

MINUTE SHEET

High Court/ Magistrate's Appeal No 9056 of 2022

Between

Xavier Lai Goon Theng

... Appellant

And

Public Prosecutor

... Respondent

Hearing Date: Friday 15 July 2022

Coram: The Honourable Tay Yong Kwang JCA

Subject: Criminal Procedure and Sentencing – Appeal against Sentence

Counsel: Patrick Fernandez and Mohamed Arshad (Fernandez LLC) for the appellant;
Tai Wei Shyong DAG and Chong Yong (Attorney-General's Chambers) for the respondent.

Hearing by Zoom, with appellant and bailor in Court 9A.

1135hrs: The Court would like to remind all parties that today's hearing is subject to the directions previously conveyed to the parties in the registry notice. In particular, parties are reminded that there is to be no photography or recording of any form and no dissemination of any photographs or recording of these proceedings. Only those counsel or persons notified to the court should be present at each location. Parties should treat these proceedings, as they would a physical hearing in the Courtroom, save they need not rise or bow.

1158hrs: **The court delivers the following judgment:**

HC/MA 9056/2022/01.

Appeal against sentence is allowed. 4 weeks imprisonment is set aside. Short Detention Order of 1 week is imposed.

The disqualification order of 5 years for all classes is to stand and to take effect from the date of release from the Short Detention Order.

Short Detention Order is to commence on Monday 15 August 2022.

Appellant is to report to Level 4, State Courts at Havelock Square at 2 pm Monday 15 August 2022.

Bail is extended as it stands.

See brief Oral Grounds attached.

- 1 There was no double counting when the DJ took into account the “relatively high degree of carelessness” in a charge involving driving a motor vehicle on a road without reasonable consideration for other persons using the road. Reasonable consideration can involve various degrees of carelessness or lack of consideration.
- 2 I agree with the Prosecution that the fact that no disqualification order can be made if probation is granted should weigh against granting probation in a case involving a serious traffic accident which resulted in grievous hurt. I also agree the more calibrated approach involving this young offender here is to substitute the four weeks imprisonment with a short detention order and I think a short detention order of 1 week and the minimum disqualification of 5 years are sufficient punishment for an offender in the appellant’s circumstances.
- 3 I will therefore allow the appeal. The 4 weeks imprisonment is set aside. I order a short detention order of 1 week and the disqualification of 5 years for all classes is to stand and to take effect from the date of release from the short detention order.

Signed: Tay Yong Kwang JCA

Certified True Copy

Manager, Judge's Chambers
Supreme Court Singapore

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGDC 76

District Arrest Case No 914170-2021
Magistrate's Appeal No 9056-2022-01

Public Prosecutor

Against

Xavier Lai Goon Theng
(Li Guan Ting)

FOUNDATIONS OF DECISION

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

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Public Prosecutor
v
Xavier Lai Goon Theng (Li Guan Ting)

[2022] SGDC 76

District Arrest Case No 914170-2021
Magistrate's Appeal No 9056-2022-01
District Judge Salina Ishak
25 March 2022

7 April 2022

District Judge Salina Ishak:

Background

1 The accused, Mr Xavier Lai Goon Theng (Li Guan Ting), a 21-year-old male Singapore citizen was first charged on 28 July 2021 for the following offence:

Charge

are charged that you, on 13 December 2020 at or about 3.18 p.m., at the junction of Bukit Batok East Avenue 6 and Bukit Batok Street 23, Singapore, did drive a grey Volkswagen car bearing registration no. SJA8366T on a road, without reasonable consideration for other persons using the road, to wit, by failing to keep a proper lookout for oncoming traffic when executing a U-turn at the said junction, thus resulting in a collision with a black Yamaha motorcycle bearing registration no. FBR5449M, and thereby causing grievous hurt to the rider of the said motorcycle by such driving, one Justin Wong Tze Lin (Male/42 years), who sustained the following injuries:

- a) Comminuted left elbow fracture dislocation, with type 1 coronoid fracture, and Medial Collateral Ligament and lateral collateral ligament instability;
- b) Left open distal radial fracture with Distal radio ulnar joint disruption complicated by acute carpal tunnel syndrome and Dorsal branch ulnar nerve neuropraxia;
- c) Left ulnar nerve neuropraxia; and d) Right ankle closed pilon fracture

and you have thereby committed an offence under section 65(1)(b) and punishable under section 65(3)(a) read with Section 65(6)(d) of the Road Traffic Act (Cap 276, 2004 Rev Ed).

2 On 25 March 2022, the accused pleaded guilty to the charge and admitted to the Statement of Facts without any qualification. After carefully considering the Prosecution’s submissions on sentence and the Defence’s plea in mitigation, I sentenced the accused to four weeks’ imprisonment and disqualified him from holding or obtaining all classes of driving licences for a period of five years with effect from the date of his release.

3 The accused being dissatisfied with my decision had filed his Notice of Appeal against my sentence and order of disqualification on 25 March 2022. He is on bail pending the hearing of his appeal.

4 Having set out the background for the present case, I now provide the reasons for my decision.

Salient Facts

Parties

5 The accused is a 21-year-old Chinese male Singapore citizen. At the material time he was the driver of the grey Volkswagen car bearing registration no. SJA8366T (“the car”). The accused was a student at the material time.

6 The victim is Justin Wong Tze Lin, a 42-year-old Chinese male. At the material time he was the rider of the black Yamaha motorcycle bearing registration no. FBR5449M (“the motorcycle”). The victim was employed as a ‘Foodpanda’ delivery rider at the material time.

First Information Report

7 On 13 December 2020 at about 3.21pm one “Ms Sally” called the Police for assistance stating: “One motorcycle and one car. Rider flown off.” The location of the incident was reported as Bukit Batok East Avenue 6, Singapore.

8 Traffic Police resources attended to the scene shortly after and the victim was conveyed to Ng Teng Fong General Hospital (“NTFGH”) by ambulance. The SD card of the in-car camera from the car was also seized by the Traffic Police.

Facts pertaining to the charge

9 Investigations revealed that, on 13 December 2020 at about 3.18pm, the victim was riding the motorcycle and travelling towards Bukit Batok Street 23 while on the way to collect a ‘Foodpanda’ order. As the traffic light was green in his favour as he reached the signalised junction of Bukit Batok Street 23 and Bukit Batok East Avenue 6, the victim proceeded to travel straight through the junction.

10 At the same time, the accused was driving the car down Bukit Batok Street 23. Upon reaching the signalised junction at Bukit Batok Street 23 and Bukit Batok West Avenue 6, the accused slowed down to make a U-turn at the junction. The traffic light was also green in his favour at the material time.



11 By this point in time, the motorcycle had already entered the junction. The motorcycle was clearly visible at this juncture and there were no other vehicles or fixtures obstructing the view of the motorcycle from where the car was positioned. However, the accused failed to keep a proper lookout for oncoming traffic. He did not stop the car to allow the oncoming motorcycle to pass through the junction. Instead, he proceeded to execute the U-turn without reasonable consideration for other persons using the road *ie* the victim. As a result of the accused's driving, the car encroached onto the path of the

oncoming motorcycle, thus causing the motorcycle to collide into the front left portion of the car.



12 The force of the collision between the motorcycle and the car caused the victim to be flung forward off the motorcycle. He landed onto the windshield of the car, and bounced off the windshield and onto the road, eventually landing somewhere near the front right bumper of the car. The force of the victim landing on the windshield of the car caused the windshield to crack.

13 The accused had braked upon impact. Following the collision, the accused stopped the car and alighted from the car to check on the victim, who was later conveyed to NTFGH as stated above.

14 The sequence of events described above was captured by the in-car camera of the car. At the time of the incident, the weather was clear, the road surface was dry and the traffic flow was light.

Injuries sustained by victim

15 The victim was caused grievous hurt as a result of the accused's driving. He was warded at NTFGH from 13 December 2020 to 4 January 2021. He was given 51 days of medical leave from 13 December 2020 to 1 February 2021. In a medical report dated 27 January 2021 prepared by Dr Antony Albert Naveen (ref no. 208410), it was stated that the victim sustained the following injuries:

- (a) Comminuted left elbow fracture dislocation, with type 1 coronoid fracture, and Medial Collateral Ligament and lateral collateral ligament instability;
- (b) Left open distal radial fracture with Distal radio ulnar joint disruption complicated by acute carpal tunnel syndrome and Dorsal branch ulnar nerve neuropraxia;
- (c) Left ulnar nerve neuropraxia; and d. Right ankle closed pilon fracture.

16 In order to treat the above injuries, the victim had to undergo multiple surgeries, as summarised below:

- (a) On 14 December 2020: surgery to examine his wrist, elbow, right knee and right ankle and to apply external fixator devices;
- (b) On 16 December 2020: surgery for left upper limb relook debridement;
- (c) On 21 December 2020: right distal tibia pilon fracture surgical fixation; and

(d) On 23 December 2020: surgery for removal of the external fixators for his left elbow and hand, open stabilisation of Lateral collateral ligament and flexor pronator mass, examination of his left elbow and right ankle, left wrist wound debridement, and open reduction and internal fixation of distal radius fracture.

17 Further follow-ups were planned for the victim, including physiotherapy. He was also given light duty for 22 days from 2 to 23 February 2021.

Damage to vehicles

18 Both vehicles were also damaged as a result of the collision:

(a) The motorcycle: front mud guard broken, clutch bar broken, front left fairing broken and front fork twisted; and

(b) The car: windshield cracked, left front headlamp cracked and left front portion of vehicle dented.

Conclusion

19 By virtue of the foregoing, the accused has thereby committed an offence under s 65(1)(b) and punishable under s 65(3)(a) read with s 65(6)(d) of the Road Traffic Act (Cap 276, 2004 Rev Ed).

Sentencing

Prescribed Penalty

20 The prescribed penalty for an offence under s 65(1)(b) and punishable ss 65(3)(a) read with 65(6)(d) of the Road Traffic Act (“RTA”) is fine not

exceeding \$5,000 or to imprisonment for a term not exceeding 2 years or to both. In addition, the offender is liable to a mandatory disqualification order for all classes of vehicles for at least five years.

Antecedents

21 The accused did not have any antecedents.

Prosecution's Submissions on Sentence

22 The Prosecution had sought a sentence of six to eight weeks' imprisonment and five years' disqualification.

The appropriate sentencing approach

23 It was the Prosecution's position that the primary sentencing objective is that of deterrence and protection of the public, particularly in light of the seriousness of the offence and the harm caused to the victim. The victim suffered grievous injuries (multiple fractures) necessitating multiple surgeries and 51 days of medical leave. The accused drove in a highly careless manner by failing to keep a proper lookout for oncoming traffic at a signalised junction while executing a U-turn.

24 It was submitted that while the accused might still be considered a youthful offender (he was 20 years old at the time of the offence), the principle of rehabilitation has been eclipsed in the present. The Prosecution was of the view that an order of probation would be manifestly inadequate and would not have the requisite deterrent effect needed to address the accused's poor driving. It was further submitted that the Prosecution would thus object to the calling of a probation suitability report.

25 It was highlighted that the present offence attracts a specified period of disqualification of not less than five years, which is an indicator of the significant primacy accorded to the objective of protecting other road users from such offenders. If an order of probation were to be imposed, a disqualification order would not be statutorily available, which would defeat the very purpose of the prescribed punishment. This was one of the factors considered by the High Court in *PP v Chew Jia Ying* (MA 9045/2021) (“Chew”). In *Chew*, the High Court allowed the Prosecution’s appeal against the order of probation imposed on the eponymous offender for an offence under s 338(b) of the Penal Code which stemmed from the offender colliding into the victim’s bicycle while she was driving her motor vehicle and causing the victim grievous injuries.

The calibration of the appropriate custodial sentence

26 It was submitted that after considering the sentencing frameworks applied in *PP v Chuah Choon Yee* [2021] SGDC 264 and *PP v Cullen Richard Alexander* [2020] SGDC 88, the custodial threshold has been crossed. It was further submitted that the accused is of low to moderate culpability and that the harm caused was moderate.

27 There are a number of aggravating factors that bear highlighting:

- (a) *The accused drove with a relatively high degree of carelessness*: the accused made a U-turn at a signalised junction without keeping a proper look-out for oncoming traffic. When he executed the U-turn, the victim’s motorcycle had already entered the junction and would have been clearly visible as there were no other obstructions.

(b) *There was a high level of potential harm:* the accused executed the U-turn at a signalised junction, and the accident occurred in close proximity to pedestrians who were on foot.

(c) *The nature of the grievous hurt caused was serious:* the victim suffered serious injuries which necessitated multiple surgeries to his legs, arms and hands.

28 The offender-specific mitigating factors are the accused's early plea of guilt, and the fact that he is untraced and has a clean driving record.

Mitigation

29 The Defence Counsel Mohamed Arshad Bin Mohamed Tahir had urged the Court to call for a probation pre-sentencing report as the accused is a young offender and is currently pursuing his tertiary education.

30 To demonstrate his remorse, he had elected to plead guilty at the earliest possible opportunity. He was untraced and had an unblemished driving record. In support of its sentencing position, the Defence relied on Menon CJ's decision in *A Karthik v PP* [2018] 5 SLR 1289 ("*A Karthik*").

31 It was submitted that the accused was 20 years old at the time of the offence and is 21 years old at the time of sentencing. A youthful offender is ordinarily sentenced on the basis of rehabilitation owing to the retrospective and prospective rationales.

32 It was orally submitted that the accident arose out of a momentary lapse of judgment. There were no other culpability enhancing factors. According to the Defence he was not intoxicated, he did not beat the traffic

red light, he stopped to help and he contacted the authorities. With regards to the harm suffered by the victim, while regrettable there was no evidence of it being permanent.

33 It was the Defence's position that the retrospective rationale emphasises a youthful offender's relative lack of maturity and his state of mind at the material time. The prospective rationale highlights the benefits of rehabilitation, to both the offender and society in general. The prospective rationale also considers how a youthful offender may suffer disproportionately in prison and be exposed to bad influence.

34 With regards to the Prosecution's submissions on the issue of disqualification, it was submitted that it would not be appropriate to consider that at this point in time. In *PP v ASR* [2019] 3 SLR 709 ("*ASR*"), the Court had clearly distinguished the two steps. The first step was to consider whether rehabilitation is a dominant sentencing objective and the second step was to then choose the appropriate sentencing option. It was highlighted that the Court does have the power to impose conditions as it thinks fit as part of the probation order. It was further submitted that even if the probation officer agrees that probation is suitable, it does not tie the hands of the Court and it gives the Court a better view of his rehabilitative potential.

35 In *A Karthik* as well as *PP v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz Koh*") it was stated that rehabilitation's primacy may be diminished by the following factors:

- (a) The offence is serious.
- (b) The harm caused is severe.

- (c) The offender is hardened and recalcitrant.
- (d) The conditions which make rehabilitative sentencing options viable do not exist.

36 It was submitted in *ASR*, Woo J considered the factors highlighted above and expressed the view that it did not think that the Menon CJ in *Boaz Koh* meant for any one or two of these factors to be decisive. Instead, Woo J held at [59] that all of the above factors are to be considered holistically and specifically noted that “even where the offence was serious and the harm caused was severe, these factors did not necessarily preclude rehabilitation from being the predominant or an important consideration.”

37 It was submitted that in fact, rehabilitative sentencing options have been imposed in cases involving robbery with common intention (see *PP v Mohammad Fareez Bin Rahmat* [2010] SGDC 99), voluntarily causing grievous hurt with a dangerous weapon (see *Muhammad Zuhairie Adely Bin Zulkifli v PP* [2016] 4 SLR 697), culpable homicide not amounting to murder (see *PP v Foo Shik Jin* [1996] SGHC 186), sexual assault (an unreported decision in DAC 16513 of 2011 and others) and drug related offences, including drug trafficking (see *PP v Adith s/o Sarvotham* [2014] 3 SLR 649). It was further submitted that Court of Appeal in *PP v ASR* [2019] 1 SLR 941 affirmed the High Court’s decision in *ASR*.

38 It was the Defence’s position that as first-time offender, the accused could make rehabilitative efforts because he has strong familial support. He resides with his family and his parents work for multi-national companies. He no longer drives and intends to take refresher courses before getting behind the wheel again.

Prosecution's Reply

39 In response to the plea in mitigation, the Prosecution confirmed that there was no permanent injury caused to the victim. He appeared to have recovered well although he had taken some time to do so.

40 In relation to its sentencing position that the present offence attracts a specified period of disqualification of not less than five years, it was not so much a matter of the duration of the disqualification or whether or not disqualification should be imposed. Unless there are special reasons, the disqualification is mandatory. It was submitted that the analysis was for the purpose of s 65 of the RTA and the criminal conduct that it is meant to meet in determining what the dominant sentencing considerations should be.

41 It was the Prosecution's position that the age of the offender is a significant consideration especially in a youthful offender but one must look at the nature of the offence as well. It was submitted for driving offences the accused has come of age. He was able to obtain a driving licence. In doing so he chose to go through a rigorous course certifying him as fit to drive. It would be odd to say that he is old enough to get a licence but still young such that we should treat him with a community-based approach.

42 It was submitted that for a road traffic offence such offences do not land themselves to being addressed by a community-based approach especially not one such as probation. It was the Prosecution's position that the criminal conduct in the present case is poor driving. In this case, the accused had put himself in a situation where he intended to go and get a licence and intended to drive that day. In terms of the traffic rules and what is expected of him, the accused already knew this. A deterrent approach is the correct approach when it comes to road traffic offences even if the offender is one

under 21 years old. Conceptually, there is a distinction to be drawn from such offences with the offences that the Defence had indicated in its submissions.

Sentencing considerations

Appropriate sentencing approach

43 Generally, offenders aged 21 or below are treated as youthful offenders for the purposes of sentencing. In the present case, the accused was 20 years' old at the time of the offence and was 21 years of age at the time of sentencing. As I was dealing with a youthful offender, the first step was to consider the primary sentencing considerations appropriate to the youth in question having regard to all the circumstances including those of the offence. The second stage of the inquiry is to select the appropriate sentence that would best meet those sentencing considerations and the priority that the sentencing judge has placed upon the relevant ones (see *Boaz Koh* at [28]).

44 While the sentencing principle of rehabilitation would prima facie take precedence in sentencing a young offender, I was of the view that it was clear in the present case that the other sentencing principles of deterrence, prevention, and retribution should also feature prominently. This is in view of the seriousness of the offence and the nature of the harm caused to the victim. The victim suffered grievous injuries necessitating multiple surgeries as set out at [15] and [16] above. He was hospitalised for 23 days from 13 December 2020 to 4 January 2021 and was given 51 days of medical leave.

45 In addition, the accused had driven in a highly careless manner by failing to keep a proper lookout for oncoming traffic at a signalised junction while executing a U-turn. When the accused approached the junction, the victim's motorcycle had already entered the junction. The motorcycle was

clearly visible at this juncture and there were no other vehicles or fixtures obstructing the view of the motorcycle from where the car was positioned. However, the accused did not stop the car to allow the oncoming motorcycle to pass through the junction. Instead, he proceeded to execute the U-turn without reasonable consideration for other persons using the road *ie* the victim. He was charged with a serious road traffic offence under s 65(1)(b) and punishable under Section 65(3)(a) of the RTA where prescribed punishment is a fine not exceeding \$5,000 or to imprisonment not exceeding 2 years or to both. In addition, he is liable to a disqualification order for at least five years.

46 While the age of the offender is a significant consideration especially in youthful offenders, the court must consider the nature of the offence as well as the culpability of the offender. The accused had a valid driving licence and was able to obtain a driving licence after undergoing a rigorous course certifying him as fit to drive. I agreed with the Prosecution that it would be odd to say that he is old enough to get a licence but still young such that he should be treated with a community-based approach.

47 As observed by the High Court in *Chew Jia Ying* at [16], a disqualification order from driving is statutorily not available where a probation order has been. While the court could order that the accused not to drive during the period of probation as a condition of the order, this is qualitatively different from a disqualification order. He would be able to resume driving once his period of probation is over. I note that the Defence had submitted that the accused intends to take refresher courses before getting behind the wheel again. A refresher course is different from the requirement to retake both the theory and practical tests and passing these rigorous tests before he is allowed on the roads again. Under s 43(1)(b) of the RTA, any

order of disqualification of more than one year would require the accused to retake his driving licence test.

48 In the present case, in light of the seriousness of the offence and harm caused, some measure of deterrence was called for and the accused's relative lack of maturity on the basis of his age should not eclipse the other sentencing principles of deterrence, prevention, and retribution for such serious road traffic offences. Accordingly, I was of the view that a probation order would not be appropriate in the circumstances and as such I did not call for a pre-sentence probation suitability report.

49 The next step was to consider whether a community-based sentence such as a short detention order was appropriate in the circumstances. In *PP v Chew Jia Ying* [2021] SGMC 21 ("*Chew Jia Ying*"), the accused was initially ordered to undergo supervised probation for a period of 12 month for an offence under s 338(b) of the Penal Code (Chapter 224, 2008 Rev Ed.)("PC") for causing grievous hurt to the victim by doing an act so negligent as to endanger the life of that person. In that case, on 24 July 2019 the accused a 19-year-old polytechnic student had failed to keep a proper lookout while driving along West Camp Road and collided with the rear of the victim's bicycle which was ahead of the accused causing him to sustain severe traumatic head injuries which rendered his left arm functionally useless. The accident occurred as the accused was changing lanes on a two-lanes road and she was then travelling at about 70 km/h, which was above the 50 km/h speed limit of the road.

50 On appeal by the Prosecution, the High Court substituted the probation order with a short detention order of two weeks and disqualification from holding or obtaining all classes of a driving licence for a period of three years.

The High Court found that the offence fell into a higher level of seriousness of the sentencing framework in *Tang Ling Lee v PP* [2018] 4 SLR 813 and the harm caused to the victim was extremely high. It was fortuitous that he was able to survive the extent of those injuries. The High Court found that the seriousness of the offence and harm caused called for some measure of deterrence. As the sentencing consideration was primarily one of protecting other road users from the offender, in view of the harm caused and the accused's driving record, a disqualification period of at least three years would be amply justified.

51 I was mindful that in *Chew Jia Ying* the offence was committed prior to the passing of the Road Traffic (Amendment) Act 2019 (Act 19 of 2019) which took effect from 1 November 2019. The amendments to the RTA were intended to provide stronger deterrence against irresponsible driving by enhancing the penalties and tightening the regulatory regime against irresponsible driving. Based on the same factual matrix, if the offender in *Chew Jia Ying* had committed the offence on or after 1 November 2019, she would have been charged for an offence under ss 65(1)(b) or 65(1)(a) of RTA and punishable under s 65(3)(a) of the RTA. Although the prescribed fine and imprisonment term is similar, the offender is now liable to at least five years disqualification. I agreed with the Prosecution that it is an indicator of the significant primacy accorded to the objective of protecting other road users from such offenders. In line with Parliament's intention to provide a stronger deterrence, the sentences imposed for offences under the RTA are now much higher compared to the sentences previously imposed for similar offences under s 338(b) of the PC.

52 In the present case, I was of the view that the accused's level of culpability was much higher than the offender in *Chew Jia Ying*. The accused

drove with a relatively high degree of carelessness as he made a U-turn at a signalised junction without keeping a proper look-out for oncoming traffic. When he executed the U-turn, the victim's motorcycle had already entered the junction and would have been clearly visible as there were no other obstructions. In contrast, *Chew Jia Ying* was a lane change situation as both the offender and the victim were travelling in the same direction.

53 In the present case, in light of the seriousness of the offence and the nature of the harm caused to the victim, I was of the view that the sentencing principles of deterrence, prevention, and retribution should eclipse that of rehabilitation. Unlike in *Chew Jia Ting*, I did not think that the imposition of a short detention order and an order of disqualification would accord with the sentencing principles of deterrence, prevention, and retribution in the circumstance.

54 I next considered the appropriate sentence to be imposed for the present charge based on the prescribed punishment under s 65(3)(a) of the RTA.

S 65(1) of the RTA

55 The present offence under s 65(1) of the RTA was enacted on 1 November 2019. S 65(1) of the RTA encapsulates the primary offence of driving without due care or reasonable consideration for other persons using the road. The subsequent subsections from ss 65(2) to 65(4) are the penalty prescribing provisions, each tiered according to the degree of hurt caused and for s 65(5), for any other case of non-personal injury or potential harm.

56 Prior to the 2019 amendment to the RTA, the offence of driving without due care or reasonable consideration under s 65 of the RTA was a

singular provision without any differentiation as to degree of hurt caused and punishable with a fine not exceeding \$1,000 or to imprisonment not exceeding six months or imprisonment not exceeding six months or to both. A second or subsequent offender was liable to a fine not exceeding \$2,000 or to imprisonment not exceeding 12 months or to both. In addition, pursuant to s 42(1) of the RTA, the court has a discretion to impose a period of disqualification for life or for such a period as the court may think fit.

57 The 2019 amendments to s 65 of the RTA resulted in a tiered approach in the prescribed penalties where a first offender under s 65(1) who fell at the lowest end of the spectrum of no personal injury or potential harm is occasioned is liable to a fine not exceeding \$1,500 or to imprisonment not exceeding six months or to both. At the highest end of the spectrum where death is caused, the first offender is liable to a fine not exceeding \$10,000 or to imprisonment not exceeding three years or to both. In addition, enhanced penalties as well as minimum disqualification periods were introduced for offences where death or grievous hurt is caused as well as for a repeat offender, a serious offender as well as a serious repeat offender.

Sentencing approach

58 Presently, there is no existing sentencing framework enunciated by the High Court for offences under s 65(1), particularly for one punishable under s 65(3)(a) of the RTA. In the present case, the Prosecution had referred to *Cullen* a reported district court decision in their address on sentence.

59 In *Cullen* the district judge in that case had proposed a sentencing matrix framework for offences punishable under s 65(3)(a) of the RTA for offenders who claim trial. The appropriate adjustments are to be made for

offenders who plead guilty by taking into consideration the offender-specific mitigating factors.

<i>CULPABILITY</i>	GRIEVOUS HURT S 65(3)(a) RTA			
	Up to \$5,000 OR Up to 2 years or Both Mandatory DQ: At least 5 years			
	<i>HARM</i>			
	Low	Medium	Serious	Very serious
Low	\$2,500 to \$5,000	Up to 3 months	3 to 6 months	6 to 9 months
Moderate	Up to 3 months	3 to 6 months	6 to 9 months	9 to 12 months
High	3 to 6 months	6 to 9 months	9 to 12 months	12 to 24 months

60 In *Cullen*, the offender was charged with two counts of driving without reasonable consideration under the s 65(1)(b) of the RTA together with one count of failing to stop after an accident under s 84(1)(a) read with s 84(7) of the RTA. This was in respect of two separate road traffic accidents which had occurred on the same day on 10 November 2019 within a span of about five minutes and not more than one kilometre apart. Damage was caused to the first victim's motorcar for the first accident. For the second accident, the accused was liable to under s 65(3)(a) of the RTA as serious damage was caused to the second victim's motorcar and grievous hurt was caused to the second victim. He was hospitalised for three days and given 48 days of hospitalisation leave. The medical report indicated that the victim had sustained a fracture to his lumbar spine (L4 superior endplate acute fracture with mild anterior wedging of L4 due to mild depression in the anterior aspect of the superior endplate). He was treated conservatively for his lumbar spine injury with a lumbar corset. A sentence of ten weeks' imprisonment and disqualification for all classes of vehicles for a period of five years with effect from date of release as well as a prohibition under s 47F RTA from driving

any motor vehicle in Singapore for a period of five years with effect from date of release was imposed for the charge involving s 65(3)(a) of the RTA.

61 Due to the dearth of reported decisions after the 2019 amendments to s 65(1) of the RTA, I have observed that *Cullen* is often cited by both the Prosecution and the Defence in their address on sentence for accident cases where grievous hurt is caused regardless of whether it fell within the first or second category of irresponsible driving. Nevertheless, I am not bound by that decision as there is no appellate determination on the appropriateness of the suggested sentencing framework.

62 In the recent case of *Wu Zhi Yong v PP* [2021] SGHC 261 (“*Wu Zhi Yong*”), Menon CJ had dealt with the first category and the more serious form of irresponsible driving and prescribed a sentencing band framework for an offence reckless driving under s 64(1) punishable under s 64(2C)(a) read with ss 64(2C)(c) of the RTA.

Band	Degree of seriousness	Sentencing Range
1	Lower level of seriousness with no offence-specific aggravating factors present or where they are present only to a limited extent.	A fine of between \$2,000 and \$15,000 and/or up to one month’s imprisonment and a disqualification period of two to three years.
2	Higher level of seriousness and would usually contain two or more offence-specific aggravating factors. In these cases, the level of culpability and the blood alcohol level will typically <i>both</i> be on the higher side. Where an offender’s blood alcohol level is in the highest or second highest band of the framework in <i>Rafael Voltaire Alzate</i> , the case is likely to fall <i>at least</i> within Band 2	Between one month’s and one year’s imprisonment and a disqualification period of three to four years.

3	The most serious cases of reckless or dangerous driving whilst under the influence of drink. In these cases, there will be multiple aggravating factors suggesting higher levels of culpability and higher alcohol levels.	Between one year's and two years' imprisonment and a disqualification period of four to five years.
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63 The prescribed penalty for an offence punishable under section 64(2C)(a) of the RTA is fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both. Where the offence involves a serious offender, he is 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 the punishment under section 64(2C)(a) of the RTA. In *Wu Zhi Yong*, after a careful consideration of different sentencing approaches at [22] to [29] the High Court had prescribed the sentencing band approach when dealing with offences punishable under s 64(2C)(a) read with ss 64(2C)(c) of the RTA. At [30] and [48] of the judgment, the High Court had set out the following sentencing approach:

The sentencing approach

30 At the first step, as set out in *Terence Ng* at [39], the court should identify the band applicable to the offence and the indicative starting point with reference to that band, having regard to the *offence*-specific factors present. These would encompass factors relating to the manner and mode by which the offence was committed, as well as the harm caused by the offender. At the second step, the court would have regard to the *offender*-specific factors, being the aggravating and mitigating factors that are personal to the offender.

48 At the second step of the analysis, the court will have regard to the offender-specific factors. Examples of these factors have been set out at [62] – [71] of *Terence Ng* and apply equally in the present framework. Offender-specific aggravating factors include offences taken into consideration for the purposes of sentencing, the presence of relevant antecedents (apart from where the offender's antecedents have been taken into account under the "repeat offender" or "serious repeat offender" provisions), and evidence showing a lack of remorse. Offender-specific mitigating factors include evidence of genuine remorse and an offender's youth.

64 Although the present case concerns the second category of irresponsible driving, due to the similarity in the structure of the statutory provisions for both forms of irresponsible driving under s 64(1) and s 65(1), I was of the view the observations as well as the sentencing approach set out by Menon CJ are instructive and provides some useful guidance on how an offence under s 65(1) should be dealt with the necessary downward calibration.

65 In my recent grounds of decision in *PP v Chua Choon Yee* [2021] SGDC 264 at [24] to [26] which the Prosecution had also referred to, I had proposed a sentencing band framework for offences punishable under s 65(3) (a) of the RTA. To determine the appropriate sentence, the court should first consider the offence-specific factors to determine the appropriate sentencing band where the present offence should be situated. Such factors would include the following:

- (a) The manner, the mode and the location by which the offence was committed *eg* driving against the flow of traffic, high degree of carelessness;
- (b) the level of potential harm *eg* serious risk posed to other road users;
- (c) the nature of the harm caused to the victim *eg* both grievous hurt and property damage caused;
- (d) the number of victims involved;
- (e) the accused's motivation for driving *eg* he had been driving a passenger for hire or reward;

(f) the accused had failed to stop after the accident to evade arrest or to avoid apprehension.

Proposed sentencing bands

66 The range of sentence that can be imposed for the present offence is a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 2 years or to both. The proposed sentencing band is as follows:

Band	Degree of seriousness	Sentencing Range
1	Lower level of seriousness and with no offence-specific aggravating factors.	A fine between \$1,000 to \$5,000 and/or up to one month's imprisonment and the minimum disqualification period of five years for all classes of vehicles.
2	Higher level of seriousness with more than one offence-specific aggravating factors. The accused's level of culpability would typically be in the medium range.	Between one month's imprisonment and up to one year's imprisonment and disqualification for a period of five to six years.
3	The most serious case of causing grievous hurt by careless or inconsiderate driving where there are multiple aggravating factors and the offender's level of culpability is high.	Between one year's imprisonment and two years' imprisonment and disqualification for a period of six to seven years.

Calibration of sentence

67 The next step would be for the court to calibrate the sentence after having regard to the offender-specific factors. The relevant factors would include offences that are taken into consideration for the purposes of sentencing, the presence of relevant antecedents and evidence showing a lack

of remorse. Offender-specific mitigating factors include a clean record, an early plea of guilt, evidence of genuine remorse and an offender's youth.

My decision on sentence

Offence-specific factors

Manner, mode and location of offence

68 In the present case, I had considered the fact that the accident occurred as the accused was making a U-turn right at the signalised junction of Bukit Batok Street 23 and Bukit Batok East Avenue 6. The victim was riding his motorcycle and travelling straight towards Bukit Batok Street 23. As the traffic light was green in his favour as he reached the signalised junction of Bukit Batok Street 23 and Bukit Batok East Avenue 6, the victim proceeded to travel straight through the junction. Upon reaching the said signalised junction, the accused slowed down to make a U-turn at the junction. The traffic light was also green in his favour at the material time. Nevertheless, as the victim was going straight, the victim had the right of way.

69 I observed that from his in-vehicle footage, the victim's motorcycle had already entered the junction as the accused approached the junction. The motorcycle was clearly visible at this juncture and there were no other vehicles or fixtures obstructing the view of the motorcycle from where the car was positioned. Nevertheless, the accused did not stop the car to allow the oncoming motorcycle to pass through the junction. Instead, he proceeded to execute the U-turn without reasonable consideration for other persons using the road *ie* the victim. This indicates a moderate degree of carelessness on the accused's part when he failed to stop before executing the U-turn and exercise a proper look out for oncoming vehicles on his right that had the right of way

as he encroached into the victim's travel path. Based on the above, I was of the view that his culpability fell within the medium range.

70 Nevertheless, I observed that there were no culpability increasing factors such as excessive speeding, deliberate dangerous driving or deliberate flouting of road traffic rules in the present case.

Nature of harm caused to the victim

71 In respect of the harm caused, I considered the fact that victim suffered both grievous hurt and property damage to his motorcycle. The victim had suffered serious injuries necessitating multiple surgeries as set out at [15] and [16] above. He was hospitalised for 23 days from 13 December 2020 to 4 January 2021 and was given 51 days of medical leave. He was also given light duty for 22 days from 2 to 23 February 2021. There was property damage caused to the victim's motorcycle namely the front mud guard, the clutch bar and the front left fairing were broken and the front fork was twisted. Based on the above, I found that the harm caused to the victim was serious in the circumstances.

Serious potential harm

72 All motorists should keep a proper look out and exercise care when approaching traffic signalised junctions and when making a U-turn across a junction when traffic light signal is green in their favour. The accused had admitted that he had failed to notice or give way while encroaching into the victim's travel path, resulting in a collision between both vehicles. There was serious potential harm present in the case as the accident had occurred in close proximity to pedestrians who were on foot as well as other road users

travelling within the vicinity of the signalised junction of Bukit Batok Street 23 and Bukit Batok East Avenue 6.

73 Due to the seriousness of the offence as set out above, I was of the view the custodial threshold had been crossed and that starting point of the present case fell within the lower end of Band 2 of the sentencing band. There were several offence-specific aggravating factors present in this case namely, the moderate degree of carelessness, the serious potential harm to other road users and serious harm caused to the victim. Hence, I was of the view that the starting point for the present offence should be two months' imprisonment.

Offender specific factors

74 The next step was for me to calibrate the sentence after considering offender-specific factors. The accused had pleaded guilty to a single charge and had unrelated antecedents. He was a youthful offender who was remorseful for what he had done, he had co-operated with the authorities and had admitted that he was careless.

75 The Prosecution had sought a sentence of six to eight weeks' imprisonment and five years' disqualification while the Defence had urged the calling of a pre-sentence probation suitability report which I had declined for the reasons as set out above.

76 After considering the relevant offender specific factors including the fact that the accused is a youthful offender, a downward calibration to four weeks' imprisonment was appropriate in the circumstances. I was also of the view that the minimum disqualification period of five years with effect from the date of release was appropriate as there were no special reasons before me not to make the order or to order a period less than the specified period of five years.



Salina Ishak
District Judge



Chong Yong (Attorney-General's Chambers) and Jakki Lim (Traffic
Police Department) for the Prosecution;
Mohamed Arshad Bin Mohamed Tahir (Fernandez LLC) for the accused.
