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AMENDING AND REPEALING CERTAIN RULES AND SECTIONS OF THE RULES ON PAROLE AND AMENDED GUIDELINES FOR RECOMMENDING EXECUTIVE CLEMENCY OF THE 2006 REVISED MANUAL OF THE BOARD OF PA...

BPAP RESOLUTION NO. 24-4-10, April 13, 2010

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WHEREAS, Section 19, Article VII of the 1987 Philippine Constitution provides that the President, except in cases of impeachment or as otherwise provided therein, may grant reprieves, commutations and pardons, and remit fines and forfeitures, after conviction by final judgment;

WHEREAS, in accordance with the above-cited constitutional provision, the President has the plenary power to grant executive clemency, except on the following three (3) constitutional limitations, to wit:

1. In cases of impeachment;
2. In cases involving violation of election laws, rules and regulations as provided for in Section 5, Paragraph C, Article IX of the 1987 Philippine Constitution without the favorable recommendation of the Commission on Elections; and
3. In cases where the conviction is on appeal or has not become final and executory;

WHEREAS, the eight (8) disqualifications or exceptions enumerated and provided for in Section 5 of the Amended Guidelines for Recommending Executive Clemency of the 2006 BPP Revised Manual are not in consonance with the provisions of Section 19, Article VII of the 1987 Philippine Constitution, constitute as limitations on the pardoning power of the President, and violate the time-honored principle of equal protection of the laws enshrined in the Bill of Rights, thus defeating the primary purpose of restorative justice;

WHEREAS, Section 5, Paragraphs a, b, c, d, e, f, g, and h of the Amended Guidelines for Recommending Executive Clemency discriminates against certain criminal offenders and denies them equal opportunity for executive clemency;

WHEREAS, under Section 10, notices to the prosecutor and convicting judge are no longer necessary since, as pillars of the criminal justice system, they have done their part and have lost jurisdiction over the case;

WHEREAS, under Section 3 of Republic Act No. 9346, otherwise known as “An Act Prohibiting the Imposition of Death Penalty in the Philippines”, enacted on June 24, 2006, persons convicted of offenses punished with reclusion perpetua, or whose sentences were reduced to reclusion perpetua by reason of this Acts shall not be eligible for parole under Act No. 4103, otherwise known as “The Indeterminate Sentence Law”, as amended;

WHEREAS, under Executive Order No. 83 dated January 11, 1937, the Board of Pardons and Parole is mandated to assist the President in exercising the power of executive clemency; and

WHEREAS, pursuant to the mandate of the law to redeem and uplift valuable human resources and prevent excessive deprivation of liberty, there is a need to provide opportunities to qualified and deserving inmates in order to ease congestion now plaguing the correctional institutions.

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WHEREFORE, premises considered, the Board resolves, as it is hereby Resolved, to AMEND and REPEAL the following provisions of the Rules on Parole and the Amended Guidelines for Recommending Executive Clemency of the 2006 BPP Revised Manual:

I. Rule 2.1. of the Rules on Parole is hereby AMENDED to read as follows:

> "RULE 2.1. Eligibility for Review of A Parole Case - an inmate's case may be eligible for review by the board provided:
>
> a. Inmate is serving an indeterminate sentence the maximum period of which exceeds one (1) year;
> b. Inmate has served the minimum period of the indeterminate sentence;
> c. Inmate's conviction is final and executory; In case the inmate has one or more co-accused who had been convicted, the director/warden concerned shall forward their prison records and carpetas/ jackets at the same time.
> d. Inmate has no pending criminal case; and
> e. Inmate is serving sentence in the national penitentiary, unless the confinement of said inmate in a municipal, city, district or provincial jail is justified.
>
> A national inmate, for purposes of these Rules, is one who is sentenced to a maximum term of imprisonment of more than three (3) years or to a fine of more than five thousand pesos; or regardless of the length of sentence imposed by the Court, to one sentenced for violation of the customs law or other laws within the jurisdiction of the Bureau of Customs or enforceable by it, or to one sentenced to serve two (2) or more prison sentences in the aggregate exceeding the period of three (3) years."

II. Rule 2.2, Paragraphs i to l of the Rules on Parole are hereby DELETED for being inconsistent with the provisions of Section 2 of the "Indeterminate Sentence Law", as amended. Further, said Rule is hereby AMENDED to read as follows:

> "RULE 2.2. Disqualifications for Parole - Pursuant to Section 2 of Act No. 4103, as amended, otherwise known as the "Indeterminate Sentence Law",parole shall not be granted to the following inmates:
>
> a. Those convicted of offenses punished with death penalty or life imprisonment;
> b. Those convicted of treason, conspiracy or proposal to commit treason or espionage;
> c. Those convicted of misprision of treason, rebellion, sedition or coup d' etat;
> d. Those convicted of piracy or mutiny on the high seas or Philippine waters;
> e. Those who are habitual delinquents, i.e., those who, within a period of ten (10) years from the date of release from prison or last conviction of the crimes of serious or less serious physical injuries, robbery, theft, estafa, and falsification, are found guilty of any of said crimes a third time or oftener;
> f. Those who escaped from confinement or evaded sentence;
> g. Those who having been granted conditional pardon by the President of the Philippines shall have violated any of the terms thereof;
> h. Those whose maximum term of imprisonment does not exceed one (1) year or those with definite sentence;
> i. Those convicted of offenses punished with reclusion perpetua, or whose sentences were reduced to reclusion perpetua by reason of Republic Act No. 9346 enacted on June 24, 2006, amending Republic Act No. 7659 dated January 1, 2004; and
> j. Those convicted for violation of the laws on terrorism, plunder and transnational crimes."

III. Rule 2.3 of the Rules on Parole is hereby AMENDED to read as follows:

> "RULE 2.3. Review Upon Petition or referral by the correctional and/or other agencies - a parole case may be reviewed by the Board upon petition or referral by the correctional and/or other agencies if inmate is not otherwise disqualified under Rule 2.2."

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IV. Section 1 of the Amended Guidelines for Recommending Executive Clemency is hereby AMENDED to read as follows:

> "SECTION 1. Plenary Power of the President to Grant Executive Clemency - Under Section 19, Article VII of the Constitution, except in cases of impeachment or as otherwise provided therein, the President may grant reprieves, commutations and pardons, and remit fines and forfeitures, after conviction by final judgment. Executive clemency rests exclusively within the sound discretion of the President, and is exercised with the objective of preventing a miscarriage of justice or correcting a manifest injustice.
>
> These Guidelines are meant solely for the guidance of the Board of Pardons and Parole (hereafter the "Board") in the performance of its duty to assist the President in exercising the power of executive clemency pursuant to Executive Order No. 83 dated January 11, 1937. These Guidelines create no vested or enforceable rights in persons applying for executive clemency."

V. Section 3 of the Amended Guidelines for Recommending Executive Clemency is hereby AMENDED to read as follows:

> "SECTION 3. Extraordinary Circumstances - The Board shall recommend to the President the grant of executive clemency when any of the following extraordinary circumstances are present:
>
> a. The trial court or appellate court in its decision recommended the grant of executive clemency for the inmate;
> b. Under the peculiar circumstances of the case, the penalty imposed is too harsh compared to the crime committed;
> c. Evidence which the court failed to consider, before conviction which would have justified an acquittal of the accused;
> d. Inmates who were over fifteen (15) years but under eighteen (18) years of age at the time of the commission of the offense;
> e. Inmates who are seventy (70) years old and above whose continued imprisonment is inimical to their health as recommended by a physician of the Bureau of Corrections Hospital and certified under oath by a physician designated by the Department of Health;
> f. Inmates who suffer from serious, contagious or life-threatening illness/ disease, or with severe physical disability such as those who are totally blind, paralyzed, bedridden, etc., as recommended by a physician of the Bureau of Corrections Hospital and certified under oath by a physician designated by the Department of Health;
> g. Alien inmates where diplomatic considerations and amity among nations necessitate review; and
> h. Such other similar or analogous circumstances whenever the interest of justice will be served thereby."

VI. Section 4 of the Amended Guidelines for Recommending Executive Clemency is hereby AMENDED to read as follows:

> "SECTION 4. Other Circumstances - When none of the extraordinary circumstances enumerated in Section 3 exist, the Board may nonetheless review and/or recommend to the President the grant of executive clemency to an inmate provided the inmate meets the following minimum requirements of imprisonment:
>
> A. For Commutation of Sentence, the inmate should have served:
>
> 1. at least one-third (1/3) of the definite or aggregate prison terms;
> 2. at least one-half (1/2) of the minimum of the indeterminate prison term or aggregate minimum of the indeterminate prison terms;
> 3. at least ten (10) years for inmates sentenced to one (1) reclusion perpetua or one (1) life imprisonment, for crimes/offenses not punished under Republic Act No. 7659 and other special laws;
> 4. at least thirteen (13) years for inmates whose indeterminate and/or definite prison terms were adjusted to a

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definite prison term of forty (40) years in accordance with the provisions of Article 70 of the Revised Penal Code, as amended;
5. at least fifteen (15) years for inmates convicted of heinous crimes/offenses as defined in Republic Act No. 7659 or other special laws, committed on or after January 1, 1994 and sentenced to one (1) reclusion perpetua or one (1) life imprisonment;
6. at least eighteen (18) years for inmates convicted and sentenced to reclusion perpetua or life imprisonment for violation of Republic Act No. 6425, as amended, otherwise known as "The Dangerous Drugs Act of 1972" or Republic Act No. 9165, also known as "The Comprehensive Dangerous Drugs Act of 2002"; and for kidnapping for ransom or violation of the laws on terrorism, plunder and transnational crimes;
7. at least twenty (20) years for inmates sentenced to two (2) or more reclusion perpetua or life imprisonment even if their sentences were adjusted to a definite prison term of forty (40) years in accordance with the provisions of Article 70 of the Revised Penal Code, as amended;
8. at least twenty-five (25) years for inmates originally sentenced to death penalty but which was automatically reduced or commuted to reclusion perpetua or life imprisonment.

B. For Conditional Pardon, an inmate should have served at least one-half (½) of the maximum of the original indeterminate and/or definite prison term."

VII. Section 5 of the Amended Guidelines for Recommending Executive Clemency is hereby REPEALED.

VIII. Section 10 of the Amended Guidelines for Recommending Executive Clemency is hereby AMENDED to read as follows:

"SECTION 10. Notice to the Offended Party - In all cases when an inmate is being considered for executive clemency, the Board shall notify the offended party or, in the event that the offended party is unavailable for comment or otherwise cannot be located, the immediate relatives of the offended party. Said persons shall be given thirty (30) days from notice to comment on whether or not executive clemency may be granted to an inmate. Provided that, in matters of extreme urgency or when the interest of justice will be served thereby, such notice may be waived or dispensed with by the Board. In such a case, the Board shall explain the reason for the waiver of such notice in the Board resolution recommending executive clemency."

IX. Section 11 of the Amended Guidelines for Recommending Executive Clemency is hereby AMENDED to read as follows:

"SECTION 11. Publication of Names of Those Being Considered for Executive Clemency - The Board shall cause the publication once in a newspaper of national circulation the names of inmates who are being considered for executive clemency. Provided, however, that in cases of those convicted of offenses punished with reclusion perpetua or life imprisonment by reason of Republic Act No. 9346, publication shall be once a week for three (3) consecutive weeks.

Any interested party may send to the Board written objections/comments/ information relevant to the cases of inmates being considered for executive clemency not later than thirty (30) days from date of publication.

Provided that, in matters of extreme urgency or when the interest of justice will be served thereby, above publication may be waived or dispensed with. In such cases, the Board shall explain the reason for the waiver of such publication in the Board resolution recommending executive clemency."

X. This Resolution shall take effect upon approval by the Secretary of Justice and fifteen (15) days after its publication in a newspaper of general circulation. Let copies of this Resolution be likewise sent to the Office of the President through the Executive Secretary, and the University of the Philippines (UP) Law Center.

Adopted: 13 April 2010

(SGD.) NATIVIDAD G. DIZON

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