

EN BANC

[G.R. No. 237721, July 31, 2018]

**IN RE: CORRECTION/ADJUSTMENT OF PENALTY PURSUANT TO
REPUBLIC ACT NO. 10951, IN RELATION TO *HERNAN V.
SANDIGANBAYAN* – ROLANDO ELBANBUENA Y MARFIL,
PETITIONER.**

DECISION

JARDELEZA, J.:

This is a petition^[1] praying for the release of petitioner Rolando M. Elbanbuena (Elbanbuena) pursuant to the provisions of Republic Act (RA) No. 10951^[2] and this Court's ruling in *Hernan v. Sandiganbayan*.^[3]

Petitioner Elbanbuena worked as a Disbursing Officer of Alingilan National High School in Alingilan, Bacolod. He was charged with four counts of malversation of public funds through falsification of a public document under Articles 217 and 171 in relation to Article 48 of the Revised Penal Code (RPC). After trial, Elbanbuena was found guilty beyond reasonable doubt of the crimes charged in the Information.^[4] The dispositive portion of the Decision states:

WHEREFORE, the accused is hereby found guilty of the complex crime of Malversation of Public Funds through falsification of public or commercial documents in Criminal Cases Nos. 95-17264, 95-17265, and 95-17266 and for Malversation of Public Funds in Criminal Case No. 95-17263, and the accused is hereby sentenced as follows:

- 1) To suffer imprisonment in Criminal Cases Nos. 95- 17264, 95- 17265, 95-17266, from prision mayor maximum or ten (10) years one (1) day to twelve (12) years to reclusion temporal maximum or seventeen (17) years four (4) months and one (1) day to twenty (20) years; in three (3) counts;
- 2) To suffer imprisonment in Criminal Case No. 95- 17263 of prision mayor medium or eight years one (1) day to ten (10) years to reclusion temporal minimum or twelve (12) years one (1) day to fourteen (14) years and eight (8) months; and
- 3) To suffer civil interdiction and absolute disqualification during the period of the sentence.

SO ORDERED.^[5]

Since Elbanbuena did not appeal the ruling, it became final and executory on August 10, 2000.^[6] On January 9, 2003, Elbanbuena started serving his sentence at the

New Bilibid Prison in Muntinlupa City.^[7]

On August 29, 2017, RA No. 10951 was promulgated. It amended Act No. 3815, otherwise known as the Revised Penal Code, and reduced the penalties for certain crimes. Pertinently, Section 40 of RA No. 10951 provides:

Sec. 40. Article 217 of the same Act, as amended by Republic Act No. 1060, is hereby further amended to read as follows:

Art. 217. *Malversation of public funds or property. – Presumption of malversation.* – Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (P40,000).

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than One million two hundred thousand pesos (P1,200,000) but does not exceed Two million four hundred thousand pesos (P2,400,000).

4. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos (P4,400,000).

5. The penalty of *reclusion temporal* in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (P4,400,000) but does not exceed Eight million eight hundred thousand pesos (P8,800,000). If the amount exceeds the latter, the penalty shall be *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses. (Emphasis supplied.)

On December 5, 2017, this Court issued its ruling in *Hernan v. Sandiganbayan*.^[8] There, the Court held:

The general rule is that a judgment that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. **When, however, circumstances transpire after the finality of the decision rendering its execution unjust and inequitable, the Court may sit *en banc* and give due regard to such exceptional circumstance warranting the relaxation of the doctrine of immutability.** The same is in line with Section 3(c), Rule II of the Internal Rules of the Supreme Court, which provides that cases raising novel questions of law are acted upon by the Court *en banc*. **To the Court, the recent passage of Republic Act (R.A.) No. 10951 x x x which accordingly reduced the penalty applicable to the crime charged herein is an example of such exceptional circumstance.** x x x

x x x x

Pursuant to the aforequoted provision, therefore, We have here a novel situation wherein the judgment convicting the accused, petitioner herein, has already become final and executory and yet the penalty imposed thereon has been reduced by virtue of the passage of said law. x x x

Thus, in order to effectively avoid any injustice that petitioner may suffer as well as a possible multiplicity of suits arising therefrom, the Court deems it proper to reopen the instant case and recall the Entry of Judgment dated June 26, 2013 of the Sandiganbayan, x x x.

On a final note, judges, public prosecutors, public attorneys, private counsels, and such other officers of the law are hereby advised to similarly apply the provisions of RA No. 10951 whenever it is, by reason of justice and equity, called for by the facts of each case. Hence, said recent legislation shall find application in cases where the impossible penalties of the affected crimes such as theft, qualified theft, estafa, robbery with force upon things, malicious mischief, malversation, and such other crimes, the penalty of which is dependent upon the value of the object in consideration thereof, have been reduced, as in the case at hand, taking into consideration the presence of existing circumstances attending its commission. For as long as it is favorable to the accused, said recent legislation shall find application regardless of whether its effectivity comes after the time when the judgment of conviction is rendered and even if service of sentence has already begun. The accused, in these applicable instances, shall be entitled to the benefits of the new law warranting him to serve a lesser sentence, or to his release,

if he has already begun serving his previous sentence, and said service already accomplishes the term of the modified sentence. In the latter case, moreover, the Court, in the interest of justice and expediency, further directs **the appropriate filing of an action before the Court that seeks the reopening of the case rather than an original petition filed for a similar purpose.**

Indeed, when exceptional circumstances exist, such as the passage of the instant amendatory law imposing penalties more lenient and favorable to the accused, the Court shall not hesitate to direct the reopening of a final and immutable judgment, the objective of which is to correct not so much the findings of guilt but the applicable penalties to be imposed.^[9] (Emphasis supplied; citations omitted.)

Hence, this petition which seeks, among others, the modification, in conformity with RA No. 10951, of the Decision^[10] dated July 5, 2000 rendered by Branch 41 of the Regional Trial Court of Bacolod City and, pursuant thereto, Elbanbuena's immediate release from confinement.

In a Resolution^[11] dated April 3, 2018, this Court required the Office of the Solicitor General (OSG) to comment on the petition (and its consolidated cases) and recommend guidelines relative thereto and similar petitions.

On July 4, 2018, the OSG filed its consolidated comment wherein it agreed that petitioners may invoke RA No. 10951 to seek a modification/reduction of the penalties for some of the crimes for which they are presently serving sentence. The OSG, however, took the position that Elbanbuena (and the other petitioners similarly situated) may not be immediately released at this point:

12. x x x While R.A. No. 10951 did reduce the imposable penalties for petitioners' crimes under the RPC, the reduced penalties to be *actually* imposed for these crimes have yet to be fixed by a court of competent jurisdiction.

13. The determination of whether petitioners are now entitled to be released requires that the court exercising jurisdiction over this petition *first*: (a) fix the new penalties for the crimes for which petitioners are presently serving sentence, as provided under R.A. No. 10951; and, thereafter (b) ascertain whether petitioners have indeed fully served their respective sentences based on such new penalties. Both have yet to be made.^[12] (Italics in the original.)

As held by this Court in *Hernan v. Sandiganbayan*, the passage of RA No. 10951 is an exceptional circumstance which warrants not only the re-opening of an already terminated case, but also the recall of an Entry of Judgment for purposes of modifying the penalty to be served. Thus, in *Hernan*, this Court re-opened the case for the sole purpose of re-computing the proper sentence to be imposed in accordance with RA No. 10951. In contrast, petitioner Elbanbuena here seeks not only a modification of his sentence in accordance with RA No. 10951; he also seeks **immediate release from confinement** on account of his alleged full service of the re-computed sentence. The determination of whether he is entitled to immediate release, however, would necessarily involve ascertaining, among others, the actual length of time Elbanbuena has *actually* been in confinement and whether time