

HONG KONG / JUDGMENT

HKSAR v. WONG YU KIN

COURT

Court of First Instance

DECIDED

9 May 2002

CASE / FILE NUMBER

HCMA353/2002

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bjbj HCMA353/2002 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO.353 OF 2002 (ON APPEAL FROM TWCC 716 OF 2002)

BETWEEN HKSAR Respondent and WONG YU KIN Appellant

Before : Deputy High Court Judge McMahon in Court Date of Hearing : 9 May 2002 Date of Judgment : 9 May 2002

J U D G M E N T

AUTONUMOUT This is an appeal against sentence only. The appellant was convicted of an offence of driving whilst disqualified, contrary to section 12(2)(b) of the Road Traffic (Driving Offence Points) Ordinance, Cap.375 of the Laws of Hong Kong, in respect of which he was sentenced to two months imprisonment, suspended for 18 months and fined \$2,000. He was convicted also of using a vehicle without third party insurance, contrary to sections 4(1) and 4(2) (a) of the Motor Vehicle Insurance (Third Party Risks) Ordinance, Cap.272 of the Laws of Hong Kong, in respect of which he was sentenced to a period of disqualification from holding or obtaining a driving licence for 12 months and fined \$2,000. AUTONUMOUT He appeals those sentences before me on the basis that they were too severe so far as the period of the disqualification imposed upon him is concerned and the period and term of the suspended sentence of imprisonment which was imposed. He does not challenge the level of fine. AUTONUMOUT In support of his grounds of appeal, the appellant urges upon me that the magistrate failed to take into account the special circumstances of the offence. Those special circumstances which he relies upon were that on the occasion of the offence his pregnant girlfriend had been taken ill after dinner at his house. He had then attempted to drive her from

his address on Lantau Island to a hospital in Kowloon City for treatment, and in the course of that journey was stopped by police at a police road block. He said that he could not have his father drive his girlfriend to hospital, his father being the only other person at the house who had a driving licence, because his father was a bus driver and was due to start work the next morning.

AUTONUMOUT In *R. v. Lui Wing Hang*, HCMA No.502/1997, which is a similar case of an offender seeking to mitigate his sentence for the driving whilst disqualified of an ill family member to receive medical treatment, Yeung J said : Driving while disqualified and hence, without third party insurance, is a very serious offence as other innocent road users who are injured in any traffic accident may be left without any compensation. A term of imprisonment for driving without third party insurance is normally called for. Whether such term of imprisonment will be suspended or not is a matter for the trial Judge to decide depending on the circumstances of each case. And as Beeson J said in the case of *R. v. Yim Chung*, HCMA No.52/2001 in respect of similar offences : These were very serious offences. The Appellant knew full well what he was doing when he was driving while disqualified. He was a menace to other road users because he was driving without third party insurance. AUTONUMOUT There is no doubt that driving whilst disqualified is a serious offence, not the least reason for that is that other road users are placed at risk in the sense that they are no longer protected by the mandatory third party insurance scheme. That is the evil that sentences imposed in respect of these offences are aimed at deterring. AUTONUMOUT The magistrate was aware of this in arriving at his sentence. The circumstances advanced by the appellant in mitigation were properly taken into account by the magistrate at the time of sentence. The magistrate believed there were other reasonable alternatives available to the appellant in terms of helping his fiancée get to hospital, not the least of those it seems to me is that the appellant's father was available for that purpose.

AUTONUMOUT The magistrate concluded quite properly that the circumstances advanced by the appellant in mitigation before him were not sufficiently special so as to exclude the mandatory minimum period of disqualification from operation. He therefore imposed the mandatory minimum period of 12 months disqualification. In my view, he was right to do so. AUTONUMOUT Further, the suspended sentence imposed and the period of suspension, given the risks disqualified drivers do impose on other road users, was also proper. The magistrate had taken into account, in arriving at that suspended sentence, and the period of the suspension, all the circumstances of the case and had properly applied the applicable law. AUTONUMOUT The magistrate, in his Reasons for Sentence, said in this regard : The offence of driving whilst disqualified in this case does warrant a custodial term. In passing sentence, I took into account all relevant mitigation factors including the guilty plea, the explanation of driving given by the Appellant and the fact that he was only disqualified under the driving points system, and not because of any serious traffic offence. In the end, I was satisfied that a suspended sentence was appropriate. AUTONUMOUT Accordingly, the magistrate's sentence in this regard was imposed after proper consideration of the law and the facts. It cannot be criticized. AUTONUMOUT The appellant has further advanced before me today the loss of his employment prospects as an environmental technician as the result of these sentences. In my view, that is not a sufficient basis for any further mitigation of sentence. A period of disqualification from driving no doubt would impinge upon the ability of individuals to perform very many occupations in Hong Kong.

The appellant is not a professional driver, albeit his licence no doubt is of some importance in his work. AUTONUMOUT At the end of the day, I am satisfied that that is no reason for any further mitigation of sentence, and the appeal against sentence is dismissed. (M.A. McMahon) Deputy High Court Judge Mr P.K. Madigan, SGC, of the Department of Justice, for the Respondent/ HKSAR Appellant in person - PAGE - & 6" FatNgan Cheng Normal.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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