

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

[2022] SGHC 240

Magistrate's Appeal No 9106 of 2022

Between

Sabrina Sim Xin Huey

... Appellant

And

Public Prosecutor

... Respondent

EX TEMPORE JUDGMENT

[Statutory Interpretation — Construction of statute]
[Criminal Procedure and Sentencing — Appeal]

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Sabrina Sim Xin Huey

v

Public Prosecutor

[2022] SGHC 240

General Division of the High Court — Magistrate's Appeal No 9106 of 2022/01

Vincent Hoong J

27 September 2022

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Vincent Hoong J (delivering the judgment of the court *ex tempore*):

1 This appeal concerns the scope of the court's discretion to impose a disqualification order under s 43B(1) of the Animals and Birds Act (Cap 7, 2002 Rev Ed) ("ABA"). In particular, whether, as the appellant contends, a court ought to only impose a disqualification order "in the most serious cases of animal abuse" and where an offender intentionally inflicts harm on an animal.

2 The appellant, Sabrina Sim Xin Huey, pleaded guilty to one charge under s 41C(1)(a)(iii), read with s 41C(2), and punishable under s 41C(3)(a)(i) of the ABA ("the Charge"). A second charge, also preferred under the same provisions, was taken into consideration for the purpose of sentencing. Broadly, the charges pertained to the appellant's failure to take reasonable steps to ensure that two dogs under her care were not confined in a manner that subjected them to unnecessary pain and suffering.

3 The District Judge (“DJ”) imposed a fine of \$8,000 on the appellant and disqualified her from being a person in charge of any animal or class of animals in the course of any employment with any animal-related business for six months (“the DQ Order”). The appellant appeals against the DQ Order. She contends that the DJ erred in principle in imposing the DQ Order or, alternatively, that the DQ Order was manifestly excessive. The DQ Order was stayed pending the hearing of this appeal.

Background facts

4 The appellant was a dog trainer. Sometime in January 2020, the complainant engaged the appellant to train her two dogs (“the Dogs”). The Dogs resided with the appellant during this engagement.¹

5 On 25 August 2020, the appellant drove the Dogs from her residence to Veragoo Close to conduct a training session. This concluded at approximately 1.45pm. Thereafter, the appellant placed the Dogs in the boot of her car and drove home.²

6 The appellant arrived home at approximately 2.30pm. She parked her vehicle in an unsheltered spot in an open-air carpark. Distracted by a social media post, the appellant exited her vehicle without the Dogs in tow.³

7 She realised that she had left the Dogs in the boot of her car approximately one and a half hours later. By the time she attended to the Dogs,

¹ Statement of Facts dated 5 May 2022 (“SOF”) at paras 1–3 (Record of Proceedings (“ROP”) at p 5).

² SOF at para 4(a) and (b) (ROP at pp 5–6).

³ SOF at para 4(c) and (d) (ROP at p 6).

they were unresponsive, which prompted the appellant to bring the Dogs to a veterinary clinic in the vicinity.⁴

8 The Dogs were, however, dead by the time they arrived at the clinic. A post-mortem conducted on one of the Dogs three hours later established that the “cause of death was heat stress”.⁵

The DJ’s decision

9 The detailed grounds of the DJ’s decision can be found at *Public Prosecutor v Sabrina Sim Xin Huey* [2022] SGDC 151. In summary, the DJ considered that s 43B of the ABA, which grants the court the discretion to impose disqualification on offenders in certain circumstances, was enacted to further the ends of deterrence.⁶

10 The present case called for a disqualification order. First, although the appellant’s offence was one marked by negligence, her conduct led to a grave outcome, namely, the deaths of the Dogs.⁷ Second, a disqualification order would impress upon the appellant that she owed a duty of care to persons who entrusted their dogs to her care and that the present incident could have been avoided if she had implemented checks.⁸ Third, a disqualification order would

⁴ SOF at para 4(d) and (f) (ROP at p 6).

⁵ SOF at paras 4(f)–(h), Annex C (ROP at pp 6, 10–11).

⁶ Grounds of Decision (“GD”) at [15] (ROP at p 70).

⁷ GD at [16]–[18] (ROP at pp 70–72).

⁸ GD at [19] (ROP at p 72).

send a signal to other persons involved in animal-related businesses to provide proper care for the animals under their charge.⁹

11 The DJ pegged the appropriate length of disqualification at six months. This balanced the fact that the appellant’s negligence resulted in the death of the Dogs with the fact that she had not intended the harm which materialised.¹⁰

The parties’ submissions

The appellant’s submissions

12 The appellant accepts that a court has a discretion to impose a disqualification order under s 43B(1) of the ABA.¹¹ That said, she contends that Parliament only intended for disqualification orders “to be meted out in the most serious cases of animal abuse” and where an offender deliberately inflicts harm on an animal.¹²

13 Alternatively, if a court has a discretion to impose disqualification orders in cases other than “the most serious cases of animal abuse”, the present case did not call for one. The offence was rooted in the appellant’s negligence. Deterrence, however, has a reduced role to play in cases involving a lack of premeditation.¹³ Further, a disqualification order is not necessary to serve a protective function. The present offences were a blemish in the appellant’s otherwise clean record as a dog trainer and more than two years had elapsed

⁹ GD at [20] (ROP at pp 72–73).

¹⁰ GD at [23] (ROP at p 74).

¹¹ Appellant’s Written Submissions dated 16 September 2022 (“AS”) at para 19.

¹² AS at paras 23–24, 36.

¹³ AS at paras 30–35, 37–63.

since the incident.¹⁴ To this it may be added that imposing the DQ Order in conjunction with the fine was unduly harsh. The appellant has compensated the owner of the Dogs and suffered a tarnished reputation.¹⁵

14 In the further alternative, the DQ Order is manifestly excessive because the appellant had not acted intentionally.¹⁶ It should also be backdated to treat the disqualification period as spent on the basis that the appellant is fully rehabilitated, had officially stopped her business after the incident and had her reputation damaged by the media coverage of the incident.¹⁷

The Prosecution's submissions

15 On the other hand, the Prosecution submits that there is nothing in s 43B of the ABA or the statute which limits the imposition of a disqualification order only to cases involving “the most serious cases of animal abuse”. The parliamentary debates on the Animals and Birds (Amendment) Bill (Bill No 40/2014) (“the Bill”) – through which Parliament introduced s 43B of the ABA – merely illustrated that the amendments to the ABA sought to make the law more responsive and preventive in addressing the welfare of animals as well as instil responsible behaviour in all stakeholders who play a part in an animal’s life cycle.¹⁸

¹⁴ AS at paras 68–71.

¹⁵ AS at paras 73–75.

¹⁶ AS at paras 76–82.

¹⁷ AS at para 83.

¹⁸ Prosecution’s Submissions dated 16 September 2022 (“PS”) at paras 37–39.

16 Rather, s 43B of the ABA was introduced to allow the court to impose disqualification orders as a social deterrent to offenders.¹⁹ In this connection, specific and general deterrence are both germane on the facts of the present case. In so far as the death of the Dogs was a direct result of the appellant's actions, the DQ Order would impress upon her the duty of care she owes to her clients as a professional dog trainer.²⁰ The DQ Order also serves to remind other similarly situated persons not to be lackadaisical in dealing with animals under their care.²¹

17 Relatedly, the length of the DQ Order was appropriate. Little weight should be accorded to the impact of the disqualification on the appellant's livelihood or the negative publicity she received.²²

My decision

18 I deal first with the appellant's contention that a court ought only to impose disqualification orders under s 43B(1) of the ABA "in the most serious cases of animal abuse" and where an offender intentionally inflicts harm on an animal. I do not accept that the court's discretion under s 43B(1) of the ABA is so restricted.

19 For ease of reference, I set out s 43B(1) of the ABA:

Disqualification orders

43B.—(1) Where a person is convicted of an offence under section 41C(2), 42(1) or 43(3), the court before which the person

¹⁹ PS at paras 21–23.

²⁰ PS at paras 24–29.

²¹ PS at paras 33–36.

²² PS at paras 40–47.

is convicted of that offence may, in addition to the punishment provided for that offence —

(a) in the case where the person commits the offence in the course of carrying on, or employment or purported employment with, an animal-related business, disqualify the person from —

(i) carrying on any animal-related business or class of animal-related businesses; or

(ii) being a person in charge of any animal or class of animals in the course of any employment with any animal-related business; or

(b) in any other case, disqualify the person from owning any animal or class of animals,

for a period not exceeding 12 months starting on such date as the court may specify.

20 To begin, the plain wording of s 43B(1) of the ABA does not support the appellant’s interpretation of the provision. The first step of statutory interpretation is to ascertain the possible interpretations of the statutory provision, having regard to both the provision in question as well as the context of the text within the written law as a whole (*Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 (“*Tan Cheng Bock*”) at [37]).

21 Nowhere in s 43B(1) of the ABA is there any suggestion that a disqualification order can only be imposed “in the most serious cases of animal abuse” and where an offender deliberately inflicts harm on an animal. On the contrary, the court is empowered to impose a disqualification order if a person is convicted of an offence under ss 41C(2), 42(1) or 43(3) of the ABA, which offences are not limited to intentional acts. To illustrate, a person may commit an offence under s 41C(1)(c) read with s 41C(2) of the ABA if he fails to make reasonable efforts to recover a missing animal. Similarly, s 42(2) of the ABA makes it clear that an owner shall be deemed to have permitted cruelty to an animal under s 42(1) of the ABA where “he has failed to exercise reasonable

care and supervision in respect of the animal”. The appellant’s proposed interpretation of s 43B(1) of the ABA reads a limitation into the provision that is clearly not provided for. Hence, I find that it is not a tenable interpretation of the provision and falls at the first stage of the *Tan Cheng Bock* framework.

22 Whilst the appellant contends that the parliamentary debates on the Bill support her interpretation of the ambit of s 43B(1) of the ABA, I find to the contrary. The appellant points to an extract of the debate on the Bill in which then Member of Parliament for Ang Mo Kio Group Representation Constituency, Mr Yeo Guat Kwang (“Mr Yeo”), observed that “[t]he Bill also proposes to empower the [c]ourt to disallow offenders, where warranted, from owning or being in charge of any animal while working or being employed in any animal-related business, or from engaging in or carrying on an animal-related business, for a set period of up to a one year” and “such a penalty need only be meted out in specific cases in line with the intent and severity of the abuse, and would be able to serve as a social deterrent to offenders” (see *Singapore Parliamentary Debates, Official Report* (4 November 2014) vol 92).²³

23 I am mindful that the court should guard against the danger of finding itself construing and interpreting statements made in Parliament rather than the legislative provision that Parliament has enacted (*Tan Cheng Bock* at [52(b)]). The parliamentary debates cannot overcome the fact that s 43B(1) of the ABA makes no mention that disqualification orders ought to be limited to the most serious cases and where an offender intentionally inflicted harm on an animal. The law enacted by Parliament is the text which Parliament has chosen in order to embody and to give effect to its purposes and objects. Furthermore, the above

²³ AS at para 23.

extract does not support the appellant's position. It merely shows that a court should have due regard to the intent and severity of abuse in deciding whether to impose a disqualification order.

24 Next, I do not accept that the DQ Order is unwarranted because the present offence was rooted in the appellant's negligence. The appellant submits that deterrence has "limited or no efficacy in cases involving inadvertence"²⁴ on the back of the High Court's observations that specific deterrence "would often be a less compelling, if not altogether irrelevant, consideration" in situations "involving factors outside the control of the accused, or where the accused acts on the basis of some irrational and uncontrollable impulse" (*Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753 at [26]).

25 However, with respect, this argument is premised on a misunderstanding of negligence. While negligence does not require an offender to have knowledge or awareness of the risk of the consequence in question ensuing but merely that as a matter of objective assessment, there are grounds that could have led a reasonable person in the position of the actor to foresee the consequence in question flowing from the action (*Muhammad Khalis bin Ramlee v Public Prosecutor* [2018] 5 SLR 449 at [34]), this does not mean that a negligent offender is *incapable* of controlling or comprehending his acts or omissions. Further, even if an offender did not appreciate the risk of his acts or omissions at the time of the offence, specific deterrence is forward-looking. It seeks to instil in a particular offender the fear of re-offending through the potential threat of re-experiencing the same sanction previously imposed (*Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [21]).

²⁴ AS at para 58.

26 Additionally, a disqualification order does not merely serve the ends of specific deterrence. In *Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139 (“*Edwin Nathen*”), the High Court noted that a disqualification order combines three sentencing objectives: punishment, protection of the public and deterrence (at [13]). I am cognisant that *Edwin Nathen* concerned a disqualification order imposed under s 67(2) of the Road Traffic Act (Cap 276, 2004 Rev Ed) for an offence of driving while under the influence of drink. That said, I find that the court’s explanation of the purposes of a disqualification order applies with equal force to disqualification orders imposed under s 43B(1) of the ABA, with the caveat that, in the context of the ABA, the protective principle guards the interests of animals and, where applicable, their owners. This can be gleaned from the offences for which a court may impose a disqualification order under s 43B(1) of the ABA, namely, where an animal owner broadly breaches the duty of care he owes to an animal under ss 41C(1)(a)–(c), has acted cruelly or permitted cruelty to an animal under s 42(1) or employs or engages an unqualified individual to perform prescribed activities and services under s 43(1). It is also supported by Mr Yeo’s observations on the function of a disqualification order under s 43B(1) of the ABA during the parliamentary debates on the Bill (see [22] above).

27 In other words, the DQ Order also seeks to punish the appellant for her negligence, protect other animals and their owners by disqualifying her from being a person in charge of any animal in the course of her employment with any animal-related business for a period of time and sound a stern warning to other persons that such negligent conduct will attract a significant period of disqualification. That the appellant acted negligently in committing the present offence does not blunt the ability of the DQ Order to serve these purposes.

28 Finally, I do not accept that the duration of the DQ Order was manifestly excessive. The period of disqualification should increase in tandem with the severity of the offence, whether or not it is also accompanied by a substantial fine. This is given that a fine and a disqualification order are concerned with different objectives (*Kwan Weiguang v Public Prosecutor* [2022] SGHC 121 at [73]) and should not generally be regarded as mutually compensatory (*Edwin Nathan* at [14]). In my view, the length of the DQ Order gave adequate weight to the fact that the appellant's negligence led to the death of two dogs. The impact of the DQ Order on the appellant's personal circumstances is insufficiently exceptional to be accorded mitigating weight (see *CCG v Public Prosecutor* [2022] SGCA 19 at [6]) and the negative publicity the appellant received is not a relevant sentencing consideration.

29 I also do not accept that the DQ Order should be backdated "to treat the disqualification period as 'spent'".²⁵ This would render the DQ Order wholly nugatory and undermine the objectives of a disqualification order which I set out at [26] above, particularly as the appellant continued taking on customers and providing dog training services after the material incident.²⁶

²⁵ AS at para 83.

²⁶ AS at para 69.

Conclusion

30 For these reasons, I dismiss the appeal against the DQ Order.

Vincent Hoong
Judge of the High Court

Clement Julien Tan Tze Ming and Tan Yan Ming Colin (Selvam
LLC) for the appellant;
Isaac Tan and Ruth Teng (Attorney-General's Chambers) for the
Prosecution.