

## THIRD DIVISION

[ G.R. NO. 170497, January 22, 2007 ]

**IN THE MATTER OF THE APPLICATION FOR THE WRIT OF  
HABEAS CORPUS RECLASSIFYING SENTENCE TO R.A. NO. 8353  
IN BEHALF OF, ROGELIO ORMILLA, ROGELIO RIVERA ALFREDO  
NAVARRO, PETITIONERS, VS. THE DIRECTOR, BUREAU OF  
CORRECTIONS, AND THE PEOPLE OF THE PHILIPPINES,  
RESPONDENTS.**

### DECISION

**YNARES-SANTIAGO, J.:**

This is a petition<sup>[1]</sup> for the issuance of a writ of *habeas corpus* filed for and in behalf of Rogelio Ormilla, Rogelio Rivera and Alfredo Navarro, praying for their release from confinement on the ground that an excessive penalty was imposed on them.

At the outset, we note that only Ormilla signed his conformity to the petition while Rivera and Navarro failed to manifest their conformity or sign the verification. Hence, the instant petition pertains only to petitioner Ormilla.

Petitioner, together with Rivera and Navarro, was convicted of two counts of rape and sentenced to reclusion perpetua for each count. He is presently confined at the National Penitentiary in Muntinlupa and has served approximately 17 years of his sentence.<sup>[2]</sup>

In the instant petition, Ormilla alleged that he should be released from confinement by virtue of Republic Act No. 8353 (R.A. No. 8353), otherwise known as "The Anti-Rape Law of 1997." He claimed that under the new rape law, the penalty for rape committed by two or more persons was downgraded to *prision mayor* to *reclusion temporal*. Thus, the penalty of *reclusion perpetua* imposed on him is excessive and should be modified in accordance with R.A. No. 8353. He prayed that he be released so he could apply for pardon or parole.

In their Comment,<sup>[3]</sup> respondents, represented herein by the Office of the Solicitor-General, contended that the penalty imposed under R.A. No. 8353 for rape committed by two or more persons is *reclusion perpetua* to death. Under Article 70<sup>[4]</sup> of the Revised Penal Code, the duration of perpetual penalties is 30 years. Since petitioner was sentenced to *reclusion perpetua* for each count of rape, the aggregate of the two penalties is 60 years. Respondents argued that petitioner has yet to complete the service of his first sentence, as he has been in confinement for only 17 years. Respondents further argued that petitioner is ineligible for parole, because Section 2 of the Indeterminate Sentence Law prohibits its application to persons convicted of offenses punished by life imprisonment.

The sole issue for resolution is whether the writ may be granted in favor of

petitioner.

The petition lacks merit.

Section 1, Rule 102 of the Rules of Court provides that a petition for the issuance of a writ of habeas corpus may be availed of in cases of illegal confinement by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto. In *Feria v. Court of Appeals*,<sup>[5]</sup> the Court held that the writ may also be issued where, as a consequence of a judicial proceeding, (a) there has been a deprivation of a constitutional right resulting in the restraint of a person; (b) the court had no jurisdiction to impose the sentence; or (c) an excessive penalty has been imposed, as such sentence is void as to such excess.<sup>[6]</sup>

None of the above circumstances is present in the instant case.

Recall that petitioner was charged and convicted under Article 335 of the Revised Penal Code which states:

Art. 335. When and how rape is committed. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

**1. By using force or intimidation;**

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age or is demented.

**The crime of rape shall be punished by reclusion perpetua.**

**Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.** (Emphasis added)

With the enactment of R.A. No. 8353, petitioner claims that the penalty of reclusion perpetua has become excessive, as the new law now punishes rape with prison mayor, citing Article 266-B as follows:<sup>[7]</sup>

Article 266-B. Penalties. --- x x x

**Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.**

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *prision mayor* to *reclusion temporal*.

x x x x. (Emphasis added)

Petitioner's reliance on the above-mentioned portion of Article 266-B is misplaced. Note that the penalty of prison mayor is imposed for rape committed under