

IN THE MATTER OF THE PETITION OF ALFREDO G. LAMEN AND REYNALDO A. CORTES FOR THE ISSUANCE OF THE WRIT OF HABEAS CORPUS FOR WILLY BAGAWE Y PAGALLA; ALFREDO G. LAMEN AND REYNALDO ...

G.R. No. 117078. February 22, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Availing of our decision in *People vs. Simon*, [1] the petitioners filed the instant petition to secure the release of Willy Bagawe y Pagalla, who was earlier convicted of the violation of Section 4, Article II of R.A. No. 6425, [2] as amended, for selling and delivering marijuana and sentenced to suffer the penalty of life imprisonment and to pay a fine of P20,000.00. The prohibited drugs involved consist of three matchboxes containing marijuana flowering tops with a total weight of 3.5 grams, one matchbox with a marijuana cigarette butt, and one brown paper bag containing 10 grams of marijuana flowering tops. [3]

In our decision of 7 April 1992, [4] we affirmed in toto the aforesaid judgment of the trial court. [5] Our decision became final on 11 May 1992. [6]

Willy Bagawe y Pagalla is presently serving his sentence in the New Bilibid Prisons in Muntinglupa, Metro Manila. He has been under incarceration since his arrest on 14 April 1987.

The petitioners contend that since the gross quantity of the marijuana involved in this case is only 13.6 grams, then in the light of *People vs. Simon*, the maximum term imposed on Bagawe should be reduced to two (2) years, four (4) months and one (1) day of prision correccional; and since he has already served more than six years, he should be released from imprisonment.

In its comment, the Office of the Solicitor General agrees with the petitioners that Simon should apply but disagrees with their computation of the maximum penalty. It recommends that, following the penalties imposed by us in *Simon* and in *People vs. Saycon*, [7] the proper penalty should be six (6) months of arresto mayor as minimum to six (6) years of prision correccional as maximum, without fine.

Article 22 of the Revised Penal Code operates to benefit Willy Bagawe since R.A. No. 7659 is favorable to him and since he is not a habitual criminal.

Following *Simon*, the penalty which could have been imposed on Willy Bagawe under R.A. No. 6425, as further amended by R.A. No. 7659, would have been prision correccional and, after applying the Indeterminate Sentence Law, he would have been sentenced to an indeterminate penalty ranging from six (6) months of arresto mayor, as minimum, to four (4) years and two (2) months of prision correccional, as maximum.

Since the decision in G.R. Nos. 88515-16 had long become final and Willy Bagawe is in fact serving his sentence, we cannot alter or modify the penalty therein imposed. Nevertheless, the writ of habeas corpus comes to his

rescue since he has undergone imprisonment for a period more than the maximum imprisonment which could have been properly imposed on him taking into account the favorable statute, R.A. No. 7659. In the 1932 case of *Directo vs. Director of Prisons*, [8] we ruled:

In view of the foregoing considerations we are of the opinion and hold: (1) that Article 22 of the Revised Penal Code which makes penal provisions retroactive so far as they favor the accused, provided he is not a habitual criminal, does not authorize a court whose sentence has become final and executory to make a substantial amendment, and any amendment made in such sentence, though it be to give effect to a penal provision favorable to the accused, would be null and void for lack of jurisdiction; and (2) that the only means of giving retroactive effect to a penal provision favorable to the accused when the trial judge has lost jurisdiction over the case, is the writ of habeas corpus.

IN VIEW OF THE FOREGOING, the instant petition is GRANTED and WILLY BAGAWAY y PAGALLA, accused-appellant in G.R. Nos. 88515--16, is hereby ordered RELEASED from detention, unless for any other lawful cause his further confinement is warranted.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Quason, and Kapunan, JJ., concur.

[1] G.R. No. 93028, 29 July 1994.

[2] The Dangerous Drugs Act of 1972.

[3] Exhibit "B"; Rollo, 15.

[4] G.R. Nos. 88515-16.

[5] Annex "B"; Rollo, 17.

[6] Annex "C"; Id., 25.

[7] G.R. No. 110995, 5 September 1994.

[8] 56 Phil. 692, 695 [1932].

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