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

[2022] SGHC 138

Magistrate's Appeal No 9246 of 2021

Between

Sheik Parvez Zunuas Bin
Shaik Raheem

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] — [Statutory Offences] — [Road Traffic Act]

[Criminal Procedure and Sentencing] — [Statutory Offences] — [Motor Vehicle (Third-Party Risks and Compensation) Act]

Sheik Parvez Zunuas bin Shaik Raheem
v
Public Prosecutor

[2022] SGHC 138

General Division of the High Court — Magistrate's Appeal No 9246 of 2021
Vincent Hoong J
11 May 2022

15 June 2022 Judgment reserved.

Vincent Hoong J:

1 In the court below, the appellant pleaded guilty to two charges: a charge under s 43(4) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA") for driving while under a disqualification order and one charge under s 3(1) of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed) ("MVA") for using a motor car without insurance. For the s 43(4) RTA charge, he was sentenced to six weeks' imprisonment and disqualified from holding or obtaining all classes of driving licences for a period of 48 months with effect from the date of release. As for the s 3(1) MVA charge, he was sentenced to a fine of $600 and disqualified from holding or obtaining all classes of driving licences for a period of 12 months with effect from the date of conviction, *ie,* 29 October 2021. While a stay of execution was ordered in respect of the imprisonment term imposed, no stay was sought as regards the disqualification order imposed for the s 3(1) MVA charge. The District Judge's

(the "DJ's") grounds of decision can be found in *Public Prosecutor v Sheikh Parvez Zunuas bin Shaik Raheem* [2021] SGDC 256 (the "GD").

Facts

2 On 10 October 2019, the appellant was convicted on a charge of under s 67(1)(*b*) of the RTA for driving a motor vehicle while having so much alcohol in his body that the proportion of it in his breath exceeded the prescribed limit. He was disqualified from holding or obtaining all classes of driving licences for 24 months with effect from 10 October 2019. Three days later, on 13 October 2019 at about 11.07 am, the appellant was found driving a motor car along Changi Airport Terminal 4 Arrival Drive whilst under disqualification. At the material time, there was therefore no policy of insurance or security in respect of the third-party risks as required by the MVA in relation to the use of the said motor car by the appellant.

The appeal

3 He now appeals against the sentences and disqualification orders imposed on him in respect of both charges (as set out in [1] above), save for the fine imposed in respect of the s 3(1) MVA charge.

4 In this appeal, he raises several points which I summarise as follows:

(a) The presiding judge in the mentions court ("mentions court judge") on 13 October 2020 had pre-judged the appellant's case by taking the view that the plaintiff did not have a "misjudged belief" that he could only stop driving when his licence had been surrendered;[1]

[1] Appellant's written submissions ("AWS") at paragraphs 8, 49 and 56.

(b) The DJ rejected, without basis,[2] the appellant's application on 31 August 2021 to make further representations to the prosecution;

(c) The prosecution did not investigate the appellant's allegation that the court interpreter had provided him with the wrong information, such as through an identity parade or by applying for the Court's records, nor did it tender any evidence to rebut or challenge the appellant's allegation;[3] and

(d) The DJ erred in both fact and law by dismissing the appellant's submission and evidence that he had been under a mistaken belief that he had seven more days to drive after being convicted of a drunk driving charge.[4]

5 I will deal with each of these points in turn.

My decision

Alleged pre-judging by mentions court judge

6 First, I address the alleged pre-judging by the mentions court judge on 13 October 2020. The appellant did not put forth any evidence to support this allegation, which also appears inconsistent with his position that the mentions court judge had also suggested that various other investigative steps, *eg*, an identity parade, be convened, or the notes of evidence, presumably from the 10 October 2019 mention, be applied for.[5] If the mentions court judge had in

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2 AWS at paragraphs 21–25.

3 AWS at paragraphs 31 and 32.

4 AWS at paragraphs 36.

5 AWS at paragraph 49.

fact pre-judged the matter, there would have been no need to suggest any such steps, and the appellant's position therefore appears to be internally inconsistent. I also find it implausible that the mentions court judge would have taken such a view at a procedural mention, where no substantive conclusions would need to have been reached.

7 In any case, there is no basis to suggest that any pre-judgment, *even if* that had taken place, had any bearing on the sentencing decision of the DJ. The appellant acknowledged as much in submitting that it is "unknown" whether the sentencing court was "cognisant of the pre-judgment [by the mentions court judge]".[6] The GD shows that the DJ had carefully considered the various aspects of the appellant's case and does not present any reason to suggest that the DJ had been influenced, or, indeed, aware of, any comments made by the mentions court judge. I am therefore unable to accept the appellant's submissions in this regard.

Alleged rejection of further representations

8 I now turn to the point concerning the DJ's rejection of the appellant's application to make further representations on 31 August 2021. I note here that the appellant queries whether the "disallowance of further representation" was erroneous in law but does not expressly assert that it was. Instead, he refers to it as a "lost opportunity".[7] In this regard, the appellant submits that in the absence of any impropriety, undue delay or abuse, representations ought not to be disallowed.[8]

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6 AWS at paragraph 56.

7 AWS at paragraph 57.

8 AWS at paragraphs 53–57.

9 On this issue, in my judgment, the DJ did not err in law. Neither did her decision result in any prejudice to the appellant. It is not disputed that the issue of whether the appellant had the "misjudged belief" that he could continue driving until his licence had been surrendered was raised by 13 October 2020 at the latest. Three sets of representations had been sent to the prosecution before 31 August 2021. It is not clear what new grounds the intended representations would or could have raised. I note as an aside that those representations, which apparently related only to sentence, had in fact been sent to the prosecution just before the mention on 31 August 2021.[9] The appellant's counsel confirmed that the appellant was ready to plead guilty on that date, and sentencing was subsequently adjourned to 1 October 2021 and subsequently to 29 October 2021. In this context, it is difficult to see how the appellant was deprived of any opportunity to make further representations.

10 More fundamentally, the appellant had every opportunity to make submissions on the appropriate sentence before the DJ. The appellant had also filed an affidavit setting out his version of events. It is trite that even if the prosecution had acceded to the appellant's representations and sought a fine, this would not have had a direct impact on the DJ's decision as she could and would still have imposed an imprisonment term if that was the more appropriate sentence in her judgment. I therefore do not think that the DJ's alleged disallowance of further representations presents any basis on which to allow the appeal.

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9 AWS at paragraph 22.

Alleged mistaken belief

11 In my view, the main question which arises is whether the DJ was correct to reject the appellant's submission that he had mistakenly believed the disqualification order had not come into effect at the time of the offences, and whether a Newton hearing should have been convened.

12 The DJ reasoned that:

(a) The mistaken belief that his disqualification only commenced seven days after his conviction could only be regarded as an exceptional circumstance if it was both innocent and based on reasonable grounds (GD at [32]).

(b) The judge who had imposed the earlier disqualification order ("DJ Ho") had pronounced the effective date of the disqualification order in the appellant's presence. It was inconceivable that the appellant was confused or only heard part of the sentence. The appellant could not have confused the commencement of the disqualification order with the seven-day deadline for him to surrender his driving licence, as those were clearly separate and distinct matters. If he had been confused, he could have sought clarification from the court (GD at [34] to [36]).

(c) The DJ found that it was more likely that the court interpreter had reminded him not to drive after his conviction as he had been disqualified and that he was to surrender his driving licence within seven days. The WhatsApp messages produced by the appellant did not corroborate his claim of mistaken belief (GD at [36] to [37]).

(d) As such, the appellant's claim that he held a genuine mistaken belief was rejected as it was neither innocent nor based on reasonable

> grounds. Instead, it was a contrived effort on the part of the appellant to avoid the consequences of his actions when he was stopped on 13 October 2019 (GD at [38]).

13 At the outset, I should emphasise that to the extent the appellant appears to be concerned that the DJ was "not pleased" with his allegations against the court interpreter,[10] any such concern is misplaced. Insofar as such allegations, against any court officer or, even judicial officers, are made in good faith and are relevant to the issues at hand, accused persons should not feel that they are somehow prevented from raising them.

14 In a different context, in *Sukla Lalatendu v Public Prosecutor and another matter* [2018] 5 SLR 1183 at [1], the court observed that where allegations of impropriety are made against judges and judicial officers, the appellate court should carefully consider the allegations and their basis to assess whether they merit closer scrutiny, so that any miscarriage of justice may be promptly corrected if the allegations are borne out, or if they are not, then the relevant appeal may be dismissed, if necessary with the appropriate observations. While the allegations in the present case concerned the court interpreter rather than DJ Ho, the appellant's concerns should equally be carefully considered, as indeed the DJ sought to do.

15 It is well-established that a Newton hearing is the exception rather than the norm and should not ordinarily be convened unless the court is satisfied that it is necessary to do so to resolve a difficult question of fact that is material to the court's determination of the appropriate sentence. The sentencing judge has a discretion to decline to hear such evidence if he is satisfied that the case

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[10] Record of Appeal ("ROA") at p 134; see also AWS at paragraph 43.

advanced on the defendant's behalf is, with good reason, to be regarded as "absurd or obviously untenable" (*Ng Chun Hian v Public Prosecutor* [2014] 2 SLR 783 at [24]).

16 Having carefully considered the submissions and evidence put before me, I am unable to agree with the appellant that the sentences imposed should be set aside or varied, or indeed, that a Newton hearing should have been convened. This is as (a) even if the appellant had held the mistaken belief alleged, this would not have been material to sentencing; and (b) in any case, his claim is obviously untenable.

17 In *Muhammad Saiful bin Ismail v Public Prosecutor* [2014] 2 SLR 1028 ("*Saiful*"), Sundaresh Menon CJ held that there could be rare occasions where the offender happens to be unaware of the disqualification being in force. Where this is so, *and the offender is able to establish that it is through no fault of hers*, then in principle, it could be a mitigating factor (*Saiful* at [30]). Any mistaken belief on the part of the appellant that the disqualification order had not taken effect would not in itself carry any mitigating weight.

18 In my view, it cannot be said in the present case that the appellant held the alleged mistaken belief through no fault of his own. The appellant does not go so far as to contend that DJ Ho had not, in imposing the disqualification order, failed to also pronounce the effective date of the order. Indeed, in support of its position that DJ Ho *did* make such a pronouncement, the prosecution referred to s 116 of the Evidence Act, under which the court may presume the existence of any fact which it thinks likely to have happened, having regard to the common course of natural events, human conduct, and public and private business in their relation to the facts of the particular case. For instance, the court may presume that judicial and official acts have been regularly performed.

While it was not disputed by the prosecution that this presumption would be a rebuttable one, there is no basis in the present case to suggest it had been rebutted.

19 As I have indicated above, the appellant did not positively assert that DJ Ho had not pronounced the effective date of the disqualification order. Instead, his affidavit merely stated that he could only remember that DJ Ho had imposed a $3,000 fine and 24 months' disqualification.[11] Further, that DJ Ho had in fact pronounced the effective date of the disqualification order is consistent with the certificate under s 45A of the Evidence Act, which confirmed that, upon the appellant's conviction, sentences including a disqualification order with effect from 10 October 2019 was passed on him (see GD at [34]).[12] Indeed, DJ Ho's notes of evidence *expressly* specified that the appellant was to be disqualified from holding or obtaining all classes of driving licences for a period of 24 months with effect from 10 October 2019. That DJ Ho pronounced the effective date of the disqualification order is not merely presumed, but indicated, in the present case, by the notes of evidence.

20 The appellant's own case is that he understood English well enough and did not need a court interpreter to translate the Court's directions into English.[13] I also note, for completeness, that there is no basis to suggest that the appellant was, through no fault of his own, unable to *hear* the effective date pronounced by DJ Ho,[14] particularly since it appears that he *could* remember DJ Ho pronouncing the quantum of the fine and length of the disqualification order.

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11 ROA p 132.

12 ROA p 166.

13 Petition of Appeal ("POA") at paragraph 9.

14 POA at paragraph 15.

This being the case, even if the court interpreter had provided him with the wrong information, any decision on the part of the appellant to take the word of the court interpreter over that of the court pronouncing judgment cannot reasonably be said to have caused him to be unaware of the effective date of the disqualification order through no fault of his own. This is especially since he did not take any steps to clarify the information allegedly given to him by the court interpreter, notwithstanding the fact that this would have on his own case, contradicted the sentence pronounced by the court. Indeed, there would have been any number of ways for the appellant to clarify any uncertainty he had regarding the commencement date of the disqualification order. For instance, aside from clarifying the matter with DJ Ho, the appellant could have checked the website maintained by the Singapore Police Force, which would have indicated the status of his driving licence (see *Saiful* at [30]). Instead, on his own case, the appellant chose to rely solely on the alleged representation by the court interpreter.

21 The appellant's lack of any effort to clarify the apparent contradiction would, on his case, be even more puzzling when seen in view of his knowledge, when pleading guilty, that the disqualification order would generally take effect from the date of conviction. The s 67(1)(*b*) RTA charge sheet referred to s 67(2) RTA, which expressly states that unless the court for special reasons thinks fit to order otherwise, the disqualification order would take effect from the date of his conviction where no imprisonment term is imposed. DJ Ho's notes of evidence also show that the appellant confirmed that he understood the nature and consequences of his plea, and the appellant does not contend otherwise. Finally, the WhatsApp messages produced by the appellant showed

that he knew, prior to the mention of the case before DJ Ho, that the disqualification order would likely take effect on 10 October 2019.[15]

22 Once it is accepted that even the appellant's own version of events would not affect the sentence that should be imposed, it would then follow that it is not necessary to convene a Newton hearing, as the appellant suggests. In this context, I also do not think that anything turns on the prosecution's alleged failure to investigate the matter in the manner suggested by the appellant.

23 For completeness, I would also add that the appellant's assertions would appear to be obviously untenable, and this is an additional reason that I do not think the DJ erred in declining to convene a Newton Hearing. As alluded to above, the appellant's failure to take any steps to clarify the apparent inconsistency between what the court interpreter had allegedly told him and what DJ Ho had pronounced, especially in the context of his clear understanding, prior to the mention, that the disqualification order would likely take effect from 10 October 2019, casts serious doubt on whether the court interpreter had indeed given him the misinformation alleged.

24 It also appears to be extremely unlikely that the court interpreter would have informed him that the disqualification order would only take effect after he surrendered his licence, given the sentence pronounced by DJ Ho. While I would not go so far as to infer that that it was more likely the court interpreter had reminded him not to drive after the conviction and that he was to surrender his driving licence within seven days (see GD at [36]), equally, I cannot see any reason that the court interpreter would have provided the erroneous information as alleged by the appellant, moments after DJ Ho pronounced the sentence.

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[15] ROA at p 146.

These factors should also be seen in the light of the fact that the appellant's recollection of the events on that date appears to have been imperfect at best, with him accepting, in his affidavit, that there were parts of the proceedings he simply could not remember.[16]

25 In this regard, I do not think that the appellant's WhatsApp messages, following the sentencing mention, *eg*, to the effect that he had one more week to surrender his licence are probative. They do not indicate, one way or another, whether the appellant knew that the disqualification order took effect from 10 October 2019. For instance, they could equally be indicative of an intention to drive while the disqualification order was in effect, apart from any time he had to surrender his licence.

Whether the sentences imposed were appropriate

26 I now turn to the sentences imposed by the DJ.

27 On the s 43(4) RTA charge, the appellant asserts that it would be duplicative to consider the s 67(1)(*b*) charge as an aggravating factor in sentencing the appellant for the s 43(4) offence.[17] However, it is clear the DJ did not do so. Instead, the DJ had considered well-established aggravating factors (see GD at [39]). The appellant's disqualification order would have expired on 9 October 2021, almost 24 months from the time he committed the s 43(4) offence, and he had driven three days after being convicted. This is aggravating (see *Saiful* at [33] and [34]) in that it indicates a more blatant disregard for the law and contempt for the penalties imposed by the court. It would also suggest that the appellant would have continued to drive during the duration of the

16 ROA at p 132.

17 AWS at paragraph 48.

disqualification order, at the very minimum, until he had to surrender his licence. Given that the usual sentencing tariff for the s 43(4) offence is between four to eight weeks (*Fam Shey Yee v Public Prosecutor* [2012] SGHC 134 at [12], cited in the GD at [31]), I do not think it can be said that the uplift of two weeks from the bottom of the range was manifestly excessive. The 48-month disqualification order, which was twice that previously imposed for the s 67(1)(*b*) charge, is also in line with Menon CJ's observation in *Saiful* at [20] that offenders can expect at least twice the original period of disqualification imposed. There are no mitigating circumstances which would suggest that the 48-month period is disproportionate.

28 On the commencement date of the disqualification order, the appellant suggested, in his written submissions, that the disqualification order should take effect from the date of his plea of guilt.[18] The starting point is that where an accused is sentenced to a disqualification order as well as a period of imprisonment in respect of the same set of offences, the former should commence at the end of the period of imprisonment. This is since an overlap between a disqualification order and a concurrent term of imprisonment would undermine the penal effect of the disqualification order (see *Saiful* at [39] and [46(a)]). Considering that the imprisonment term and disqualification order arose out of the same charge, the DJ did not err in ordering that the disqualification order take effect from the appellant's date of release from prison.

29 On the s 3(1) MVA charge, the appellant contends that the fine imposed by the sentencing judge should remain, with the disqualification period reduced from 12 to three months. However, the 12-month period is specified in

[18] AWS at paragraph 59.

s 3(1) MVA and is to be ordered unless there are special reasons relating to the facts or circumstances of the offence (see *Prathib s/o M Balan v Public Prosecutor* [2018] 3 SLR 1066 at [11]). The appellant has not pointed to any special reasons, save for his alleged mistaken belief, which for the reasons above, should not be seen as mitigating, and which, in any case, I do not accept.

30 The appeal is dismissed.

Vincent Hoong
Judge of the High Court

Rajwin Singh Sandhu (Rajwin & Yong LLP) for the appellant;
Benedict Teong (Attorney-General's Chambers) for the respondent.