

FIRST DIVISION

[G.R. No. 211269, June 15, 2016]

**RUBEN E. TIU, PETITIONER, VS. HON. NATIVIDAD G. DIZON,
ACTING CHAIRPERSON OF THE BOARD OF PARDONS AND
PAROLE, HON. FRANKLIN JESUS BUCAYU, DIRECTOR OF THE
BUREAU OF CORRECTIONS, HON. SECRETARY LEILA M. DE LIMA
OF THE DEPARTMENT OF JUSTICE, HON. PAQUITO N. OCHOA JR.,
THE EXECUTIVE SECRETARY, RESPONDENTS.**

D E C I S I O N

PERLAS-BERNABE, J.:

Before the Court is a petition for *habeas corpus*^[1] filed by petitioner Ruben E. Tiu (petitioner), who is detained at the Sablayan Prison and Penal Farm in Sablayan, Occidental Mindoro, seeking his immediate release from prison on the strength of his conditional pardon without parole conditions, as well as the automatic reduction of his sentence by virtue of his status as a penal colonist.^[2]

The Facts

On June 16, 2000, petitioner and two others^[3] were found guilty beyond reasonable doubt by the Regional Trial Court of Makati City, Branch 143, of selling, delivering, and giving away to a poseur-buyer 1,977 grams of *methamphetamine hydrochloride*, commonly known as "shabu" a regulated drug, without authority of law or corresponding license therefor.^[4] Consequently, they were sentenced to suffer the penalty of *reclusion perpetua* and to pay the fine of P10,000,000.00 each.^[5] Their conviction, which was affirmed by the Court in a Decision^[6] dated March 10, 2004, became final and executory on July 29, 2004.^[7]

On March 24, 2009, the Board of Pardons and Parole (BPP) issued Resolution No. 022-3-09^[8] recommending the grant of executive clemency to petitioner, among many others. On June 3, 2010, acting on said recommendation, then President Gloria Macapagal-Arroyo (PGMA) granted^[9] him "conditional pardon without parole conditions,"^[10] but was, nonetheless, still "subject to the conditions indicated in [the individual pardon papers]."^[11] It turned out, however, that no such papers were issued in petitioner's favor. Thus, petitioner repeatedly requested^[12] for a certificate of conditional pardon without parole conditions from the Legal Affairs Office of the Office of the President (OP), but said requests were denied by Deputy Executive Secretary for Legal Affairs Michael G. Aguinaldo (Deputy Executive Secretary Aguinaldo) in three (3) separate letters dated March 13, 2013,^[13] August 12, 2013,^[14] and August 14, 2013,^[15] informing petitioner that the records of his case were referred back to the BPP. Respondent Natividad G. Dizon, Chairman of the BPP, confirmed in a letter^[16] dated September 5, 2013 that: (a) petitioner's

Certificate of Conditional Pardon without Parole Conditions was not signed by PGMA; (b) consequently, the documents relative to petitioner's case were returned to the BPP; and (c) the BPP had resolved to defer action thereon pending compliance with all the basic requirements for executive clemency.^[17]

In the meantime, President Benigno Simeon C. Aquino III signed into law Republic Act No. (RA) 10592,^[18] which, subject to its provisions, would substantially increase the Good Conduct Time Allowance (GCTA) of qualified inmates. Thus, on July 27, 2013, petitioner's *carpeta* was returned to the Bureau of Corrections in Muntinlupa City for the re-computation of his time served.^[19]

On July 7, 2014, petitioner filed the instant Amended Petition for *Habeas Corpus*,^[20] insisting on the efficacy and enforceability of his conditional pardon without parole conditions, which allegedly necessitates his release from prison. Further, he claims that he is entitled to nineteen (19) years and seven (7) months of GCTA, computed hereafter, which, when tacked to his actual service of fourteen (14) years and nine (9) months, would add up to thirty-four (34) years and four (4) months, or more than his alleged reduced sentence of thirty (30) years:^[21]

MONTHS	DAYS GCTA	MONTHLY GCTA
01 October 1999 - 01 October 2001	20 days	24 months
01 October 2002 - 01 October 2005	23 days	36 months
01 October 2006 - 01 October 2010	25 days	178 months
01 October 2011 - 01 July 2014	30 days	44 months

He argues that, since he was granted a "colonist status" by then Director of Corrections Gaudencio S. Pangilinan (Director of Corrections Pangilinan) on December 21, 2011, as contained in Correction's Order No. 015-5-2012,^[22] his sentence was automatically reduced to thirty (30) years^[23] pursuant to Section 7 (b), Chapter 3, Part II, Book I of the Bureau of Corrections Operating Manual (BuCor-OM), the pertinent portions of which read as follows:

SECTION 7. *Privileges of a colonist.* - **A colonist** shall have the following privileges:

- a. credit of an additional GCTA of five (5) days for each calendar month while he retains said classification aside from the regular GCTA authorized under Article 97 of the Revised Penal Code;
- b. automatic reduction of the life sentence imposed on the colonist to a sentence of thirty (30) years;

x x x x (Emphasis and underscoring supplied)

To bolster his claim of reduction of sentence, petitioner cites^[24] Sections 5 and 7 of Act No. 2489,^[25] which provide for automatic modification of sentence from life imprisonment to thirty (30) years for prisoners receiving and retaining the

classification of penal colonists or trustees. He theorizes^[26] that, although said law **requires executive approval** for such classification, his colonist status was nonetheless "regularly awarded" by the Director of Corrections whose authority to so classify him as such is derived from Section 6, Chapter 3, Part II, Book I of the BuCor-OM. The aforementioned provisions read:

Provisions in Act No. 2489

Section 5. Prisoners serving sentences of life imprisonment **receiving and retaining the classification of penal colonists** or trustees will automatically have the sentence of life imprisonment modified to a sentence of thirty years **when receiving the executive approval for this classification** upon which the regular credit now authorized by law and special credit authorized in the preceding paragraph, for good conduct, may be made.

Section 7. The provisions of this Act as applied in the case of **penal colonists** and trustees may, **by executive approval and upon recommendation of the Director of Prisons [(now Director of Corrections)]**, be made applicable to all first-class workmen confined in Bilibid Prison who have earned the privilege of classification as penal colonists or trustees by serving one-fifth of the time sentence as imposed by the court, or seven years in the case of a life-sentenced prisoner, in addition to the compensation allowed, if any of such first-class workmen shall by written petition elect to remain in the industrial division at Bilibid Prison: *Provided*, That no prisoner shall receive the benefit of this section during the first two years of imprisonment unless authorized by the Director of Prisons [(now Director of Corrections)] for special reasons. (Emphases and underscoring supplied)

Section 6, Chapter 3, Part II, Book I of the BuCor-OM

Section 6. *Colonist*. - **The Director may, upon the recommendation of the Classification Board, classify an inmate who has the following qualifications as a colonist:**

- a. be at least a first class inmate and has served one (1) year immediately preceding the completion of the period specified in the following qualifications;
- b. has served imprisonment with good conduct for a period equivalent to one fifth (1/5) of the maximum term of his prison sentence, or seven (7) years in the case of a life sentence. (Emphasis and underscoring supplied)

Finally, petitioner invokes Section 5^[27] of RA 10592, which provides that the time allowances for good conduct **once granted shall not be revoked**.^[28] He further proposes that RA 10592 be given retroactive effect in light of the liberal construction provided for in the rules to favor detained or convicted prisoners like him.^[29]

On the other hand, herein respondents, through the Office of the Solicitor General (OSG), maintain^[30] that a prisoner serving a sentence of life imprisonment

receiving and retaining classification as a penal colonist will automatically have his sentence modified to thirty (30) years of imprisonment only "**when receiving the executive approval for this classification.**"^[31] However, petitioner failed to obtain such executive approval. They argue further against petitioner's reliance on the BuCor-OM, which is a mere administrative rule or regulation that cannot amend Act No. 2489 by abridging or expanding its scope.^[32] Petitioner's colonist status granted merely by the Director of Corrections, without executive approval, did not modify his sentence.^[33] Hence, there being no unlawful restraint, no writ of *habeas corpus* should be issued in his favor.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not a writ of *habeas corpus* should be issued in favor of petitioner.

The Court's Ruling

The petition lacks merit.

The object of the writ of *habeas corpus* is to inquire into the legality of the detention, and, if the detention is found to be illegal, to require the release of the detainee. Well-settled is the rule that the writ will not issue where the person in whose behalf the writ is sought is in the custody of an officer under process issued by a court or judge with jurisdiction or by virtue of a judgment or order of a court of record.^[34] The writ is denied if the petitioner fails to show facts that he is entitled thereto *ex merito justicias*.^[35]

In this case, petitioner is serving sentence by virtue of a final judgment convicting him of the offense of selling and delivering prohibited drugs defined and penalized under Section 15, Article III of RA 6425,^[36] as amended by RA 7659.^[37] He failed to show, however, that his further incarceration is no longer lawful and that he is entitled to relief under a writ of *habeas corpus*.

First. Petitioner's insistence on the efficacy and enforceability of the conditional pardon without parole conditions granted to him by PGMA on June 3, 2010 deserves scant consideration.

It must be emphasized that pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. It is the private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended and not communicated officially to the court. A pardon is a deed, to the validity of which delivery is essential.^[38]

The executive clemency extended by PGMA on June 3, 2010 to a number of prisoners including petitioner was made "subject to the conditions indicated in the corresponding documents."^[39] It is undisputed, however, that no individual pardon papers were issued in petitioner's favour, thereby rendering the grant of executive clemency to him as **incomplete and ineffective**, as clarified by Deputy Executive Secretary Aguinaldo.^[40] The necessity for the individual pardon papers is best