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

[2022] SGHC 121

Magistrate's Appeal No 9181 of 2021/01

Between

Kwan Weiguang

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Sentencing — Principles]
[Road Traffic — Offences — Reckless driving]

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Introduction

1 This is an appeal against the disqualification order that was imposed on the appellant. A disqualification order prevents an offender from holding or obtaining a driving licence for a specified period. The appellant, Mr Kwan Weiguang, pleaded guilty to one charge of dangerous driving under s 64(1) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA") punishable under s 64(2C)(*a*) of the RTA.[1] The charge is as follows:[2]

> You … are charged that you on 16 December 2020 at or about 8.34 p.m. along Keppel Road towards the direction of Cantonment Link, Singapore, did drive a motor vehicle SHD5358U on a road in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the

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1 Record of Proceedings ("ROP") at p 27; Grounds of Decision ("GD") at [1].

2 ROP at p 4.

> amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, *to wit*, by repeatedly changing lanes ahead of motor car SLF6779Z and subsequently applying brake and coming to a rest in a position likely to cause danger to other road users on lane 2 of 3 lanes and you have thereby committed an offence under Section 64(1) Chapter 276 and punishable under Section 64(2C)(a) of the said act.

2 In the court below, a fine of $1,600 and a disqualification order for a period of 15 months were imposed on the appellant.[3] The appellant only appealed against the 15-month disqualification order,[4] and has paid the fine.[5] Thus, the crux of the appeal is whether the disqualification order period was manifestly excessive.

3 A critical question arose during the submissions on the weight to be ascribed to the fact that under s 43(1)(*b*) of the RTA, if the disqualification period imposed exceeded one year (or 12 months), the appellant would have to re-take the prescribed test of competence to drive. The court below seemed to ascribe great weight to this, opining that "it was appropriate that the disqualification period should exceed a year so that the [appellant] would be compelled to re-take and pass the prescribed test of competence as is required under section 43(1)(b) of the RTA, and more importantly, to re-learn safe driving."[6] Whether this was appropriate will be examined subsequently.

4 The statutory provisions invoked in this case had undergone various legislative amendments which introduced substantial changes to the sentencing regime under the RTA. In light of these changes, the appellant submits that a

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3 ROP at p 27; GD at [2].

4 ROP at p 11; Petition of Appeal at [4].

5 ROP at p 36; GD at [29].

6 ROP at p 36; GD at [26].

new sentencing framework is necessary which adopts a "sentencing bands" approach, rather than a "sentencing matrix" approach.[7] Without pre-empting the analysis below, my view is that a complete framework should not be formulated in this case as we are dealing only with the disqualification term and not the actual punishment (the fine or imprisonment). Nevertheless, some parameters on how the period of disqualification should be determined will be set out.

5 For convenience, the relevant portions of the RTA (applicable as of 14 June 2021)[8] are set out below:

> **Disqualification for offences**
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> **42.**—(1) 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.
>
> …
>
> **Provisions as to disqualifications and suspensions**
>
> **43.**—(1) Where a person who is disqualified by virtue of a conviction or order under this Act is the holder of a driving licence, the licence shall —
>
> (a) be suspended as long as the disqualification continues in force if he is disqualified from holding or obtaining a driving licence for a period of less than one year; and
>
> (b) be of no effect if he is disqualified from holding or obtaining a driving licence for a period of one year or longer and he shall not drive a motor vehicle after the period of disqualification unless he passes the prescribed test of competence to drive.
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> …

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7 Appellant's written submissions dated 22 March 2022 ("AWS") at [13]–[19].

8 ROP at pp 4–5.

Reckless or dangerous driving

64.—(1) If any person drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, the person (called the offender) shall be guilty of an offence.

(2) If death is caused to another person by the driving of a motor vehicle by the offender, the offender shall be punished with the following on conviction of an offence under subsection (1):

…

(2A) If grievous hurt is caused to another person by the driving of a motor vehicle by the offender, the offender shall be punished with the following on conviction of an offence under subsection (1):

…

(2B) If hurt is caused to another person by the driving of a motor vehicle by the offender, the offender shall on conviction of an offence under subsection (1) —

…

(2C) In any other case involving the driving of a motor vehicle by the offender, the offender shall on conviction of an offence under subsection (1) —

> (*a*) be liable to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both;
>
> (*b*) where the person is a repeat offender, be liable to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both;
>
> (*c*) where the offender is a serious offender in relation to such driving, be liable to a fine of not less than $2,000 and not more than $10,000 or to imprisonment for a term not exceeding 12 months or to both, in addition to any punishment under paragraph (*a*) or (*b*); or
>
> (*d*) where the offender is a serious repeat offender in relation to such driving, be punished with a fine of not less than $5,000 and not more than $20,000 and with imprisonment for a term not exceeding 2 years, in addition to any punishment under paragraph (*a*) or (*b*).

> (2D) A court convicting a person of an offence under subsection (1) in the following cases is to, unless the court for special reasons thinks fit to not order or to order otherwise, order that the person be disqualified from holding or obtaining a driving licence for a disqualification period of not less than the specified period corresponding to that case:
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> …
>
> (*i*) for a serious offender in subsection (2C)(*c*) — 2 years;
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> (*j*) for a serious repeat offender in subsection (2C)(*d*) who has been convicted (whether before, on or after the date of commencement of section 13 of the Road Traffic (Amendment) Act 2019) on only one earlier occasion of any specified offence — 5 years.
>
> …

6 The court can impose a disqualification order on top of the usual punishments involving a fine or imprisonment term. As mentioned earlier, if the disqualification period imposed is one year or longer, an additional prescribed test of competence to drive needs to be taken by the offender under s 43(1)(*b*) of the RTA. Under s 42(1) of the RTA, the court has the discretion to decide on the appropriate disqualification period to be imposed on the offender. However, where punishment is effected under certain provisions such as s 64(2C)(*c*) and s 64(2C)(*d*) of the RTA, then s 64(2D) of the RTA stipulates the minimum disqualification periods to be imposed. The present case concerns s 64(2C)(*a*) of the RTA where no minimum disqualification period is set out, and it is in this context that I considered it necessary to provide guidance on the appropriate sentencing parameters.

7 It is also pertinent to note that the inclusion of a tiered structure, which calibrates the punishment according to the degree of hurt caused (from s 64(2) to s 64(2C) of the RTA) and the incorporation of minimum disqualification periods for some offences (under s 64(2D) of the RTA), are changes of a relatively new vintage. These changes were introduced following the passing of

the Road Traffic (Amendment) Act 2019 (Act 19 of 2019) (the "2019 RTA amendments"). Prior to this, no gradation of punishment according to the harm caused and no minimum disqualification period was set out.

Factual background

8 On 16 December 2020, at or about 8.34pm, the appellant was driving his motor taxi along Ayer Rajah Expressway towards the direction of Marina Coastal Expressway.[9] The other party involved is Lo Heng Sung @ Sani Bin Abdullah ("Lo").[10] The appellant saw Lo driving slowly ahead and he proceeded to overtake Lo and entered lane two of three along Keppel Road.[11]

9 Having entered Keppel Road, the appellant noticed Lo driving behind him and high-beaming his lights at him. In response, the appellant tapped on his brakes. Lo then moved away to lane three of three and drove on the appellant's left side. Lo then sounded his horn continuously.[12]

10 The appellant then entered lane three of three as well and continued driving ahead of Lo. When Lo tried to avoid the appellant by changing lanes, the appellant would prevent this by changing to that same lane and continuing to drive ahead of Lo. This happened on four occasions in total, and the incident lasted for ten seconds.[13] On the final occasion, while driving ahead of Lo, the

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9 ROP at p 6; Statement of Facts ("SOF") at [4].

10 ROP at p 6; SOF at [2].

11 ROP at p 6; SOF at [5].

12 ROP at p 6; SOF at [6].

13 ROP at p 7; SOF at [7].

appellant applied his brakes, switched on his hazard lights and alighted from his taxi to confront Lo physically.[14]

11 After the confrontation, the appellant walked back to his motor taxi and accelerated to move off. A collision occurred when Lo's motor car suddenly appeared in front of the appellant's vehicle.[15] Lo drove away while the appellant called for the police.[16] Scratches were sustained on both vehicles, but both individuals were uninjured.[17]

12 At the material time, it was drizzling, the road surface was wet, traffic volume was light, and visibility was clear.[18]

Summary of the decision below

13 The District Judge's ("DJ") full grounds of decision are set out in *Public Prosecutor v Kwan Weiguang* [2021] SGDC 204. The DJ had applied the approach taken in *Public Prosecutor v Koh Thiam Huat* [2017] 4 SLR 1099 ("*Koh Thiam Huat*") at [41], which considered the two principal parameters in sentencing, *viz*, the harm caused and the offender's culpability.[19]

14 Beginning with the level of harm, the DJ was of the view that the actual harm was low in this case as there was no personal injury and only slight damage to the vehicles. However, there was a fair degree of potential harm to other road

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14 ROP at p 7; SOF at [8].

15 ROP at p 7; SOF at [9].

16 ROP at p 7; SOF at [10].

17 ROP at pp 7–8; SOF at [12]–[13].

18 ROP at p 8; SOF at [14].

19 ROP at pp 31–32; GD at [17].

users due to the appellant's repeated lane changing and then stopping of his taxi in the middle of the road. Driving is an inherently dangerous activity that can pose a serious risk to road users and pedestrians alike. This risk was increased by the drizzling weather and wet road surface.[20]

15 Turning to the level of capability, the DJ found that the appellant's level of capability was moderate. The conduct of the appellant in the entire incident bore elements of road rage. The appellant had used his taxi as a means of retaliation against Lo on a public road after Lo had high-beamed at him, honked at him and (allegedly) flashed his middle finger. The appellant could have ignored Lo and driven off, but he did not do so. Instead, the appellant endangered other road users via his dangerous driving by repeatedly changing lanes to get ahead of Lo and braking abruptly.[21]

16 The mindset of the appellant made his driving dangerous and was an aggravating factor. The appellant had embarked on a persistent and deliberate course of dangerous driving with the aim of manoeuvring his taxi in front of Lo in order to stop, alight and confront Lo. Safety to other road users was no longer a consideration in the appellant's mind and there was no regard to the danger posed after the appellant was "triggered" by Lo's conduct.[22]

17 The DJ noted that the primary sentencing considerations in dangerous driving offences were specific and general deterrence. Where the offence bore elements of road rage, these sentencing objectives would best be met with a

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20 ROP at p 33; GD at [18].

21 ROP at pp 33–34; GD at [19]–[20].

22 ROP at p 34; GD at [21].

sufficiently lengthy term of disqualification (in addition to a fine).[23] A disqualification order acts as an effective deterrent, and, rather than a fine, it is what the motorist fears. Punishment and protection of the public would also be effected by taking the driver off the road for a substantial period of time.[24]

18 The DJ also took into account various mitigating factors in calibrating the sentence: the appellant was a first-time offender with no antecedents, there was remorse shown in the early plea of guilt, and the appellant pleaded for leniency as he was the sole breadwinner of his family.[25] However, a strong term of disqualification was required to meet the objectives of general and specific deterrence. The appropriate disqualification period should exceed a year so that the appellant would be compelled to re-take and pass the prescribed test of competence to drive required under s 43(1)(*b*) of the RTA.[26] A disqualification term of 15 months and a fine of $1,600 was imposed.[27]

Summary of the appellant's case

19 The case of *Wu Zhi Yong v Public Prosecutor* [2021] SGHC 261 ("*Wu Zhi Yong*"), where the Honourable Chief Justice Sundaresh Menon had held that the extensive amendments to the RTA in 2019 had necessitated a new sentencing framework, was raised by the appellant.[28] This, the appellant argues, requires the court to consider a "sentencing bands" approach rather than a

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23 ROP at p 34; GD at [22].

24 ROP at p 35; GD at [23]–[25].

25 ROP at p 36; GD at [27].

26 ROP at pp 35–36; GD at [26]–[27].

27 ROP at p 36; GD at [28].

28 AWS at [12].

"sentencing matrix" approach.[29] The rationale for this is that the architecture of s 64 of the RTA does not sit easily with a sentencing matrix approach as Parliament had already delineated the range of sentences applicable in relation to each type of harm (*Wu Zhi Yong* at [27]–[28]). However, the comments in *Wu Zhi Yong* were confined to the sentencing of an offence punished under s 64(2C)(*a*) read with s 64(2C)(*c*) of the RTA, and the frameworks for the other limbs of s 64 were left open for consideration in future (*Wu Zhi Yong* at [29]). The appellant argues that it is logical and in the interest of consistency to apply the sentencing bands approach to the present case.[30]

20 The appellant submits that there is little guidance given on how the court will exercise its discretion and decide upon the appropriate period of the disqualification order under s 42(1) of the RTA.[31] Hence, providing a new sentencing framework is pivotal in this case as this would ensure consistency and parity in sentencing between offenders punished under s 64 of the RTA. This need for consistency in sentencing has been emphasised multiple times in previous cases.[32]

21 The appellant then proposes a two-step sentencing framework based on *Wu Zhi Yong* that would apply under s 64(2C)(*a*) of the RTA,[33] but only in relation to the disqualification order.[34] The three sentencing bands proposed (Bands 1–3) correlated to the seriousness of the offence, with the most serious

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29 AWS at [14]–[18].

30 AWS at [19].

31 AWS at [20]–[22].

32 AWS at [23]–[24].

33 AWS at [26]–[37].

34 AWS at [25].

cases in the highest band (Band 3) requiring a three-year disqualification period.[35] This upper limit was derived from searches conducted in the Sentencing Information and Research Repository ("SIR").

22 Regarding the disqualification period to be imposed for the lowest band of offences (Band 1), it should be below 12 months. The appellant argues that the 12-month threshold is significant as offenders who are disqualified for a period of 12 months or more will have to re-take and pass the prescribed test of competence to drive pursuant to s 43(1)(*b*) of the RTA before being permitted to drive again. Thus, to give due regard to the 12-month threshold, offenders with less severe offences should not be imposed with a disqualification period that would require them to re-take the prescribed test of competence to drive.[36]

23 Applying this proposed framework, the appellant falls into Band 1, which necessitates a disqualification period below 12 months so that no prescribed test of competence needs to be re-taken. The appellant disagreed with the DJ's findings that there was a fair degree of potential harm as the appellant was not speeding, there were no pedestrians on the road, the swerving of the vehicle lasted for only ten seconds, the traffic volume was light and visibility was clear.[37] The DJ failed to appreciate the factual matrix and had assessed potential harm in a vacuum. Further, the DJ erred in finding that the appellant's conduct "bore elements of road rage" and his mindset was an aggravating factor

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35 AWS at [34].

36 AWS at [35].

37 AWS at [43].

which made his driving particularly dangerous.[38] Lastly, the DJ failed to accord the appropriate weight to the mitigating factors at play.[39]

24 A disqualification period of less than 12 months should be imposed,[40] and this would be sufficient to meet the objective of deterrence.[41] The appellant relies on driving to earn an income as the sole breadwinner of his family and the imposition of disqualification period of any length is already detrimental.[42] The disqualification period imposed must be commensurate with the fine imposed.[43] Hence, given that the fine imposed was only $1,600, the disqualification period should not exceed 12 months.[44]

Summary of Prosecution's case

25 The Prosecution argued in oral submissions before me that the appellant's proposed sentencing framework should be rejected. First, the framework was incomplete as it only dealt with the disqualification order but not the actual punishment (the fines or imprisonment term). Second, the upper limit of three years proposed by the appellant was arbitrary as it was based on precedents found in the SIR, which lacked the relevant factual details for the court to appreciate the context in which a certain disqualification order was made. Third, there is no reason why the maximum disqualification period in the least severe cases (or "Band 1" cases as coined by the appellant) could not reach

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38 AWS at [46].

39 AWS at [49].

40 AWS at [58].

41 AWS at [53].

42 AWS at [49(c)] and [54].

43 AWS at [55].

44 AWS at [57].

or exceed 12 months. The court can calibrate the disqualification period to reach or exceed 12 months in order to make the appellant re-take the prescribed test of competence to drive, thus ensuring that he relearns safe driving when he is shown to be an unsafe driver who disregards the safety of other road users.[45]

26 The primary sentencing considerations for dangerous driving offences are those of specific and general deterrence. In fact, the 2019 RTA amendments had enhanced the maximum prescribed sentences for dangerous driving offences which evinces Parliament's intention to deter such offences. While the 2019 RTA amendments did not directly affect the duration of disqualification to be imposed under s 42(1) of the RTA, the heightened need for deterrence should be reflected in the court granting longer disqualification orders as well.[46]

27 The Prosecution submits that the DJ rightly assessed the appellant's culpability to be moderate as he had driven in an aggressive manner with a clear disregard for the safety of other road users. The appellant intentionally tapped on his brakes whilst knowing that Lo was directly behind his taxi, the appellant deliberately obstructed Lo by switching lanes abruptly, he stopped his taxi in the middle of the road and the offence was committed at night while it was drizzling.[47] The incident bore elements of road rage which enhanced the appellant's culpability. Lo's initial aggression in flashing of the high beam and the alleged pointing of the middle finger did not excuse the appellant's

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45 Respondent's Submissions dated 22 March 2022 ("RS") at [30].

46 RS at [16].

47 RS at [18].

dangerous driving as his response was vengeful and disproportionate.[48] For completeness, the level of harm caused was rightly assessed by the DJ as well.[49]

28 The DJ had also adequately considered the mitigating factors at play – that the appellant was a first-time offender with no antecedents, that he pleaded guilty at the earliest instance, he was remorseful, and was the sole breadwinner who needed his driving licence to support his family.[50]

29 The DJ rightly recognised that the offence was sufficiently serious to warrant disqualification for more than 12 months and to make the appellant re-take the test of competence to drive as the appellant showed utter disregard for the safety of other road users. The appellant should not be allowed back onto the roads without having to take lessons to learn safe driving.[51] The quantum of fine imposed should not be determinative of the period of disqualification. Hence, the fact that a low fine was imposed does not *ipso facto* mean that a longer term of disqualification is manifestly excessive.[52] Lastly, the sentence imposed is not manifestly excessive when compared with sentencing precedents.[53]

The decision

30 Having heard the arguments, I am persuaded that the disqualification order imposed below was excessive and should be reduced to a 12-month

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48 RS at [19]–[20].

49 RS at [22].

50 RS at [25].

51 RS at [30].

52 RS at [31].

53 RS at [32]–[40].

duration. This would still suffice to achieve the sentencing aims of protection of the public, deterrence and punishment. Consequently, this would mean that the appellant would have to take the prescribed test of competence to drive under s 43(1)(*b*) of the RTA. However, for reasons explained below, the threshold period of one year (or longer) disqualification which triggers the need to re-take the driving test should not be the main focal point for calibrating the sentence. Regard must be had to the specific factual matrix before the court.

Sentencing framework

31 The preliminary issue to be addressed is whether this is an appropriate case for a sentencing framework to be set out.

32 Section 64(1) of the RTA (in force at the material time) encapsulates the offence of reckless or dangerous driving. This is a case where no death or hurt was caused, and the offender falls to be punished under the residual provision in s 64(2C) of the RTA catering for "any other case". Specifically, limb s 64(2C)(*a*) of the RTA is engaged where the offender is liable to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both. There have yet to be any guidelines laid down within the case law on the sentencing framework for s 64(2C)(*a*) of the RTA specifically.

33 In *Wu Zhi Yong* (at [29]), the court set out a sentencing framework involving a modified sentencing bands approach, but confined the framework to a situation concerning a "serious offender" under s 64(2C)(*a*) read with s64(2C)(*c*) of the RTA. However, that case was one where the court had the opportunity to address both the punishment to be imposed as well as the disqualification order, and thus, could set out a complete framework encompassing both elements (see *Wu Zhi Yong* at [39]). There is no such

opportunity here since the appellant only appeals against the disqualification order. To my mind, this is not an appropriate case to set out a sentencing framework, and I would be loath to prescribe an incomplete one which dealt only with the disqualification order.

Purpose of sentencing and achieving consistency

34 In oral arguments before me, the appellant urged for a sentencing framework to be set out, and in particular, for the appellant's proposed framework to be adopted. Rather fervent arguments were raised on why this was necessary in order to achieve consistency in sentencing between offenders due to the lack of guidance on how disqualification periods were determined. The High Court decision of *Takaaki Masui v Public Prosecutor and another appeal and other matters* [2021] 4 SLR 160 at [91] and [92] was cited for the proposition that setting out a sentencing framework will be beneficial for achieving broad consistency.[54] The proverbial man on the street can then have certainty in the foreseeable consequences of criminal conduct. Hence, it was argued by the appellant that a framework mirroring that as set out in *Wu Zhi Yong* should be adopted in this case, with the sentencing bands being calibrated based on information obtained from the SIR.

35 While consistency is important, it is not the controlling or determinative factor in every situation. There is a difference in perspective between the relevant stakeholders comprising legal advisers advising clients, would-be offenders considering the consequences, and the judge as the decision-maker. Particularly for the judge, the key concern is that justice must be done in the specific case at hand when selecting the appropriate sentence, and one must be

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[54] AWS at [24].

wary of prematurely ossifying the law through frameworks when it is not the appropriate occasion.

36 With that said, consistency in sentencing via frameworks and guidelines can serve useful purposes. As noted in *Public Prosecutor v Pang Shuo* [2016] 3 SLR 903 at [28], guidelines provide the analytical frame of reference which can promote public confidence in sentencing, enhance transparency, and accountability in the administration of justice. As stated extrajudicially by Menon CJ, although sentencing is a matter of discretion, it should never be exercised arbitrarily. Broad consistency in sentencing provides society with an understanding of how crimes are punished for members of the public to arrange their own affairs and make decisions (see Menon CJ's remarks during his opening address at the Sentencing Conference 2014 at [17], accessible at <https://www.sal.org.sg/Newsroom/Speeches/Speech-Details/id/76> (accessed 25 April 2022)).

37 On the other hand, judicial discretion underpins sentencing and frameworks should not be adopted as rigid formulae and for their own sake. A sentencing framework for a particular offence need not necessarily be applicable in all situations, and the court must be careful not to artificially regard it as applicable if, on the facts of the case, it is not appropriate to do so (*Goik Soon Guan v Public Prosecutor* [2015] 2 SLR 655 at [43]). The focus is on achieving a reasoned, fair and appropriate sentence. Analytical tools must not hamper the court's ability to attain individualised justice with due regard to the facts of each particular case.

38 The question of whether sentencing is an art or science has been debated for centuries by philosophers such as Thomas Aquinas (see Sir Anthony Hooper, "Sentencing: Art or Science" (2015) 27 SAcLJ 17 at [1]). Without

delving into the quagmire of legal philosophy, what is clear is that the Court of Appeal has cautioned on occasion that the court deciding a case must "[bear] in mind that sentencing is an art and not a science" (*ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 ("*ADF v PP*") at [197]). The sentencing process is never meant to be a mechanistic one (*ADF v PP* at [218]):

> 218 The sentencing process is not – and ought not to be – a mechanistic one. Still less is a decision on sentencing in a given case arrived at merely by a resort to a prior precedent or precedents unless the facts as well as context in that case are wholly coincident with those in the prior case or cases. This last mentioned situation is, in the nature of things, likely to be rare. The sentencing process is a complex one where the precise factual matrix is all-important and where the court is tasked with the delicate process of balancing a number of important factors centring on both individual (in particular, in relation to the accused) and societal concerns. Indeed, the general aims of sentencing (*viz*, prevention, retribution, deterrence, rehabilitation and the public interest) embody these various concerns (see generally Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) at ch 6). Having regard to the fact that the sentencing process is not a mechanistic one, it ought (as I have just mentioned) to be a holistic and integrated one that takes into account all the general aims of sentencing as applied to the precise factual matrix before the court itself, and in so far as they are relevant to that particular factual matrix.
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> [emphasis in original omitted]

39 In this connection, there is something to be said regarding the appellant's rather mechanical and mathematical approach in constructing a sentencing framework based on information obtained from searches conducted in the SIR.[55] The appellant submits that the upper limit of the duration in disqualification orders for serious offences (Band 3) in their proposed framework should be three years based on the statistics in the SIR, and it would follow that the upper limit for Bands 1 and 2 would correspondingly be one and two years (with a

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[55] AWS at [33]–[35].

further downward calibration for Band 1 to below 12 months, taking into account the need to pass the prescribed test of competence to drive).

40 As I have pointed out to the appellant during the oral submissions, the cases found in the SIR only provide the length of disqualification orders that was ultimately imposed but they do not reveal the specific and relevant facts that would enable the court to better appreciate the context in which a disqualification order was made. There is no explanation provided on how the sentences were arrived at. Adopting the proposed framework by the appellant would be anathema to the idea of individualised justice and eschewing a mechanical approach. As cautioned in *Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor* [2005] 3 SLR(R) 1 at [24], it is the circumstances of each case which are of paramount importance in determining the appropriate sentence: "Sentencing is neither a science nor an administrative exercise. Sentences cannot be determined with mathematical certainty." I do not think it is appropriate to derive a framework based solely on the duration of the disqualification period imposed (as gleaned from the SIR) and then to divide it equally into the various sentencing bands without knowing the factual matrix in those cases. Sentencing benchmarks are never intended to achieve mathematically precise sentences (*Mohd Akebal s/o Ghulam Jilani v Public Prosecutor and another appeal* [2020] 1 SLR 266 at [20(b)]). Thus, the sentencing framework proposed by the appellant is not adopted.

41 Returning to the point on consistency in sentencing, while consistency is important as it goes towards fairness and predictability, these considerations might have to give way in some situations to other apposite considerations. For instance, a different approach may be appropriate when responding to a spike in offences. An upward trend in the commission of certain offences which increases the risk faced by victims (see *Stansilas Fabian Kester v Public*

Prosecutor [2017] 5 SLR 755 at [43]–[44]) could necessitate the need for stronger sentences. Where there is a spike in offences, it would be in the public interest for the court to send a clear deterrent message to prevent the commission of such offences through weightier punishments imposed in accordance with the sentencing objective of general deterrence (see *Public Prosecutor v BRH* [2020] SGHC 14 at [49]–[50]).

42 Another consideration might be the need to recalibrate the sentences to be imposed in light of new circumstances. For example, in *Ding Si Yang v Public Prosecutor and another appeal* [2015] 2 SLR 229 at [57], the court was of the view that the sentencing norms for match-fixing offences required a timely "sharp upward recalibration" considering the increased lucrativeness and anonymity of match-fixing offences as well as the increased potential for reputational harm to Singapore. In other situations, a new framework might be required altogether. In *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449, while it was acknowledged that the previous sentencing framework laid down for rape offences had brought a measure of consistency (at [2]), in the face of certain problems with the old framework (such as the clustering of sentencing outcomes), a revised version was established by the Court of Appeal.

43 Hence, consistency is not the controlling factor in every situation, and I do not find it necessary to set out a framework just to attain consistency for its own sake. I now turn to the other reasons why it is inappropriate to set out a framework, in any event.

Sentencing framework not necessary in this case

44 It would not be wise to formulate a framework when there is an insufficient body of case law before the court. As I have noted in *Public Prosecutor v Sindok Trading Pte Ltd (now known as BSS Global Pte Ltd) and other appeals* [2022] SGHC 52 at [29], sentencing frameworks should only be imposed when there are sufficient cases and should not be imposed *a priori* generally. This would ensure that a framework is set out only when there is a sufficiently clear sentencing pattern which emerges.

45 There could also be other reasons for declining to formulate a general sentencing framework, such as the wide range of misconduct in different circumstances that could be caught under the offence-creating provision such that a single sentencing framework would never be adequate to cater to the full range of different factual scenarios (see *Koh Yong Chiah v Public Prosecutor* [2017] 3 SLR 447 at [34]; *Public Prosecutor v Tan Kok Ming Michael and other appeals* [2019] 5 SLR 926 at [104]).

46 In the present case, the issue is not the latter but the former – that there is an insufficient corpus of case law. As pointed out by the Prosecution, reliance on the SIR records is unhelpful as they do not contain the specific facts of the cases nor do they explain the basis of sentences given.[56] There is a dearth of reported cases for dangerous driving offences under s 64(2C)(*a*) of the RTA after the enactment of the 2019 RTA amendments.[57] The only case which might be directly relevant is *Public Prosecutor v Ryan Asyraf Bin Mohammad A'zman* [2022] SGDC 15 ("*Ryan Asyraf*"), which I will deal with later. Given the

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56 RS at [37].

57 RS at [39].

scarcity of cases to draw guidance from, it would not be appropriate to lay down a framework and it is left open for consideration in future.

47 Nevertheless, it is pertinent to note that in *Wu Zhi Yong*, the court endeavoured to lay down a framework for offences under s 64(2C)(*c*) read with s 64(2C)(*a*) of the RTA despite the scarcity of cases after the 2019 RTA amendments. Whilst recognising that significant amendments to the RTA had taken place, the court referred to cases under the pre-amended RTA when setting out the sentencing bands framework but recognised that they "cannot be applied directly" (*Wu Zhi Yong* at [38]). Thus, one could argue that the court, in this case, should also endeavour to set out a framework and the scarcity of cases is no great hurdle.

48 However, the additional difficulty at present, as alluded to above at [33], is that the court would only be able to pronounce on the framework for the disqualification order but not the main punishment to be imposed under s 64(2C)(*a*) of the RTA. The fine has been fully paid for and the appellant only appeals against the disqualification order. This would mean that the framework set out, if any, would be incomplete and this is unsatisfactory.

49 Further, in *Wu Zhi Yong* (at [12]–[17], the parliamentary intent was clear that a tougher stance should be taken against road traffic offenders with regard to the enhancement of punishments under s 64 of the RTA after the 2019 RTA amendments. Thus, the court in *Wu Zhi Yong* could apply an upward calibration of sentences from the pre-amended RTA cases, noting that should the new framework be applied to those past cases, it "should generally result in higher sentences" (at [38]). The case of *Wu Zhi Yong* was also one where the minimum disqualification period of two years was prescribed by Parliament in s 64(2D)(*i*) of the RTA for a serious offender who was punished under s 64(2C)(*c*).

50 However, here, the parliamentary intent is unclear with regard to whether the court should impose longer disqualification orders when exercising its powers under s 42(1) of the RTA as there were no changes effected to that provision in the 2019 RTA amendments. As noted above at [6], the present case concerns punishment under s 64(2C)(*a*) of the RTA where no minimum disqualification period is set out by Parliament under s 64(2D) of the RTA. Thus, the court retains the full discretion to decide on the appropriate period.

51 Hence, while the appellant has done a commendable job in proposing a sentencing framework and considerable thought was put into it, the present case is not one where a sentencing framework should be set out.

52 Nevertheless, while not aiming for absolute consistency, my view is that some sentencing parameters and factors to be considered can be provided in this case to give some guidance.

Sentencing parameters

53 The sentencing parameters that I set out in the following paragraphs only apply to determining the appropriate disqualification order to be imposed (if any) when an offence is punishable under s 64(2C)(*a*) of the RTA. Different considerations may apply for the other provisions within the RTA, and I do not lay anything down for those.

54 Looking at the range of specified minimum disqualification orders that must be imposed for more severe offences under s 64 of the RTA, for an offender or repeat offender who had caused death (punishable under s 64(2)(*a*) and s 64(2)(*b*) of the RTA), the period is at least ten years as stipulated by s 64(2D)(*a*) of the RTA. What can be observed is that very substantial periods of disqualification may be prescribed where the harm caused is high.

55 More relevant to the case at hand, for the offences under s 64(2C) of the RTA, which is a residual category where no hurt is caused, the minimum disqualification period for a serious offender who is punished under s 64(2C)(*c*) is two years pursuant to s 64(2D)(*i*) of the RTA, and it is five years for a serious repeat offender punished under s 64(2C)(*d*) pursuant to s 64(2D)(*j*) of the RTA. It seems that in the case of serious repeat offenders, the disqualification period can be increased rather substantially. However, for the present offence under s 64(2C)(*a*) of the RTA, which concerns a non-serious first-time offender, no minimum period is stipulated in s 64(2D) of the RTA.

56 To my mind, under s 64(2C)(*a*) of the RTA, for first-time traffic offenders with a clean driving record (especially those without any history of compoundable offences or speeding tickets), the disqualification period should be set at 12 months or below. This is assuming that the degree of potential harm posed to other road users is relatively low. Unless there is a substantial or significant danger caused by the offender, or where there is a contumelious or blatant disregard for the safety of other road users, the disqualification order imposed should ordinarily not go beyond 12 months.

57 However, the disqualification period should exceed 12 months and can go up to 24 months and beyond where there is very dangerous behaviour demonstrated by the offender, or conduct showing a disregard for traffic rules, etiquette and the interests of other road users. There must be something affecting the privilege of driving a vehicle on the road to a substantial degree.

58 Next, before addressing the relevant and material factors to consider when imposing a disqualification order, I first consider the underlying objectives of such an order.

Objectives of disqualification orders

59 A driving disqualification order combines three sentencing objectives: punishment, protection of the public and deterrence (*Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139 ("*Edwin Nathen*") at [13]). Often, due to the limited range of fines in the punishment provision, the impact of a disqualification order is likely to be felt much more acutely than any marginal increase in the quantum of the fine (see *Edwin Nathen* at [13]).

60 Ensuring the safety of others in public is an important consideration. As discussed in *Public Prosecutor v Ong Heng Chua and another appeal* ("*Ong Heng Chua*") [2018] 5 SLR 388 at [61]:

> 61 The most important sentencing principles engaged in disqualification orders are the protection of society, because the objective of disqualification orders is to prevent future harm that the offender may cause to the public, and deterrence, because such orders deprive offenders of the freedom to drive. In line with these principles, greater weight should be placed on the culpability of the offender in the commission of the offence as well as his driving record. These reflect how much of a danger he poses to society, and are also indicative of the degree of specific deterrence necessary. …

Protection is achieved by removing a dangerous driver from the roads to attenuate the risk of harm occasioned by bad or antisocial driving. Further, Parliament has made it clear that the ability to impose disqualification orders under s 42(1) of the RTA is meant to protect innocent road users from the potential danger posed by motorists who demonstrate violent or aggressive behaviour when reacting to situations connected to driving such as: flashing of head lamps, overtaking and disputes over parking spaces, *etc* (see *Singapore Parliamentary Debates*, *Official Report* (20 January 1999) vol 69 at col 1932 (Wong Kan Seng, Minister for Home Affairs)).

61 A disqualification order also serves to remove the privilege to drive from those who have abused it, and this also reinforces the notion of shared usage of the roads. It must be remembered that driving is an inherently dangerous activity. The licence to drive is a privilege accorded to persons who, through a series of properly administered tests, have demonstrated that they are capable of meeting the standards expected of a reasonably competent driver (*Jali bin Mohd Yunos v Public Prosecutor* [2014] 4 SLR 1059 at [36]). The former Minister for Home Affairs, Prof S Jayakumar, had expressed the following view which reinforces this notion (see *Singapore Parliamentary Debates*, *Official Report* (28 March 1990) vol 55 at col 960): "… we must get every driver in Singapore to note that when he is issued a licence, it is in fact a very special privilege and it is granted on condition that he drives in a responsible manner bearing in mind the interest of others."

62 The imposition of disqualification orders takes effect above and beyond the primary sentence of an imprisonment term or fine (or both). As recognised by former Chief Justice Yong Pung How in *Sivakumar s/o Rajoo v Public Prosecutor* [2002] 1 SLR(R) 265 ("*Sivakumar*") at [28], "the most satisfactory penalty for most motoring offences is disqualification because a fine is paid once and then forgotten". By imposing a sufficiently lengthy disqualification order, an offender is reminded every day of his offence and the unwarranted risks which he had placed on ordinary members of the public (*Sivakumar* at [28]). The offender would no longer be a menace on the roads and would be reminded that he was not permitted to drive because of his bad behaviour (*Public Prosecutor v Fizul Asrul bin Efandi* [2018] 5 SLR 475 ("*Fizul Asrul*") at [14]). Thus, it is said that, rather than a fine, it is disqualification that the motorist fears (see *Public Prosecutor v Chiam Liang Kee* [1960] MLJ 163).

63 More generally, it is also well established that the primary sentencing considerations for dangerous driving offences are those of specific and general deterrence (*Public Prosecutor v Aw Tai Hock* [2017] 5 SLR 1141 at [21]).

64 With these broad principles in mind concerning the objectives of imposing a disqualification order, the disqualification order should be calibrated in a reasoned manner and considering any previous case law pronouncements. Bearing in mind that it would be unrealistic, and perhaps unwise, to set out an exhaustive list of factors to be taken into account when determining the period for a disqualification order, I proceed to consider some of these factors which might be relevant and material.

The relevant and material factors

Circumstances of the commission of the offence

65 The circumstances of the commission of the offence which might have increased the danger posed to road users during the incident are relevant. This would include any acts endangering safety as well as the manner of driving. For example, the offender may have exhibited poor control of his vehicle; he might have been apprehended for speeding; or he might have been found driving dangerously or recklessly, such as driving against the flow of traffic or being involved in a car chase in an attempt to avoid apprehension by the police (*Edwin Nathen* at [27]). Adopting a particularly dangerous manner of driving which could involve excessive speeding, rambunctious or intemperate behaviour such as those in "hell riding" cases would also be relevant (*Koh Thiam Huat* at [41]).

66 Other relevant circumstances that increase the risk and danger to road users include driving during rush hour when the traffic volume is heavy, driving within residential or school zones, driving a heavy vehicle that is more difficult

to control, or setting out to drive a substantial distance to reach a destination (in the context of drink driving) (*Edwin Nathen* at [28]).

67 The extent of any property damage caused and the potential harm that could have resulted from the act of dangerous or reckless driving would also be relevant (*Wu Zhi Yong* at [36(a)] and [36(b)]. The level of potential harm must be assessed against the actual facts which include, *inter alia*, the condition of the road, the volume of traffic, the number of pedestrians actually on or which might reasonably be expected to be on the road at the relevant time, the speed and manner of driving, visibility at the relevant time, the type of vehicle, and any particular vulnerabilities (*Neo Chuan Sheng v Public Prosecutor* [2020] SGHC 97 at [22]).

Continued ability to drive and attitude towards other road users

68 The competence of the driver on the road is relevant, as well as their attitude towards other road users. One must consider whether the continued ability to drive is compromised. Where there is a blatant disregard for the safety of other road users and a lack of personal responsibility, it is within the public interest to remove such a driver from the roads for a substantial period of time (*Edwin Nathen* at [14]).

69 The presence of any violence or threats of violence which are characteristic of road rage situations might require a longer period of disqualification. There is a need to deter road users from losing their tempers and responding to incidents that arise from the shared use of public roads with violence or threats of violence, especially given Singapore's high population density and increasing road traffic (*Public Prosecutor v Lim Yee Hua and another appeal* [2018] 3 SLR 1106 at [24]). A dim view is taken of road rage

incidents. In deciding whether the court should exercise its discretion to impose a disqualification order, it was stated in *Fizul Asrul* at [16] that: "It is clearly in the public interest that aggressive drivers who do not control their anger and who pose a danger to the safety of other road users should not be allowed to drive for an appropriate period of time."

70 It is also particularly aggravating when the offender has decided to pursue a personal vendetta or to settle a score from a driving-related dispute by seeking to force a confrontation with the other party by driving right in front of him and jamming the brakes multiple times (see, *eg*, *Public Prosecutor v Wang Jianliang* [2019] SGMC 27 at [31]). This is so even if there was an actual or perceived slight arising from that other party who may have conducted himself discourteously on the road. It is one thing to convey displeasure by sounding the horn (or by some other reasonable means), but it is another to perpetuate the confrontation by cutting in front of that other party and risking a collision.

71 In *Teo Seng Tiong v Public Prosecutor* [2021] 2 SLR 642 at [120], the Court of Appeal has made it clear that provocation by other road users does not entitle an offender to react disproportionately:

> 120 … Further, even if the DQ Order of two years were considered excessive, the facts do not justify a reduction to below 12 months, which is what the Applicant truly hopes for. The Applicant may have been provoked first by Eric's insistence on cycling in the middle of the left lane and his subsequent conduct in damaging the left side-view mirror but his retaliation by veering the lorry sharply into the path of the moving bicycle shows his attitude towards road safety and lack of concern about possible injury to other road-users. It has been reiterated over the years that a motor vehicle can be a lethal weapon with the wrong person at the steering wheel.

In this connection, where the past driving records reveal the offender to be an unsafe driver with a cavalier attitude towards road safety and demonstrating his

unwillingness to comply with the law, a more severe sanction is warranted (*Ong Heng Chua* at [46]). An aggressive and unsafe driver should be taken off the roads for a longer period.

Not necessary to link to fine and/or imprisonment imposed

72 The appellant submitted that the period of disqualification imposed should be proportionate to the fine and/or imprisonment term imposed.[58] This would mean that given the low fine of $1,600 imposed (out of the maximum of $5,000 or even an imprisonment term of 12 months), the disqualification period imposed on the appellant should, accordingly, be lower. I do not agree with this proposition.

73 There is no necessary link between the period of the disqualification order and the fine and/or imprisonment sentence imposed. The court may calibrate the disqualification order separately. In some circumstances, it may be appropriate to impose a longer term of disqualification even if the fine and/or imprisonment sentence imposed is relatively lenient, mainly because the disqualification order is concerned with a different set of objectives as alluded to above at [59]–[62]. The imposition of a disqualification order takes effect above and beyond the primary punishment. A sufficiently long disqualification order may need to be imposed to send a strong signal even if there is low harm (as reflected in the lower punishment).

74 On the flipside, neither is it meant to be inversely proportional. As noted in *Neo Chuan Sheng* at [19] and *Edwin Nathen* at [13], when deciding on the appropriate period of disqualification, the disqualification order and the fine

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58 AWS at [55].

imposed would not be mutually compensatory. Meaning to say, an increase in the punishment imposed (the fine or imprisonment term) should not be taken to mandate the imposition of a reduced period of disqualification than would otherwise have been ordered. It would be unprincipled to discount the period of disqualification in such a manner.

Irrelevance of the 12-month threshold and driving test

75 In the oral arguments before me, great emphasis was placed on the 12-month threshold for the disqualification order. This is primarily because an offender who had been disqualified for one year or longer would have to re-take and pass a prescribed test of competence to drive before he is allowed back on the road under s 43(1)(*b*) of the RTA. The appellant argued that it is for this reason that the disqualification order imposed should be set below 12 months as the need to re-take the driving test would further delay and impact his livelihood as a taxi driver. The Prosecution, on the other hand, pointed out that the 12-month threshold should be crossed in this case as it would allow the appellant to gain experience in safe driving.[59]

76 I am aware that in *Neo Chuan Sheng* at [24], Justice Chua Lee Ming had considered the 12-month threshold to be an important factor which can be taken into consideration when deciding on the disqualification period:

> 24 One important consideration with respect to disqualification orders is whether the disqualification order should be for a period of at least 12 months ("the 12-month threshold"). The 12-month threshold is significant because disqualification for 12 months or more means that the offender's driving licence ceases to have any effect and he has to re-take and pass the prescribed test of competence to drive before he can drive after the period of disqualification: s 43(1)(*b*) RTA. Using the harm and culpability framework, the 12-month

[59] RS at [30].

> threshold would certainly be crossed if both harm and culpability are high. Conversely, it would not be crossed if harm and culpability are both low. …

The DJ in the court below had also considered the 12-month threshold as an important factor when deciding that the disqualification period should exceed a year so that the appellant would be compelled to re-take the driving test and to learn safe driving.[60] Yet, in those cases, the underlying purpose of the provision was not examined, which may have required recourse to extraneous materials.

77 I have my doubts and wonder whether the sentencing judge is allowed to calibrate the length of disqualification just to compel the offender to re-take and pass the prescribed test of competence to drive under s 43(1)(*b*) of the RTA, which would function almost as an "additional punishment". The question is whether this 12-month threshold should operate consciously on the mind of the judge or whether it should be kept out as an irrelevant consideration.

78 Adopting the purposive approach to statutory interpretation as laid down in s 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) ("the IA") and which was elaborated upon in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [54], the court should first ascertain possible interpretations of the provision, having regard to the text of the provision as well as the context of the provision within the written law as a whole. On an ordinary reading of s 43(1)(*b*) of the RTA, all that is stated is that if the period of disqualification imposed is one year or longer, then the prescribed test of competence to drive must be passed before that person can return to driving a motor vehicle. Contrary to what was suggested by the Prosecution and the DJ in the court below, there is no mention in this provision that this prescribed test

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60 ROP at p 36; GD at [26].

of competence to drive was to promote "safe driving", and hence, it is unclear if the 12-month threshold should be considered by the court when deciding on the disqualification period.

79 Turning to the next step in the *Tan Cheng Bock* framework, the court must ascertain the legislative purpose or object of the provision. The purpose should ordinarily be gleaned from the text itself. However, the text of s 43(1)(*b*) of the RTA, by itself, is rather unhelpful as it is merely a provision that lays out the requirement that the driving test must be taken and passed where the disqualification period is one year or more. However, it does not state the rationale for this requirement and whether the court can consider it in sentencing. Further, the discretion conferring provision in s 42(1) of the RTA is also unhelpful in illuminating the purpose of s 43(1)(*b*) of the RTA as it merely states that "the court may, in addition to [punishments provided for], make an order disqualifying [an offender] … for such period as the court may think fit" – but there is no mention of the 12-month threshold nor the prescribed test of competence to drive. Recourse to extraneous material is hence necessary here as the purpose of the provision is obscure. Pursuant to s 9A(2)(*b*) of the IA, extraneous material may be used to ascertain the meaning of a provision if the provision is ambiguous or obscure. Looking to the Parliamentary speech at the material time when the provision was first introduced in 1990, which is material that can be considered under s 9A(3)(*c*) of the IA, the intention behind the provision is revealed (*Singapore Parliamentary Debates*, *Official Report* (28 March 1990) vol 55 at col 962 (Prof S Jayakumar, Minister for Home Affairs):

> Next, the amendments on the re-taking of a driving test for drivers who have been disqualified or suspended from driving one year or longer. At present, a driver whose licence has been suspended by the Traffic Police or disqualified by the court can automatically resume driving after the period of suspension or disqualification. However, that disqualification or suspension in itself is no assurance that the driver has learnt proper driving

> habits and skills. Indeed, not having driven for a year or more, his skills are likely to have deteriorated. Under the amendments, therefore, a driver who has been suspended or disqualified for a year or more must re-take the driving test so that we can be satisfied that he still retains his driving skills and that he has the minimum ability and competence to drive.

It would seem that the primary purpose of s 43(1)(*b*) of the RTA was a practical one. It was to ensure that the disqualified offender would retain his driving competency if he happened to be disqualified from driving for one year or longer as his "skills are likely to have deteriorated" in that period of being away from the wheel. While there is a brief mention of the need for offenders to learn "proper driving habits", this appears to be ancillary. Thus, it may not be entirely apt for the court to calibrate the disqualification period just to reach one year (or more) in order to compel the offender to re-take the driving test as part of the appropriate punishment, though it could be a subsidiary consideration.

80 To put it another way – the court should not consider the 12-month threshold and the need to re-take the driving test when deciding on the appropriate disqualification period to be imposed. The retest is to ensure competence (perhaps functioning as a driving refresher course of sorts) and is not meant as an "additional punishment" to be imposed for the offender to re-learn safe driving. Under the third stage of the *Tan Cheng Bock* framework, that interpretation best accords with the purpose of s 43(1)(*b*) of the RTA – which is not meant to be a punitive provision.

81 I am fortified in my view that the provision is concerned with competence and is not punitive as this appears to be the position in England as well. While the applicable provision in England is different insofar as the need to re-take the driving test can be imposed discretionarily regardless of the length of disqualification under s 93(7) of the Road Traffic Act 1972 (c 20) (UK), it is

similarly described as a "test of competence to drive" which must be passed before an offender can resume driving. In *R v Donnelly* [1975] 1 WLR 390, the English Court of Appeal held (at 392) that the "object of the enactment of section 93(7) of the Road Traffic Act 1972 is to test drivers who may have become disqualified and who may for some reason show some lack of competence …" and stated (at 393) that "section 93(7) is not a punitive section" but was one intended to protect the public against incompetent drivers. This proposition was also confirmed in subsequent cases such as *R v Buckley (Nicholas*) [1989] Crim LR 386, where the English Court of Appeal held that the power of the court to make an offender resit a test under that provision is not to be exercised as an additional punishment, and is only appropriate to be invoked where the competency of the driver is in question.

82 The position in Scotland is also aligned to the English position, where it was stated that the section "is designed not to impose a further penalty but to enable the court in appropriate circumstances to ensure that the person concerned is fit to continue driving on the public roads" (*Brian Hannah Neill v Hugh Ross Annan*, 1990 SCCR 454 at 456). An order is appropriate where an offender is "likely to be incompetent after a long period of disqualification" and "should not be permitted to drive on the road again until he has satisfied the authorities that he has not lost the skills that a competent driver must possess" (*William George Gordon Kemp Middleton v Graeme Napier*, 1997 SCCR 669 at 670).

83 To recapitulate, the court should not consider the 12-month threshold (which would trigger the need to re-take and pass the prescribed test of competence to drive under s 43(1)(b) of the RTA) as an important factor when deciding upon the appropriate disqualification order period. It is an irrelevant consideration as the retest was never meant to function as an additional punitive

element. I disagree with the DJ below that it can be appropriate for the court to tweak the disqualification order to reach or exceed a year in order to compel the offender to re-take the test to learn "safe driving", as this was never the intention of Parliament. The retest is to ensure competence. There has been no indication or evidence that there would be specific training to discourage road rage or anything beyond the general requirements for new drivers as regards safe driving.

Impact on livelihood and family of little weight

84 The appellant raised the point that driving was his livelihood as he worked as a Grab driver prior to his period of suspension. Most of his income goes towards supporting his family as the sole breadwinner.[61] There would be hardship caused to the family. Thus, leniency was pleaded.

85 It is trite that the impact on livelihood and hardship to the family caused by the imposition of a sentence should be given little weight, unless there are exceptional circumstances (*CCG v Public Prosecutor* [2022] SGCA 19 at [6]; *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [11]). In *Ang Jwee Herng v Public Prosecutor* [2001] 1 SLR(R) 720 at [78], it was cautioned that this factor should not be given much weight because the sentence meted out will not accurately reflect the gravity of the offence:

> 78 … If the courts were to take such hardship into account in determining the appropriate sentence, then any punishment meted out would not be accurately reflective of the gravity of the offence and circumstance of the offender himself, but tempered with considerations of the extent to which his family would be prejudiced by it. The crux of the matter is that part of the price to pay for committing a crime is the hardship that would unavoidably be caused to the offender's family. To put it bluntly, the appellant should have thought hard about these

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61 AWS at [49(c)].

> consequences before committing the offences in question. It is now too late in the day for him to regret the inescapable hardship which his own foolishness and greed will cause to his wife and children. …

86 The abovementioned cases concern imprisonment terms, but those principles apply with equal force to the imposition of disqualification orders. By way of illustration, in *Fizul Asrul* at [19], the court dismissed the offender's argument that a disqualification order should not be imposed because of the adverse impact on his family.

87 Regarding this factor, leniency can only be afforded in very exceptional or extreme circumstances, but those are likely to be very rare (*Chua Ya Zi Sandy v Public Prosecutor* [2021] SGHC 204 at [11]).

Application to the facts

88 In light of the foregoing factors and factual matrix before the court, my view is that the disqualification order should be reduced to 12 months.

89 Beginning with the aggravating factors, there was danger posed to other road users in the commission of the offence. While it is fortunate that there was no personal injury caused to parties, there was a fair degree of potential harm, considering the conditions at the material time. The traffic volume was indeed described in the statement of facts as "light",[62] but I do not think that the road traffic was so negligible. The offence occurred at about 8.34pm when there was still some traffic, and this is unlike the situation in *Neo Chuan Sheng* where the offence was committed at about 2.10am when no vehicles or pedestrians would be expected to be on the road (see [41] of *Neo Chuan Sheng*). It is foreseeable

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62 ROP at p 8; SOF at [14].

that the rapid changing of lanes and sudden braking of the taxi by the appellant could have caused a collision with other vehicles on the road. This risk was accentuated by the fact that it would be harder to control the vehicle given that it was drizzling and the road surface was wet.[63]

90 The manner of driving by the appellant was also dangerous. The appellant had driven in an aggressive manner with a disregard for the safety of other road users. After being high-beamed by the other involved party, Lo, the appellant proceeded to brake multiple times whilst he was driving directly in front of Lo and demonstrated that he was a road bully. This forced Lo to brake quickly to avoid an accident and it was merely fortuitous that Lo was able to do so. Braking sharply in front of other vehicles is not only intimidating behaviour, but it can also directly lead to collisions.

91 Even after Lo had tried to disengage with the appellant by switching to a different lane, the appellant was persistent and switched lanes abruptly on four occasions in order to continue driving ahead of Lo and to pester him. The appellant was not willing to let Lo go off on his way and instead prolonged the incident. The sudden switching of lanes was also dangerous behaviour as vehicles behind would not be able to predict this behaviour. The whole situation only ended when the appellant came to a complete stop in the middle of the road just to confront Lo, and the appellant did so without any regard to the oncoming traffic.

92 Further, it was conceded that the appellant's dangerous driving bore elements of road rage.[64] The appellant had no regard for the concept of shared

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63 ROP at p 8; SOF at [14].

64 AWS at [47].

usage of roads and selfishly chose to settle his dispute with Lo by using his taxi vehicle as a means of retaliation against the perceived slight by Lo (who high-beamed his lights and allegedly pointed his middle finger). As mentioned above at [69]–[70], the court takes a dim view of drivers who lose their temper easily and who choose to react disproportionately. While Lo might have acted discourteously, I do not think it was necessary for the appellant to stop in the middle of the road, come out of his vehicle and confront Lo face to face. The appellant's conduct was disproportionate, and direct face to face confrontations should be avoided at all costs as there is always the risk that they could devolve into affrays. The appellant demonstrated that he could not control his anger and to avoid escalation and retaliation: it is in the public interest to remove such offenders from the road for an appropriate period of time. I agree with the DJ below that the appellant should have ignored Lo and driven off instead of escalating matters further.[65]

93 Where road rage is involved, and the threat to safety is anything more than fleeting or momentary, the usual appropriate disqualification period should be of a length to both punish and deter. I am doubtful that, in general, anything less than 12 months' disqualification would be a suitable response. The greater the threat to traffic safety, or the greater the degree of conflict being played out on the roads because of the road rage, the greater the length of disqualification. As for the interplay with the other sentences that may be imposed, it suffices to reiterate (as noted above) that the sentencing objectives of disqualification have a different focus from the other sentences, targeting primarily the continued use of the privilege of driving on the roads, and maintenance of traffic safety through the use of that privilege.

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[65] ROP at p 33; GD at [20].

94 Turning to the mitigating factors, I do not give any weight to the fact that hardship would be caused to the appellant's family by imposing the disqualification order. While one can sympathise with his position as driving is his only trade as a Grab driver, in light of the reasons mentioned above at [85]–[87], I do not find his circumstances to be exceptional enough to warrant any leniency.

95 Weight is given to the fact that the appellant is a first-time offender with a clean driving record. The appellant is untraced, not even for compounded offences. Thus, it would seem that the present offence was a one-off incident.

96 I also note that the appellant had pleaded guilty.[66] The Prosecution argues that contrition was not shown as the appellant had tried to shift the blame to Lo in his mitigation plea,[67] I do not find this to be the case, and agree with the DJ's findings that the appellant had "readily admitted fault and owned up to being impulsive at the time of the incident."[68]

97 With regard to precedents, as mentioned above at [46], at present, there is only one reported case involving an offence under s 64(2C)(*a*) of the RTA (after the enactment of the 2019 RTA amendments) where a disqualification order was imposed. In *Ryan Asyraf* (where the offender pleaded guilty), the offender had made an abrupt illegal U-turn in order to evade a police pursuit. This caused an unknown vehicle travelling along the same road to apply its emergency brakes to avoid a collision. While no actual harm was caused by the illegal U-turn, the sentencing judge found that the potential harm was high and

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66 ROP at p 36; GD at [27].

67 RS at [26(a)].

68 ROP at p 36; GD at [27].

the accused's culpability was high as he was attempting to evade arrest (*Ryan Asyraf* at [46]). A sentence of one week's imprisonment and 24 months' disqualification was imposed. The offender in *Ryan Asyraf* has appealed against the decision, but the appeal was eventually dismissed in the High Court.[69]

98 I do not find that precedent to be particularly helpful. While there are certain similarities in the facts as the offender in *Ryan Asyraf* had also pleaded guilty and there was no actual harm, the circumstances are different with the present case as that case involved the evasion of police arrest.

99 Taking all the circumstances into account, most significantly that this was a road rage incident with danger being posed to road users, a disqualification order of 12 months' duration is appropriate to fulfil the objectives of punishment, protection of the public and deterrence. The circumstances match the general characteristics of cases meeting the 12 months' disqualification imposed. The degree of danger and road rage did not warrant 15 months' disqualification. To reiterate, the DJ was incorrect in finding it appropriate for the disqualification period to reach or exceed a year just to compel the appellant to re-take the prescribed test of competence to drive under s 43(1)(*b*) of the RTA and to re-learn "safe driving". The retest was never meant to function as an additional punitive element (see above at [75]–[83]), and I excluded this consideration when deciding on the disqualification period.

Conclusion

100 For the abovementioned reasons, the appellant's disqualification order is thus reduced, though not entirely for the reasons advanced. While I did not

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69 See certificate of result of appeal dated 13 May 2022 in HC/MA 9004/2022/01.

find it necessary to set out a sentencing framework in this case, I have aimed to lay down some relevant sentencing parameters and factors.

Aedit Abdullah
Judge of the High Court

Anand George and Tam An Tian Amanda (I.R.B Law LLP) for the appellant;
Tan Zhi Hao (Attorney-General's Chambers) for the respondent.
