



Summary of Judicial Decision

Secretary for Justice v Wong Cheung Kit (“the Respondent”) CAAR 9/2020; [2020] HKCA 809

Decision : **SJ’s application for review of sentence allowed**
Date of Hearing and Judgement : **22 September 2020**
Date of Reasons : **14 October 2020**

Background

1. At about 6 a.m. on 15 March 2019, the Respondent was driving his taxi with two passengers onboard along Ngau Tau Kok Road. When the traffic light was in the Respondent's favour, the taxi approached a pedestrian crossing and hit the 82-year-old deceased, who was walking slowly on the pedestrian crossing and had in fact crossed more than two-third of it. At the time it was dark, road surface was slightly wet and traffic volume was low. The deceased passed away 4 days later.
2. The Respondent pleaded guilty to a charge of causing death by dangerous driving and a charge of using a vehicle with fitting other than in good and serviceable condition. He was sentenced to a total of 4 months’ imprisonment, disqualification from driving for 5 years and completion of driving improvement course at his own expense.

Issue in dispute

3. Whether the term of imprisonment imposed on the Respondent for causing death by dangerous driving was wrong in principle and manifestly inadequate.
4. In particular, whether the Judge had failed to sufficiently reflect the Respondent’s culpability and to take into account the aggravating features, as well as erred in awarding an extra 2-month discount based on the Respondent’s remorse and family support.

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

(full text of Court of Appeal’s judgement at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=131304&QS=%2B&TP=JU)

5. In allowing the application for review, the Court of Appeal reaffirmed a number of sentencing principles.



6. Deterrence sentence is called for and culpability of a defendant is the dominant factor in assessing the overall seriousness of the crime. (Paragraph 27)
7. The incident occurred as the Respondent failed to reduce driving speed when he approached the pedestrian crossing and completely failed to pay attention to the road condition, hence failed to notice the deceased. It was not a case of momentary loss of attention and the Court emphasized that an incident occurring at a pedestrian crossing was an aggravating factor. However, the Court accepted that the Respondent's criminality was to a certain extent reduced because his vision was partially impaired by the fact that it was still dark with light rain and there was reflection from raindrops on the front glass panel of the Respondent's taxi. In the circumstances, the appropriate starting point should be 18 months' imprisonment. (Paragraphs 33 to 34)
8. There was no basis for the sentencing judge to give an extra reduction of 2 months for the Respondent's remorse and family support as those factors were subsumed in his timely plea of guilty. (Paragraph 35)
9. The Respondent was entitled to one-third discount for his plea. The sentence was thus reduced to 12 months. Given this was a review of sentence and the fact that the Respondent would be faced with a substantial increase in sentence towards the end of his serving the original sentence, the Court made a further reduction of 2 months, resulting in 10 months' imprisonment. (Paragraphs 34 and 37)

**Prosecutions Division
Department of Justice**

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