



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **January 11, 2023**, which reads as follows:*

“G.R. No. 260032 (Clarence Mataverde y Dionisio, Petitioner, v. People of the Philippines, Respondent). – The Court:

- (1) **GRANTS** petitioner’s motion for extension of thirty (30) days from the expiration of the reglementary period within which to file a petition for review on *certiorari*; and
- (2) **NOTES** the Entry of Appearance dated August 24, 2022, filed by Atty. Loraine Z. Ferrer of Doque Odosis Tezon Bravo Encinas Law Offices as counsel for petitioner, and **GRANTS** her request that she be furnished copies of all pleadings, notices and other court processes in this case at Unit 309 Prince David Condominium, Katipunan Avenue, Loyola Heights, Quezon City.

After a judicious study of the case, the Court resolves to deny the Petition for Review on *Certiorari*¹ for failure to sufficiently show that the Court of Appeals (CA) committed any reversible error in the challenged Decision² dated February 23, 2021 and Resolution³ dated March 21, 2022 in CA-G.R. CR No. 43756 as to warrant the exercise by this Court of its discretionary appellate jurisdiction.

It is settled that search and seizure must be carried out through a judicial warrant, otherwise, Section 2,⁴ Article III of the 1987 Constitution would be violated and any evidence obtained from such

¹ *Rollo*, pp. 13-28.

² *Id.* at 33-46. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Marie Christine Azcarraga- Jacob and Angelene Mary W. Quimpo-Sale.

³ *Id.* at 47-48.

⁴ SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized

search and seizure shall be inadmissible for any purpose in any proceeding.⁵ Nonetheless, warrantless searches and seizures are, by way of exception, allowed in the following instances: (1) warrantless search incidental to a lawful arrest; (2) seizure of evidence in plain view; (3) search of a moving vehicle; (4) consented warrantless search; (5) customs search; (6) stop and frisk; and (7) exigent and emergency circumstances.⁶

In relation thereto, the Court, in *People v. Escañó*,⁷ discussed the validity of checkpoints conducted pursuant to the gun ban enforced by the Commission on Elections (COMELEC) in this wise:

This Court has ruled that not all checkpoints are illegal. Those which are warranted by the exigencies of public order and are conducted in a way least intrusive to motorist are allowed. For, admittedly, routine checkpoints do intrude, to a certain extent, on motorists' right to 'free passage without interruption,' but it cannot be denied that, as a rule, it involves only a brief detention of travelers during which the vehicle's occupants are required to answer a brief question or two. *For as long as the vehicle is neither searched nor its occupants subjected to a body search, and the inspection of the vehicle is limited to a visual search, said routine checks cannot be regarded as violative of an individual's right against unreasonable search.* In fact, these routine checks, when conducted in a fixed area, are even less intrusive.

The checkpoint herein conducted was in pursuance of the gun ban enforced by the COMELEC. The COMELEC would be hard put to implement the ban if its deputized agents were limited to a visual search of pedestrians. It would also defeat the purpose for which such ban was instituted. Those who intend to bring a gun during said period would know that they only need a car to be able to easily perpetrate their malicious designs.⁸ (Italics supplied)

Considering that a police officer cannot be expected to appear before a judge and apply for a search warrant for a moving vehicle that can easily speed away and escape in a matter of seconds, the rules governing searches and seizures of vehicles have been liberalized for practical purposes. Nonetheless, the inherent mobility of vehicles cannot justify all kinds of searches. Thus, law enforcers must always act based on probable cause.⁹

In the case, the Court agrees with the findings of the Regional Trial Court (RTC) and the CA that there was probable cause to justify the search conducted by the police officers at the checkpoint. The police officers manning the checkpoint located at Brgy. Aduas, Cabanatuan City to implement the

⁵ Section 3 (2), Article III of the 1987 Constitution of the Republic of the Philippines.

⁶ *Manibog v. People*, G.R. No. 211214, March 20, 2019.

⁷ 380 Phil. 719 (2000).

⁸ *Id.* at 733-734.

⁹ *Veridiano v. People*, 810 Phil. 642 (2017).

COMELEC gun ban were able to personally observe Clarence Mataverde y Dionisio (petitioner) when he went through the checkpoint. They likewise had a reasonable basis to suspect that he had a firearm that was concealed and tucked in his waist because when they conducted a visual search of petitioner, they observed a noticeable bulge protruding under his shirt and around his waist. From this, experience led them to reasonably suspect that petitioner might be carrying a firearm. Verily, the warrantless search conducted by the police officers against petitioner is valid and the evidence resulting from it is admissible in evidence.

The Court also agrees with the findings of the RTC and the CA that petitioner violated Section 32¹⁰ of Republic Act No. (RA) 7166,¹¹ in relation to the Omnibus Election Code and COMELEC Resolution No. 9028.

To constitute a violation of Section 32 of RA 7166, the following elements must be established: (1) the person is bearing, carrying, or transporting firearms or other deadly weapons; (2) such possession occurs during the election period; and (3) the weapon is carried in a public place. In addition, it is settled that even if the accused can prove that he is holding a valid license to possess such firearm, this circumstance by itself cannot exculpate him from criminal liability. The burden is on the accused to show that he also has a written authority issued by the COMELEC to possess such firearm.¹²

All the elements are present in the case.

The police officers manning the checkpoint during the *election period* found the firearm, magazine, and ammunition, in *petitioner's possession*; the gun was specifically tucked in his waist. Petitioner was carrying the firearm while traversing a public road, which is a *public place*.¹³ Although petitioner was able to show Firearm License Card No. 926529/1872526, he did not, however, possess any COMELEC authorization to carry firearms outside his residence during the period of the gun ban.¹⁴

Anent the penalty, the Omnibus Election Code, and reiterated in COMELEC Resolution No. 9028, states:

“Section 264. *Penalties.* – Any person found guilty of any

¹⁰ Section 32 of Republic Act No. (RA) 7166 reads:

Section 32. *Who May Bear Firearms.* - During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission. The issuance of firearms licenses shall be suspended during the election period.

¹¹ Entitled, “An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, authorizing Appropriations therefor, and for Other Purposes.”

¹² *Abenes v. Court of Appeals*, 544 Phil. 614, 632-633. (2007).

¹³ *Rollo*, p. 43.

¹⁴ *Id.*

election offense under this Code shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. Any political party found guilty shall be sentenced to pay a fine of not less than ten thousand pesos, which shall be imposed upon such party after the criminal action has been instituted in which their corresponding officials have been found guilty. x x x”

Verily, the Judgment¹⁵ dated November 22, 2018 in Criminal Case No. 19176 of the RTC which sentenced petitioner to suffer the indeterminate penalty of imprisonment for a period of one (1) year as minimum to two (2) years, as maximum,¹⁶ as *modified* by the CA in that petitioner shall be disqualified from applying for probation; that he shall be further disqualified from holding public office; and that he shall be deprived of the right of suffrage is in accordance with law and jurisprudence.¹⁷

WHEREFORE, the Petition is **DENIED**. The Decision dated February 23, 2021 and Resolution dated March 21, 2022 of the Court of Appeals in CA-G.R. CR No. 43756 are **AFFIRMED**.


The motion for an extension of thirty days within which to file a petition for review on *certiorari* with entry of appearance is **GRANTED**.

SO ORDERED.”

By authority of the Court:

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court

By:


RUMAR D. PASION
Deputy Division Clerk of Court

Atty. Loraine Z. Ferrer
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¹⁵ Id. at 52-56. Penned by Acting Presiding Judge Frazierwin V. Viterbo.

¹⁶ Id. at 56.

¹⁷ *People v. Galon*, G.R. No. 257969, July 27, 2022.

COURT OF APPEALS
CA-G.R. CR No. 43756
1000 Manila

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
1229 Legaspi Village, Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 30, Cabanatuan City
3100 Nueva Ecija
(Crim. Case No. 19176)

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