

## SECOND DIVISION

[ G.R. No. 156983, September 23, 2003 ]

**IN THE MATTER OF THE APPLICATION FOR THE HABEAS CORPUS  
OF JOSE VICTOR RIGOR Y DANAÑO, PETITIONER, VS. THE  
SUPERINTENDENT, NEW BILIBID PRISON, RESPONDENT.**

### RESOLUTION

**AUSTRIA-MARTINEZ, J.:**

Hopeful that he may be released from incarceration, petitioner Jose Victor Rigor y Danao filed the present petition for *habeas corpus* seeking that the penalty imposed on him by the Regional Trial Court of Mandaluyong City (Branch 214) in Criminal Cases Nos. MC-99-1235-D and MC-99-1236-D be reduced to six months and one day of *prision correccional* in each case, and that he be set free, having served more than a year of imprisonment.

Per the Joint Decision dated August 31, 2001 of the RTC, petitioner was convicted of illegal sale and possession of methamphetamine hydrochloride, popularly known as *shabu*, to wit:

WHEREFORE, the prosecution having successfully established the guilt of the accused beyond reasonable doubt accused JOSE VICTOR RIGOR Y DANAÑO is hereby sentenced, as follows: in Criminal Case No. MC-99-1235-D: SIX (6) MONTHS AND ONE (1) DAY OF *arresto mayor* maximum to FOUR (4) YEARS AND FOUR (4) MONTHS AND ONE (1) DAY OF *prision correccional* and a fine of P5,000.00 and, in Criminal Case No. MC-99-1236-D: SIX (6) MONTHS AND ONE (1) DAY OF *arresto mayor* maximum to FOUR (4) YEARS AND ONE (1) DAY OF *prision correccional* and a fine of P5,000.00.

...

SO ORDERED.<sup>[1]</sup>

Petitioner admits that he did not appeal from said conviction, hence, it became final and executory.<sup>[2]</sup> As of the filing of the petition, Rigor had already served one year and five months of imprisonment.<sup>[3]</sup>

Petitioner cites several rulings of this Court and the Court of Appeals<sup>[4]</sup> wherein Republic Act No. 7659 was given retroactive effect and the accused therein set to liberty.<sup>[5]</sup>

The Office of the Solicitor General filed its Comment opposing the petition on the grounds that petitioner has yet to serve the maximum penalty imposed on him on his two convictions and that he must serve these penalties successively.<sup>[6]</sup>

A cursory reading of the petition gives the impression that what petitioner seeks is that he be entitled to enjoy the beneficial provisions of Rep. Act No. 7659 by taking into account the years of imprisonment he had already served, and consequently, his release from prison. However, a further review of his petition reveals that what petitioner actually asks for is the reduction of his penalty to only six months and one day of *prision correccional* in each of his convictions so that he may be deemed to have served the maximum penalty in both instances, and should now be released. Thus, the prayer in his petition states: [7]

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that after given due course, modify the penalties in criminal cases nos. MC-99-1235 and MC-99-1236-D by reducing the same to six (6) months and one (1) day of *prision correccional* in each case.

The relief prayed for cannot be granted for the simple reason that the Joint Decision of the trial court in Criminal Cases Nos. MC-99-1235-D and MC-99-1236-D is already final and executory, petitioner having failed to timely appeal therefrom.[8] Hence, the Court is bereft of any jurisdiction to revise, modify or alter the penalties imposed, as prayed for in the present petition.

However, the Court noted a palpable error apparent in the Joint Decision of the trial court that must be rectified in order to avoid its repetition. The trial court erroneously included an additional one day on the maximum period of *arresto mayor* imposed on petitioner, which is incorrect, as it is outside the range of said penalty. The duration of *arresto mayor* is only from one month and one day to six months.[9] Adding one day to the maximum penalty will place it within the range of *prision correccional*. [10]

Moreover, imposing the maximum penalty of imprisonment of four years, four months and one day of *prision correccional* is also incorrect as it is outside the range of the penalty imposable in this case. Republic Act No. 7659, which took effect on December 13, 1993, modified the penalties prescribed by Republic Act No. 6425. Where the quantity of prohibited drugs involved is less than 250 grams, the penalty to be imposed shall be *prision correccional*. Applying further the Indeterminate Sentence Law, and there being no aggravating or mitigating circumstances,[11] the penalty imposable is reduced to any period within *arresto mayor*, as minimum term, to the medium period of *prision correccional* as the maximum term, or an indeterminate sentence of six months of *arresto mayor* as minimum to *prision correccional* in its medium period ranging from two years and four months and one day to four years and two months, as maximum.[12]

Hence, the penalty of imprisonment in each of Criminal Case No. MC-99-1235-D and Criminal Case No. MC-99-1236-D, should have been from six months of *arresto mayor* as minimum, to four years and two months of *prision correccional*, as maximum.

In line with the ruling of the Court in *People vs. Barro, Sr.*, to wit: