

HONG KONG / JUDGMENT

HKSAR v. KWOK CHING YEUNG

[2021] HKCFI 3457

COURT

Court of First Instance

DECIDED

22 November 2021

CASE / FILE NUMBER

HCMA114/2020

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bjbj HCMA 114/2020

[2021] HKCFI 3457 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO 114 OF 2020 (ON APPEAL
FROM KCS NO 500439 OF 2020)

BETWEEN HKSAR Respondent and KWOK CHING-YEUNG Appellant

Coram: Hon S T Poon J in Court Date of Hearing: 3 September 2020 Date of Reasons for
Judgment: 22 November 2021 R E A S O N S F O R J U D G M E N T

Background

The Appellant pleaded guilty before Special Magistrate Mr Yu Chun Pong (the Magistrate) to a summons of Speeding , contrary to section 41(1)(a) of the Road Traffic Ordinance, Cap. 374 (the Ordinance) and was sentenced to (i) fine of \$4,000; (ii) disqualification from driving all classes of vehicles for 6 months; (iii) attend and complete a driving improvement course at his own costs; and (iv) retake driving test. The Appellant appeals against the fine of \$4,000 and the order to retake driving test. The Speeding offence took place on 28 October 2019 at the Kwun Tong Bypass, Kowloon when the Appellant was driving his vehicle at 122 km/h where the speed limit enforced was 70 km/h. In mitigation, the Appellant claimed that he was in rush to go back home to take his 6-year old son who was having a fever to see a doctor. After the Magistrate made the order to retake driving test, he urged the Magistrate not to make the order as he needed to drive light goods vehicle during his work and it would have taken one year to arrange for the test. In his Reasoning the driving skills of the convicted person, such as old age or infirmity, or reason of public benefit, or the facts of case show that he was driving inappropriately. If there was nothing wrong with his driving skills then there is no basis for making the order to retake the driving test. The Magistrate considered that (a) the subject road sections do not have hard shoulders with one

vehicle width; (b) there are many bends with distance not far apart; there are traffic merging points; and the 70km/h speed limit in force in the subject road is not an overly cautious design. The Magistrate stated that the Appellant exceeded the speed limit on the road by no less than 52km/h and his actual speed was no less than 122 km/h. This was far more than the 110 km/h limit imposed in Hong Kong. For the above reasons the Magistrate found that the Appellant had either failed to abide by the law and had low safety awareness, or he had poor driving skills. In order to safeguard the safety of the Appellant and the public, the Magistrate considered that he must be sure the Appellant could pass the driving test before he would allow the Appellant to drive again. The Magistrate considered that while it was not common to see cases of speeding which exceed 45km/h in Hong Kong urban area, but in Kowloon City Magistrates Courts, there were similar cases each day out of which most of them occurred in the Kwun Tong Bypass which is a matter of concern. In the present case, the speeding was at the highest level and in fact exceeded the speed limit allowed in any road in Hong Kong. The offence occurred at 2250 hours. Although it was not the busy hours, it was also not the early hours. The subject road consisted only of 2 lanes. The magnitude of the speeding was serious which could create fear for the other drivers on the road. The learned magistrate considered that the only mitigating factor was the Appellant's guilty plea. The Appellant also had prior speeding records. Having considered all factors, the Magistrate imposed a fine of HK\$4,000. Grounds of Appeal The Appellant's grounds of appeal are as follows: The fine of \$4,000 was the maximum permitted by law and took no account of the Appellant's guilty plea; The order to retake the driving test was also wrong in principle. For Ground (1), Mr Boyton, counsel for the Appellant, admitted that the maximum fine for the offence is in fact HK\$5,000 as pursuant to section 113C(2) and Schedule 8 of the Criminal Procedure Ordinance Cap. 221, the fine of HK\$4,000 had been converted to a Level 2 fine.

Judgment

I am of the view that the fine imposed is manifestly excessive and the order to retake driving test is wrong in principle. Although a one-third discount for guilty plea should not be rigidly applied to cases where a fine is imposed, in the present case, by imposing a fine of \$4,000 the Magistrate should have had in mind a starting point of \$5,000 or more before giving a discount for the Appellant's guilty plea. The offence committed by the Appellant was driving in excess of 45km/h. In the present case, the Appellant had exceeded 52 km/h of the speed limit, which is 7 km/h more than the minimum speed that can lead to committing the present offence. In my judgment, this is not a case where a starting point of maximum fine should be considered and the fine of \$4,000 is manifestly excessive. Regarding the order to retake the driving test, apart from speeding, I do not see any other factors which can be indicative of the Appellant's poor driving skills in the present case. As I have mentioned before, the extent of speeding in this case cannot be categorized as the most serious types for this offence. The sentences prescribed under the Ordinance for the present offence are already serious. People committing the offence will face a mandatory disqualification of driving licence and attendance of driving improvement course. By imposing an order to retake the driving test against the Appellant in the present case is to place an extra punishment to him without justifiable cause. It is punitive in nature and is wrong in principle.

For the above reasons, the Appellant's appeal should be allowed. The \$4,000 fine should be substituted by a fine of \$3,000. The order to retake driving test be set aside. (S T Poon) Judge of the Court of First Instance High Court Ms FOK Sha Sha, Jennifer, SPP of Department of Justice, for the Respondent. Mr BOYTON, David and Ms PAO, Peggy Pak Yiu, instructed by Messrs Jal. N. Karbhari & Co., for the Appellant.

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Respondent s List of Authorities. PAGE * MERGEFORMAT - A B C D E F G H I J K L M N O P Q R S
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