

IN RE JUDGE JOSE G. PAULIN OF BRANCH III OF THE COURT OF FIRST INSTANCE OF SURIGAO DEL NORTE.

A.M. No. OCA-112. December 19, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

Deputy Court Administrator Leo D. Medialdea called the Court's attention to the decision of Hon. Judge Jose G. Paulin of the Court of First Instance of Surigao del Norte dated July 31, 1980 in Criminal Case No. 380 wherein he convicted the accused, Primitivo Botona, of serious physical injuries punishable under article 263(4) of the Revised Penal Code by *arresto mayor* maximum to *prision correccional* minimum.

Appreciating in favor of the accused the mitigating circumstance of plea of guilty and there being no aggravating circumstances, Judge Paulin imposed upon him the penalty of "three (3) months and twenty-eight (28) days as minimum to six (6) months as maximum" (sic).

In his explanation as to why he imposed that sentence, Judge Paulin erroneously stated that the penalty provided by article 263(4) is *arresto mayor* to *prision correccional* minimum with a range of "six months as minimum to two years and four months as maximum" (p. 4 of decision), an error which he repeats in his first indorsement of September 29, 1980.

Judge Paulin's knowledge of the duration of penalties and the application of the Indeterminate Sentence Law is deficient.

The penalty of *arresto mayor* maximum to *prision correccional* minimum has a range of four months and one day to two years and four months. That range is divisible into three periods: minimum period - four months and one day to one year; medium period - one year and one day to one year and eight months, and maximum period - one year, eight months and one day to two years and four months.

Because there is one mitigating circumstance, the imposable penalty should be taken from the minimum period whose duration is four months and one day to one year.

As Judge Paulin in his discretion imposed a penalty of six months, then that should be the only imposable penalty. The penalty cannot be indeterminate because the Indeterminate Sentence Law does not apply to convicts whose maximum term of imprisonment does not exceed one year.

Judge Paulin also erred in stating in the last paragraph of his indorsement that the penalty next lower to *arresto mayor* maximum to *prision correccional* minimum is "*arresto mayor* medium and maximum". He does not know how to graduate penalties.

The next lower penalty is *arresto mayor* minimum and medium. That next lower penalty is not applicable to the case decided by him because no indeterminate penalty is called for. And no indeterminate sentence is imposable because the imposable penalty does not exceed one year. A single or straight penalty has to be imposed.

Judge Paulin is censured or reprimanded for his un-awareness of, or unfamiliarity with, the application of the Indeterminate Sentence Law and the duration and graduation of penalties. A copy of this resolution should be attached to his personal record.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.

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