

## SECOND DIVISION

[ G.R. No. 168546, July 23, 2008 ]

**MICHAEL PADUA, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### DECISION

**QUISUMBING, J.:**

This petition for review assails the Decision<sup>[1]</sup> dated April 19, 2005 and Resolution<sup>[2]</sup> dated June 14, 2005, of the Court of Appeals in CA-G.R. SP No. 86977 which had respectively dismissed Michael Padua's petition for certiorari and denied his motion for reconsideration. Padua's petition for certiorari before the Court of Appeals assailed the Orders dated May 11, 2004<sup>[3]</sup> and July 28, 2004<sup>[4]</sup> of the Regional Trial Court (RTC), Branch 168, Pasig City, which had denied his petition for probation.

The facts, culled from the records, are as follows:

On June 16, 2003, petitioner Michael Padua and Edgar Allan Ubalde were charged before the RTC, Branch 168, Pasig City of violating Section 5,<sup>[5]</sup> Article II of Republic Act No. 9165,<sup>[6]</sup> otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," for selling dangerous drugs.<sup>[7]</sup> The Information reads:

The Prosecution, through the undersigned Public Prosecutor, charges **Edgar Allan Ubalde y Velchez a.k.a. "Allan"** and **Michael Padua y Tordel a.k.a. "Mike"**, with the crime of violation of Sec. 5, Art. II, Republic Act No. 9165 in relation to R.A. [No.] 8369, Sec. 5 par. (a) and (i), committed as follows:

On or about June 6, 2003, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, Edgar Allan Ubalde y Velchez and Michael Padua y Tordel, a minor, seventeen (17) years old, conspiring and confederating together and both of them mutually helping and aiding one another, not being lawfully authorized to sell any dangerous drug, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Roland A. Panis, a police poseur-buyer, one (1) folded newsprint containing 4.86 grams of dried marijuana fruiting tops, which was found positive to the tests for marijuana, a dangerous drug, in violation of the said law.

Contrary to law.<sup>[8]</sup>

When arraigned on October 13, 2003, Padua, assisted by his counsel *de officio*, entered a plea of not guilty.<sup>[9]</sup>

During the pre-trial conference on February 2, 2004, however, Padua's counsel manifested that his client was willing to withdraw his plea of not guilty and enter a plea of guilty to avail of the benefits granted to first-time offenders under Section 70<sup>[10]</sup> of Rep. Act No. 9165. The prosecutor interposed no objection.<sup>[11]</sup> Thus, the RTC on the same date issued an Order<sup>[12]</sup> stating that the former plea of Padua of not guilty was considered withdrawn. Padua was re-arraigned and pleaded guilty. Hence, in a Decision<sup>[13]</sup> dated February 6, 2004, the RTC found Padua guilty of the crime charged:

*In view of the foregoing, the Court finds accused Michael Padua y Tordel guilty of [v]iolation of Sec. 5 Art. II of R.A. No. 9165 in relation to R.A. No. 8369 Sec. 5 par. (a) and (i) thereof, and therefore, sentences him to suffer an indeterminate sentence of six (6) years and one (1) day of Prision Mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum and a fine of Five Hundred Thousand Pesos (P500,000.00).*

No subsidiary imprisonment, however, shall be imposed should [the] accused fail to pay the fine pursuant to Art. 39 par. 3 of the Revised Penal Code.

SO ORDERED.<sup>[14]</sup>

Padua subsequently filed a Petition for Probation<sup>[15]</sup> dated February 10, 2004 alleging that he is a minor and a first-time offender who desires to avail of the benefits of probation under Presidential Decree No. 968<sup>[16]</sup> (P.D. No. 968), otherwise known as "The Probation Law of 1976" and Section 70 of Rep. Act No. 9165. He further alleged that he possesses all the qualifications and none of the disqualifications under the said laws.

The RTC in an Order<sup>[17]</sup> dated February 10, 2004 directed the Probation Officer of Pasig City to conduct a Post-Sentence Investigation and submit a report and recommendation within 60 days from receipt of the order. The City Prosecutor was also directed to submit his comment on the said petition within five days from receipt of the order.

On April 6, 2004, Chief Probation and Parole Officer Josefina J. Pasana submitted a Post-Sentence Investigation Report to the RTC recommending that Padua be placed on probation.<sup>[18]</sup>

However, on May 11, 2004, public respondent Pairing Judge Agnes Reyes-Carpio issued an Order denying the Petition for Probation on the ground that under Section 24<sup>[19]</sup> of Rep. Act No. 9165, any person convicted of drug trafficking cannot avail of the privilege granted by the Probation Law. The court ruled thus:

Before this Court now is the Post-Sentence Investigation Report (PSIR) on minor Michael Padua y Tordel prepared by Senior Parole and Probation Officer Teodoro Villaverde and submitted by the Chief of the Pasig City Parole and Probation Office, Josefina J. Pasana.

In the aforesaid PSIR, Senior PPO Teodoro Villaverde recommended that

minor Michael Padua y Tordel be placed on probation, anchoring his recommendation on Articles 189 and 192 of P.D. 603, otherwise known as the Child and Welfare Code, as amended, which deal with the suspension of sentence and commitment of youthful offender. Such articles, therefore, do not find application in this case, the matter before the Court being an application for probation by minor Michael Padua y Tordel and not the suspension of his sentence.

On the other hand, Section 70 is under Article VIII of R.A. 9165 which deals with the Program for Treatment and Rehabilitation of Drug Dependents. Sections 54 to 76, all under Article VIII of R.A. 9165 specifically refer to violations of either Section 15 or Section 11. Nowhere in Article VIII was [v]iolation of Section 5 ever mentioned.

More importantly, while the provisions of R.A. 9165, particularly Section 70 thereof deals with Probation or Community Service for First- Time Minor Offender in Lieu of Imprisonment, the Court is of the view and so holds that minor Michael Padua y Tordel who was charged and convicted of violating Section 5, Article II, R.A. 9165, cannot avail of probation under said section in view of the provision of Section 24 which is hereunder quoted:

"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." (underlining supplied)

**WHEREFORE**, premises considered, the Petition for Probation filed by Michael Padua y Tord[e]l should be, as it is hereby **DENIED**.

SO ORDERED.<sup>[20]</sup>

Padua filed a motion for reconsideration of the order but the same was denied on July 28, 2004. He filed a petition for certiorari under Rule 65 with the Court of Appeals assailing the order, but the Court of Appeals, in a Decision dated April 19, 2005, dismissed his petition. The dispositive portion of the decision reads:

**WHEREFORE**, in view of the foregoing, the petition is hereby **DENIED** for lack of merit and ordered **DISMISSED**.

**SO ORDERED**.<sup>[21]</sup>

Padua filed a motion for reconsideration of the Court of Appeals decision but it was denied. Hence, this petition where he raises the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE DENIAL OF THE PETITION FOR PROBATION WHICH DEPRIVED PETITIONER'S RIGHT AS A MINOR UNDER ADMINISTRATIVE ORDER NO. [02-1-18-SC] OTHERWISE KNOWN AS [THE] RULE ON JUVENILES IN

## CONFLICT WITH THE LAW.

### II.

WHETHER OR NOT [THE] ACCUSED[']S RIGHT [TO BE RELEASED UNDER RECOGNIZANCE] HAS BEEN VIOLATED OR DEPRIVED IN THE LIGHT OF R.A. 9344 OTHERWISE KNOWN AS AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE JUSTICE AND WELFARE SYSTEM, CREATING THE JUVENILE JUSTICE AND WELFARE COUNCIL UNDER DEPARTMENT OF JUSTICE APPROPRIATING FUNDS THEREFOR AND OTHER PURPOSES.<sup>[22]</sup>

The Office of the Solicitor General (OSG), representing public respondent, opted to adopt its Comment<sup>[23]</sup> as its Memorandum. In its Comment, the OSG countered that

#### I.

THE TRIAL COURT AND THE COURT OF APPEALS HAVE LEGAL BASIS IN APPLYING SECTION 24, ARTICLE II OF R.A. 9165 INSTEAD OF SECTION 70, ARTICLE VIII OF THE SAME LAW.

#### II.

SECTION 32 OF A.M. NO. 02-1-18-SC OTHERWISE KNOWN AS THE "*RULE ON JUVENILES IN CONFLICT WITH THE LAW*" HAS NO APPLICATION TO THE INSTANT CASE.<sup>[24]</sup>

Simply, the issues are: (1) Did the Court of Appeals err in dismissing Padua's petition for certiorari assailing the trial court's order denying his petition for probation? (2) Was Padua's right under Rep. Act No. 9344,<sup>[25]</sup> the "Juvenile Justice and Welfare Act of 2006," violated? and (3) Does Section 32<sup>[26]</sup> of A.M. No. 02-1-18-SC otherwise known as the "Rule on Juveniles in Conflict with the Law" have application in this case?

As to the first issue, we rule that the Court of Appeals did not err in dismissing Padua's petition for certiorari.

For certiorari to prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.<sup>[27]</sup>

"Without jurisdiction" means that the court acted with absolute lack of authority. There is "excess of jurisdiction" when the court transcends its power or acts without any statutory authority. "Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction. In other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility, and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform

the duty enjoined or to act at all in contemplation of law.<sup>[28]</sup>

A review of the orders of the RTC denying Padua's petition for probation shows that the RTC neither acted without jurisdiction nor with grave abuse of discretion because it merely applied the law and adhered to principles of statutory construction in denying Padua's petition for probation.

Padua was charged and convicted for violation of Section 5, Article II of Rep. Act No. 9165 for selling dangerous drugs. It is clear under Section 24 of Rep. Act No. 9165 that any person convicted of drug trafficking cannot avail of the privilege of probation, to wit:

*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.)

The law is clear and leaves no room for interpretation. Any person convicted for drug trafficking or pushing, regardless of the penalty imposed, cannot avail of the privilege granted by the Probation Law or P.D. No. 968. The elementary rule in statutory construction is that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says.<sup>[29]</sup> If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or speech is the index of intention.<sup>[30]</sup> Furthermore, there is the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure.<sup>[31]</sup>

Moreover, the Court of Appeals correctly pointed out that the intention of the legislators in Section 24 of Rep. Act No. 9165 is to provide stiffer and harsher punishment for those persons convicted of drug trafficking or pushing while extending a sympathetic and magnanimous hand in Section 70 to drug dependents who are found guilty of violation of Sections 11<sup>[32]</sup> and 15<sup>[33]</sup> of the Act. The law considers the users and possessors of illegal drugs as victims while the drug traffickers and pushers as predators. Hence, while drug traffickers and pushers, like Padua, are categorically disqualified from availing the law on probation, youthful drug dependents, users and possessors alike, are given the chance to mend their ways.<sup>[34]</sup> The Court of Appeals also correctly stated that had it been the intention of the legislators to exempt from the application of Section 24 the drug traffickers and pushers who are minors and first time offenders, the law could have easily declared so.<sup>[35]</sup>

The law indeed appears strict and harsh against drug traffickers and drug pushers while protective of drug users. To illustrate, a person arrested for using illegal or dangerous drugs is meted only a penalty of six months rehabilitation in a government center, as minimum, for the first offense under Section 15 of Rep. Act No. 9165, while a person charged and convicted of selling dangerous drugs shall suffer life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (P500,000.00) to Ten Million Pesos (P10,000,000.00) under Section 5, Rep.