



Republic of the Philippines
Supreme Court
 Manila

EN BANC

**IN RE: CORRECTION/
 ADJUSTMENT OF PENALTY
 PURSUANT TO REPUBLIC ACT
 NO. 10951, IN RELATION TO
 HERNAN v. SANDIGANBAYAN**

G.R. No. 240563

Present:

CARPIO, J.,
 LEONARDO-DE CASTRO,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 PERLAS-BERNABE,
 LEONEN,
 JARDELEZA,
 CAGUIOA,
 TIJAM,
 A. REYES, JR.,
 GESMUNDO, and
 J. REYES, JR., JJ.

**EMALYN MONTILLANO y
 BASIG,**
 Petitioner.

Promulgated:

August 14, 2018

X-----X

RESOLUTION

TIJAM, J.:

Before Us is a Petition for Release,¹ praying for the modification of the penalty imposed by the Regional Trial Court (RTC) of Muntinlupa City, Branch 204 in Criminal Case No. 16-782, and consequently, for the immediate release of Emalyn Montillano y Basig (petitioner) pursuant to the

¹Rollo, pp. 3-14.

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provisions of Republic Act (R.A.) No. 10951,² and this Court's ruling in *Hernan v. Sandiganbayan*.³

The Facts

In the said RTC Judgment⁴ dated June 15, 2017, petitioner was convicted of the crime of Simple Theft and thus, sentenced as follows:

WHEREFORE, finding the [petitioner], GUILTY beyond reasonable doubt by her own admission for the offense of "Simple Theft" of personal property worth Php 6,000.00, she is sentenced to suffer an indeterminate penalty of imprisonment of six (6) months of *arresto mayor* as minimum, to four (4) years of *prision correccional* as maximum. Considering that the property in this case has been recovered, no civil liability is imposed.

The preventive imprisonment undergone by [petitioner] shall be credited in her favor.

Issue a commitment order for the commitment of [petitioner] to the Correctional Institute for Women for the service of her sentence.

SO ORDERED.⁵

Per the RTC Branch Clerk of Court's Certification⁶ dated November 7, 2017, no appeal was filed in the said case.

Per her Prison Record,⁷ petitioner already has two (2) years, three (3) months, and twenty-seven (27) days time served with earned good conduct time allowance as of May 8, 2018.

Meanwhile, R.A. No. 10951 was promulgated on August 29, 2017, which provides under Section 81, paragraph 4 thereof, that any person guilty of theft shall be punished by *arresto mayor* in its medium period to *prision correccional* in its minimum period⁸ if the value of the property stolen is over ₱5,000.00 but does not exceed ₱20,000.00.

Applying, thus, the Indeterminate Sentence Law and invoking our ruling in *Hernan*, allowing for the re-opening of an already terminated case for purposes of modifying/reducing the penalty to be served, petitioner comes before this Court averring that she is entitled to have her sentence

² AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS "THE REVISED PENAL CODE", AS AMENDED. Approved on August 29, 2017.

³ G.R. No. 217874, December 5, 2017.

⁴ Rendered by Judge Juanita T. Guerrero; *rollo*, pp. 21-22.

⁵ *Id.* at 22.

⁶ *Id.* at 23.

⁷ *Id.* at 20.

⁸ Two (2) Months and One (1) Day to Two (2) Years and Four (4) Months.

modified in accordance with R.A. No. 10951 and thereafter, to be immediately released from confinement in view of the aforesaid circumstances.

The Issue

Is petitioner entitled to the relief prayed for?

Ruling of the Court

While the petitioner correctly invoked R.A. No. 10951 for the modification of her sentence, in the recent case of *In Re: Correction/Adjustment of Penalty pursuant to R.A. No. 10951 in Relation to Hernan v. Sandiganbayan – Rolando Elbanbuena y Marfil*,⁹ however, this Court ruled that the determination of whether the petitioner is entitled to immediate release would necessarily involve ascertaining, among others, the actual length of time actually served and whether good conduct time allowance should actually be allowed, and thus should be better undertaken by the trial court, which is relatively more equipped to make findings of both fact and law. Thus, the Court issued Guidelines considering the anticipated influx of similar petitions, in the interest of justice and efficiency, which states:

I. *Scope.*

These guidelines shall govern the procedure for actions seeking (1) the modification, based on the amendments introduced by R[.]A[.] No. 10951, of penalties imposed by final judgments; and (2) the immediate release of the petitioner-convict on account of full service of the penalty/penalties, as modified.

II. *Who may file.*

The Public Attorney's Office, the concerned inmate, or his/her counsel/representative, may file the petition.

III. *Where to file.*

The petition shall be filed with the Regional Trial Court exercising territorial jurisdiction over the locality where the petitioner-convict is confined. The case shall be raffled and referred to the branch to which it is assigned within three (3) days from the filing of the petition.

IV. *Pleadings.*

(A) *Pleadings allowed.* – The only pleadings allowed to be filed are the petition and the comment from the OSG. No motions for extension of time, or other dilatory motions for postponement shall be allowed. The petition must contain a certified true copy of the Decision sought to be modified and, where applicable, the *mittimus* and/or a certification

⁹ G.R. No. 237721, July 31, 2018.

from the Bureau of Corrections as to the length of the sentence already served by petitioner-convict.

(B) *Verification.* – The petition must be in writing and verified by the petitioner-convict himself.

V. *Comment by the OSG.*

Within ten (10) days from notice, the OSG shall file its comment to the petition.

VI. *Effect of failure to file comment.*

Should the OSG fail to file the comment within the period provided, the court, *motu proprio*, or upon motion of the petitioner-convict, shall render judgment as may be warranted.

VII. *Judgment of the court.*

To avoid any prolonged imprisonment, the court shall promulgate judgment no later than ten (10) calendar days after the lapse of the period to file comment. The judgment shall set forth the following:

- a. The penalty/penalties imposable in accordance with R[.]A[.] No. 10951;
- b. Where proper, the length of time the petitioner-convict has been in confinement (and whether time allowance for good conduct should be allowed); and
- c. Whether the petitioner-convict is entitled to immediate release due to complete service of his sentence/s, as modified in accordance with R[.]A[.] No. 10951.

The judgment of the court shall be immediately executory, without prejudice to the filing before the Supreme Court of a special civil action under Rule 65 of the Revised Rules of Court where there is showing of grave abuse of discretion amounting to lack or excess of jurisdiction.

VIII. *Applicability of the regular rules.*

The Rules of Court shall apply to the special cases herein provided in a suppletory capacity insofar as they are not inconsistent therewith.¹⁰

WHEREFORE, the petition is **GRANTED**. The Decision dated June 15, 2017 of the Regional Trial Court of Muntinlupa City, Branch 204 in Criminal Case No. 16-782 is hereby **REMANDED** to the said court for the determination of: (1) the proper penalty in accordance with Republic Act No. 10951; and (2) whether petitioner Emalyn Montillano y Basig @ “Dagul” is entitled to immediate release on account of full service of her sentence, as modified.

¹⁰ Id.

Let copies of this Resolution be furnished the Office of the Court Administrator for dissemination to the First and Second Level Courts, as well as to the Presiding Justices of the appellate courts, the Department of Justice, Office of the Solicitor General, Public Attorney's Office, Prosecutor General's Office, the Directors of the National Penitentiary and Correctional Institution for Women, and the Integrated Bar of the Philippines for their information, guidance, and appropriate action.

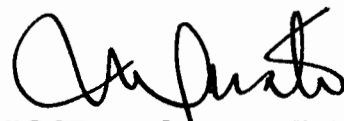
SO ORDERED.


NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Senior Associate Justice

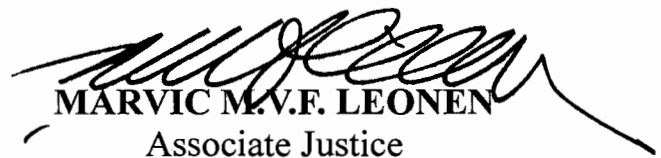

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

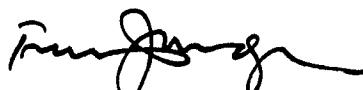

DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice

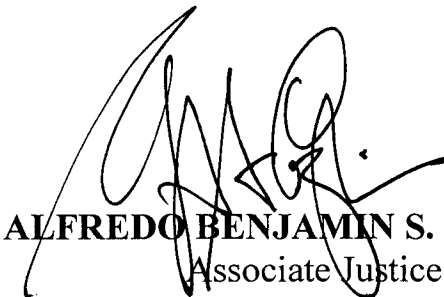

MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. FERLAS-BERNABE
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

Reyes
ANDRES B. REYES, JR.
Associate Justice

Gesmundo
ALEXANDER G. GESMUNDO
Associate Justice

Jose C. Reyes, Jr.
JOSE C. REYES, JR.
Associate Justice


CERTIFICATION

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



ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, Republic Act No. 296,
The Judiciary Act of 1948, As Amended)

CERTIFIED TRUE COPY


EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court