IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 35

Criminal Motion No 19 of 2018

Between

Chong Sher Shen

… *Applicant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing]–[Appeal]–[Jurisdiction]

Chong Sher Shen
v
Public Prosecutor

[2019] SGCA 35

Court of Appeal — Criminal Motion No 19 of 2018
Tay Yong Kwang JA, Woo Bih Li J, and Quentin Loh J
10 May 2019

17 May 2019

Tay Yong Kwang JA (delivering the grounds of decision of the court):

1 The applicant in this Criminal Motion ("CM") appeared in person before us. He is a 62-year old Singaporean. He currently faces five charges before the State Courts which include charges for driving a vehicle while under a disqualification order and for using a vehicle without insurance coverage. These offences were allegedly committed on 23 July 2015 and 16 June 2017.

2 In or about 1977, erroneous entries ("the 1977 errors") were made by the Criminal Records Office ("CRO") to the applicant's CRO record. The 1977 errors stated that the applicant was convicted for four traffic offences by the then-Subordinate Courts on 13 April 1977. They were the following, with the sentences imposed shown (with "DQ" signifying the period of disqualification from driving):

Offence	Sentence
Failing to display an "L" plate	Fine $150
Failing to insure against third party risks	Fine $150, one year DQ (the "1977 DQ")
Reckless/dangerous driving	Fine $500
Carrying a passenger other than an instructor	Fine $150

The Prosecution accepted that these four entries were erroneous as the applicant had not been convicted on any of the said four offences.

3 In Criminal Revision 5 of 2018 ("CR 5") in the High Court, the applicant sought the following reliefs from the Court acting in its revisionary jurisdiction:

(a) that the 1977 errors be removed from his CRO record;

(b) consequent upon (1), his conviction on 13 May 1998 by the then Subordinate Courts (now the State Courts) be set aside or, alternatively, the two-year DQ which was ordered against him be substituted with a DQ of less than one year;

(c) the convictions entered against him by the then Subordinate Courts on 11 April 2001, 21 July 2005 and 4 June 2009, all of which pertained to traffic offences or related offences, be set aside; and

(d) the trial of his pending charges in the State Courts be vacated and re-fixed after the disposal of CR 5.

4 The Prosecution informed us that the applicant's CRO record was already rectified and that the 1977 errors were expunged even before the High Court heard CR 5 on 13 July 2018. The High Court Judge dismissed CR 5 as he was of the view that the 1977 errors did not occasion "serious or palpable injustice" and he did not see any basis to invoke the Court's revisionary jurisdiction. No written grounds of decision were given by the High Court.

5 This applicant, in this CM, sought leave to appeal under s 397(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) against the dismissal of CR 5 by the High Court. The law is clear. Under s 29A(2) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), the CA has jurisdiction to hear appeals from the High Court sitting in its original criminal jurisdiction, but has no jurisdiction to entertain an appeal from the High Court sitting in revision over the State Courts. There was therefore no question of giving the applicant leave to appeal against the dismissal of CR 5.

6 Even if we treated this CM as an application under s 397 Criminal Procedure Code to refer questions of law of public interest, no such question was placed before us. If at all, the only possible question of law would have been: "Should an erroneous criminal record showing convictions that did not take place be expunged?"

7 This question called for a self-evident answer and had been answered affirmatively by the prosecution's confirmation that the applicant's CRO record was corrected even before the High Court heard CR 5. On the above two legal grounds, which we explained to the applicant, this CM should be dismissed.

8 Nevertheless, even if we go into the merits of CR 5 (which we did in the hope that the applicant would understand that the dismissal of his CM was not

on purely technical grounds only), it was clear to us that there were no merits in that application for revision (apart from the rectification already discussed). The 1977 errors contained only one DQ for one year (for the offence of not having third party insurance). The other 3 charges resulted in fines only. Most of the applicant's subsequent convictions and sentences after 1977 were already spent, except for offences for which he was convicted in 2009 because of the long DQ of 14 years. The applicant argued that the 1977 errors affected all these later traffic offences (for which he was convicted post-1977) in the way set out below.

9 On 13 May 1998, the applicant pleaded guilty to one charge of permitting his employee to drive a lorry when that employee did not possess a class 4 driving licence and to one charge of permitting the same when there was no third party insurance. The applicant was a director of the company which owned the lorry. At the hearing on 13 May 1998, he was represented by Mr Gurdaib Singh and after the antecedents in his CRO record, which contained the 1977 errors, were read out in court, the applicant or his counsel confirmed them to be correct. For the first charge, the District Court imposed a fine of $1,000. For the second charge, the sentence was a fine of $1,000 and DQ for two years in respect of all classes of driving licences with effect from the date of sentencing on 13 May 1998 ("the 1998 DQ").

10 The applicant argued that the District Court ordered DQ for two years "only and only because the Court took into consideration" the 1977 errors, in particular, the erroneous 1977 DQ for one year. He submitted that the District Court "should have imposed a disqualification for less than one year, in which case his disqualification would only be a suspension of his driving licence and not a revocation or cancellation of his licence altogether." If that had happened, "his licence would be valid immediately after the expiry of the less than 1 year

period of disqualification". In other words, he would not be required to go through the process of applying for a driving licence again (with all the attendant tests). Flowing from this logic, the applicant added:

> Following your petitioner's submissions above, under a less than 1 year driving disqualification imposed for his 13th May 1998 conviction, for example, for 6 months, he would have had a valid driving licence after 12th March 1999 and following that he would have had a driving licence on each of the following dates of purported offences, that is, 29th September 2000, 30th November 2000, 1st November 2005, 22nd October 2007, 12th February 2008 and 1st February 2009.

The applicant appeared to have made a computation error because 6 months after 13 May 1998 would not be 12 March 1999 but we left this aside and considered his arguments on their logic.

11 It was fair to say that the District Court could have taken the 1977 errors into consideration when it ordered DQ for two years in May 1998 but it was certainly not an inevitable consequence that the District Court would have ordered DQ for less than one year if the 1977 errors were not before the District Court. In fact, s 3(2) of the Motor Vehicles (Third Party Risks and Compensation) Act (Cap 189, 1985 Rev Ed) (now s 3(3) of the Motor Vehicles (Third Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed)), which applied to the second charge mentioned above, provides that a person guilty under s 3 "shall (unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification) be disqualified for holding or obtaining a driving licence under the Road Traffic Act (Cap 276) for period of 12 months from the date of the conviction". The general rule therefore, was that a minimum DQ of 12 months would have been ordered, with or without the 1977 errors.

12 During mitigation on 13 May 1998, Mr Gurdaib Singh was recorded to have said the following:

> Accused is 39 years old. Pleading guilty. On the day in question, regular driver not working. Principal Offender drove on an urgent assignment. Regrets the offences. Urges court for leniency. Ask that the disqualification be restricted to Class 4. Married with two children.

It can be seen that the applicant's counsel submitted on only the classes of driving licence for which the applicant should be disqualified, not on the length of the disqualification. No "special reasons" were highlighted to warrant DQ for less than 12 months. Further, as a director of the company, the applicant had allowed the public to be endangered by the presence of a large vehicle (the applicant says it was a 14-foot lorry) on the roads driven by someone not qualified to handle that sort of vehicle. The DQ for two years was therefore entirely justifiable on these facts alone.

13 On 11 April 2001, the applicant pleaded guilty to five charges, two of which concerned driving when he was not the holder of a class 3 driving licence on 29 September 2000 and on 30 November 2000, together with two consequential offences of driving without insurance coverage. He was not legally represented at this hearing. The two statements of facts were read to him in English and he then presented a written mitigation plea. The District Court imposed fines for all five charges and two concurrent DQs for 5 years each in respect of all classes of driving licences for the insurance offences. The record does not mention if the applicant's CRO record was tendered or whether the applicant confirmed it to be correct. The State Court's records in this case contained a very faint copy of the applicant's CRO record which did not appear to contain the 1977 errors. When the first set of offences in question here were committed on 29 September 2000, the 1998 DQ (for a period of 2 years) had

already expired by 12 May 2000. Nonetheless, the applicant did not re-apply for a driving licence but chose to drive on both occasions anyway.

14 On 21 July 2005, the applicant pleaded guilty to one charge of driving a car while under DQ and one charge of driving without insurance cover. He was represented by Mr Lim Swee Tee. The record stated that his CRO record was admitted, however a copy of this CRO record was not in evidence before us (though it presumably contained the 1977 errors as well). The Applicant was given two concurrent DQs for 7 years each.

15 On 4 June 2009, the applicant pleaded guilty to three charges of driving while under disqualification on 22 October 2007, 12 February 2008, and 1 February 2009 and one charge of driving without insurance coverage on 1 February 2009. Two other related offences were admitted and taken into consideration for sentencing. At this hearing, he was represented by Mr Leonard Loo. The applicant's CRO record at the time of this hearing, which was not in evidence before us, was read and admitted by the applicant at some time past 11am. The case was then stood down by the District Court to 3pm for mitigation and sentence.

16 At 3pm, Mr Leonard Loo was recorded to have said during mitigation (among other things):

> … My client cannot understand why he committed the offences. Because he knew that he did not have a driving licence, he drove even more carefully on the road. Admits folly and wishes to be given another chance so that he will not appear in Court again.

The applicant was also allowed to address the court in mitigation.

17 For the four charges proceeded with at this hearing, the applicant was sentenced to imprisonment for three months, four months, five months, and one month respectively, together with four concurrent DQs for 14 years each. The District Court ordered the four months and one-month imprisonment terms to run consecutively, resulting in a total of only five months' imprisonment. Although this was not in issue before us, it could be seen that the sentencing was wrong in law because consecutive sentences must result in a term of imprisonment which is longer than the longest imprisonment sentence imposed for any individual charge (see *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [77]). Otherwise the result is that there were actually no consecutive imprisonment terms as mandated by law. The applicant should therefore have been imprisoned for at least one month more and it was fortunate for him that no one pointed out this error in sentencing.

18 Returning to the applicant's case, the applicant's logic flowing from [10] above is that there should have been a DQ of less than one year in place for the 1998 charges. If this were the case, his driving licence would still have been valid after the expiry of that DQ by late 1998 or early 1999 and his driving in 2000 would not have been an offence. Similarly, if there were no offence committed in 2000, then there would be no DQ for five years in 2001 and it follows that there would be no offence committed and therefore no DQ for seven years in 2005. Since there was no offence committed in 2005, there would also be no offence committed and no DQ of 14 years in 2009.

19 If the above was correct and all the convictions after 1998 were set aside, the applicant's view was that for the pending cases in the State Courts, he committed no offence on 23 July 2015 when he was arrested for driving while under DQ and for not having third party insurance coverage and on 16 June 2017 when he drove a vehicle again.

20 It follows from the above that the foundation of the applicant's claim of injustice done to him is that the 1998 DQ would definitely have been less than one year if the CRO containing the 1977 errors had not been used by the prosecution in court at the hearing in May 1998. According to the applicant's logic, all the subsequent offences predicated upon the 1998 DQ for two years would not have taken place. However, as pointed out earlier and as we have explained in simple language to the applicant in court, the applicant's premise regarding the 1998 DQ is totally wrong and unsupportable on facts and in law. It follows that his arguments built on and consequential upon this wrong premise cannot stand.

21 The above chronology also shows that the applicant could have pointed out the 1977 errors over the years in court but did not do so although he had the benefit of defence counsel on most of the occasions. It is also plain from the applicant's various traffic offences over the years that he would drive a vehicle whenever the need arose, regardless of whether or not he possessed a valid driving licence or was under DQ at those times. As the Prosecution pointed out, the applicant knew that he could have re-applied for a driving licence after the 1998 DQ for two years expired in May 2000. However, for his own reasons, he did not do so but proceeded to drive a vehicle knowing he had no valid driving licence. In addition, as we have indicated at [17] above, his imprisonment term in 2009 ought to have been longer but that is something long past and should not be resurrected as an issue now.

22 In the circumstances, we saw no legal or factual basis for the applicant's CM before us. We dismissed the CM accordingly.

Tay Yong Kwang	Woo Bih Li J	Quentin Loh J
Judge of Appeal	Judge	Judge

Applicant in-person;
Kow Keng Siong, Nicholas Wuan Kin Lek, and Amanda Sum
(Attorney-General's Chambers) for the respondent.