Muhammad Saiful bin Ismail *v* Public Prosecutor
[2014] SGHC 37

Case Number	: Magistrate's Appeal No 206 of 2013 (DAC 31034/2013 and others)
Decision Date	: 26 February 2014
Tribunal/Court	: High Court
Coram	: Sundaresh Menon CJ
Counsel Name(s)	: Appellant acting in person; Ms Tan Wen Hsien (Attorney-General's Chambers) for the respondent.
Parties	: Muhammad Saiful bin Ismail — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Driving while under a disqualification order

26 February 2014

Sundaresh Menon CJ:

1 This was an appeal brought by Muhammad Saiful bin Ismail ("the appellant") against the decision of the District Judge ("the DJ") in *Public Prosecutor v Muhammad Saiful bin Ismail* [2013] SGDC 313 ("the GD"). The appellant pleaded guilty on 21 August 2013 to the following charges:

(a) trafficking 0.26g of methamphetamine, a Class A Controlled Drug, an offence under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA") read with s 5(2) of the same Act and punishable under s 33;

(b) possession of 2.68g of methamphetamine, a Class A Controlled Drug, an offence under s 8(a) of the MDA and punishable under s 33;

(c) riding a motorcycle whilst under a disqualification order, an offence under s 43(4) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("the RTA"); and

(d) using a motorcycle without insurance coverage, an offence under s 3(1) of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed) and punishable under s 3(2) of that Act.

2 The appellant also consented to the following three charges being taken into consideration for sentencing:

(a) using a motorcycle after the expiry of the period for which road tax had been paid, an offence under s 29(1) of the RTA;

(b) failing to obey traffic signals, an offence under s 120(4) of the RTA; and

(c) making an unauthorised U-turn, an offence under rule 13(1) of the Road Traffic (Traffic Signs) Rules (Cap 276, R 33, 2004 Rev Ed).

3 The DJ sentenced the appellant to a total of five years and eight weeks' imprisonment, five strokes of the cane, a fine of $600 and a disqualification from holding or obtaining all classes of driving

licences for a period of one year with effect from the date of conviction, and for a period of eight years from the date of release from prison.

4 The appellant only challenged the start date of the eight-year disqualification order ("the disqualification order"). The appellant submitted that the disqualification order should start from the date of his conviction rather than from the date of his release from prison. I allowed the appeal and I now give my reasons for doing so.

Facts

5 The charges stemmed from two separate incidents. On 23 November 2012 at about 4.30am, the appellant was stopped at a roadblock for a spot check. He was found to have been riding whilst subject to a disqualification order, which also meant that he was riding without valid insurance cover. This was the subject matter of the charges enumerated in [1(c)] and [1(d)] above.

6 On 20 March 2013, the appellant was arrested by Central Narcotics Bureau officers at the lobby of the Fragrance Sunflower Hotel. The appellant admitted to being in possession of one packet of "sejuk", the street name for methamphetamine which he intended to sell to someone he referred to as "Didi". This was the subject matter of the charge referred to at [1(a)] above. The officers searched the appellant and recovered a red pouch containing four more packets of "sejuk". The appellant admitted that the four packets belonged to him and that these were meant for his personal consumption. This was the subject matter of the charge referred to at [1(b)] above.

The DJ's decision

7 I shall only address the portions of the DJ's decision which touch on the commencement date for the disqualification order because the appeal does not concern any other aspect. The DJ ordered that the disqualification order should commence on the date of the appellant's release from prison. The duration of the disqualification order and the date on which it was to commence were explained as follows:

(a) Driving while subject to a court-ordered disqualification is a serious offence (citing *Public Prosecutor v Lee Cheow Loong Charles* [2008] 4 SLR(R) 961 ("*Charles Lee*") at [29] (at [31] of the GD)). The offender puts others at risk of not being able to recover any losses from him in the event of an accident because he would not be covered by insurance. Moreover, it is a "wilful act of disregard" of a court-ordered sanction (at [29] of the GD).

(b) At the time he was stopped, the appellant had been disqualified for more than five and a half years. Assuming that this was the first time that the appellant was riding since the commencement of his disqualification period, he would not have ridden for a considerable period prior to this. By riding without having taken the re-test that is statutorily mandated in such circumstances, he was putting others at real danger of physical harm and injury (at [30] of the GD).

(c) The usual benchmark for those driving while under a period of disqualification is a custodial sentence and disqualification for a period that is twice the period of the previous disqualification. However the appellant's previous seven-year disqualification was a long one because it involved a loss of life. The present offence arose out of the appellant giving his wife a ride home without any incident, and did not warrant a period of disqualification that was twice the length of the previous period (at [32] of the GD).

(d) A slightly longer period of eight years would be a sufficient deterrent. As the term of imprisonment is for a substantial period of time, the disqualification order should run from the date of his release from imprisonment to have a meaningful effect (at [33] of the GD).

(e) The appellant's plea for a shorter period of disqualification on the ground that he would need a valid licence in order to stand a better chance of finding work given his lack of other skills or qualifications, was not a sufficient reason to impose anything less than an appropriate period of disqualification. He ought to have realised the folly of his actions. Moreover, there was no reason why he should confine himself to seeking employment that required him to have a licence to ride (at [34] of the GD).

The arguments on appeal

8 The appellant was unrepresented and did not make any legal submissions of substance. In essence he again submitted that he had limited education and would find it difficult to get a job upon his release from prison if he were not able to drive. He also said that being a dispatch rider was the job that he would be best suited for.

9 The Prosecution submitted that the appellant should in fact have been sentenced to a disqualification period well in excess of seven years (though no cross-appeal was bought on the grounds that the sentence was manifestly inadequate). The Prosecution relied on some of the points made by the DJ (see [7(a)] and [7(b)] above) and also submitted that the appellant was riding in a dangerous manner that jeopardised the safety of other road users, as evidenced by the appellant failing to obey a traffic signal and making an unauthorised U-turn, both of which were the subject of charges that were taken into consideration. Finally, the Prosecution submitted that if the disqualification period were to run from the date of the appellant's conviction, the operative period of the disqualification order would be much shorter than the intended period since he would be in prison for a significant portion of the disqualification order and would be unable to drive in any event. This would dilute the deterrent effect of the disqualification order.

Issues before this Court

10 I first considered whether the disqualification order, was manifestly excessive, in and of itself. If it was not in principle so, I then considered whether it became objectionable by reason of it being ordered to commence upon the appellant's release from prison.

Was the eight-year disqualification term in itself manifestly excessive?

11 I start with the decision of Chan Sek Keong CJ in *Charles Lee*, where the following propositions were laid down:

(a) Driving while under a disqualification order is as serious an offence as a motorist can commit, and evinces a blatant disregard for the law (at [29]).

(b) The punishment for this offence was enhanced in 1993 because of concern over incorrigible, habitual, high-risk drivers who blatantly disregard the law. It is not easy to detect these offenders unless they happen to be apprehended for a traffic offence or involved in an accident (at [30]).

(c) The offence is to be punished robustly because of the danger posed to the public and the offender's complete disregard for the earlier disqualification order (at [31]).

I accept these general propositions.

12 The DJ observed that the usual benchmark is a custodial sentence and disqualification for a further period that is twice that of the previous disqualification. However, no authority was cited for this proposition.

13 A search reveals that the following five cases have advanced the same proposition though, as is evident from the table, it has not always resulted in the further period of disqualification being double the original:

S/N	Case Name	Original Disqualification Period	Punishment Imposed	Factor
1	*Public Prosecutor v Chin Thian Seong* [2007] SGDC 163	One year	Two years	2
2	*Public Prosecutor v Koh Yiong Lionel* [2007] SGDC 279	15 months	Two years	1.6
3	*Public Prosecutor v Loh Teck Lok* [2007] SGDC 193	Four years	Six years	1.5
4	*Public Prosecutor v Poh Chee Wee Vincent* [2007] SGDC 280	30 months	Five years	2
5	*Public Prosecutor v Rennie Siow Chern Hua* [2007] SGDC 131	18 months	Three years	2

14 In none of these cases, was any authority cited for the proposition that the further disqualification period should generally be twice that of the previous disqualification. There are also other cases which do not specifically advance the proposition and these are collated in the following table:

S/N	Case Name	Original Disqualification Period	Punishment Imposed	Factor
1	*Aquaro Massimo v Public Prosecutor* [2012] SGHC 6	Two years	Four years	2
2	*Fam Shey Yee v Public Prosecutor* [2012] 3 SLR 927	18 months	Three years	2
3	*Public Prosecutor v Catherine Peter* [2010] SGDC 28	Two years	Four years	2
4	*Public Prosecutor v Choo Puay Lan* [2010] SGDC 64	Six months	Three years	6
5	*Public Prosecutor v Giuseppe De Vito* [2010] SGDC 340	Two years	Three years	1.5

6	*Kim Sung Young v Public Prosecutor* [2003] SGDC 267	Two years	Six years	3
7	*Public Prosecutor v Lee Chew Loong Charles* [2008] 4 SLR(R) 961	18 months	Three years	2
8	*Public Prosecutor v Lian Chee Yeow Michael* [2011] SGDC 190	Five years	Ten years	2
9	*Public Prosecutor v Lim Keng Chuan* [2010] SGDC 233	Three years	Ten years	3.33
10	*Public Prosecutor v Muhammad Fazil bin Azman* [2010] SGDC 168	12 months	Three years	3
11	*Public Prosecutor v Tan Chen Chey* [2009] SGDC 485	15 months	Three years	2.4
12	*Public Prosecutor v Tan Thiam Soon* [2011] SGDC 228	Two years	Five years	2.5
13	*Public Prosecutor v Yapp Chong Meng Ronald* [2010] SGDC 163; MA 240/2010 (9 Sept 2010, unreported)	12 months	Three years, reduced to one year on appeal	1
14	*Yeo Chew Song v Public Prosecutor* (unreported, MA 296/94/01)	Five years	Ten years	2

15 It will be evident that in only four of the 19 cases collated in the preceding two tables was a subsequent disqualification order *less* than twice the duration of the original imposed. An analysis of the four cases suggests that there were extenuating circumstances in three of them which would likely have borne on the sentencing decisions:

(a) In *Public Prosecutor v Yapp Chong Meng Ronald* [2010] SGDC 163 ("*PP v Yapp*"), the District Judge noted that the accused needed to help in his wife's toy delivery business by making two pressing one-off deliveries and had committed the offence towards the end of the original disqualification period. Despite this, the District Judge sentenced the accused to a further disqualification order of three years which was three times the duration of the first order. In MA 240/2010 (9 September 2010, unreported), Lee Seiu Kin J reversed this and held that an order of three years was manifestly excessive and reduced it to one year. It was noteworthy that the convicted person in that case was a first offender, had ridden only on one occasion six days before his disqualification was to end and had served eight weeks' imprisonment.

(b) In *Public Prosecutor v Giuseppe De Vito* [2010] SGDC 340 ("*PP v de Vito*"), the accused engaged a full-time driver to transport him in his company car. On the day of the offence, his pregnant wife suddenly fell ill and experienced vaginal bleeding. Her gynaecologist had earlier warned that she had a high chance of miscarriage. Anxious about the prospect of having to rush his wife to get medical aid, the accused drove to a nearby petrol station to refill the nearly empty fuel tank in his car. There he was apprehended by two traffic policemen.

(c) In *Public Prosecutor v Koh Yiong Lionel* [2007] SGDC 279, the accused received a call from his father's helper informing him that his daughter had been crying incessantly for an hour and was perspiring profusely in an air-conditioned room. The accused drove "out of desperation and urgent necessity".

16 However, in *Public Prosecutor v Loh Teck Lok* [2007] SGDC 193 the District Judge found that the accused drove with "full and actual knowledge" that he was under a disqualification order and that there was no critical need for him to do so. Despite this, the accused was only sentenced to a period 1.5 times that of the original.

17 General and specific deterrence are the sentencing considerations at the forefront when dealing with offences under s 43(4) (*Charles Lee* at [32]). Deterrence is an important principle that underlies our sentencing jurisprudence and it is directed at keeping crime rates in check (*Public Prosecutor v Tan Fook Sum* [1999] 1 SLR(R) 1022 at [18]). General deterrence aims to educate and deter other like-minded members of the general public by making an example of a particular offender (*Meeran bin Mydin v Public Prosecutor* [1998] 1 SLR(R) 522 at [9]). It is an especially weighty consideration where premeditation is present (*Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [22]); or where it is difficult to detect the crime in question (*ibid* at [25(d)]).

18 The crime of driving while being subject to a disqualification is difficult to detect (see [11(b)] above) and often involves premeditation. A disqualification period that is shorter than the original disqualification period would do little to deter future like-minded offenders. As I observed in *Edwin s/o Suse Nathen v Public Prosecutor* [2013] SGHC 194 (at [13]) in the context of the offence of drink-driving, a disqualification order is an important punitive element and this is equally true of offences under s 43(4).

19 A disqualification order also prevents these offenders from driving and endangering themselves as well as other road users. The imposition of another, longer disqualification period would help ensure that such drivers are kept off the roads for a longer period of time.

20 For these reasons, in my judgment, while there is no invariable rule that the disqualification period imposed for a s 43(4) offence must be double that of the original disqualification period, in most cases, a s 43(4) offender can and should expect a period of disqualification that is at least twice the original period, unless this would be disproportionate in all the circumstances, including by reason of strong mitigating circumstances or a decreased level of culpability (see the examples mentioned at [15] above and the further discussion at [23]–[37] below. Conversely, where there are aggravating circumstances, the period of disqualification may well be more than twice the original period.

21 I have referred to considerations of proportionality. Proportionality acts as a counterbalance to the principles of deterrence, retribution and prevention in the sentencing matrix. This is reflected in the simple fact that although a lifetime ban from driving would better serve the objectives of deterrence and prevention than a ban of a shorter duration, courts do not routinely impose lifetime bans.

22 The principle of proportionality has been expressed in several different ways: the sentence must be commensurate with the gravity of the offence, the sentence must fit the crime, and a proportion must be maintained between the offence and the penalty (*Public Prosecutor v Saiful Rizam bin Assim and other appeals* [2014] SGHC 12 at [29]). The principle of proportionality militates against the conclusion that in the case of a s 43(4) offence, the disqualification period imposed must invariably and inflexibly be double that of the original.

Are aggravating and mitigating factors relevant to a strict liability offence?

23 Section 43(4) of the RTA is a strict liability offence: the mere act of driving whilst under a disqualification order is all that needs to be proven for the offence to be made out.

24 The issue of how aggravating or mitigating factors interact with strict liability offences raises the question of whether culpability is relevant to sentencing despite being irrelevant to the question of liability. Strict liability offences can be seen as falling within one of two classes: first, where culpability is excluded only at the offence-creating stage (for ease of reference, singly-strict liability offences); and second, where considerations of culpability are excluded at both the offence-creating and the sentencing stages (doubly-strict liability offences). An example of a doubly-strict liability offence would be s 132 of the RTA, where a person may opt to pay a prescribed fine under the Road Traffic (Prescribed Offences and Prescribed Notices) Rules (Cap 276, R 28, 2004 Rev Ed) for certain traffic offences.

25 There is no doubt that s 43(4) of the RTA is a singly-strict and not a doubly-strict liability offence. This is so because s 43(4) of the RTA explicitly states that an offender is liable on conviction to a fine not exceeding $10,000, *or* to a term of imprisonment not exceeding three years, *or* to both. Section 42(1) of the RTA stipulates that a court may (or shall as the case may be) order a person who has been convicted of a motor vehicle-related offence to be disqualified from holding or obtaining a driving licence "for life or for such period as the court may think fit". Parliament has, by these provisions, explicitly empowered the courts to mete out a range of penalties (in terms of both type and quantity). The only defensible and principled way to decide on the type and severity of the penalty to be imposed in any given case is by having regard to the offender's level of culpability. Aggravating and mitigating factors demonstrate the increased or decreased culpability of the offender in question and must therefore be taken into account in the sentencing calculus for such offences.

26 In keeping with this, previous cases have considered the culpability of the offender in deciding on the penalty to be meted out for an offence under s 43(4). I have mentioned three cases (listed at [15] above) where a relatively short disqualification period was imposed because of the decreased culpability of the offenders in those cases. There are also cases where a longer disqualification period was imposed because the offence involved a high degree of culpability. In *Public Prosecutor v Lim Keng Chuan* [2010] SGDC 233, the convicted person drove his vehicle into a police officer in an attempt to escape. Despite the police officer grabbing the right front door frame of the vehicle after being hit, the convicted person continued to accelerate and dragged the police officer for a distance of approximately one car length. The egregious circumstances of the offence led the District Judge to impose a disqualification order for a period of ten years (a factor of 3.33).

27 I consider some specific types of mitigating and aggravating factors.

Knowledge of the disqualification order

28 It has been noted that an offence under s 43(4) is a serious one, among other things, because it evinces a blatant disregard for the law. This is necessarily predicated on the offender knowing that he is already subject to a disqualification order at the time he commits the subsequent offence. There are ample provisions in place to ensure that all traffic offenders who have been sentenced to a disqualification order are made aware of this. Section 42 of the RTA is the empowering provision for the vast majority of disqualification orders. The express words of s 42 of the RTA stipulate that "[a] *court before which a person is convicted* of any offence in connection with the driving of a motor vehicle may… order him to be disqualified" [emphasis added]. This indicates that the sentence of

disqualification cannot be imposed if the offence is compounded. It can reasonably be expected that the court would bring home to the accused during the sentencing process that he is being sentenced to a disqualification order.

29 Section 42A of the RTA is the other provision under which a disqualification order may be ordered, and it may be invoked only where an accused fails to attend court when required to do so. Even then, the Public Prosecutor must apply to court for a disqualification order, with s 42A(*d*) making it clear that prior warning must be given before this is done.

30 There may nonetheless 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. The Singapore Police Force ("SPF") maintains a website where users can check the status of their driving licences. One could imagine, for example, a person who knows that she has to serve a one-year disqualification period, but is unable to establish exactly when the disqualification period is to commence. She then checks the SPF website for this purpose and finds that it inaccurately reflects her licence as not being under a current disqualification order. Needless to say, this is not material in this case.

Intentional and flagrant breaking of the law

31 An offender who intentionally sets out to break the law would be treated differently than one who does not. This can be a significant factor in strict liability offences where the mere act is sufficient to constitute the offence. The proposition is not controversial though its application in practice can be more difficult.

32 For the purposes of illustration only, evidence that the offender was driving for reward while under disqualification, or that he has multiple unexplained convictions under s 43(4) (which incidentally also opens the way for a forfeiture order under s 43(5)) would likely lead to the conclusion that the accused had intentionally and flagrantly broken the law. This would be a significant aggravating factor.

Length of time from expiry of original disqualification order

33 The length of time from the start or end of the original disqualification order might also be relevant to the issue of culpability. A person who is caught driving near the beginning of the original disqualification period is likely to be more culpable than one who is caught near the end of the period, if only because it may suggest a more blatant disregard for the law and contempt for the penalties imposed by the court.

34 Aside from this, a person who commits an offence under s 43(4) near the end of his disqualification period may be taken to have abided by the disqualification order for most of its duration. That period of compliance can be taken to be a mitigating factor. On the other end of the spectrum, a person who is caught near the beginning of his disqualification period would likely have driven many more times during the duration of the disqualification order but for the fact that he was apprehended early on

35 This proposition appears to have been one of the grounds for appellate intervention in *PP v Yapp*.

Weight of surrounding circumstances

36 The circumstances might show a diminished level of culpability where the offender felt compelled by the weight of the surrounding circumstances to commit the offence. For instance, the accused in *PP v De Vito* was refilling his petrol in order to ferry his sick and pregnant wife to the hospital. The District Judge took these circumstances into account in sentencing the accused to a disqualification order that was only 1.5 times the original period of disqualification.

37 It is evident therefore that even though an offence under s 43(4) is one of strict liability, a sentencing court is required to have regard to any mitigating and aggravating circumstances before deciding on the precise sentence to be imposed in each case. The foregoing is a non-exhaustive list of the principal factors that might be relevant.

38 In the present case, the appellant did not appeal against the duration of the disqualification order. Having reviewed the circumstances, I was satisfied that the duration of the disqualification order was not manifestly excessive. Applying the law to the facts, it is evident that the eight-year term of disqualification imposed by the trial judge (a multiple of 1.14 times the original period) is not manifestly excessive, a lower multiple having been imposed in only one other reported case (*PP v Yapp*, at [15(a)] *supra*).

Was the disqualification order objectionable because it was to commence only upon the appellant's release from prison?

39 The starting point must be that where an accused is sentenced to an order of disqualification as well as a period of imprisonment, the former should commence at the end of the period of imprisonment. This follows as a matter of common sense since an accused would already be physically incapacitated from driving during his term of imprisonment without any need for a disqualification. Hence, there was nothing inherently objectionable in the DJ's approach at least as a starting point.

40 But the case before me was a little out of the ordinary. The charges concerned two completely separate classes of offences arising from two *wholly unconnected* incidents. The driving offences occurred on 23 November 2012 while the drug offences took place some four months later on 20 March 2013. Upon closer consideration, it became apparent to me that the appellant had been prejudiced by an accident of timing.

41 In the present case, had the appellant first been convicted of and punished for the driving offences with the sentence that he eventually received, namely, a term of imprisonment of two months and a disqualification order of seven years, and if he had committed the drug offences after serving that term of imprisonment, two observations may safely be made:

(a) The sentencing court for the drug offences would have had no power to hold that the additional term of imprisonment he would have to serve for the drug offences should in some way affect the operation of the earlier disqualification order that had been made by the first court for the driving offences. This is because under the current statutory regime, while the court has the power to *postpone* the commencement of a disqualification order so that it takes effect upon the prisoner's release from prison, this only avails where the court is imposing both types of penalties at one and the same hearing. Where the matters are dealt with at separate hearings, the court has no power to *suspend* the operation of a disqualification order that was made earlier in order to take account of any subsequent period during which an offender comes to serve a term of imprisonment.

(b) Given the penal disparity between imprisonment and disqualification, the sentencing court hearing the subsequent drug offences would not order the term of imprisonment meted out for

the drug offences to commence only upon the expiry of the period of the disqualification.

42 The point of this is to illustrate that where *any* fresh offence that results in a term of imprisonment being imposed is committed by an offender at a time when he is already subject to a disqualification order, this will, at least to some extent, undercut the penal effect of that disqualification order. The present case involved precisely such a set of circumstances. The appellant had committed a fresh set of offences, namely the drug offences, after he had committed the driving offences. The only circumstance that was different in this case is that the appellant was charged and convicted of these two unconnected series of offences at the same time. But this was an accident of timing. It seemed unsatisfactory to me that the appellant's fate should be materially affected by what was essentially a matter of chance and timing.

43 The point was starkly brought home in this case by the fact that the drug offences and the driving offences need not and probably would not have been before the same sentencing court had the appellant been advised to contest the drug charges. Had that transpired, then by virtue of s 132(1) of the CPC, which states that there must be a separate trial for every distinct offence, the appellant would have first pleaded guilty to the driving offences and been sentenced. Thereafter, when the charges for the drug offences were brought to trial, he could have pleaded guilty to those if he wished.

44 Had he done so, it seems inevitable that at least part of the period covered by the disqualification order for the driving offences would have overlapped with the term of imprisonment that the appellant would have had to serve for the subsequent conviction for the drug offences. This was only avoided in this case because the appellant had chosen not to contest either set of charges and instead to plead guilty to both as a result of which he was sentenced at the same time by the same court.

45 While it may well be possible for measures to be taken to prevent an accused person from conducting his defence in such a tactical way, that is ultimately not relevant. In my view, it was untenable that the appellant should be worse off in having pleaded guilty to both sets of offences than he might well have been had he chosen instead to contest one set of charges. This was a material consideration that the DJ did not take into consideration, simply because it was never raised; but having considered the point, I was satisfied that it warranted my intervention in the appeal.

46 Drawing the threads together:

(a) Where an offender is sentenced to both a term of imprisonment and a disqualification order in respect of the same set of offences, as a general rule, that disqualification order should not overlap with a concurrent term of imprisonment because this would undermine the penal effect of the disqualification order. Hence, as a starting point, a period of disqualification should in such circumstances be ordered to commence from the time the offender is released after serving the term of imprisonment.

(b) However, where an offender is sentenced to a disqualification order and a term of imprisonment, and the sentences do not arise out of the same set of offences but out of separate and unconnected offences, then it may be appropriate to have the disqualification commence from the date of the conviction, even if this results in an overlap with a period of imprisonment imposed for a separate and unconnected offence that is committed *after* the offence for which the disqualification is imposed.

47 In the present case, I was satisfied that it was appropriate to order that the disqualification

order should commence from the date of the appellant's conviction rather than from the date of his release from prison for three reasons:

(a) First, the circumstances which led to the sentencing court having both the driving offences and the drug offences before it appeared to have been fortuitous.

(b) Second, the sentencing court should not make an order that incentivises undesirable behaviour, such as attempts to delay the resolution of the non-driving offences while attempting to expedite the resolution of the driving offences. Yet this would have been the effect of ordering the disqualification order to commence upon the appellant's release from prison rather than from the date of his conviction.

(c) Third, as a matter of parity between like offenders, where a person first commits an offence that renders him liable to disqualification from driving for a period of time and then commits a distinct offence that renders him liable to a period of imprisonment, the aggregate punishment that is imposed on him for the two offences should as far as possible not be affected by the sequence in which the two offences are dealt with by the courts. There is no difference in the position of the offender in these two situations. The fact that he had been sentenced to the disqualification *before* he committed the subsequent offence in one case but *not yet* in the other is legally irrelevant and it should not be allowed to have any consequence in terms of the punishment that is imposed on him. Yet, for the reasons set out at [42]–[45] above that is precisely what would have transpired in this case if I had allowed the sentence to stand in the terms imposed by the DJ.

48 I am also satisfied that this does not violate the concerns of general and specific deterrence (with regard to offences committed after a potential disqualification order) because a prospective offender is unlikely to base his actions on the consideration that a potential disqualification period would be overtaken by a subsequent imprisonment sentence. Imprisonment, after all, entails a total loss of physical liberty. It would be foolhardy for a person to commit additional offences simply because a potential term of imprisonment would undercut a potential disqualification order.

49 A brief coda: the foregoing analysis might well not apply if the distinct set of offences, for which a term of imprisonment is imposed, is committed *before* the set of offences for which disqualification is ordered. What troubled me in this case was that the appellant's fate seemed to be affected by the chance matter of the sequence in which his various charges were disposed of: see [42] and [47(a)] above. I was also troubled by the fact that the appellant stood to be materially prejudiced on account of facts that were legally irrelevant (see [47(c)] above and in a way that was counterintuitive (see [45] and [47(b)] above). I am not certain that these considerations would apply with equal force where a person commits an offence which invites a period of disqualification *after* he commits an offence that results in a term of imprisonment. It might be argued that, in such a case, it is the sequence in which the offences are committed, rather than the chance sequence in which the offences are tried, that is material; a sentencing court therefore ought to take steps to minimise the prospect of undercutting the penal effect of the disqualification order. I prefer to leave this open for consideration on a future occasion if and when it arises because this point was not explored in the course of argument.

50 However, it seems to me that these issues might be addressed if there was a power to suspend the operation of a disqualification order whenever the disqualification period overlaps with a period of imprisonment. The Prosecution accepted that there was no such power and this was the root of the problem in the present case. This would undoubtedly require legislative intervention and is a matter that the Minister might wish to consider. But it is beyond the purview of the courts and that being so,

the considerations I have set out above led me to the conclusion that the appellant should not be unduly prejudiced in having pleaded guilty to both sets of offences at the outset.

Conclusion

51 I therefore allowed the appeal. The disqualification order of eight years is to commence from the date of the appellant's conviction.