

FIRST DIVISION

[G.R. No. 152044, July 03, 2003]

DOMINGO LAGROSA AND OSIAS BAGUIN, PETITIONERS, VS. THE PEOPLE OF THE PHILIPPINES AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

This is a petition for review of the decision of the Court of Appeals in CA-G.R. No. 67308,^[1] which affirmed the Resolution of the Regional Trial Court of Tagbilaran City, Branch 2, denying petitioners' Application for Probation, and its Order denying petitioners' Motion for Reconsideration.^[2]

The undisputed facts are as follows.

On October 29, 1996, the Regional Trial Court of Tagbilaran City, Branch 2, rendered a decision in Criminal Case No. 8243,^[3] finding petitioners Domingo Lagrosa and Osias Baguin guilty of violation of Section 68 of P.D. 705, as amended (The Revised Forestry Code), for having in their possession forest products without the requisite permits. The trial court sentenced them to suffer the indeterminate penalty of imprisonment from two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum. Petitioners' Motion for Reconsideration of the decision^[4] was denied by the trial court on November 21, 1996.^[5]

Petitioners appealed their conviction to the Court of Appeals, where it was docketed as CA-G.R. CR No. 20632.^[6] On March 14, 2000, the appellate court affirmed the conviction of the petitioners, with the modification as to the penalty imposed, which was reduced to an indeterminate penalty ranging from six (6) months and one (1) day of *prision correccional*, as minimum, to one (1) year, eight (8) months and twenty one (21) days of *prision correccional*, as maximum.^[7] The decision became final and executory on April 12, 2000.

On August 29, 2001, petitioners filed an Application for Probation with the trial court,^[8] which, as mentioned at the outset, was denied. Petitioners' motion for reconsideration was likewise denied by the trial court. Hence, petitioners filed a petition for certiorari with the Court of Appeals, which was docketed as CA-G.R. SP No. 67308.^[9] On January 11, 2002, the Court of Appeals rendered the assailed decision affirming the questioned resolutions of the trial court.

Hence this petition, raising the following arguments:

- 1) That Section 4 of Presidential Decree No. 968, as amended

by PD No. 1990, is very absurd and illogical considering that petitioners were not given the opportunity to apply for probation when they were convicted by the Regional Trial Court of Bohol, Branch 2, because the penalty imposed by said court is more than six (6) years and therefore non-probationable.

That the first opportunity for herein petitioners to apply for probation was when the Court of Appeals modified the sentence imposed by the Regional Trial Court of Bohol, Branch 2, from two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum, to six (6) months and one (1) day to one (1) year, eight (8) months and twenty one (21) days as maximum which is clearly probationable.

- 2) That the ruling of this Honorable Supreme Court in the case of *Pablo Francisco versus Court of Appeals, et al.*, G.R. No. 108747, is not applicable to the instant case because in the said *Francisco* case the accused therein can apply for probation because the penalty imposed by the lower court was already probationable but the accused instead appealed the decision but in the case of herein petitioners they cannot apply for probation when they were convicted because the penalty imposed by the lower court was more than six (6) years and therefore non-probationable.
- 3) That the decision of the Court of Appeals herein sought to be reviewed is clearly contrary to the purpose of the Probation Law.^[10]

The law that is at the heart of this controversy is Presidential Decree No. 968, also known as the Probation Law, as amended by P.D. 1990, the pertinent provision of which reads:

SEC. 4. *Grant of Probation.* - Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant, and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best; *Provided, That no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction.* (underscoring ours)

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court. The filing of the application shall be deemed a waiver of the right to appeal.

An order granting or denying probation shall not be appealable.

Under Section 9 (a) of the Probation Law, offenders who are sentenced to serve a maximum term of imprisonment of more than six years are disqualified from seeking probation.