



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated March 29, 2022 which reads as follows:*

“G.R. No. 247578 – (*Marvin Angelo V. Palomo v. People of the Philippines*).— Assailed in this Petition for Review on *Certiorari*<sup>1</sup> are the *Decision*<sup>2</sup> dated 27 September 2018 and the *Resolution*<sup>3</sup> dated 26 March 2019 of the Court of Appeals (CA), dismissing the *certiorari* petition<sup>4</sup> filed by petitioner Marvin Angelo V. Palomo before it, and denying the Motion for Reconsideration thereof, respectively, in CA-G.R. SP No. 134926.

ANTECEDENTS

In an amended Information,<sup>5</sup> petitioner along with other accused, was charged with Murder before the Regional Trial Court (RTC) of Pasig City. During trial, the defense proved that he was only 16 years old at the time of the commission of the crime.<sup>6</sup>

Ensuingly, the RTC rendered its its *Decision*<sup>7</sup> dated 25 March 2013, convicting petitioner and his co-accused of Homicide for failure of the prosecution to prove the qualifying circumstances of Murder.<sup>8</sup> Nevertheless, considering petitioner's minority, the RTC sentenced

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<sup>1</sup> *Rollo*, pp. 3-101.

<sup>2</sup> *Id.* at 52-62; Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Marlene B. Gonzales-Sison and Germano Francisco D. Legaspi, concurring.

<sup>3</sup> *Id.* at 64-65.

<sup>4</sup> *Id.* at 66-82.

<sup>5</sup> *Id.* at 22.

<sup>6</sup> *Id.* at 26.

<sup>7</sup> *Id.* at 22-38. Penned by Presiding Judge Florian Gregory O. Abalajon.

<sup>8</sup> *Id.* at 37.

him to suffer the indeterminate penalty of two (2) years and four (4) months of *prision correccional* as minimum to six (6) years and one (1) day of *prision mayor* as maximum.<sup>9</sup>

Unruffled, petitioner moved for a reconsideration<sup>10</sup> of the foregoing Decision, beseeching the RTC to appreciate in his favor the mitigating circumstance of voluntary surrender. This would further reduce his sentence to enable him to avail of the privileges under Presidential Decree No. 968 or the "*Probation Law*." Acting thereon, the RTC denied petitioner's motion given that the defense failed to prove the elements of voluntary surrender.<sup>11</sup> However, the RTC adjudged that as a minor, petitioner may be placed on probation in lieu of service of sentence even if the penalty imposed would not be reduced or modified as allowed under *Section 42*<sup>12</sup> of Republic Act (RA) No. 9344 otherwise known as the "*Juvenile Justice and Welfare Act of 2006*."<sup>13</sup>

Thenceforth, petitioner applied for probation. In an Order<sup>14</sup> dated 4 November 2013, the RTC denied the application upon receipt of an unfavorable recommendation from the Pasig City Parole and Probation Office, stressing that the penalty imposed upon petitioner is beyond what is allowed under the *Probation Law*.

Inevitably, petitioner filed a Motion for Reconsideration,<sup>15</sup> asserting that he was qualified for probation regardless of the penalty imposed. His motion was denied by the RTC in its Order<sup>16</sup> dated 7 January 2014. The RTC held that its earlier pronouncements were mere recommendations as petitioner's decision to apply for probation, instead of filing an appeal, was his and his counsel's judgment call.<sup>17</sup>

Thereupon, petitioner filed a Notice of Appeal, which the RTC denied in the Order<sup>18</sup> dated 28 January 2014 since the Decision was already final and executory considering that the application for probation and the filing of an appeal were mutually exclusive remedies.

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<sup>9</sup> Id. at 38.

<sup>10</sup> Id. at 39-41.

<sup>11</sup> Id. at 42.

<sup>12</sup> SEC. 42. *Probation as an Alternative to Imprisonment*. - The court may, after it shall have convicted and sentenced a child in conflict with the law, and upon application at any time, place the child on probation in lieu of service of his/her sentence taking into account the best interest of the child. For this purpose, Section 4 of Presidential Decree No. 968, otherwise known as the "Probation Law of 1976", is hereby amended accordingly.

<sup>13</sup> *Rollo*, p. 43.

<sup>14</sup> Id. at 21.

<sup>15</sup> Id. at 44-46.

<sup>16</sup> Id. at 47-48.

<sup>17</sup> Id. at 48.

<sup>18</sup> Id. at 20.

Petitioner sought recourse before the CA *via* a *certiorari* petition<sup>19</sup> imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC. However, in the assailed Decision,<sup>20</sup> the CA dismissed the petition<sup>21</sup> on the following grounds— *one*, petitioner availed of the wrong remedy in impugning the RTC Decision, which convicted him of Homicide, as well as the Orders denying his application for probation and notice of appeal; *two*, petitioner's postulation that RA No. 9344 allows a child in conflict with the law to avail of the privileges under the *Probation Law* regardless of the penalty imposed deserves no credence in that *Sections 5(m),<sup>22</sup> 42,<sup>23</sup> and 67<sup>24</sup>* of the said law allow a child in conflict with the law to avail of the right to probation only when he/she is not disqualified under the *Probation Law*;<sup>25</sup> and *three*, the RTC's pronouncement that petitioner may apply for probation regardless of the penalty imposed is a misapplication of the law which does not, by itself, warrant the filing of a *certiorari* petition.<sup>26</sup>

Petitioner sought reconsideration of the assailed *Decision* his plea was denied by the CA in the challenged *Resolution*.<sup>27</sup>

Unfazed, petitioner is now before this Court avouching that the RTC should have granted his application for probation as he was led to believe that being a minor, he can avail of the privileges of the *Probation Law* regardless of the penalty imposed. Alternatively,

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<sup>19</sup> Supra note 4.

<sup>20</sup> Supra note 2.

<sup>21</sup> Id. at 61.

<sup>22</sup> SEC. 5. *Rights of the Child in Conflict with the Law*. - Every child in conflict with the law shall have the following rights, including but not limited to:

x x x x

(m) the right to probation as an alternative to imprisonment, if **qualified under the Probation Law**;

x x x x (Emphasis supplied)

<sup>23</sup> Supra note 10.

<sup>24</sup> SEC. 67. *Children Who Reach the Age of Eighteen (18) Years Pending Diversion and Court Proceedings*. - If a child reaches the age of eighteen (18) years pending diversion and court proceedings, the appropriate diversion authority in consultation with the local social welfare and development officer or the Family Court in consultation with the Social Services and Counseling Division (SSCD) of the Supreme Court, as the case may be, shall determine the appropriate disposition. In case the appropriate court executes the judgment of conviction, and unless the child in conflict the law has already availed of probation under Presidential Decree No. 603 or other similar laws, the **child may apply for probation if qualified under the provisions of the Probation Law**. (Emphasis supplied).

<sup>25</sup> *Rollo*, pp. 59-60.

<sup>26</sup> Id. at 61.

<sup>27</sup> Supra note 3.

petitioner contends that the mitigating circumstance of voluntary surrender should be appreciated in his favor to make the penalty imposed probationable.<sup>28</sup>

In its Comment,<sup>29</sup> the Office of the Solicitor General (OSG) prayed for the denial of the *Petition* for raising questions of fact.<sup>30</sup> The OSG asseverates that petitioner was not entitled to probation<sup>31</sup> and that the mitigating circumstance of voluntary surrender could not be availed of.<sup>32</sup>

In his *Reply*,<sup>33</sup> petitioner echoed his averments in the *Petition*.

### THE COURT'S RULING

*The Petition is bereft of merit.*

The CA erred not in adjudicating that petitioner is not entitled to probation. *Sections 5m,*<sup>34</sup> *42,*<sup>35</sup> *and 67*<sup>36</sup> of RA No. 9344, taken as a whole, clearly express the legislative intent of allowing a child in conflict with the law to avail of the privileges of the *Probation Law* only when he/she is qualified. Section 9 of the *Probation Law*, as amended, disqualifies offenders—

SEC. 9. *Disqualified Offenders.* — The benefits of this Decree shall not be extended to those:

a. sentenced to serve a maximum term of imprisonment of **more than six (6) years;**

x x x (Emphasis supplied)

Having been convicted of homicide and meted an indeterminate penalty of two (2) years and four (4) months of *prision correccional* as minimum to six (6) years and one (1) day of *prision mayor* as maximum, petitioner is disqualified from availing of the privileges under the *Probation Law*.

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<sup>28</sup> Id. at 14.

<sup>29</sup> Id. at 183-197.

<sup>30</sup> Id. at 188.

<sup>31</sup> Id. at 191.

<sup>32</sup> Id. at 195.

<sup>33</sup> Id. at 203-207.

<sup>34</sup> Supra note 18.

<sup>35</sup> Supra note 10.

<sup>36</sup> Supra note 20.

It bears accentuating that while the RTC's disquisition that petitioner may avail of probation regardless of the penalty imposed is a misapplication of the law, as aptly held by the CA, a misapplication of the law does not by itself justify the filing of a *Certiorari Petition* absent proof that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction. There must be a clear abuse of the authority vested in a tribunal. This abuse must be so serious and so grave that it warrants the interference of the court to nullify or modify the challenged action and to undo the damage done.<sup>37</sup>

It is primal that probation is not a right but a mere privilege— an act of grace and clemency conferred by the State, and may be granted by the Court to a deserving defendant. Accordingly, the grant of probation rests solely upon the discretion of the Court. It is to be exercised primarily for the benefit of organized society, and only incidentally for the benefit of the accused.<sup>38</sup> Jurisprudence instructs that appeal and probation are mutually exclusive remedies.<sup>39</sup>

In the case at bench, petitioner was represented by a *counsel de parte* throughout the proceedings. Given that petitioner's decision to file an application for probation instead of filing an appeal was his and his counsel's judgment call, they should have known those disqualified offenders under the *Probation Law*.

The Court refuses to pander to petitioner's disputation that the mitigating circumstance of voluntary surrender should be appreciated in his favor as this issue involves a question of fact. It is elemental that Rule 45 is limited only to errors of law and not errors of fact. While this rule is not absolute, none of the recognized exceptions,<sup>40</sup> which allow the Court to review factual issues, obtain in the instant case.<sup>41</sup>

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<sup>37</sup> See *G.V. Florida Transport, Inc. v. Tiara Commercial Corporation*, 820 Phil. 235, 247 (2017).

<sup>38</sup> See *Almero v. People of the Philippines*, 729 Phil. 335, 342 (2014).

<sup>39</sup> See *People of the Philippines v. Galuga*, G.R. No. 221428, 13 February 2019.

<sup>40</sup> The general rule for petitions filed under Rule 45 admits exceptions, to wit: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. (See *Sps. Miano v. Manila Electric Company*, 800 Phil. 119, 123 (2016).

<sup>41</sup> See *Gatan v. Vinarao*, 820 Phil. 257, 265-266 (2017).

*A final point.* It must be emphasized that whether voluntary surrender is appreciated or not, the maximum penalty that may be imposed upon petitioner would still be beyond six (6) years. The penalty prescribed by the Revised Penal Code (RPC) for Homicide is *reclusion temporal*.<sup>42</sup> On account of petitioner's minority, which is a privileged mitigating circumstance, the penalty next lower in degree shall be imposed,<sup>43</sup> *i.e., prision mayor*.

Appositely, Article 64(2) of the RPC provides:

Article 64. Rules for the Application of Penalties Which Contain Three Periods. — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

x x x x

2. When **only a mitigating circumstance is present** in the commission of the act, they shall impose the penalty in its **minimum period**.

x x x x (Emphasis supplied)

The minimum period of *prision mayor* is six (6) years and one (1) day to eight (8) years. This is the maximum term of imprisonment after applying the *Indeterminate Sentence Law*.<sup>44</sup> Thus, even if the ordinary mitigating circumstance of voluntary surrender is appreciated, the maximum penalty that must be imposed upon petitioner would still exceed six (6) years, thereby disqualifying him from availing of the benefits of the *Probation Law*.

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<sup>42</sup> Article 249. Homicide. — Any person who, not falling within the provisions of article 246 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

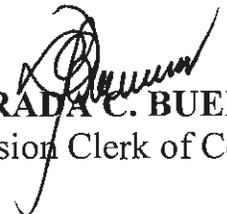
<sup>43</sup> See Article 68 of the RPC, as amended.

<sup>44</sup> Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the **maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code**, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

**WHEREFORE**, the Petition for Review on *Certiorari* is hereby **DENIED**. The *Decision* dated 27 September 2018 and the *Resolution* dated 26 March 2019 of the Court of Appeals in CA-G.R. SP No. 134926 are **AFFIRMED**.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court

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