HONG KONG / JUDGMENT

HKSAR V. BRAR, GURWINDER SINGH

[2024] HKCFI 1817

COURT
Court of First Instance

DECIDED
6 June 2024

CASE / FILE NUMBER
HCMA365/2023

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HCMA 365/2023

[2024] HKCFI 1817 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO 365 OF 2023 (ON APPEAL FROM STCC NO 2180 OF 2023)

BETWEEN HKSAR Respondent and BRAR, GURWINDER SINGH Appellant

Before: Hon S T Poon J in Court Date of Hearing: 6 June 2024 Date of Judgment: 6 June 2024

J U D G M E N T

The appellant was convicted of the offence of driving a motor vehicle with alcohol concentration and driving exceeding the prescribed limit. He was sentenced for 240 hours community service order, fined $10,000 and disqualified from driving for 3 years. And he was also ordered to attend a driving improvement course at his own costs within the last three months of the period of disqualification before he can qualify to drive again. The appellant now appeals against his sentence. At the hearing before me, Mr Chan, counsel for the appellant informed the court that the appellant had in fact finished performing the community service order and therefore at this hearing, Mr Chan will focus on the sentence of disqualification and the fine. Mr Chan submitted that the sentence imposed by the learned magistrate is manifestly excessive, as in the present case, the concentration of alcohol only exceeded 6 milligrammes which rendered the offence a tier 1 offence. And therefore, the maximum order for community service order of 240 hours while the police officer recommended 80 hours in her report and the disqualification order for 3 years against the minimum sentence provided under the ordinance for 2 years and also the

$10,000 fine all added together is manifestly excessive. In the learned magistrate's statement of findings, she put particular emphasis on the appellant's long history of traffic offence records. At paragraph 15 of the statement of findings, the learned magistrate said the Defendant has a long history of driving records and clearly is no stranger to road traffic offences. He has repeatedly committed traffic offences including careless driving, driving a vehicle without a driving license, failing to comply with traffic signals, driving without third party insurance and speeding. Not to mention that apart from these offences mentioned by the learned magistrate, the appellant had also a previous drink driving record which he was sentenced to 140 hours community service order and also a fine. In the statement of findings, the learned magistrate also mentioned that she was in fact particularly generous not ordering an immediate custodial sentence for the appellant. I am of the view that the magistrate is entitled to take into account the appellant's long history of traffic offences in considering her sentence. In looking at the appellant's traffic record, he has committed three times of careless driving, and the offence of using a vehicle without insurance. These are very serious traffic offences. And in total, including speeding and failing to comply with traffic signals, there are altogether over 15 traffic offences. This is also his second time of committing the offence of driving under the influence of alcohol within two years. Obviously, the previous sentence imposed on the appellant had not been successful in deterring the appellant from committing further traffic offences. I am of the view that the learned magistrate is entitled and also is right to consider a more serious sentence this time to prevent the appellant from committing further serious traffic offences. And in my view, even if the learned magistrate considered a custodial sentence for the present offence, it will not be manifestly excessive. In the circumstances, I consider that the sentence imposed by the magistrate is appropriate and I see no reason to disturb her decision. I order that appeal be dismissed. (S T Poon) Judge of the Court of First Instance High Court Mr Lau Chirk-yen Jason, SPP of the Department of Justice, for the respondent Mr Kleon Chan, instructed by Chaudhry Solicitors, for the appellant

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Prepared on 29 October 2026 · Esheria