EN BANC

G.R. No. 179611 ***(Efren S. Almuete vs. Honorable Menrado V. Corpuz, Acting Presiding Judge of Trial Court of Bayombong, Nueva Vizcaya, Branch 27, and People of the Philippines)***

Promulgated:

January 27, 2015

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DISSENTING OPINION

VELASCO, JR., *J.*:

I respectfully dissent to the resolution denying the second motion for reconsideration of petitioner. I vote that it be partially granted, if only to ensure that the proper penalty is imposed on the accused-petitioner, and to prevent him from serving a sentence which, under the circumstances of this case, is unwarranted and unsupported by evidence.

The majority is of the opinion that because of his continued refusal to surrender himself to the authorities, the petitioner is a fugitive from justice who cannot seek any affirmative remedy from the Court. With most respect, I register my disagreement to such an observation. In the first place, when the Court reduced the penalty imposed on the petitioner in its March 12, 2013 Decision in G.R. No. 179611, We have in effect granted the petitioner affirmative relief even though he is presently not in the custody of the law. While the decision to reduce the penalty was borne by the finding that the penalty imposed by the trial court is patently wrong, it nevertheless resulted in relief being granted to petitioner, without the Court first requiring that he physically surrender himself to the authorities.

This issue is not entirely novel. In *Miranda v. Tuliao*, We have ruled that an accused seeking relief from the court need not be in the custody of the law, as long as he is deemed to have submitted himself to the jurisdiction of the court. There, the Court cited prior jurisprudence thus:

> [T]he following cases best illustrate this point, where we granted various reliefs to accused who were not in the custody of the law, but were deemed to have placed their persons under the jurisdiction of the court. Note that none of these cases involve the application for bail, nor a motion to quash an Information due to lack of jurisdiction over the person, nor a motion to quash a warrant of arrest:
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> 1. In *Allado v. Diokno*, on the prayer of the accused in a petition for certiorari on the ground of lack of probable cause, we issued a temporary restraining order enjoining PACC from enforcing the warrant of arrest and the respondent judge therein

from further proceeding with the case and, instead, to elevate the records to us.

2. In *Roberts, Jr. v. Court of Appeals*, upon the accused's Motion to Suspend Proceedings and to Hold in Abeyance Issuance of Warrants of Arrest on the ground that they filed a Petition for Review with the Department of Justice, we directed respondent judge therein to cease and desist from further proceeding with the criminal case and to defer the issuance of warrants of arrests against the accused.

3. In *Lacson v. Executive Secretary*, on the prayer of the accused in a petition for certiorari on the ground of lack of jurisdiction on the part of the Sandiganbayan, we directed the Sandiganbayan to transfer the criminal cases to the Regional Trial Court even before the issuance of the warrants of arrest.[1] (citations omitted)

While the factual circumstances in *Miranda* may be significantly different from those in the case at bar, it is still sufficient basis to dispel the notion that a person needs to be in the custody of the law before he/she can seek any affirmative remedy from the Court. Enlightening is the Court's discussion between custody of the law and jurisdiction over the person:

> Custody of the law is required before the court can act upon the application for bail, but is not required for the adjudication of other reliefs sought by the defendant where the mere application therefor constitutes a waiver of the defense of lack of jurisdiction over the person of the accused. Custody of the law is accomplished either by arrest or voluntary surrender, while jurisdiction over the person of the accused is acquired upon his arrest or voluntary appearance. One can be under the custody of the law but not yet subject to the jurisdiction of the court over his person, such as when a person arrested by virtue of a warrant files a motion before arraignment to quash the warrant. On the other hand, one can be subject to the jurisdiction of the court over his person, and yet not be in the custody of the law, such as when an accused escapes custody after his trial has commenced. Being in the custody of the law signifies restraint on the person, who is thereby deprived of his own will and liberty, binding him to become obedient to the will of the law. Custody of the law is literally custody over the body of the accused. It includes, but is not limited to, detention.[2] (citations omitted)

In the case of petitioner, while he is no longer in the custody of the law, having been considered to have jumped bail, it must be stressed that he has long been under the jurisdiction of the court, because he had actively participated in the case from the time of his arraignment all the way until trial. There being no question that petitioner had already been placed under the jurisdiction of the court, he must be accorded affirmative relief without being required to physically surrender himself to the authorities.

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[1] G.R. No. 158763, March 31, 2006, 486 SCRA 377, 391.
[2] Id. at 388.

In light of the foregoing, I reiterate my position that the Court ought to look into and re-examine the penalty to be imposed on the accused. While I find no substantial reason to deviate from Our ruling on the substantive issues passed upon in Our assailed Decision dated March 12, 2013, I submit that in the interest of substantial justice, and in line with the established precept that any doubt should be construed in favor of the accused, a second look into the propriety and reasonableness of the penalty imposed on the accused is in order.

Recalling Our March 12, 2013 Decision, We have already ruled:

> Substantial justice demands that we suspend our Rules in this case. "It is always within the power of the court to suspend its own [R]ules or except a particular case from its operation, whenever the purposes of justice require. x x x Indeed, when there is a strong showing that a grave miscarriage of justice would result from the strict application of the Rules, this Court will not hesitate to relax the same in the interest of substantial justice." Suspending the Rules is justified "where there exist strong compelling reasons, such as serving the ends of justice and preventing a miscarriage thereof." After all, the Court's "primordial and most important duty is to render justice x x x."
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> Surely, this is not the first time that the Court modified the penalty imposed notwithstanding the finality of the assailed Decision. (citations omitted)

For purposes of imposing the correct penalty, the rules applicable to theft are likewise applicable to violations of Section 68 of Presidential Decree No. 705 (PD 705). The law itself explicitly provides so:

> **Section 68.** *Cutting, gathering and/or collecting timber or other products without license.* Any person who shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable and disposable public lands, or from private lands, without any authority under a license agreement, lease, license or permit, **shall be guilty of qualified theft as defined and punished under Articles 309 and 310 of the Revised Penal Code**. x x x

Meanwhile, the referred to provisions of the Revised Penal Code provide:

> **Art. 309.** *Penalties.* — Any person guilty of theft shall be punished by:
>
> 1. The penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos, but if the value of the thing stolen exceeds the latter amount the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

2. The penalty of *prision correccional* in its medium and maximum periods, if the value of the thing stolen is more than 6,000 pesos but does not exceed 12,000 pesos.

3. The penalty of *prision correccional* in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.

4. *Arresto mayor* in its medium period to *prision correccional* in its minimum period, if the value of the property stolen is over 50 pesos but does not exceed 200 pesos.

5. *Arresto mayor* to its full extent, if such value is over 5 pesos but does not exceed 50 pesos.

6. *Arresto mayor* in its minimum and medium periods, if such value does not exceed 5 pesos.

7. *Arresto menor* or a fine not exceeding 200 pesos, if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of the thing stolen does not exceed 5 pesos. If such value exceeds said amount, the provision of any of the five preceding subdivisions shall be made applicable.

8. *Arresto menor* in its minimum period or a fine not exceeding 50 pesos, when the value of the thing stolen is not over 5 pesos, and the offender shall have acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family.

Art. 310. *Qualified theft.* — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of the plantation or fish taken from a fishpond or fishery, or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (As amended by R.A. 120 and B.P. Blg. 71. May 1, 1980).

From the foregoing, it is clear that a violation of Sec. 68, PD 705 is punishable as Qualified Theft under the Revised Penal Code. But in determining the appropriate penalty, Art. 310 of the Revised Penal Code refers to the preceding provision, i.e. Art. 309. The plain wording of Art. 309 provides that the value of the property subject of the offense is the material determining factor in the imposition of the proper penalty on the offender. As such, it is the prosecution's duty to provide sufficient evidence of the value of the property subject of the offense; otherwise, the courts will have no basis in determining the correct penalty to be imposed in a particular case.

In the present case, the Information against petitioner alleged that the value of the timber of which he was accused of gathering, collecting, removing, or possessing, amounted to Fifty-Seven Thousand and Twelve

Pesos (₱57,012.00).[3] In the testimony of DENR Officer Gregorio Francia (Francia) presented before the trial court, he **estimated** the price of the subject timber to be Twelve Pesos (₱12.00) per board foot, because, as he claimed, this was the prevailing price of unregistered lumber.[4] Given that the seized lumbers totaled 4,751 board feet, the prosecution went with the ₱57,012.00 valuation.

Based on the sole testimony of DENR Officer Francia, the trial court proceeded to impose on petitioner the following penalty contained in its September 8, 1998 Decision, thus:

> WHEREFORE, finding the accused, namely, Efren S. Almuete, Johnny Ila and Ramel and Joel Lloren y dela Cruz GUILTY beyond reasonable doubt of violation of Section 68, P.D. No. 705, as amended, they are each sentenced to suffer the penalty of 18 years, 2 months and 21 days of reclusion remporal as minimum to 40 years of reclusion perpetua as maximum.[5]

In this Court's Decision dated March 12, 2013, this was modified and lowered to six (6) years of *prision correccional*, as minimum, to thirteen (13) years of *reclusion temporal*, as maximum.

After a circumspect review of the facts and circumstances of the case and the established jurisprudence on the determination of the imposable penalty on persons found guilty of violation of Sec. 68, PD 705, and notwithstanding the fact that petitioner's right to appeal had already prescribed, I see that there is a need to further modify the subject judgment, if only to ensure that the correct penalty is imposed on petitioner, and that it is fair and just to him.

Such further reduction is called for, because a close examination of the records of the case reveals that the prosecution utterly failed to prove beyond reasonable doubt its valuation of the subject timber. Absent proof that the timbers were in fact valued at ₱57,012.00, there is also no basis in applying Art. 309(1) in relation to Art. 310 of the Revised Penal Code, because the penalty in the said clause applies only whenever the prosecution has successfully discharged its burden of proving that the value of the subject of the offense exceeds ₱22,000.00.

In the instant case, I submit that the prosecution failed to provide sufficient basis for its valuation of the seized timbers. The following testimony of the seminal witness, DENR Officer Francia, is revealing:

> ATTY. CASTILLO
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> Q: Sometime in August 1993, your office knew the price of forest products?

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[3] Records, p. 64.
[4] TSN, September 24, 1997, p. 164.
[5] Records, p. 404.

A: We usually computed the price of the forest products in our own initiative, sir.

Q: Can you tell us more or less the price of the lumber or common hardwood specie in August 1993?
A: During that time **as per feedback** the prevailing price within my jurisdiction was about ₱12.00 per board foot, sir.

Q: And when you mean price, is that the price in the market?
A: No, sir the retail price of the lumber dealers before. **It was the unregistered price commonly used and the price then.**

Q: Please elaborate to the Court what do you mean by unregistered price?
A: What I mean, **there was that unregistered price because we were not reporting to our higher source,** sir it was **only on the common interview by our personnel from the ones who were dealing of this business.**

Q: You made mention of the price of the forest products insofar as lumber dealers are concerned, what is the difference between the price of the forest products from lumber dealers in this unregistered price?
A: The price within the registered lumber dealers are more or less higher than that with the unregistered lumber dealers, sir.

Q: What do you mean by **this unregistered price of forest products**?
A: **Those businessmen who are not duly authorized to do that kind of business, sir.**

x x x x

ATTY. CASTILLO:

Q: In that period of time sometime in August 1992, do you know the price of lumbers from registered lumber dealers?
A: Yes sir.

Q: How much?
A: During that period of the prevailing price was ₱18.00 per board foot, sir.

Q: How much was the price of the forest products from illegal or unregistered lumber dealers?
A: ₱12.00 per board foot, sir.

Q: Can you tell us why the difference is too much?
A: May be it is because registered lumber dealers are paying some additional tax so there is much difference, sir.

COURT:

Q: Aside from the fact that the unregistered lumber dealers are in a hurry to dispose their products, is that correct?
A: Yes, sir.

Go ahead.

ATTY CASTILLO:

Q: Now how did your office gather this data?
A: It was through our personnel who are going around patrolling and also they got this information through some interviews or asking from people doing their business, sir.

Q: Did you know if your officer converted this data that they gathered in writing?
A: During that period we were doing it as an official report to our higher superior, sir.

Q: Now you said during that period you did not officially convert that an official report?
A: We have but later on from 1994 up to the present year there is none, nevertheless we can see there the prevailing price of the different forest products in our jurisdiction, sir.[6] (emphasis added)

It cannot be disputed that DENR Officer Francia himself admitted that the valuation at ₱12.00 per board foot is only an **estimate**. Francia also admitted that his pegging of the value of the timber at ₱12.00 per board foot was based on reports coming from personnel on the ground. However, the prosecution failed to present the said personnel as witnesses, to attest to their findings. Worse, while Francia declared that such reports were reduced to writing, the prosecution did not bother to present them as part of their evidence. Thus, at best, the valuation presented during the trial is a mere conjecture on the part of the witness DENR Officer Francia. At worst, his testimony is considered hearsay evidence, rendering his valuation as inutile and without any weight or credit.

It is an established rule that a witness may not testify as to what he merely learned from others either because he was told or read or heard the same. Such testimony is considered hearsay and may not be received as proof of the truth of what he has learned.[7] Thus, as is constantly held by the Court, such evidence has not much weight and credit, if not totally nil.

While it can be conceded that the price monitoring report, which the prosecution offered as Exhibit "L," was introduced in evidence as part of the testimony of DENR Officer Francia, the said report did not even indicate nor reflect the value of ₱12.00 per board foot, as estimated by Francia. The said monitoring report only reflects the following standard retail price, average price, and lowest price of indicated wood:

	SRP	Ave. price	Lowest price
1. Basic necessities			
a. Fuelwood Softwood	₱3.00	₱3.33	₱4.00
b. Charcoal Softwood	35.00	40.00	35.00

[6] TSN, September 24, 1997, pp. 164-167.
[7] *Borlongan, Jr. v. Peña*, G.R. No. 143591, May 5, 2010, 620 SCRA 106, 131.

Hardwood	100.00	100.00	100.00
2. Prime commodities			
a. Plywood			
1/8	170.00	190.00	170.00
3/16	230.00	252.50	230.00
1/4	295.00	301.60	295.00
3/8	600.00	610.00	600.00
1/2	695.10	701.00	695.00
Danarro	520.00	320.00	320.00
b. Wallboard			
¾	740.00	760.00	740.00
c. Lumber			
Tanguile	26.00	26.00	26.00
d. Coco lumber	8.00	8.00	8.00
e. Merine plywood	310.00	328.00	310.00
f. Rattan			
a. Split bundle	47.00	47.50	48.00
b. Unsplit	2.00	3.57	2.00
g. Buho	6.00	6.50	6.00
h. Kawayan kiling	6.00	6.50	6.00
i. Kawayan tinik	35.00	37.50	35.00
j. Sawali	135.00	137.00	135.00

The prosecution then marked as its evidence (Exhibit L-1") the entry for lumber – tanguile. From this, several observations can immediately be made vis-à-vis the allegations of the prosecution and the evidence they presented in court. First, there is no evidence on record that the seized lumbers were actually tanguile wood. The price monitoring report refers to a particular kind of lumber, which is tanguile. This portion of the report cannot be taken to mean that all kinds of lumber will be similarly priced at ₱26.00 per board foot. Second, the report does not in fact support the testimony of Francia, because in no uncertain terms, Francia identified the value of the seized lumber at ₱12.00. Nowhere in the monitoring report is the figure "₱12.00" ever reflected or mentioned.

An exhaustive review and re-examination of the evidence reveals that the prosecution was unable to adduce hard and convincing proof that can serve as strong and clear basis of the value of the seized timbers. The unavoidable conclusion, therefore, is that the allegation in the Information that the seized timbers are valued at ₱57,012.00, falls flat without any substantiation. Hence, the need to adjust the penalty accordingly.

In such situations, i.e., where the prosecution failed to prove the value of the seized timbers, *Merida v. People*[8] is PRECEDENT. In *Merida*, which involves a similar prosecution for violation of Sec. 68, PD 705, We explained:

[8] G.R. No. 158182, June 12, 2008.

> To prove the amount of the property taken for fixing the penalty imposable against the accused under Article 309 of the RPC, **the prosecution must present more than a mere uncorroborated "estimate" of such fact. In the absence of independent and reliable corroboration of such estimate, courts may either apply the minimum penalty under Article 309 or fix the value of the property based on the attendant circumstances of the case.** In *People v. Dator* where, as here, the accused was charged with violation of Section 68 of PD 705, as amended, for possession of lumber without permit, the prosecution's evidence for the lumber's value consisted of an estimate made by the apprehending authorities whose apparent lack of corroboration was compounded by the fact that the transmittal letter was not presented in evidence. Accordingly, we imposed on the accused the minimum penalty under Article 309(6) of the RPC. (emphasis added, citations omitted)

In *Merida*, the Court, applying the Indeterminate Sentence Law, ruled that the minimum imposable penalty for the offense of violation of Sec. 68 of PD 705 is four (4) months and one (1) day of *arresto mayor* to three (3) years), four (4) months and twenty-one (21) days of *prision correccional*.

Allow me to clarify and explain the computation made in *Merida* on the imposable penalty. The applicable provision is Art. 309(6) of the Revised Penal Code, which provides for the penalty of *arresto mayor* in its minimum and medium periods. Following Art. 310, this should be increased by two degrees; the imposable penalty then falls within *prision correccional*, in its medium and maximum periods. This is the imposable penalty to the offense of which petitioner is convicted.

Applying the Indeterminate Sentence Law, which says that the minimum period shall be within the range of the penalty next lower to that prescribed, there is a need to adjust the minimum of the penalty to one degree lower than the imposable penalty, which is four (4) months and one (1) day of *arresto mayor*. As far as the maximum is concerned, the Indeterminate Sentence Law merely provides that it not exceed the maximum imposable penalty, which in this case is within *prision correccional* in its medium and maximum periods.

Following *Merida*, I find that the correct sentence to be imposed on the petitioner should also be pared down to four (4) months and one (1) day of *arresto mayor* as minimum, to three (3) years, four (4) months and twenty-one (21) days of *prision correccional* as maximum.

In Our ruling dated March 12, 2013, this Court, citing various jurisprudence, had already dealt with the apparent conflict between the finality of the judgment and the modification of the penalty imposed. There, We saw the need to modify the penalty imposed, despite saying that the judgment for conviction had already been rendered final and executory. We deemed that in the case at bar, substantial justice demands that the Rules be suspended, because a grave miscarriage of justice would result in the strict application of the rules.

Finally, another cogent reason why the penalty to be imposed on the petitioner should be mitigated, is the possibility that the petitioner could have been acquitted, had he been given the opportunity to appeal his conviction through a liberal application of the Rules and Administrative Circular No. 16-93.

The likelihood of an exoneration can be gleaned from the examination and calibration of the pieces of evidence undertaken by the Court of Appeals in CA-G.R. SP No. 49953, where the petitioner was acquitted. Were it not for the petitioner's wrongful remedy of certiorari, the factual findings of the Court of Appeals, and consequently its acquittal, would have been sufficient basis for applying the doctrine of double jeopardy.

The following discussion of the court *a quo* is enlightening on the absence of proof to support a conviction beyond reasonable doubt:

> The offense of which petitioners were convicted is one which declares malum prohibitum the possession of forest products without legal documents required x x x. The fact of lack of legal papers and the fact of possession must be established.
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> The fact of lack of legal papers is undoubtedly established.
>
> As to the fact of possession, We are not convinced that the same was established beyond reasonable doubt insofar as petitioner Almuete is concerned.
>
> On the part of Almuete, although he was not in the truck carrying the illegal logs, he was allegedly pointed to as the owner thereof. Allegedly, he was in constructive possession of the pieces of lumber.
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> In spite of the fact that petitioner Almuete was not present when the offense was committed, the trial court convicted petitioner Almuete of the offense charged by relying heavily on the testimony of the witness Florendo.
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> A reading of the testimony of witness Florendo would show that his testimony is not worthy of belief as it was full of inconsistencies.
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> x x x x
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> The Court further doubts the veracity of the testimony of witness Florendo when the prosecution failed to present the tape used by witness Florendo to record the interview of petitioner Almuete.
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> This vital piece of evidence is necessary to affirm the claims of witness Florendo. However, for unexplained reason, the prosecution failed to present the tape which would support the testimony of witness Florendo.[9]

With respect to the circumstantial evidence relied upon by the RTC, the CA made these observations:

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[9] CA Decision, pp. 6-12.

> Likewise, the trial court convicted petitioner Almuete on the basis of the following circumstantial evidence: (1) testimony of the arresting officer; (2) petitioner Almuete owns the trucks which transported the lumber; (3) petitioner is in the construction business; and (4) logs were transported under the cover of darkness. This chain of circumstantial evidence deserves scant consideration.
>
> The first circumstantial evidence x x x relates to the testimonies of the arresting officers. The arresting officers testified that they heard the drivers admit that the owner of the lumber is petitioner Almuete. The testimonies of the arresting officers are admittedly hearsay evidence. The trial court itself found such testimonies to be hearsay evidence.
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> x x x x
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> The fact that petitioner Almuete is the owner of the truck does not necessarily imply that petitioner Almuete is also the owner of everything loaded on the said trucks with or without his knowledge.
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> Neither the fact that petitioner Almuete is engaged in a construction business would necessarily imply that he owns the pieces of lumber illegally transported on board his trucks.
>
> These pieces of evidence are highly speculative. The possibility is not remote that indeed without authority from petitioner Almuete, drivers – petitioners Ila and Lloren allowed the transport of the pieces of lumber. The prosecution failed to show that the logs were transported with the authority of petitioner Almuete.[10]

From the foregoing, it is clear that the testimonial evidence offered by the prosecution, as well as the circumstantial evidence banked on by the trial court, is not adequate to support a conviction. As a matter of fact, there is no direct, positive, and clear evidence against Almuete that will constitute proof beyond reasonable doubt. There is also no sufficient basis to apply the rule on circumstantial evidence.

While this Court, in **G.R. No. 144332**, nullified the CA Decision in CA-G.R. SP No. 49953 and reinstated that of the RTC, on the ground that the CA acted with grave abuse of its discretion when it ventured beyond the sphere of its authority and arrogated unto itself the authority to review perceived errors of the trial court in the exercise of its judgment and discretion, which are correctible only by appeal by writ of error, still the possibility of acquittal cannot be discounted. The foregoing discussions, as well as the factual findings of the CA in the nullified Decision, are enlightening. Therefore, I submit that in the interest of substantial justice, relief be accorded the petitioner by reducing further the penalty to be imposed upon him.

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[10] Id. at 12-14.

WHEREFORE, I submit that the Court approve the Respectful Motion for Leave of Court to File Second Motion for Reconsideration, and admit and entertain the second Motion for Reconsideration. I recommend to modify the March 12, 2013 Decision, in that the penalty imposed on the petitioner be further reduced to four (4) months and one (1) day of *arresto mayor* as minimum, to three (3) years), four (4) months and twenty-one (21) days of *prision correccional* as maximum.

PRESBITERO J. VELASCO, JR.
Associate Justice