

## FIRST DIVISION

[ G.R. No. 128508, February 01, 1999 ]

**DANIEL G. FAJARDO, PETITIONER, VS. COURT OF APPEALS,  
HON. FLORENTINO P. PEDRONIO, IN HIS CAPACITY AS  
PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 31,  
ILOILO CITY; PEOPLE OF THE PHILIPPINES AND STATION  
COMMANDER OF ILOILO CITY, RESPONDENT.**

### D E C I S I O N

**PARDO, J.:**

The case is an appeal *via* certiorari taken by petitioner from a decision of the Court of Appeals that denied due course to his motion for probation in Criminal Case No. 14196 of the Regional Trial Court, Branch 31, Iloilo City, arising from his conviction of violation of Batas Pambansa Bilang 22, for which he was sentenced to imprisonment of eight (8) months.

We deny the petition.

On May 26, 1988, the Regional Trial Court, Branch 33, Iloilo City, convicted petitioner of violation of Batas Pambansa Bilang 22, and sentenced him to suffer the penalty of eight (8) months imprisonment and to pay the costs, in Criminal Case No. 14196. He appealed to the Court of Appeals.<sup>[1]</sup> By decision promulgated on February 27, 1990, the Court of Appeals affirmed the conviction.

On August 20, 1990, the Supreme Court denied a petition for review on certiorari of the conviction.<sup>[2]</sup>

Upon the remand of the record to the lower court, on June 2, 1995, petitioner filed a motion for probation contending that he was eligible for probation because at the time he committed the offense in 1981, an accused who had appealed his conviction was still qualified to apply for probation and that the law that barred an application for probation of an accused who had interposed an appeal was *ex post facto* in its application, and, hence, not applicable to him.

On January 5, 1996, the trial court denied petitioner's motion for probation.

On July 29, 1996, petitioner filed with the Court of Appeals a petition for certiorari to annul the lower court's denial of his application for probation.<sup>[3]</sup> On November 12, 1996, the Court of Appeals denied due course to the petition.<sup>[4]</sup>

Hence, this appeal.<sup>[5]</sup>

At issue in this case is whether petitioner could qualify to apply for probation under

Presidential Decree No. 968 since he had appealed from his conviction in 1988, after Presidential Decree No. 1990 amending Presidential Decree No. 968, became effective in 1986, providing that "no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction."

[6] Petitioner maintains the view that Presidential Decree No. 1990, issued on October 5, 1985, is null and void on the ground that at that time President Ferdinand E. Marcos could no longer exercise legislative powers as the Batasan Pambansa was functioning and exercising sole legislative powers.

The contention is without merit. At that time, President Marcos was vested with legislative powers concurrently with the Batasan Pambansa.[7]

Consequently, Presidential Decree No. 1990, is valid. Presidential Decree No. 1990, enacted on October 5, 1985, "was printed in Volume 81 of the Official Gazette dated December 30, 1985 but said issue was released for circulation only on July 1, 1986; hence, P D 1990 became effective after fifteen (15) days from July 1, 1986, in accordance with Article 2 of the Civil Code, or on July 16, 1986." [8] It is not *ex post facto* in its application. The law applies only to accused convicted after its effectivity.

[9] An *ex post facto* law is one that punishes an act as a crime which was innocent at the time of its commission. [10] Presidential Decree No. 1990, like the Probation Law that it amends, is not penal in character. [11] It may not be considered as an *ex post facto* law. [12]

At the time of the commission of the offense charged--violation of Batas Pambansa Bilang 22--in 1981, petitioner could have appealed if convicted and still availed himself of probation. However, petitioner was convicted on May 26, 1988, and he appealed. At that time, petitioner no longer had the option to appeal and still apply for probation if unsuccessful in the appeal. [13] Presidential Decree No. 1990 was then in full effect. Hence, he could no longer apply for probation since he had appealed.

On October 13, 1997, the Solicitor General [14] submitted a manifestation positing the view that petitioner's application for probation may still be considered because when petitioner committed the offense in 1981, he could avail himself of probation since the law as it stood at that time provided that an accused convicted of a crime may apply for probation even if he had appealed the conviction. [15] We do not share his view. The case he cited is a Court of Appeals decision, and, hence, not a precedent. What is more, it is inapplicable because there, the accused's conviction became final on October 14, 1985. Presidential Decree No. 1990 although enacted on October 5, 1985, was published in the Official Gazette on December 30, 1985, [16] and, hence, was not yet applicable at the time the accused was finally convicted. Regrettably, the Solicitor General has cited a Court of Appeals decision that is inapplicable to this case because the facts were not similar.

We find it unnecessary to resolve the other issues that petitioner has raised questioning the constitutionality and wisdom of Presidential Decree No. 1990, amending the probation law.

**WHEREFORE**, the Court DENIES the petition for review on certiorari of the decision of the Court of Appeals in CA-G. R. SP No. 41447. Costs against petitioner.