



### Summary of Judicial Decision

**SJ v Chu Wing Yin Christine (“the Respondent”)**

**CAAR 5/2018; [2019] HKCA 1459**

**Decision** : **Application for review of sentence allowed (but the sentence was not interfered with in light of the procedural history of the case)**

**Date of Hearing** : **12 July 2019, 23 September 2019**

**Date of Judgment** : **23 December 2019**

### Background

1. In the morning on 3 November 2017, the respondent was driving a private vehicle along Gascoigne Road at about 50 km/h. When she approached a pedestrian crossing against a red traffic signal, she failed to stop and did not slow down at the pedestrian crossing. As she drove past it, her vehicle hit three pedestrians. As a result of the incident one pedestrian suffered from aphasia, right body paralysis, movement difficulties, and mild cognitive impairment. She also required a caregiver to give her daily assistance. Immediately after the accident she had to undergo brain surgery and was discharged from hospital on 7 December 2017. As at 3 January 2018 she had residual dysphasia and acalculia. The other two pedestrians suffered from splenic laceration and other relatively more minor injuries respectively.
2. The respondent pleaded guilty in the District Court to one charge of causing grievous bodily harm by dangerous driving, contrary to section 36A of the Road Traffic Ordinance (Cap. 374), and was sentenced to a community service order (“CSO”) of 200 hours, a disqualification order of 4 years, and was required to take a driving improvement course at her own expense within the last three months of said period of disqualification.

### Issues in dispute

3. Was the sentence of CSO imposed on the respondent, being a non-custodial sentence, wrong in principle for an offence of causing grievous bodily harm by dangerous driving?
4. Was the sentence in any event manifestly inadequate?

### Department of Justice’s Summary of the Court’s rulings

(full text of the Court of Appeal’s judgment at

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=126315&QS=%2B&TP=JU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=126315&QS=%2B&TP=JU))

5. For an offence of causing grievous bodily harm by dangerous driving, the dominant sentencing consideration is the culpability of the defendant. That includes firstly the objective dangerousness of the defendant’s driving and



- secondly his moral culpability. (paragraphs 53-55, 78)
6. The sentencing court will also consider the harm and impact caused by the defendant's driving to the victims. (paragraphs 56-57, 79)
  7. The normal sentence for this type of offence is one of immediate custodial sentence. The length of sentence will be determined by an assessment of the two factors of culpability and harm, bearing in mind that the maximum sentence for the offence is 7 years' imprisonment on indictment. Only in exceptional circumstances would other sentencing options be available and this will be dependent upon the circumstances of the offence and of the offender. (paragraphs 58, 81)
  8. Other relevant orders including disqualification from driving, driving improvement course and compensation will also be considered. (paragraph 83)
  9. Aggravating factors for the offence may include (i) the extent and nature of the injuries inflicted; (ii) the number of people put at risk; (iii) the degree of speed; (iv) the extent of intoxication or of substance abuse; (v) whether there was erratic or aggressive driving; (vi) whether there was competitive driving or showing off; (vii) the length of the journey during which others were exposed to risk; (viii) whether there was any ignoring of warnings; (ix) whether the defendant was escaping police pursuit; (x) the degree of sleep deprivation; (xi) whether the defendant failed to stop; (xii) the fact that the offence took place at a pedestrian crossing; and (xiii) whether the defendant was driving a public service vehicle. (paragraphs 45, 49, 80)
  10. On the facts of the case, the Court considered that the appropriate starting point should have been 18 months' imprisonment. However, in light of the procedural history of the case (where the hearing of the matter had been adjourned for the parties to submit overseas case authorities to the Court and the respondent had completed the hours required in the CSO), the Court took the view that it would not be just to now impose a sentence of imprisonment on the respondent. Hence, the sentence remains undisturbed. (paragraphs 64-69)

**Prosecutions Division  
Department of Justice**

**April 2020**