

Aquaro Massimo v Public Prosecutor  
[2012] SGHC 6

**Case Number** : Magistrate's Appeal No 211 of 2011  
**Decision Date** : 12 January 2012  
**Tribunal/Court** : High Court  
**Coram** : Choo Han Teck J  
**Counsel Name(s)** : Lim Yong (Lim Hua Yong & Co) for the appellant; April Phang (Attorney-General's Chambers) for the respondent.  
**Parties** : Aquaro Massimo — Public Prosecutor

*Criminal Procedure and Sentencing*

12 January 2012

**Choo Han Teck J:**

1 The appellant was a 46 year old restaurateur. He was disqualified by a Subordinate Court from holding a driver's licence for two years. The disqualification order took effect from 26 November 2008 and would have expired on 25 November 2010. However, on 29 July 2010 the appellant was arrested for riding a motorcycle FZ 7117 T. He pleaded guilty to that charge as well as a charge for riding without insurance cover. He was sentenced to five weeks' imprisonment and four years' disqualification in respect of the first charge, and fined \$500 in respect of the second charge.

2 The appellant was married with two daughters aged 11 and 14 at the material time. He started a restaurant in Tanjong Pagar on 8 May 2009. Coming from Italy, he had misgivings in having sent his children out of their country at too young an age. One of his daughters had more trouble adapting than he feared, and he and his wife wondered if they should send her back to Italy. On the evening in question, the appellant spent an hour in vain to catch a taxi home. He had also received several telephone calls from his wife telling him that their daughter was distressed and had locked herself in the bathroom at home. The appellant was also physically tired for want of sleep. It was under these circumstances that he rode his brother's motorcycle towards home when he was stopped at a routine police road block. His brother had just left for China to work and had asked the appellant to have the motorcycle towed away.

3 The trial judge below was of the view that an offence under s 43(4) of the Road Traffic Act (Cap 276, 2004 Rev Ed) usually attracts a custodial sentence of eight weeks' imprisonment, and a disqualification of three years. Several cases were referred to in which the range of sentence was between four to eight weeks' imprisonment. Counsel on appeal referred to the same authorities and conceded that he was unable to find cases involving motorcycles. All the authorities referred to driving a motor car while under disqualification. The only one that involved a motorcycle was Fazil bin Azman [2010] SGDC 186, but in that case the rider was involved in a collision at the time of the offence.

4 I am of the view that the court may, in appropriate cases, distinguish a case in which a motorcar or heavy vehicle was used, from one in which a motorcycle was used in offences under s 43(4). In this case, a shorter sentence of imprisonment may be ordered where the vehicle was a motorcycle, no accident had occurred, no physical harm was caused and there were sympathetic

considerations available to the court. The appellant from despair and temptation rode himself to prison. I think that he will not place himself in a similar situation again. Consequently, I reduced the term of imprisonment from five to two weeks. Other terms remain undisturbed.

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