



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated February 19, 2020 which reads as follows:*

**“G.R. No. 250155 – Joselito Padua y Manalang v. People of the Philippines** - The petitioner’s motion for an extension of thirty (30) days within which to file a petition for review on certiorari is **GRANTED**, counted from the expiration of the reglementary period.

Before the Court is a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court assailing the Resolutions dated June 25, 2019<sup>1</sup> and October 16, 2019<sup>2</sup> of the Court of Appeals (CA) in CA G.R. SP No. 161129.

Joselito Padua y Manalang (Padua) was accused of violating Section 5,<sup>3</sup> Article II of Republic Act No. 9165<sup>4</sup> (R.A. No. 9165), involving 0.111 grams of *shabu*, through an Information dated February 8, 2019.

The Information reads:

That on or about February 06, 2019 in Orani, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being authorized by law, did then and there willfully sell, distribute and give away to another one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride commonly known as “**shabu**” weighing ZERO POINT ONE ONE SEVEN (0.117) GRAM, a dangerous drug. (Emphasis supplied)

- over – ten (10) pages ...

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<sup>1</sup> Penned by Associate Justice Ruben Reynaldo G. Roxas, with Associate Justices Marlene Gonzales-Sison and Victoria Isabel A. Paredes, concurring; *rollo*, pp. 41-47.

<sup>2</sup> *Id.* at 46-47.

<sup>3</sup> Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.*

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<sup>4</sup> COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.

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CONTRARY TO LAW.<sup>5</sup>

Upon motion to plea bargain by Padua, the Regional Trial Court (RTC) Branch 1 of Balanga, Bataan issued an Order<sup>6</sup> on February 22, 2019, finding him guilty to the lesser offense penalized under Sec. 12,<sup>7</sup> Art. II of R.A. No. 9165, pursuant to A.M. No. 18-03-16-SC.<sup>8</sup> Pertinent portions of the Order read:

**WHEREFORE, finding accused Joselito Padua guilty beyond reasonable doubt to the lesser offense penalized under Sec. 12, Art II of R.A. 9165, pursuant to A.M. No. 18-03-16-SC, he is hereby sentenced to an indeterminate penalty ranging from six months and one day as minimum to three (3) years as maximum and to pay a fine of Php10,000.00 with subsidiary imprisonment in case of insolvency.**

In this connection, the District Jail Warden of Bataan is hereby directed to bring accused Joselito Padua to the Bataan Crime Laboratory for drug testing. Should accused Joselito Padua yield POSITIVE for drug use, he shall be referred to Liyang Treatment and Rehabilitation Center for further drug dependency test and shall undergo six months rehabilitation, in which case, the six-month period he was in rehabilitation shall be computed and deducted from the entirety of the sentence imposed hereof. Should accused x x x yield NEGATIVE for drug use, the District Jail Warden is hereby directed to release accused Joselito Padua from this hold after he is able to completely serve the entire period of the sentence imposed upon him unless he is being held for some other lawful cause or causes.

The period within which accused is in preventive imprisonment shall be considered in the computation of his sentence.

Further, the District Jail Warden is directed to submit a report relative hereof.

**Make it of record that accused is ineligible to apply for probation in this case.**

Prof. Saldana, Atty. Sierra and accused Joselito Padua are notified of this order in open Court.

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<sup>5</sup> Rollo, p. 79.

<sup>6</sup> Penned by Presiding Judge Angelito I. Balderama; id. at 76-78.

<sup>7</sup> Section 12. *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.*

<sup>8</sup> Adoption of the Plea Bargaining Framework in Drugs Cases, April 10, 2018.

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The accused when asked in open Court whether someone threatened or coerced him in entering into plea bargaining, the accused answered in the negative and said that the same was out of his own volition.

SO ORDERED.<sup>9</sup> (Emphasis supplied)

Padua filed a Motion for Reconsideration which the RTC denied in an Order dated March 8, 2019.<sup>10</sup>

Padua then filed a Petition for *Certiorari* under Rule 65 of the Rules of Court before the CA assailing the February 22, 2019 and March 8, 2019 Orders of the trial court. He averred that the RTC committed grave abuse of discretion in finding: that A.M. No. 18-3-16-SC disqualified him from applying for probation; that he was convicted for violation of Section 5, Art. II of R.A. No. 9165 despite his guilty plea to the lesser offense of Sec. 12 of the same law; and, that he is ineligible for probation, without hearing and even though he possessed all the qualifications and none of the disqualifications under Presidential Decree (P.D.) No. 968.<sup>11</sup>

On June 25, 2019, the CA issued a Resolution dismissing Padua's petition. The appellate court held that since Padua raised pure questions of law, the petition should have been filed directly with the Supreme Court following Sec. 2, Rule 41 in relation to Rule 45 of the Rules of Court.<sup>12</sup>

The CA likewise denied Padua's motion for reconsideration on October 16, 2019.<sup>13</sup>

Hence the present petition where Padua is raising the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE PETITION FOR CERTIORARI FOR BEING THE WRONG REMEDY SINCE THE ISSUES RAISED THEREIN WERE PURE QUESTIONS OF LAW, WHICH SHOULD HAVE BEEN DIRECTLY ELEVATED TO THIS HONORABLE COURT VIA A PETITION FOR REVIEW ON CERTIORARI UNDER RULE 45 OF THE RULES OF COURT.

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<sup>9</sup> *Rollo*, pp. 74-75.

<sup>10</sup> *Id.* at 78.

<sup>11</sup> Probation Law of 1976.

<sup>12</sup> *Id.* at 44.

<sup>13</sup> *Rollo*, p. 47.

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## II

WHETHER OR NOT A.M. NO. 18-03-16-SC DISQUALIFIED THOSE CHARGED WITH VIOLATION OF SECTION 5, ARTICLE II OF R.A. NO. 9165 FROM APPLYING FOR PROBATION.

## III

WHETHER OR NOT THE PETITIONER'S RIGHT TO DUE PROCESS WAS VIOLATED WHEN HE WAS DECLARED TO BE INELIGIBLE FOR PROBATION, WITHOUT ANY HEARING CONDUCTED, DESPITE THE FACT THAT HE POSSESSED ALL THE QUALIFICATIONS AND NONE OF THE DISQUALIFICATIONS UNDER P.D. NO. 968.<sup>14</sup>

Padua argues that he correctly filed a petition for *certiorari* before the CA since the RTC's flagrant disregard of established rules of procedure amounted to gross ignorance of the law, which could not be considered as merely error in judgment but error in jurisdiction that is correctible by a *certiorari* petition. The filing of the petition before the CA was also correct since the SC is the court of last resort, and the case does not fall under any of the recognized exceptions enumerated in *The Diocese of Bacolod v. COMELEC*<sup>15</sup> Even assuming that the proper remedy was appeal and not *certiorari*, substantial justice should be given weight over rigid enforcement of the rules.

Padua also asserts that A.M. No. 18-03-16-SC did not disqualify those charged with violation of Sec. 5, Art. II of R.A. No. 9165 from applying for probation. Being charged is different from being convicted. In this case, while Padua was charged with violation of Sec. 5 of R.A. No. 9165, due to the grant of his plea bargain, he was only convicted under Sec. 12.<sup>16</sup> Since Padua was convicted of violation of Sec. 12, and not of Sec. 5, the prohibition under Sec. 24 of the law does not apply. Thus, he may validly apply for probation.

Padua further argues that there was violation of his right to due process when the RTC declared that he is ineligible for probation despite the fact that he possessed all the qualifications and none of the disqualifications under the law.

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<sup>14</sup> Id. at 18-19.

<sup>15</sup> 751 Phil. 301 (2015).

<sup>16</sup> *Rollo*, p. 26.

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Section 8 of P.D. No. 968 enumerates the criteria for placing an offender on probation. Secs. 1<sup>17</sup> and 2<sup>18</sup> of R.A. No. 10707 also provide for the qualifications and disqualifications of an applicant for probation.

Since the penalty imposed on Padua is less than six years, the offense he committed cannot be considered as grave or serious that would disqualify him from the application of the Probation Law. He was also deprived of due process when the RTC did not conduct any hearing to determine the merits of his application for probation pursuant to Sec. 5 of P.D. No. 968.<sup>19</sup>

We find MERIT in the petition. The case is REMANDED to the court of origin for hearing on the petitioner's application for probation.

*First*, on the matter of raising pure questions of law before the Court of Appeals.

It is settled that in all cases decided by the RTC, in the exercise of its original jurisdiction where the appellant raises only questions of law, the appeal must be taken to the Supreme Court on a petition for review on *certiorari* under Rule 45, of the Rules of Court.<sup>20</sup> An issue is deemed to involve pure question of law when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts, or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted.<sup>21</sup>

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<sup>17</sup> Sec. 4 of Presidential Decree No. 968, as amended, is hereby further amended to read as follows:

Sec. 4. *Grant of Probation.* – Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant for a probationable penalty and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best. No application for probation shall be entertained or granted if the defendant has perfected an appeal from the judgment of conviction.

<sup>18</sup> Section 9 of the same Decree, as amended, is hereby further amended to read as follows:

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;
- (b) convicted of any crime against national security;
- (c) who have previously been convicted by final judgment of any offense punished by imprisonment of more than six (6) months and one (1) day and/or a fine of more than one thousand pesos (P1,000.00);
- (d) who have been once on probation under the provisions of this Decree; and
- (e) who are already serving sentence at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof.

<sup>19</sup> *Rollo*, pp. 19-31.

<sup>20</sup> *City of Lapu-Lapu v. Phil. Economic Zone Authority*, 748 Phil. 473-568 (2014); *Badillo v. Court of Appeals*, 578 Phil. 404-419 (2008).

<sup>21</sup> *City of Lapu-Lapu v. Phil. Economic Zone Authority*, *supra*.

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Here, the petition filed by Padua clearly involves a pure question of law. Thus, the CA did not err in dismissing the petition before it, as Sec. 2 of Rule 50 of the Rules of Court provides that an improper appeal to the CA shall be dismissed outright.<sup>22</sup>

Nevertheless, considering the important question involved in this case, we shall take cognizance of the instant petition in the interest of substantial justice.

Now to the merits.

The crux of Padua's petition hinges on the question of whether he is eligible to apply for probation under P.D. No. 968, when he was charged under Sec. 5 but convicted for Sec. 12 of R.A. No. 9165 by reason of plea bargaining under A.M. No. 18-03-16-SC.

A.M. No. 18-03-16-SC (*Adoption of the Plea Bargaining Framework in Drugs Cases*), which was issued by the Court *En Banc* on April 10, 2018 provided, among others, that those charged under Sec. 5, involving *shabu* that are .01 to .99 grams may enter a plea of guilt and be convicted under Sec. 12, which carries a penalty of six months and one day to four years and a fine ranging from ₱10,000.00 to ₱50,000.00.

Following this administrative matter, Padua entered into a plea bargain and was convicted for Sec. 12 for which he was sentenced to an indeterminate penalty from six months and one day as minimum to three years as maximum and to pay a fine of ₱10,000.00 with subsidiary imprisonment in case of insolvency.

Even though he was charged under Sec. 5, he is not proscribed from applying for probation under P.D. No. 968, as the prohibition covers only those that have been *convicted* for drug trafficking or pushing.

As clearly provided in Sec. 24 of R.A. No. 9165:

**Sec. 24. Non-Applicability of the Probation Law for Drug Traffickers and Pushers.** – Any person **convicted** for drug trafficking or pushing under this Act, regardless of the penalty imposed by the Court, cannot avail of the privilege granted by the Probation Law or Presidential Decree No. 968, as amended. (Emphasis supplied)

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<sup>22</sup> Id.

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The Court had the occasion to explain, in a Minute Resolution dated April 2, 2019 in “*A.M. No. 18-03-16-SC (Re: Letter of Associate Justice Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association)*” the reason why the sale of *shabu* (in amounts of less than 0.99 grams) and marijuana (in amounts of less than 9.99 grams) are covered by the plea bargaining framework. To quote:

It bears emphasis that the main reason of the Court in stating in A.M. No. 18-03-16-SC dated April 10, 2018 that “plea bargaining is also not allowed under Section 5 (*Sale, Trading, etc. of Dangerous Drugs*) involving all other kinds of dangerous drugs, except *shabu* and marijuana” lies in the diminutive quantity of the dangerous drugs involved. Taking judicial notice of the volume and prevalence of cases involving the said two (2) dangerous drugs, as well as the recommendations of the Officers of the PJA, the Court is of the view that illegal sale of 0.01 gram to 0.99 gram of methamphetamine hydrochloride (*shabu*) is very light enough to be considered as necessarily included in the offense of violation of Section 12 (Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs), while 1.00 gram and above is substantial enough to disallow plea bargaining. The Court holds the same view with respect to illegal sale of 0.01 gram to 9.99 grams of marijuana, which likewise suffices to be deemed necessarily included in the same offense of violation of the same Section 12 of R.A. No. 9165. While 10.00 grams and above is ample enough to disallow plea bargaining.<sup>23</sup>

The Court, in the same Resolution, likewise clarified that while there are fears that the allowance of plea bargaining, in effect “degraded” the penalties provided by R.A. No. 9165, particularly for violation of Sec. 5, since the accused are allowed to plead guilty to violation of Sec. 12 only, where the penalty is minimal and probationable, it is actually towards the provision of a simplified and inexpensive procedure for the speedy disposition of cases in all courts that the rules on plea bargaining was introduced.<sup>24</sup> The plea bargaining framework was intended to expedite criminal proceedings and declog court dockets, so also as not to affect the other equally-important cases (criminal, civil, commercial, special proceedings and special civil actions) that merit the trial court’s limited personnel and logistical resources. Bearing in mind the policy behind R.A. No. 9165, the Court carefully chose to allow plea bargaining in illegal sale of marijuana and *shabu* in trifling quantities, because these are

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<sup>23</sup> A.M. No. 18-03-16-SC (*Re: Letter of Associate Justice Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association*),” April 2, 2019, p. 4.

<sup>24</sup> Id. at 7, citing *Estipona v. Lobrigo*, G.R. No. 226679, August 15, 2017, 837 SCRA 160.

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offenses that are often committed and that really flood court dockets, but get dismissed later not because the offenders are innocent, but because the cases are poorly built-up.<sup>25</sup>

It should be emphasized, however, that plea bargaining is always addressed to the sound discretion of the judge, guided by Court issuances. Furthermore, if an accused applies for probation, it does not follow that the same will be granted by the court.<sup>26</sup>

Probation Law or P.D. No. 968, as amended by R.A. No. 10707<sup>27</sup> provides strict criteria and exacting conditions for the grant of probation. To wit:

SEC. 8. *Criteria for Placing an Offender on Probation.* In determining whether an offender may be placed on probation, the court shall consider all information relative, to the character, antecedents, environment, mental and physical condition of the offender, and available institutional and community resources. Probation shall be denied if the court finds that:

- (a) the offender is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or
- (b) there is undue risk that during the period of probation the offender will commit another crime; or
- (c) probation will depreciate the seriousness of the offense committed.

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;
- b. convicted of any crime against the national security;
- c. who have previously been convicted by final judgment of an offense punished by imprisonment of more than six (6) months and one (1) day and/or a fine of more than one thousand pesos (P1,000.00);
- d. who have been once on probation under the provisions of this Decree; and

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<sup>25</sup> Id.

<sup>26</sup> Id. at 4, 8-9.

<sup>27</sup> AN ACT AMENDING PRESIDENTIAL DECREE NO. 968, OTHERWISE KNOWN AS THE "PROBATION LAW OF 1976," as amended.

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- e. who are already serving sentence at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof.”

Section 10. *Conditions of Probation.* Every probation order issued by the court shall contain conditions requiring that the probationer shall:

- (a) present himself to the probation officer designated to undertake his supervision at such place as may be specified in the order within seventy-two hours from receipt of said order;
- (b) report to the probation officer at least once a month at such time and place as specified by said officer.

The court may also require the probationer to:

- (a) cooperate with a program of supervision;
- (b) meet his family responsibilities;
- (c) devote himself to a specific employment and not to change said employment without the prior written approval of the probation officer;
- (d) undergo medical, psychological or psychiatric examination and treatment and enter and remain in a specified institution, when required for that purpose;
- (e) pursue a prescribed secular study or vocational training;
- (f) attend or reside in a facility established for instruction, recreation or residence of persons on probation;
- (g) refrain from visiting houses of ill-repute;
- (h) abstain from drinking intoxicating beverages to excess;
- (i) permit to probation officer or an authorized social worker to visit his home and place or work;
- (j) reside at premises approved by it and not to change his residence without its prior written approval; or
- (k) satisfy any other condition related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience.

Finding that no trial was conducted to ascertain whether petitioner has the qualifications and none of the disqualifications to avail of probation, we find that the remand of the instant case is in order.

**WHEREFORE**, the petition is **GRANTED**. The case is **REMANDED** to the Regional Trial Court, Balanga, Bataan, Branch 1, for trial on the application for probation of Joselito Padua y Manalang in connection with Criminal Case No. 19450.

**SO ORDERED.”**

Very truly yours,

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

by:

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