



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**PAULO CASTIL y ALVERO,**  
*Petitioner,*

**G.R. No. 253930**

Present:

**GESMUNDO, C.J.,**  
*Chairperson,*  
**HERNANDO,**  
**ZALAMEDA,**  
**ROSARIO, and**  
**MARQUEZ, JJ.**

- versus -

**PEOPLE OF THE PHILIPPINES,**  
*Respondent.*

Promulgated:

**JUL 13 2022**

*[Signature]*

X-----X

**DECISION**

**HERNANDO, J.:**

This Petition for Review on *Certiorari*<sup>1</sup> assails the October 14, 2019 Decision<sup>2</sup> and the October 9, 2020 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 42335, which affirmed the March 21, 2018 Decision<sup>4</sup> of the Regional Trial Court (RTC), Quezon City, Branch 215 finding petitioner Paulo Castil y Alvero (petitioner) guilty beyond reasonable doubt of the crime of Illegal Possession of Firearms under Section 28, paragraphs (a) and (e) of Republic Act No. (RA) 10591,<sup>5</sup> otherwise known as the “Comprehensive Firearms and Ammunition Regulation Act.”

<sup>1</sup> *Rollo*, pp. 11-34.

<sup>2</sup> *Id.* at 36-48. Penned by Associate Justice Eduardo B. Peralta, Jr., and concurred in by Associate Justices Ramon M. Bato, Jr. and Ruben Reynaldo G. Roxas.

<sup>3</sup> *Id.* at 50-52. *Id.*

<sup>4</sup> *Id.* at 72-81. Penned by Presiding Judge Rafael G. Hipolito.

<sup>5</sup> Entitled “AN ACT PROVIDING FOR A COMPREHENSIVE LAW ON FIREARMS AND AMMUNITION AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF;” [COMPREHENSIVE FIREARMS AND AMMUNITION REGULATION ACT]. Approved: May 29, 2013.

### The Factual Antecedents

This case arose from an Information<sup>6</sup> charging petitioner with violation of Section 28, paragraphs (a) and (e) of RA 10591, thus:

That on or about the 10<sup>th</sup> day of July, 2015, in Quezon City, Philippines, the said accused, without any authority of law, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control **one (1) Norinco cal. 9mm, loaded with five (5) live ammunitions**, without first having secured the necessary license/permit issued by the proper authorities.

CONTRARY TO LAW.<sup>7</sup>

Upon arraignment, petitioner pleaded not guilty.<sup>8</sup> Proceedings ensued.

### Version of the Prosecution

At around 10:00 p.m. of July 9, 2015, a confidential informant (CI) tipped off the Station Anti-Illegal Drugs–Special Operation Task Group operatives of *Talipapa* Police Station, Quezon City that a certain Sandra Young<sup>9</sup> (Young), who had been a subject of past surveillance operations on illegal drug activity in Quezon City, was selling illegal drugs at Certeza Compound, Luzon Ave., *Brgy.* Culiat, Quezon City.<sup>10</sup> The police chief immediately formed a buy-bust operation team composed of Police Officer 1 John Paul Rebustes (PO1 Rebustes) as poseur-buyer, and Senior Police Officer 1 Johnny Mahilum and Police Officer 1 Erwin Fegason as back-ups.<sup>11</sup> A marked ₱500-bill was given to PO1 Rebustes.<sup>12</sup>

The team, together with the CI, proceeded to the Certeza Compound. Upon arrival, the CI received a phone call from Young instructing them to meet her on Commonwealth Ave. corner San Simon St., *Brgy.* Holy Spirit.<sup>13</sup> Considering that the place was under a different jurisdiction, the team dropped by the Batasan Hills Police Station No. 6 to coordinate.<sup>14</sup>

<sup>6</sup> Records, p. 1. Petitioner was also separately charged with Illegal Sale of Dangerous Drugs under Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 (see *rollo*, p. 41).

<sup>7</sup> *Id.* Emphasis in the original.

<sup>8</sup> *Id.* at 36.

<sup>9</sup> Alias “Mommy.”

<sup>10</sup> *Rollo*, p. 37.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

The team arrived at the new designated area and waited for Young to arrive.<sup>15</sup> The CI received another phone call from Young instructing them to meet her at the agreed-upon spot.<sup>16</sup>

At around 12:00 a.m., a black Honda CRV arrived driven by Young and accompanied by petitioner.<sup>17</sup> Then, the CI and PO1 Rebustes were ordered to board the back seat of the vehicle.<sup>18</sup>

Inside the vehicle, Young ordered PO1 Rebustes to give payment to petitioner, who in turn handed one heat-sealed plastic sachet of suspected shabu to PO1 Rebustes.<sup>19</sup>

Unable to execute the pre-arranged signal, PO1 Rebustes decided to introduce himself as a police officer, and attempted to arrest Young and petitioner.<sup>20</sup> Young floored the accelerator and sped off.<sup>21</sup> The CI managed to jump from the car, while petitioner wrestled with PO1 Rebustes.<sup>22</sup> At the Quezon City Circle, Young rammed the car into a gutter and got stuck.<sup>23</sup> Young was able to escape, while petitioner and PO1 Rebustes continued wrestling each other.<sup>24</sup>

The back-up officers then arrived and helped PO1 Rebustes apprehend petitioner.<sup>25</sup> PO1 Rebustes conducted a body search on petitioner and recovered from his waist a Norinco caliber 9mm gun with serial number 160447275 loaded with five pieces of live ammunition.<sup>26</sup> The search also yielded two small heat-sealed transparent plastic sachets containing suspected shabu.<sup>27</sup> The vehicle was likewise searched and two small heat-sealed transparent plastic sachets containing suspected shabu were recovered from the dashboard drawer.<sup>28</sup>

The police officers brought petitioner to the police station. PO1 Rebustes marked the firearm with JPR/PC-10-07-15, and the ammunitions with JPR/PC-2-10-07-15, JPR/PC-3-10-07-15, JPR/PC-4-10-07-15, JPR/PC-5-10-07-15,

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<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id. at 38.

<sup>20</sup> *Rollo*, p. 38; TSN, October 27, 2015, pp. 13-14.

<sup>21</sup> *Rollo*, p. 38.

<sup>22</sup> Id.

<sup>23</sup> Id. at 38, 75.

<sup>24</sup> Id. at 38.

<sup>25</sup> Id.

<sup>26</sup> *Rollo*, p. 38; TSN, April 18, 2016, p. 6.

<sup>27</sup> Records, p. 9.

<sup>28</sup> Id.

JPR/PC-6-10-07-15 in the presence of petitioner.<sup>29</sup> During trial, PO1 Rebutest was able to identify the loaded firearm as the same one he recovered from petitioner based on the markings he made.<sup>30</sup>

During his cross-examination, petitioner admitted that he did not have a license to own or possess a gun, or previously applied for such.<sup>31</sup>

Meanwhile, the seized drugs from the body search as well as the object of the illegal sale were marked and inventoried in the police station in the presence of media representative Ed Mahilum.<sup>32</sup> The object of the illegal sale was marked with JPR/ZY-10-07-15, while the two sachets from the body search were marked with EF/PC-1-10-07-15 and EF/PC-2-10-07-15.<sup>33</sup> The two sachets recovered from the vehicle were also marked with JM-1-10-07-15 and JM-2-10-07-15.<sup>34</sup>

Afterwards, the seized drugs were transmitted to the forensic laboratory for examination; the items tested positive for the presence of methamphetamine hydrochloride, a dangerous drug.<sup>35</sup>

Petitioner was then separately charged with violations of Sections 5 and 11 of RA 9165<sup>36</sup> or the “Comprehensive Dangerous Drugs Act of 2002.”<sup>37</sup>

### **Version of the Defense**

Petitioner denied the charge. He alleged that on that night, he received a text message from his friend that her car stalled near “COA” (Commission on Audit Building) because of a flat tire.<sup>38</sup> When he arrived there, some individuals approached him and asked him to go with them to the police station.<sup>39</sup> On board a van, petitioner claimed that these persons asked him who the owner of the gun was; however, they did not show him any gun of sorts nor recover any from him.<sup>40</sup> When they arrived at the police station, petitioner was arrested.<sup>41</sup>

<sup>29</sup> *Rollo*, p. 38; TSN, April 18, 2016, pp. 7 and 9.

<sup>30</sup> *Rollo*, p. 38.

<sup>31</sup> TSN, January 5, 2018, p. 10.

<sup>32</sup> Records, pp. 7, 9, 18. TSN, May 30, 2016, pp. 13-14.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 9.

<sup>35</sup> *Id.* at 12-13.

<sup>36</sup> Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES;” [COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002]. Approved: June 7, 2002.

<sup>37</sup> Records, p. 2. TSN, April 18, 2016, pp. 15-16.

<sup>38</sup> TSN, January 5, 2018, p. 5.

<sup>39</sup> *Id.* at 5-7.

<sup>40</sup> *Id.* at 7-8.

<sup>41</sup> *Id.* at 8-9.

### **Ruling of the Regional Trial Court**

In its March 21, 2018 Decision,<sup>42</sup> the RTC convicted petitioner for Illegal Possession of Firearms. Evidence show that petitioner was found in possession of a firearm with live ammunition without the requisite license.<sup>43</sup> Petitioner's denial does not deserve credence as it lacks truth, and it cannot prevail over the positive identification of a credible witness of the prosecution.<sup>44</sup>

The dispositive portion of the RTC Decision reads:

**WHEREFORE**, premised on the attendant facts and evidence and application of laws and jurisprudence, as the quantum of evidence of proof beyond reasonable doubt was duly established by the prosecution, judgment is hereby rendered finding accused PAULO CASTIL y ALVERO GUILTY as charged in the Information and he is hereby sentenced to suffer the penalty from ranging [sic] Ten (10) Years and One (1) Day of *prision mayor* maximum in its minimum period as minimum to Ten (10) Years Eight (8) Months and One (1) Day of *prision mayor* maximum in its medium period as maximum.

**SO ORDERED.**<sup>45</sup>

Aggrieved, petitioner filed a notice of appeal.<sup>46</sup>

### **Ruling of the Court of Appeals**

In its October 14, 2019 Decision,<sup>47</sup> the CA denied the appeal and affirmed petitioner's conviction. It ruled that petitioner's warrantless arrest is valid as he was caught in the act of Illegal Sale of Dangerous Drugs.<sup>48</sup> Thus, the warrantless search that followed is likewise valid for being pursuant to a valid arrest.<sup>49</sup> Further, the prosecution was able to prove the elements of Illegal Possession of Firearms. PO1 Rebustes was able to positively identify petitioner as the person in possession of the subject firearm.<sup>50</sup> The second element is proved in view of petitioner's admission in court of his lack of license to possess a firearm and non-application.<sup>51</sup> The CA also brushed aside the inconsistencies in the testimony of PO1 Rebustes as too minor to affect credibility.<sup>52</sup> Lastly,

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<sup>42</sup> *Rollo*, pp. 72-81.

<sup>43</sup> *Id.* at 79.

<sup>44</sup> *Id.* at 79-80.

<sup>45</sup> *Id.* at 80-81. Emphasis in the Original.

<sup>46</sup> *CA rollo*, pp. 12-13.

<sup>47</sup> *Rollo*, pp. 36-48.

<sup>48</sup> *Id.* at 40-42.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 42.

<sup>51</sup> *Id.* at 42-43.

<sup>52</sup> *Id.* at 45.

petitioner's defenses of denial and frame-up fail in view of the prosecution's positive identification of accused.<sup>53</sup>

The dispositive portion of the CA Decision reads:

**WHEREFORE**, premises considered, the **APPEAL** is **DENIED** for lack of merit.

**SO ORDERED.**<sup>54</sup>

Petitioner moved for reconsideration<sup>55</sup> but it was denied by the CA in its October 9, 2020 Resolution.<sup>56</sup> Hence, this Petition.

### Parties' Arguments

Petitioner presents two arguments. First, the search conducted on him is unconstitutional. The illogical manner by which the alleged illegal sale of dangerous drugs occurred and his participation therein cast doubt as to the existence of the buy-bust operation.<sup>57</sup> Thus, his warrantless arrest is invalid, which resultantly makes the subsequent search illegal for not being conducted after a valid arrest.<sup>58</sup> Second, petitioner argues that his purported admission of lack of license and non-application is insufficient to produce a conviction.<sup>59</sup> The prosecution did not submit a negative certification from the PNP to show that petitioner indeed did not have a license.<sup>60</sup>

In its Comment,<sup>61</sup> the Office of the Solicitor General (OSG) counters that there was a legitimate buy-bust operation where petitioner was validly arrested, resulting to the validity of the subsequent warrantless search.<sup>62</sup> The OSG also posits that the elements of the crime charged were present. The second element of lack of authority to possess was sufficiently established by petitioner's judicial admission.<sup>63</sup>

Petitioner filed a Reply<sup>64</sup> and reiterated that a negative certification from the PNP to prove petitioner's lack of license is essential for a conviction.<sup>65</sup>

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<sup>53</sup> Id. at 47.

<sup>54</sup> Id. at 48. Emphasis in the original.

<sup>55</sup> Id. at 50.

<sup>56</sup> Id. at 50-52.

<sup>57</sup> Id. at 18-20.

<sup>58</sup> Id. at 21-23.

<sup>59</sup> Id. at 23-25.

<sup>60</sup> Id. at 26-27.

<sup>61</sup> Id. at 127-141.

<sup>62</sup> Id. at 131-133.

<sup>63</sup> Id. at 135-136.

<sup>64</sup> Temporary *rollo*, unpaginated.

<sup>65</sup> Id.

### Issue

At the outset, it must be stressed that the subject of the appeal here is petitioner's conviction for violation of Section 28, paragraphs (a) and (e) of RA 10591, and not his violation of RA 9165.

The issue here is whether petitioner's conviction of the crime of Illegal Possession of Firearms is proper.

### Our Ruling

The Petition has no merit. The Court affirms petitioner's conviction of the crime of Illegal Possession of Firearms.

### **Petitioner's warrantless arrest and subsequent warrantless search are valid**

At the outset, the Court finds that petitioner's arrest and subsequent body search are valid.

Petitioner was arrested pursuant to a buy-bust operation, where he was caught engaged in Illegal Sale of Dangerous Drugs punishable under Section 5 of RA 9165, in which he was separately indicted. Section 5, Rule 113 of the Rules of Court provides for the instances of a valid warrantless arrest:

Section 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

x x x x

In order for a warrantless arrest under the first paragraph to be valid, two requisites must concur: (a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and, (b) such overt act is done in the presence or within the view of the arresting officer.<sup>66</sup> The Court held that in a buy-bust operation, “the violator is caught *in flagrante delicto* and the police officers conducting the same are not only authorized but also duty-bound to apprehend the violator[,] and consequently search him [or her] for anything that may have been part of or used in the commission of the crime.”<sup>67</sup>

Here, the Court sees no infirmity in the conduct of the buy-bust against petitioner. There is no showing that petitioner was instigated to sell dangerous drugs; on the contrary, the order to commence the transaction in fact came from Young, and PO1 Rebustes and petitioner merely complied.<sup>68</sup> Further, there is no textbook method of conducting buy-busts.<sup>69</sup> A prior surveillance is not necessary, especially if the police officers are accompanied by an informant,<sup>70</sup> such as in the instant case.

Further, it is quite obvious that PO1 Rebustes, being the poseur-buyer, had personal knowledge of the illegal sale of dangerous drugs between himself and petitioner: PO1 Rebustes gave the marked money to petitioner, who in turn handed him one heat-sealed plastic sachet of suspected *shabu*.<sup>71</sup> This is a transgression of Section 5 of RA 9165 committed in the presence of an officer. Thus, petitioner was caught *in flagrante delicto*.

With petitioner’s arrest being within the confines of the law, it follows that the warrantless search performed on petitioner that yielded the subject firearm is also valid. It is well-settled that one of the instances of a reasonable warrantless search and seizure is a warrantless search incidental to a lawful arrest.<sup>72</sup> The subject firearm and ammunition are therefore admissible in evidence.

### **Petitioner is guilty of Illegal Possession of Firearms**

Now on the crime committed by petitioner.

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<sup>66</sup> *Damayo v. People*, G.R. No. 241275, February 15, 2022, citing *People v. Cogaed*, 740 Phil. 212, 238 (2014).

<sup>67</sup> *People v. Cruz*, 667 Phil. 420, 435 (2011). Citation omitted.

<sup>68</sup> *Rollo*, p. 38.

<sup>69</sup> *People v. Jimenez*, 842 Phil. 87, 98-99 (2018), citing *People v. Manlangit*, 654 Phil. 427, 437 (2011)

<sup>70</sup> *Id.*

<sup>71</sup> *Rollo*, p. 38.

<sup>72</sup> *People v. Sapla*, G.R. No. 244045, June 16, 2020.



Petitioner was charged with violation of Section 28, paragraphs (a) and (e) of RA 10591, which reads:

ARTICLE V  
Penal Provisions

Section 28. *Unlawful Acquisition, or Possession of Firearms and Ammunition.* — The unlawful acquisition, possession of firearms and ammunition shall be penalized as follows:

(a) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a small arm;

x x x x

(e) The penalty of one (1) degree higher than that provided in paragraphs (a) to (c) in this section shall be imposed upon any person who shall unlawfully possess any firearm under any or combination of the following conditions:

(1) Loaded with ammunition or inserted with a loaded magazine;

x x x x

Section 28 penalizes unlawful possession of a firearm. The elements of the offense are: (a) the existence of the subject firearm; and, (b) the fact that the accused who possessed or owned the same does not have the corresponding license for it.<sup>73</sup> If the firearm is loaded with ammunition, the penalty is increased one degree higher.

There is no dispute as regards the first element here. The prosecution was able to identify in court the actual Norinco caliber 9mm firearm with serial number 16047245 and the five live ammunition seized from petitioner through the markings PO1 Rebustes placed.<sup>74</sup> PO1 Rebustes also positively identified petitioner as the person in possession of the subject firearm.<sup>75</sup>

Under contention is the second element of lack of license. The CA ruled that petitioner's judicial admission proves the existence of the second element. Petitioner, however, contends that his admission is insufficient for a conviction as there is a need for the prosecution to submit a negative certification from the PNP to prove the second element.

The Court agrees with the CA. Petitioner's own judicial admission of his lack of license to carry a firearm is sufficient to establish the second element of the crime.

<sup>73</sup> *Lodovico v. People*, G.R. No. 256508, November 23, 2021, citing *Jacaban v. People*, 756 Phil. 523, 531 (2015).

<sup>74</sup> TSN, April 18, 2016, pp. 6-10; TSN, May 30, 2016, pp. 9-10.

<sup>75</sup> TSN, April 18, 2016, pp. 14-15.

To be clear, there is no exact way of proving the second element of Illegal Possession of Firearms. What matters is that the courts, including this Court, are convinced that the element is proven beyond reasonable doubt regardless of the kind of evidence offered to prove it. Notably, RA 10591 and case law do not provide for specific modes to prove the element of lack of license to carry a firearm.

Hence, as proof of the second element, the Court usually accepts the presentation of a certification issued by the Firearms and Explosives Office of the PNP showing that the accused is not a licensed or registered holder of a firearm, or the testimony to that effect of a representative therefrom.<sup>76</sup>

As it is not limited to the aforesaid negative certification or testimony, the Court also accepts the judicial admission of the accused or his counsel that the accused is not a holder of a license at the time of the commission of the offense. Section 4, Rule 129 of the Revised Rules on Evidence states:

Section 4. *Judicial admissions.* – An admission, oral or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that the imputed admission was not, in fact, made. (4a)

A judicial admission is a verbal declaration or written statement made by a party in the course of the proceedings in the same case, which does not require proof.<sup>77</sup> It is binding upon the party making these admissions.<sup>78</sup> A judicial admission is a waiver of proof, and production of evidence is dispensed with.<sup>79</sup> It removes an admitted fact from the field of controversy.<sup>80</sup> To contradict one's own admission, the Rules require that the party who made the admission must show that it was made through palpable mistake, or that the imputed admission was not, in fact, made.<sup>81</sup>

In a line of cases,<sup>82</sup> the Court considered judicial admissions as proof of the accused's lack of license to possess a firearm as long as there is no showing that they were made through palpable mistake, or that they were not, in fact made. In those cases, the Court affirmed the conviction of the accused even

<sup>76</sup> *People v. Guinto*, G.R. No. 243591, September 16, 2020.

<sup>77</sup> *Leynes v. People*, 795 Phil. 927, 935 (2016).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Lopez v. People*, G.R. No. 236005, March 21, 2018; *Flores v. People*, G.R. No. 219154, September 2, 2015; *Castro v. People*, G.R. No. 157700, June 5, 2013. Unsigned Resolutions of the Court. In *Castro*, the judicial admission is in the form of the admission in court of petitioner's (accused) counsel that "petitioner had not been issued any permit to carry any firearm." In *Flores*, the judicial admission was made by petitioner during pre-trial. In *Lopez*, the judicial admission was in the form of a stipulation of facts the parties entered into during the pre-trial conference as contained in the Pre-Trial Order.

without the negative certification from the PNP or the testimony from a representative therefrom.<sup>83</sup> The important gauge still is that the judicial admission must overcome reasonable doubt.

Thus, as it currently stands, the acceptable ways of proving the second element of lack of license in Illegal Possession of Firearms cases are: (a) the certification issued by the Firearms and Explosives Office of the PNP; (b) the testimony of a representative from the Firearms and Explosives Office of the PNP; or, (c) judicial admission of the accused or counsel. Of course, it is not limited to the foregoing and the element may be proved through other ways as long as the proof offered overcomes reasonable doubt.

In the instant case, the Court holds that petitioner's judicial admission is sufficient to establish the second element. Petitioner's statements during the cross-examination show that, at the time of the commission of the offense, he indeed is not a holder of a license to carry firearms, thus:

Cross-examination of Accused Paulo Castil by ACP Rafael Jaime A. Mison

ACP MISON:

Q Mr. Witness you denied being the owner of Norinco 9MM loaded with 5 ammunitions?

A No, sir.

Q Other than this, do you own any other gun?

A None, sir.

Q **Considering that you don't own a gun, you do not have license to own a gun?**

A **None, sir.**

Q **Eversince [sic] you did not apply for a license to own a gun?**

A **No, sir.**<sup>84</sup>

Surely, this admission made by petitioner during his cross-examination amounts to a judicial admission, which no longer requires proof.<sup>85</sup> When asked if he had or had previously applied for a license, petitioner clearly responded in the negative. There is no room for interpretation. This response was also not refuted during his re-direct examination.

Further, there is no allegation that the admission was made through palpable mistake or was not in fact made at all. Petitioner's contentions in the appeal did not include this point and merely focused on assailing the kind of evidence to prove the element.

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<sup>83</sup> Id.

<sup>84</sup> TSN, January 5, 2018, p. 10. Emphases supplied.

<sup>85</sup> *People v. ZZZ*, G.R. No. 243933, June 21, 2021.

In view of this judicial admission, it is no longer necessary to present a negative certification from the PNP or a testimony of a representative therefrom to prove the second element.

Considering the foregoing, the Court is convinced that the elements of the crime of Illegal Possession of Firearms were sufficiently established.

### Penalty

As to the penalty, Section 28 of RA 10591 imposes the penalty of *prision mayor* in its medium period for illegal possession of a small arm. The penalty is increased to a higher degree—*prision mayor* in its maximum period in this instance—if the subject firearm is loaded with ammunition or inserted with a loaded magazine. As Section 28 adopts the nomenclature of the penalties under the Revised Penal Code<sup>86</sup> (RPC), “the ascertainment of the indeterminate sentence will be based on the rules applied for those crimes punishable under the RPC.”<sup>87</sup>

In this case, it is undisputed that the subject firearm is loaded with five ammunition, thereby necessitating the aggravation of penalty.

The proper penalty therefore is eight (8) years, eight (8) months, and one (1) day of *prision mayor* in its medium period, as minimum, and ten (10) years, eight (8) months, and one (1) day of *prision mayor* in its maximum period, as maximum.

**WHEREFORE**, the Petition is **DENIED**. The October 14, 2019 Decision and October 9, 2020 Resolution of the Court of Appeals in CA-G.R. CR No. 42335 are **AFFIRMED** with **MODIFICATION**. Petitioner Paulo Castil y Alvero is found **GUILTY** beyond reasonable doubt of violation of Section 28, paragraphs (a) and (e) of Republic Act No. 10591, otherwise known as the “Comprehensive Firearms and Ammunition Regulation Act.” He is sentenced to suffer the penalty of imprisonment for a period of eight (8) years, eight (8) months, and one (1) day of *prision mayor* in its medium period, as minimum, to and ten (10) years, eight (8) months, and one (1) day of *prision mayor* in its maximum period, as maximum.


<sup>86</sup> Entitled “AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS.” Approved: December 8, 1930.


<sup>87</sup> *Cahulogan v. People*, 828 Phil. 742, 751 (2018). See Act No. 4103, entitled “AN ACT TO PROVIDE AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES,” sec. 1. Approved: December 5, 1933.

**SO ORDERED.**

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

WE CONCUR:

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*  
*Chairperson*


  
**RODIL V. ZALAMEDA**  
*Associate Justice*

  
**RICARDO R. ROSARIO**  
*Associate Justice*

  
**JOSE MIDAS P. MARQUEZ**  
*Associate Justice*

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
ALEXANDER G. GESMUNDO  
*Chief Justice*