold was clearly crossed. In terms of punishment, a SDO will still result in the respondent spending time behind bars for his misdeeds. The SDO in fact signals that what he did *was* serious and he is not being let off scot-free. As such, I am unable to see why there is any violation of a distinct public interest or inappropriate messaging if the SDO is upheld on the facts of this case. I might have been more readily persuaded otherwise if the facts at hand had warranted a much lengthier term of imprisonment – say, exceeding four weeks. The prosecution very fairly did not attempt to pitch its case that high.

18 I agree with the District Judge that the respondent is amenable to rehabilitation but would also deserve to be adequately punished and deterred. This was his first brush with the law in 44 years. He had acted completely out of character. It is unlikely that he will reoffend. Hence I do not see specific deterrence in the form of a conviction and an imprisonment term being a pivotal consideration here, when this can be achieved through the imposition of a SDO. As for general deterrence, I do not see pressing public policy considerations militating against the imposition of a CBS in the form of a SDO and CSO. I do not believe this will somehow convey an unintended signal to embolden others to act in a similar fashion. I reiterate that the facts of this case are unusual and quite exceptional.

Conclusion

19 I conclude by observing that the District Judge had not prioritised the respondent's rehabilitation to the exclusion of all other sentencing considerations. To the contrary, the sentence achieves a fairly-calibrated and sensible balance between the various sentencing considerations. It is proportionate to the gravity of the offence, having regard also to the circumstances of the offender.

20 The sentence of a 10-day SDO coupled with a 120-hour CSO is not manifestly inadequate and is appropriate in the circumstances. The appeal against sentence is therefore dismissed and the sentence ordered by the District Judge is affirmed.

See Kee Oon
Judge

Mark Tay and Esther Tang (Attorney-General's Chambers) for the appellant;
The respondent in person.
