

Public Prosecutor v Howe Vincent  
[2012] SGDC 25

**Case Number** : DAC 14236/2011, Magistrate's Appeal No 14 of 2012

**Decision Date** : 02 February 2012

**Tribunal/Court** : District Court

**Coram** : Salina Bte Ishak

**Counsel Name(s)** : Deputy Public Prosecutor Norman Yew for the Prosecution; Mr Derek Kang of M/s Rodyk & Davidson LLP for the Accused

**Parties** : Public Prosecutor — Howe Vincent

2 February 2012

**District Judge Salina Ishak:**

**The Charges**

1 The Accused, Mr Howe Vincent had pleaded guilty to three charges, namely:

- (i) a charge of driving motor car SJY77D on 3 November 2010 at about 9.55 pm along the Pan Island Expressway whilst under disqualification under Section 43(4) Road Traffic Act (Cap 276) ("first charge" – **DAC 14236/2011**);
- (ii) a charge of using motor car SJY77D on 3 November 2010 at about 9.55 pm along the Pan Island Expressway whilst there was not in force the requisite policy of insurance or security in respect of third party risks under Section 3(1) Motor Vehicle (Third Party Risks and Compensation) Act Cap 189)("second charge" – **DAC 14237/2011**) and
- (iii) a charge of failing to inform the traffic of his intention to slow down or to change the direction of his vehicle by means of an approved type of direction indicator while driving motor car SJY77D on 3 November 2010 at about 9.55 pm along the Pan Island Expressway under Rule 2(1) Road Traffic Rules and punishable under Section 131(2) Road Traffic Act (Cap 276) ("third charge" –DAC 14238/2011).

2 Two other charges, namely a charge driving motor car SJH9989C on 5 February 2009 at about 3.25 am along Outram Road whilst under disqualification under Section 43(4) Road Traffic Act ("fourth charge" – **DAC 14239/2011**) and a charge of failing to drive motor car SJH9989C in an orderly and careful manner on 5 February 2009 at about 3.25 am along Outram Road by failing to have a proper lookout and encroaching into the path of a police vehicle under Rule 29 Road Traffic Rules ("fifth charge" – **DAC 14240/2011**) were taken into consideration for the purposes of sentencing.

3 In addition, the Accused was given a discharge amounting to an acquittal pursuant to the withdrawal of two other charges of failing to provide a breath specimen without a reasonable excuse on 5 February 2009 at about 3.25 am along Outram Road under Section 69(4) Road Traffic Act ("sixth charge" – **DAC 14241/2011**) and a charge of failing to provide a

breath specimen for analysis by means of a Breath Evidential Analyzer when required to do so by a police officer on 5 February 2009 at about 5.09 am at Central Police Division under Section 70(4)(a) Road Traffic Act ("seventh charge" – **DAC 14242/2011**). This was after a warning was administered by the police for these two charges.

## Summary of Facts

4 The Statement of Facts ("**Exhibit P1A**") which the Accused had agreed to without any qualification reads as follows:

*Complainant is SSGT Mohd Sulaiman attached to Traffic Police Department.*

2 *Defendant is Howe Vincent, male 34 years old, NRIC: S XXXX442H. He was the driver of the motor car SJY77D at the material time.*

3 *On 3 November 2010, at about 5.30 pm, the accused took the key to the motor car SJY77D (registered under his company) and left his office to drive the said car to pick up his overseas client. He met up with his client at Ngee Ann City and left for dinner at CHIJMES. After dinner, he drove his client from CHIJMES to Changi Airport.*

4 *On the same day, at about 9.55 pm after sending his client to the airport, the defendant was driving the motor car SJY 77 D along the extreme right lane of the Pan Island Expressway, Singapore towards Tuas when he was directed by the complainant to pull over at the side of the road. He had failed to give signal when changing lanes. The complainant ascertained the identity of the defendant and discovered that he was driving whilst under disqualification. The complainant then placed the defendant under arrest and a report was lodged accordingly.*

5 *Investigations revealed that on 4 February 2009, the defendant was disqualified from holding or obtaining a driving licence for all classes of vehicles for a period of 2 years with effect from 4 February 2009 until 3 February 2011, which conviction has not been set aside.*

5 *The insurance policy of the vehicle was valid. However the defendant was driving the said vehicle without an insurance coverage or such security in respect of third-party risks insurance policy as the defendant was driving whilst under disqualification.*

6 *The defendant has thereby committed the following offences:*

a *Driving whilst under disqualification under Section 43(4) of the Road Traffic Act, Chapter 276;*

b *Using vehicle without insurance coverage under Section 3(1) of the Motor Vehicle (Third-Party Risks & Compensation) Act, Chapter 189, and*

c *Failing to give signal under Rule 2(1) Road Traffic Rules.*

7 *The defendant admits to the above offences and is charged accordingly.*

## Antecedents

5 The Accused has the following antecedents:

### **20.7.1993**

- taking or driving a motor vehicle without lawful authority under Section 96(1) Road Traffic Act and was fined \$700 in Court 23 (rendered spent on 17/10/2005);

- driving a motor vehicle while under 17 years of age under Section 62(1) Road Traffic Act and was fined \$500 in Court 23;

- using a motor vehicle without insurance coverage in respect of third-party risks under Section under Section 3(1) of the Motor Vehicle (Third-Party Risks & Compensation) Act. He was fined \$800 and disqualified from holding or obtaining a driving licence for all classes of vehicles for 12 months in Court 23.

#### 4.2.2009

- drink driving under Section 67(1)(b) Road Traffic Act, Chapter 276. He was fined \$3,000 and disqualified from holding or obtaining a driving licence for all classes of vehicles for 2 years in Court 21.

#### Prosecution's Skeletal Submissions on Sentence

6 In his submission on sentence, DPP Norman Yew highlighted that the Accused was convicted on 4 February 2009 in Court 21 for a charge under Section 67(1)(b) Road Traffic Act and was sentenced to a fine of \$3,000 and disqualification for all classes for two years' from 4 February 2009 until 3 February 2011. Barely a day after his conviction, the Accused went on to commit several other road traffic offences on 5 February 2009 whilst driving vehicle bearing registration number SJH9989C. It was submitted that the fact that he could do so showed his scant regard for the law.

7 The prosecution submitted that on 3 November 2010, once again the Accused proceeded to drive a vehicle, SJY77D and has been convicted in this Court for the three proceeded charges. It is clear from here that the Accused is a recalcitrant offender.

8 The prosecution sought to distinguish the present case from **PP v Catherine Peter [2010] SGDC 28** that was cited by the defence in the written mitigation. In that case, the Accused had travelled a short distance i.e. from her house to Elias Mall. She had also driven whilst under disqualification once. In the present case, the Accused had driven relatively far, from his office at Ngee Ann City, to CHIJMES and then to the airport. Moreover, he had driven whilst under disqualification twice (once on 5 February 2009 and once on 5 November 2010). It was submitted that it is clear that the circumstances are more aggravated, unlike the accused in the previous case.

9 It was further submitted that this present case can be distinguished from **PP v Giuseppe De Vito [2010] SGDC 340** cited by the defence based on the same reasons cited above in *Catherine Peter's* case i.e. the short distance travelled and that the accused had driven whilst under disqualification once only. In addition, the accused in *Giuseppe De Vito* had to rush his wife for emergency medical treatment due to vaginal bleeding (although it must be noted that when the accused pleaded guilty before me in *Giuseppe De Vito*, in his plea in mitigation at page 3 and paragraph 8 of my decision, I was informed by his Counsel what was foremost in the accused's mind then was how he could rush his wife for medical treatment should the need arise). It was submitted that the circumstances in that case are far more mitigatory than in the present case where the Accused had driven to entertain his client and thereafter send him to the airport.

10 The prosecution next cited the case of **Chng Wei Meng v Public Prosecutor [2002] 2 SLR(R) 566** to highlight the seriousness of the offence of driving whilst under disqualification as well as the emphasis that motorists who drive while disqualified must expect a term of imprisonment and not merely a fine.

This was reiterated by the Honourable the Chief Justice **Chan Sek Keong in PP v Lee Cheow Loong Charles [2008] 4 SLR 961**.

11 The prosecution submitted that based on sentencing precedents, a term of imprisonment and a disqualification order for all classes is usually imposed and fines have only been given in exceptional cases. It was further submitted that the present case cannot be considered as an exceptional case. In view of his repeated audacious behaviour, the prosecution urged the Court to impose a custodial sentence (and objects to a fine) and a period of disqualification for all classes that is higher than the normal range.

## **Mitigation**

12 In his written plea in mitigation, the Accused's Counsel, Mr Derek Kang submitted that a fine would be appropriate given the circumstances under which the offences were committed. He also submitted that his client had pleaded guilty at the earliest possible opportunity and has not contested the charges. It was also highlighted that the three proceeded charges that the Accused had pleaded guilty to all relate to the same traffic incident.

## **Background**

13 The Accused is a Singapore national who is 33 years of age and is married with two young children aged 7 and 3 years respectively. According to his Counsel, the Accused is the Chief Executive Officer of STAG Group Pte Ltd with more than 80 workers under his care. He is the only legal representative of his Shanghai office and the sole Singaporean director for his Malaysian operations.

14 It was submitted that the Accused has a psychiatric history of clinical depression stemming from bipolar affective disorder. Counsel further submitted that he was instructed that the Accused's psychiatric condition worsen in or about mid 2009 when he was experiencing marital problems and facing the then impending break-up of his marriage. His wife had at the time filed for divorce and divorce proceedings were nearing the final stages. During that time, he took heavily to the bottle as a means of coping with his clinical depression.

15 His Counsel submitted that the Accused originally obtained his driving licence around 1996. He had an unblemished driving record for 13 years until 2009 when he was convicted of a drink-driving offence after being stopped at a road block. It was further submitted that the Accused had instructed him that the incident of drink-driving coincided with the time when his clinical depression worsened. According to him, the Accused had expeditiously pleaded guilty to the offence and was fined and disqualified from driving for two years. He took immediate steps to comply with the Court's disqualification order by engaging a full-time driver to ferry him around in his car and has since sobered up.

### *Incident on 3 November 2010*

16 His Counsel submitted that on 3 November 2010, the Accused met with an important overseas client who was in Singapore very briefly for various business meetings including one with his client. The meeting was arranged at short notice and the Accused's driver whom he had engaged was unavailable that evening. According to his Counsel, the Accused was unable to obtain a taxi despite making several telephone calls for one. The Accused drove the motor vehicle SJY77D to send the overseas client to the meeting venue at CHIJMES. When the meeting overran its expected end time and the overseas client looked like he would miss his flight from the Changi Airport, the Accused was urged by the overseas client to drive him to the airport. His Counsel submitted that the Accused gave in to the overseas client's request because he genuinely believed that it did not appear that the overseas client would be able to obtain a taxi in time to catch a flight. Counsel further submitted that at the material time, there were no taxis available in the immediate vicinity of CHIJMES.

17 His Counsel submitted that the Accused was not involved in any accident at any time and there was no negative consequence arising from his driving stint while under disqualification or without insurance coverage. It was further submitted that the Accused is sufficiently well-to-do such that he would have been able to make good any third-party claims that might have been made against his insurance policy had he been responsible for any accidents.

## **Case Law**

### **Section 43(4) Road Traffic Act**

18 His Counsel submitted that for a conviction under Section 43(4) Road Traffic Act, an Accused could be sentenced to a fine or imprisonment and cited the case of **Chng Wei Meng v Public Prosecutor** [2002] 2 SLR(R) 566 in support of his submissions. He also referred to the cases of **PP v Catherine Peter** [2010] SGDC 28 and **PP v Giuseppe De Vito** [2010] SGDC 340 and submitted that the Courts (on appeal) have decided to impose fines in two cases involving driving whilst under disqualification. In *Catherine Peter's* case, he highlighted the fact that on appeal, her custodial sentence was set aside and a

fine of \$2,500 and a four year disqualification was imposed despite the fact that the accused in that case had a previous conviction for drink driving in 2009. He went on to submit that in *Giuseppe De Vito's* case, on appeal in account of the short distance travelled from the offender's house to the petrol station, the sentence was reduced to a fine of \$3000 and a nominal custodial sentence of one day. He submitted that this was despite the fact that the accused in that case '*...had two previous convictions for drink driving on 2 separate occasions in September 2008 and 2009 respectively*'. I then highlighted that this was incorrect as the accused in that case had in fact a previous conviction for drink driving and dangerous driving on the same date i.e. 19 September 2008 (see page 2 paragraph 4 of my decision *PP v Giuseppe De Vito [2010] SGDC 340*).

19 His Counsel submitted that the facts in the present case are as compelling as the two cases to warrant a non-custodial sentence. According to him, similar to *Catherine Peter* and *Giuseppe de Vito*, the Accused was faced with an emergency, which required him to drive urgently. In the present case, the Accused's driver was unavailable to chauffeur him to a business meeting and subsequently his overseas client looked like he would miss his flight out of Singapore as a result of the business meeting running over time. Further, the Accused had attempted (albeit unsuccessfully) to arrange for alternative transportation arrangements for himself by trying to make a call booking for taxis while he was still at his office. His Counsel submitted that it should be noted the accused persons in *Catherine Peter* and *Giuseppe de Vito* did not even try to make other plans. He further submitted although the accused person in *Catherine Peter* did attempt to unsuccessfully flag a cab from the roadside, she stopped short of making a booking for a taxi. This is unlike the Accused who made the extra effort to procure alternative transportation arrangement by making a call booking (albeit unsuccessfully) for taxis. The Accused was unaware that his overseas client's flight out of Singapore was so soon after the end of the business meeting. His Counsel stated that they are instructed that otherwise the Accused would have pre-planned for alternative transportation arrangement for his overseas client such as having his driver on standby or arranging for an advance taxi booking so that the taxi could wait around or the meeting to end.

20 In addition to the above factors, the Accused has a psychiatric history of clinical depression stemming from bipolar affective disorder prior to the offence. The Accused's psychiatric condition coupled with the fact that he was at the material time in the process of picking up the pieces of his marital life put him in a mentally fragile state. Consequently, this resulted in the impairment of the Accused's judgment in taking the keys to the motor vehicle SJY77D from his company and made him susceptible to accepting his overseas client's urgings for the Accused to drive him to the airport. In support of the assertion of his mental state, his Counsel referred to reports from the Taizhou Municipal Bureau of Public Health (and English translations thereof). He submitted that in the Accused's state of depression and undue haste to be hospitable to his overseas client, the Accused unwisely drove to meet his overseas client to drive him to the airport. The Accused deeply regrets his lapse of judgment and is remorseful.

#### *Section 3(1) read with 3(2) Motor Vehicle (Third-Party Risks & Compensation) Act*

21 His Counsel referred to my decision in ***PP v Lian Chee Yeow Michael [2011] SGDC 190*** to submit that the sentencing norm for a first offender for the offence of driving without the necessary insurance coverage in respect of third-party risk unless there are aggravating circumstances. When I highlighted to him that the Accused has a previous antecedent for the same offence, his Counsel deleted the sentence in the mitigation plea that the Accused is a first offender. He submitted that the Accused was faced with an emergency and had explored every reasonable alternative before driving by attempting to book a taxi and by attempting to contact his driver. There was no accident and there are no aggravating factors that would warrant a departure from imposing a fine. He added that the present offence stemmed from his offence under Section 43(4) Road Traffic Act. Each offence flowed from the other and formed part of one transaction.

#### *Rule 2(1) Road Traffic Rules*

22 His Counsel submitted that a first offender shall be liable to a fine not exceeding \$1,000 or to imprisonment for a period not exceeding three months. Given that the Accused is a first offender, in the circumstances, a fine would be appropriate for him.

23 His Counsel further submitted that ultimately, the circumstances surrounding the commission of the offences make the imposition of a custodial sentence unusually harsh. There is little risk of recidivism by the Accused given the one-off nature of the facts surrounding his offences.

#### *Other mitigating factors*

*i Only one other antecedent*

24 It was submitted that the Accused has only one other antecedent. I noted that this assertion is erroneous as he had admitted to his prior road traffic antecedents in 1993 and 2009 without any qualifications. His Counsel submitted that the Accused's present offences were at the material time just three months shy of the expiration of the two years' disqualification imposed on his driving.

*ii Served a self-imposed extended period of disqualification from driving*

25 His Counsel submitted that the Accused is remorseful and voluntarily abstained from applying for a fresh driving licence even after his original disqualification ended in February 2011. According to his Counsel, the Accused has effectively already served a year of driving disqualification and urged the Court to take this fact into consideration in determining the appropriate disqualification for the present case.

*iii Remorse and full cooperation with the Traffic Police*

26 It was submitted that from the beginning, the Accused has been remorseful and fully cooperative with the traffic police. He assures the Court that he will abide fully with all the road traffic laws from now on and has learnt his lesson.

*iv Pleaded guilty at the earliest opportunity*

27 His Counsel submitted that the Accused is deeply contrite and has pleaded guilty as soon as the prosecution had replied to the letter of representation.

*v A custodial sentence could adversely affect the Accused's psychiatric condition and cause hardship to him and his family.*

28 It was submitted that the Accused has recovered from an episode of bipolar disorder brought about by the then impending break-up of his marriage, which he has since put in a tremendous amount of work to rebuild. If his fragile condition is shaken by a custodial sentence, he could suffer a relapse of his psychiatric condition. His Counsel further submitted that the Accused's relationship with his two young children is very close and that they require his presence and care as a father. A custodial sentence will hence be most difficult on the Accused's two young children who will be bereaved of a father figure in their lives.

*vi A custodial sentence will cause hardship to the Accused's employees and suppliers*

29 In addition, it was submitted that a custodial sentence on the Accused would affect the livelihoods of the more than 80 employees who are dependent on him and who work in his company and its overseas branch offices. The Accused is the accounts signatory to his company; if the Accused is incarcerated, none of the employees under his payroll or the company's suppliers will get paid.

*vii A custodial sentence will doubly penalize our client*

30 His Counsel submitted that the Accused is the CEO of his company and also the sole legal representative of his Shanghai office and the sole Singaporean director of his Malaysian operations. The Accused spearheads most of his company's directives and is the representative of most of his company's business initiatives. Consequently, a custodial sentence would effectively stop most of his company's business operations. In the light of the above, a custodial sentence would doubly penalize the Accused by both incarcerating him and financially ruining him and the company.

*viii No accident or damage to property*

31 His Counsel urged the Court to take cognizance of the fact that there was no accident caused, no damage caused to any public or personal property and no one was injured as a result of the Accused's momentary lapse of judgment. Taking into consideration these additional mitigating factors as well as the extenuating circumstances surrounding the client's commission of the offence, it was submitted that a fine would appropriately reflect the culpability of the Accused and be a sufficient deterrence to him.

### **Prosecution's Reply to Mitigation Plea**

32 In response to paragraph 21 and Tab E of the mitigation plea which made reference to his psychiatric condition, DPP Norman Yew submitted that the reports does not establish any causal link between the offence and the psychiatric issues. It was further submitted that the present case is clearly a case where the Accused was given two choices; firstly to promote road safety by not driving and abiding by the law and his second choice is to please his client. He has clearly chosen the wrong side of the law in this particular case.

33 The prosecution submitted that if the present case is compared with PP v Giuseppe De Vito, the Accused's reasons for driving under disqualification and breaking the law has no mitigating value. In Giuseppe De Vito's case, the accused drove under disqualification because the wife was suffering from vaginal bleeding.

I then highlighted to the prosecution that the accused in that case had driven in anticipation of a medical emergency. The prosecution further submitted in that case, there were some health risks involved but there is no risk in the present case.

34 It was further submitted by the prosecution the argument based on financial hardship by the defence did not constitute sufficient hardship to have mitigating value. The prosecution was of the view that the argument that a custodial sentence would cause the Accused's children to '*be bereaved of a father figure in their lives*' to be a bit of an exaggeration.

35 On the point of administrative problems in the Accused person's company in the event he is incarcerated, the prosecution submitted that financial arrangements and personnel movements could be made. In light of the aggravating factors and the real mitigating factors in this case, a custodial sentence and disqualification period that is longer than the normal range would be warranted for this particular Accused person.

### **Reply by the Defence**

36 In reply to the prosecution's submissions, Mr Derek Kang highlighted that there was no pressing health issue in *Catherine Peter's* case either. In addition, in both the cases of *Giuseppe De Vito* and *Catherine Peter*, they had driven reasonably shortly after disqualification period. For *Catherine Peter*, she had driven within four months of her disqualification.

37 I then highlighted to the defence that it was the Prosecution's contention that the Accused had driven a day after his disqualification for the charge that was taken into consideration before me (i.e. DAC 14239/2011). In response, it was submitted that he was talking about the November 2010 charge for which he is convicted. He further submitted that for the drink driving case, it was committed while he was having marital problems.

### **The Sentence**

38 After a careful consideration of the facts and circumstances of the case, his plea in mitigation as well as the prosecution's submissions on sentence, I was of the view that there was no causal link between his mental state and the commission of the offence. I was also of the view that the facts in the present case did not justify a departure from the usual sentencing tariff of a custodial sentence. Accordingly, I sentenced the Accused as follows:

i) **DAC 14236/2011**

- 6 weeks' imprisonment and a disqualification from holding or obtaining a driving licence for all classes of vehicles for a period of three years;

- ii) **DAC 14237/2011** - \$1,000 in default 5 days' imprisonment and a disqualification from holding or obtaining a driving licence for all classes of vehicles for a period of two years from the date of conviction;
- i) **DAC 14238/2011** - \$400 in default two days' imprisonment;
- His total sentence was: 6 weeks' imprisonment, a fine of \$1,400 in default seven days' imprisonment and a total period of disqualification from holding or obtaining a driving licence of three years for all classes of vehicles.

39 After I had sentenced the Accused, dissatisfied with sentence imposed by me for the first charge in **DAC 14236/2011** where an imprisonment term was imposed, the Accused lodged a Notice of Appeal on the same day in respect of the said charge. He is presently on bail of \$15,000 pending the hearing of his appeal. The fine imposed for the two other proceeded charges has been paid in full.

40 I now provide the reasons for my decision.

## **Sentencing Considerations**

### **Section 43(4) Road Traffic Act**

41 The offence of driving whilst under disqualification is punishable with a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years' or to both.

### **Case Law**

42 Due to the serious nature of this offence, the usual tariff for a charge under Section 43(4) is a custodial sentence of between 4 to 8 weeks' imprisonment and an order of disqualification of at least 3 years for all classes of vehicle. As highlighted by the prosecution in their address on sentence, this position has been clearly established in the case of **Chng Wei Meng v Public Prosecutor 2 SLR(R) 566**, where the Honourable the Chief Justice Yong Pung How stated as follows:

*42 In **Samnasivam s/o Sharma v PP [1992] 2 SLR 580**, I held that unless special circumstances of the case can be shown, magistrates should not hesitate to impose a substantial sentence of imprisonment. That statement of mine should now be reconsidered in the light of legislative amendments to s 43(4) in April 1993. On 25 April 1993, Parliament amended the provision by removing the words 'special circumstances' hence eliminating the fetter on the court's discretion to impose a custodial sentence. The current position in the amended s 43(4) is that an offender shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding three years or to both. The courts now clearly have an absolute discretion in every situation to determine the types and extent of the various sentencing options, subject to the limits of punishment as prescribed by the legislature.*

*43 I was firmly of the view that the courts have an interest and a duty to the people of Singapore to ensure strict compliance with our safety regulations and promote the safety and security of our roads and highways. Driving while under disqualification is about as serious an offence as a motorist can commit. Not only does it compromise the safety of our roads; it also creates problems in ensuring adequate compensation for luckless victims. Prima facie, motorists who drive while disqualified must now expect a term of imprisonment and not merely a fine. In addition, the irresponsible motorist who has knowledge of an order of disqualification made against him but who continues to drive in blatant disregard of the law and the authority of the courts can also expect to face the full impact of the law upon him and receive enhanced custodial sentences.*

In **Chng's** case, the High Court had affirmed the trial judge's sentence of one month imprisonment in respect of the offence of driving while under disqualification pursuant to Section 42A Road Traffic Act. It must be highlighted that such a sentence is only a starting point and for the more serious offence of driving while under disqualification **after** a Court conviction, an accused person should expect a longer custodial sentence especially where there are aggravating facts.



43 This position was once again affirmed by the Honourable the Chief Justice Chan Sek Keong in **Public Prosecutor v Lee Cheow Loong Charles** [2008] 4 SLR 961 [at 29] where he cited with approval the description of such an offence in **Chng's** case [at 43] as being:

*"...is about as serious an offence as a motorist can commit...[T]he irresponsible motorist who has knowledge of an order of disqualification made against him but who continues to drive in blatant disregard of the law and the authority of the courts can also expect to face the full impact of the law upon him and receive enhanced custodial sentences."*

He also stated:

*"31 It is clear that driving whilst under disqualification is a serious offence which is to be punished strictly because of the danger posed to the public and the offender's complete disregard for the earlier disqualification order imposed by the court."*

*32...General and, especially, specific deterrence are important considerations in offences such as the present one, which are very difficult to detect."*

In **Lee's** case, on an appeal by the Prosecution, the Honourable the Chief Justice Chan Sek Keong enhanced the original sentence of two months' imprisonment and disqualification from obtaining holding a driving licence for all classes of motor vehicles for 3 years after release from prison for an offence under Section 43(4) Road Traffic Act to a sentence of twenty four months' imprisonment but did not disturb the disqualification order.

#### *Recent Cases*

44 In **PP v Rennie Seow Chen Hua** [2007] SGDC 131, the accused had been stopped for driving at 96 km/h in excess of the speed limit of 60 km/h along Bishan Road. On screening him, it was discovered that his driving licence had been disqualified for a period of 18 months. He pleaded guilty to three charges, namely a charge of driving whilst under disqualification, a charge of using a vehicle without the necessary insurance coverage in respect of third party risks and a speeding charge. In his mitigation, the accused, a Vice President of ABN-AMBRO Bank heading its Financial Institutions, Public Sector and Real Estate commercial banking department, had driven to his in-laws' house to retrieve pain medication for his wife who had complained of abdominal and menstrual pain the previous night and had 'completely forgot' that he was under a driving disqualification. He was sentenced to six weeks' imprisonment and a disqualification for three years for all classes of vehicles from his release for the charge of driving whilst under disqualification, a fine of \$500 in default three days imprisonment and a disqualification of 12 months for all classes of vehicle for the charge of using a vehicle without the requisite insurance charge and a fine of \$1000 in default five days' imprisonment and a disqualification for four months' for all classes for the speeding charge. He filed an appeal against the sentence of six weeks' imprisonment and 3 years' disqualification for all classes of vehicles upon his release for the driving whilst under disqualification charge. On the date of the hearing of his appeal, the accused applied for leave to withdraw his appeal and Lee Seiu Kin J granted leave for him to withdraw his appeal.

45 In **PP v Ng Peng Han** [2009] SGDC 307 the accused was stopped by a police officer who had observed him using a mobile phone whilst driving. Upon screening, it was discovered that he was driving whilst under disqualification. Accused had 4 previous convictions for driving whilst under disqualification and was last sentenced to 2 years' imprisonment and disqualification for life all classes. He pleaded guilty to a charge of driving a motor vehicle whilst under disqualification and a charge of using a mobile telephone while driving. Two other charges of taking and using a motor vehicle without the owner's consent and a charge of using a motor vehicle without an insurance policy or security in respect of third-party risk were taken into consideration. He was sentenced to 4 years' imprisonment and a disqualification for all classes for life for driving whilst under disqualification as Section 67A(1) Road Traffic Act invoked and fine of \$800 in default 4 days' imprisonment and disqualified for all classes for life for using mobile telephone whilst driving. On appeal by the Accused, Choo Han Teck J dismissed the appeal.

46 In **PP v Tan Chen Chey** [2009] SGDC 485 the accused had alcoholic breath when he was stopped by a police officer for checks and he failed the breathalyser test. His level of alcohol was 46 microgrammes alcohol in 100 millilitres of breath. It was discovered that he was driving whilst under disqualification and as such there was no insurance policy or security in respect of third party risks. He had a previous conviction for drink driving and was fined \$2500 and disqualified for 18 months for all

classes. He was sentenced to 3 weeks' imprisonment, \$5,000 in default 10 days and a four years' disqualification for all classes' from release for drink driving, 8 weeks' imprisonment and a three years' disqualification for all classes for the driving whilst under disqualification and \$500 in default 3 days imprisonment and disqualified for 12 months' all classes from the date of conviction for using the vehicle without the requisite insurance coverage. Imprisonment terms were to run concurrently. On appeal by the Accused, V K Rajah JA dismissed the appeal.

47 In **PP v Choo Puay Lan** [2010] SGDC 64, the Accused had driven her motor van to deliver periodicals when she was stopped by the police. Her delivery helper had refused to turn up for work to make the deliveries. Licensing Officer from Traffic Police confirmed that she was driving whilst under disqualification and as such did not have insurance policy or security for third-party risk. The Accused had previous conviction of using a mobile telephone while driving and was fined \$800 and a disqualification for 6 months' all classes. She was sentenced to 6 weeks' imprisonment and disqualified for 3 years all classes for the driving whilst under disqualification and \$500 in default 3 days imprisonment and disqualified for 12 months' all classes from the date of conviction for using the vehicle without the requisite insurance coverage. On appeal by the Accused, leave was granted by VK Rajah JA for her to withdraw appeal.

48 In **PP v Muhammad Fazil Bin Azman** [2010] SGDC 186, had pleaded guilty to two charges, namely a charge of riding whilst under disqualification under Section 43(4) Road Traffic Act (Cap 276) and a charge of using a vehicle whilst there was not in force the requisite policy of insurance or security in respect of third party risks under Section 3(1) and punishable under Section 3(2) Motor Vehicle (Third Party Risks and Compensation) Act (Cap 189). A third charge of careless driving under Rule 29 Road Traffic Rules was taken into consideration for the purpose of sentencing. The accused was riding his motorcycle along Upper Serangoon Road towards Hougang, when he collided into the rear of a vacuum tanker. Upon screening with Traffic Operations Command Centre, it was discovered that defendant's driving licence had been disqualified. He was sentenced to 8 weeks' imprisonment and a disqualification from holding or obtaining a driving licence for all classes for a period of three years for the Section 43(4) Road Traffic Act charge and fined of \$1,000 in default 5 days' imprisonment and a disqualification from holding or obtaining a driving licence for all classes for a period of two years from the date of conviction for the Section 3(1) Motor Vehicle (Third Party Risks and Compensation) Act charge. An appeal was filed against his sentence and in his attempt to persuade the Court not to impose the usual tariff of a custodial sentence in respect of a charge of driving whilst under disqualification, the Defence Counsel, in that case had sought to argue that the High Court decision of **Chng Wei Meng v Public Prosecutor** [2002] 4 SLR 595 by Chief Justice Yong Pung How was not good law and should not be followed by this Court as it 'usurps the legislative intent' that the Court should consider the option of sentencing to a fine only by stipulating that every person convicted under Section 43(4) must be imprisoned. His appeal against sentence was dismissed by Chao Hick Tin JA.

49 In **PP v Lian Chee Yeow Michael** [2011] SGDC 190, the accused was stopped at a police road block along Still Road South. Upon checking, it was discovered that his driving licence had been disqualified for 5 years for causing death by rash or negligent act under Section 304A Penal Code. In his mitigation, it was submitted that he had taken over from his brother along the ECP as his brother was too tired and was driving in an unsteady manner. Both the accused and his brother were on the way home from providing cleaning, backstage services for the grand opening of the Resorts World Sentosa Casino. Although a report that both of them suffered from depression were submitted to Court, the report indicated that the accused did not have a mental disorder at the time of the offence. He was sentenced to four 4 weeks' imprisonment and disqualified for a period of 10 years' for all classes for driving whilst under disqualification and fined \$500 in default 3 days' imprisonment and disqualified for a period of 10 years' for all classes for using vehicle without insurance coverage. His appeal against sentence was dismissed by Chao Hick Tin JA.

50 In **PP v Tan Thiam Soon** [2011] SGDC 22, the accused was involved in an accident with a motorcycle at the signalized junction of Merpati Road while travelling along Aljunied Road (towards Upper Aljunied Road) whilst driving his motor car. Investigations subsequently revealed that the Accused was driving his car whilst he was under an order of disqualification. As he had also been driving the motor car without a driving licence, there was not in force the requisite policy of insurance or security in respect of third party risks. He had a previous for drink driving under Section 67(1)(b) Road Traffic Act (Cap 276) five months prior to the present charge where he fined \$3,000 and was disqualified from holding or obtaining a driving licence for all classes of vehicle for 2 years. He was sentenced to 8 weeks' imprisonment and to be disqualified from holding or obtaining a driving licence for a period of 5 years with effect from the date of conviction for driving whilst under disqualification and fined \$600 and to be disqualified from holding or obtaining a driving licence for a period of 5 years with effect from the date of conviction for using the vehicle without the requisite insurance coverage in respect of third-party risks. His appeal against his sentence was dismissed by V K Rajah JA.

## **Sentencing Considerations**

51 In its consideration of the appropriate sentence to be imposed for a charge of driving whilst under disqualification, the Court has to take into account all the surrounding circumstances of the particular case, the existence of similar or related antecedents, the risk of the Accused causing injury to people or damage to property on the road such as whether there was poor control of the vehicle, whether it was a recent disqualification, whether the Accused was driving under the influence of alcohol or other relevant factors, to see what kind of sentence is appropriate for the situation. In my examination of the present case, I noted that there were several aggravating factors.

### ***Aggravating Factors***

*(i) Drove a motor vehicle one day after being disqualified by the Court*

52 In the present case, as highlighted by the prosecution I noted that the Accused had driven motor vehicle SJH9989C on **5 February 2009** barely one day after his conviction for the offence of drink driving on 4 February 2009. In addition, he had committed several other road traffic offences as reflected in **DAC 14239/2011** to **DAC 14242/2011** on 5 February 2009 whilst driving the said car. I agreed with the prosecution that the fact that he could do so soon after being disqualified from driving for a period of two years by the Court showed his scant regard for the law.

*(ii) Drove a motor vehicle once again after being disqualified by the Court*

53 Further, despite being caught driving on 5 February 2009 for several road traffic offences and before these matters were dealt with, on **3 November 2010**, once again the Accused proceeded not only to drive another vehicle i.e. SJY77D whilst under disqualification but had also used the vehicle without the requisite insurance coverage or security in respect of third-party risks and had failed to give the proper signal whilst changing lanes. In my view, his Counsel's submissions that the Accused is sufficiently well-to-do such that he would have been able to make good any third-party claims that might have been made against his insurance policy had he been responsible for any accidents had very little mitigating value nor could it be used to justify his act of driving whilst under disqualification. Hence, I agreed with the prosecution's position that it is clear from here that the Accused is a recalcitrant offender.

*(iii) No immediate or life threatening emergency to attend to*

54 In the present case, the Accused had driven from his office at Ngee Ann City to pick up his client for a meeting at CHIJMES and subsequently to the airport. According to the Accused, the meeting with his client was arranged at short notice and the Accused's driver whom he had engaged was unavailable that evening. He was unable to obtain a taxi despite making several telephone calls for one. He drove the motor vehicle SJY77D to send the client to the meeting venue at Chijmes and subsequently to the airport at his client's request. On the facts, as highlighted by the prosecution, I noted that the Accused had driven for quite a distance to several locations unlike both the accused person in *Catherine Peter* and *Giuseppe de Vito* who had driven short distances.

55 On the facts, I found the reasons provided by the Accused could not be said to constitute an emergency that left him with no other choice but to drive on the day in question. I also found that on the facts, there were no real emergency or life threatening situation for the Accused to attend to and I was not satisfied that there were no other alternative transport arrangements available to him on the day in question or that he had even tried hard enough to find one. As the Chief Executive Officer of STAG Group Pte Ltd, it is inconceivable that he could not seek the assistance of his subordinates or employees to provide the necessary transport for his client for the meeting at CHIJMES and thereafter to the airport. I also found it difficult to accept his assertion that he was unable to obtain a taxi despite making several telephone calls for one bearing in mind that there are seven taxi companies in Singapore for him to choose from and that his meeting at CHIJMES was in a central part of town.

*Mental State of the Accused*

56 In his plea in mitigation, it was submitted that the Accused has a psychiatric history of clinical depression stemming from bipolar affective disorder prior to the offence. It was also submitted that his psychiatric condition coupled with the fact that he was at the material time in the process of picking up the pieces of his marital life put him in a mentally fragile state. In support of the assertion of his mental state, his Counsel had tendered reports in the Chinese language together with the English translations with some illegible texts noted from the Taizhou Municipal Bureau of Public Health in China. After a careful examination of the English translations, I noted it was unclear from the various reports who were the doctors who had examined the Accused and whether they were indeed qualified to provide an expert opinion on the mental state of the Accused person. In addition, as highlighted by the prosecution, there was no evidence of a causal link between the commission of the offences and the Accused state of mind at the time of the offences. Accordingly, I placed very little weight on these reports in my sentencing considerations.

#### *Prior Road Traffic Antecedents*

57 Contrary to his Counsel's assertion that the Accused had only one other antecedent, the Accused himself had admitted that he had prior road traffic antecedents not only on 4 February 2009 but also on 20 July 1993. This is unlike the accused persons in *Catherine Peter* and *Giuseppe de Vito* who both had only one prior antecedent for drink driving.

58 In my view, on the facts of the present case there were no exceptional facts in his plea in mitigation that warranted a departure from the usual sentencing norm of a custodial sentence. It is clear from the newspaper articles in TODAY and the Straits Times in the Bundle of Authorities and Documents tendered by the defence that the sentences imposed on appeal for the cases of *Catherine Peter* and *Giuseppe de Vito* are 'one-off' cases and not to be used as sentencing precedents. On the facts, I was of the view that the other mitigating factors listed as paragraphs 29 items *v*, *vi* and *vii* on the impact of a custodial sentence on his family and his businesses have been greatly overstated bearing in mind that the period of incarceration imposed is not a lengthy one. As highlighted by the prosecution, the Accused person could make still alternative financial or personnel arrangements during his absence from work.

59 In the present case, it was clear that there was no immediate or life threatening emergency to be attended to which left him with no choice but to drive. The Accused had clearly not only acted in blatant disregard of the law and the authority of the courts as he had driven on more than one occasion whilst under disqualification and had also committed other road traffic offences. As highlighted by both Chief Justice Yung Pung How in **Chng's** case and Chief Justice Chan Sek Keong in **Lee's** case, the Accused as an irresponsible motorist who has knowledge of an order of disqualification made against him but who continues to drive in blatant disregard of the law and the authority of the courts should expect to face the full impact of the law upon him and receive enhanced custodial sentences.

60 In my view, in such a case, as a form of specific and general deterrence, public interest compels me to impose a stern sentence on the Accused as well as other like-minded potential offenders to deter them from re-offending and to send the message that the Court adopts a zero tolerance approach towards acts which constitutes offences against public safety. Accordingly, I imposed a sentence of 6 weeks' imprisonment and a disqualification from holding or obtaining a driving licence for all classes of vehicles for a period of three years for the offence of driving whilst under disqualification under Section 43(4) Road Traffic Act in **DAC14236/2011**.

61 In my view, this sentence is within my powers to impose and is fair and appropriate having regards to the facts and circumstances of the present case. To my mind, the sentences reflect the need to show the Court's zero tolerance approach towards acts which constitutes offences against public safety as well as the Court's strict approach towards persons such as the Accused who put other law abiding road users at risk and who show blatant disregard of the law and the authority of the courts.

62 The Accused is dissatisfied with his sentence for the first charge in **DAC14236/2011** and now appeals against it.

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