

HONG KONG / JUDGMENT

HKSAR v. WONG MAN

COURT

Court of First Instance

DECIDED

23 January 2007

CASE / FILE NUMBER

HCMA1088/2006

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bjbj HCMA1088/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 1088 OF 2006 (ON APPEAL FROM ESCC 4109 OF 2006)

BETWEEN HKSAR Respondent and WONG MAN (ted on her own plea of an offence of driving a motor vehicle with a breath alcohol concentration exceeding the prescribed limit, contrary to section 39A(1) of the Road Traffic Ordinance, Cap.

374. She was made the subject of a community service order of 200 hours and disqualified from holding a driving licence for two years. She appeals her sentence on the basis that it is manifestly excessive. AUTONUMOUT The facts of the case were that the appellant was driving her motor vehicle at 4:30 a.m. in Kornhill in Quarry Bay when it mounted a pavement and collided with separation railings and a sign Pedestrians ahead . Her vehicle was also badly damaged, but no one was injured. AUTONUMOUT Police attended the scene and breath tested the appellant. She was found to have 82 micrograms of alcohol present in 100 millilitres of her breath, that is nearly four times the prescribed limit of 22 micrograms. The appellant remained silent when arrested and cautioned. She was not charged with careless driving as, for some reason, it was considered there was insufficient evidence. AUTONUMOUT The appellant prior to this had been driving for 14 years and had a clear record. Both Mr Hung for the appellant and Mr Lee for the respondent have taken me through a large number of magistracy appeal authorities concerning penalties which had previously been imposed in drink driving cases. AUTONUMOUT Those authorities are perhaps noteworthy for the variations in the sentences imposed for offences of this sort involving relatively large levels of breath alcohol, and particularly so in terms of the licence disqualification period imposed. AUTONUMOUT But one general principle clearly emerges. The degree to which the level of alcohol in the breath of the offender exceeds the prescribed limit is relevant to the period of disqualification imposed. (See Lau Shu Wing, HCMA1124/1998.) AUTONUMOUT Obviously the greater the margin by which the prescribed level is exceeded then the greater the culpability of the offender. Without attempting to set

out tariffs, but with a view to promoting some consistency in penalty in respect to this offence, it seems to me that where a first offender's breath alcohol level exceeds the prescribed limit by only a small margin, a relatively short period of disqualification could be imposed, perhaps significantly less than 12 months. Where the excess is substantial, then 12 months would be a proper disqualification period, as reflected in many of the authorities produced to me today. In circumstances where there is a doubling or more of the prescribed limit, longer periods of disqualification would be appropriate. Where the breath alcohol level of an offender approaches four times the prescribed limit, a disqualification period of over 18 months should be considered. AUTONUMOUT In the present case the appellant's breath alcohol level was nearly four times the prescribed level. That in my view justified the period of disqualification imposed by the magistrate. It may be thought that, in comparison to the periods of disqualification imposed in previous cases, it is somewhat high, but regardless of whether or not the appellant was charged with careless driving, the effect of that alcohol level upon her driving was plain to see. AUTONUMOUT For no obvious reason other than the effect her alcohol consumption had on her driving, she simply failed to negotiate a reasonably gradual right hand bend and ran onto the pavement. She was obviously travelling at a reasonably fast speed at the time and it was fortuitous there was no one injured. AUTONUMOUT In the circumstances I do not see that the period of disqualification can be said to be manifestly excessive. AUTONUMOUT So far as the further penalty of 200 hours community service is concerned, however, I think that to be too high. It approaches the upper range of such orders. I note from the report obtained by the magistrate prior to sentencing that 80 hours of service for the appellant was recommended by the probation officer. AUTONUMOUT In my judgment the 200 hours of community service ordered combined with the period of licence disqualification leads to too great a totality of sentence in the circumstances of this case, bearing in mind also the previous clear traffic record of the appellant. AUTONUMOUT In my view an appropriate order in this regard would be 100 hours. AUTONUMOUT Accordingly, the appeal against sentence is dismissed except that the order that the appellant serves 200 hours community service is set aside and replaced with an order that she serves 100 hours of community service. (M.A. McMahon) Judge of the Court of First Instance, High Court Mr Robert K.Y. Lee, SGC of the Department of Justice, for HKSAR Mr Hung Wan Shun, Stephen, of Messrs Pang, Wan & Choi, for the Appellant PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V &`#\$ & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 26 October 2026 · Esheria