

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

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

Ponente: AUSTRIA-MARTINEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-156983/>

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 DANAOS 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.[1]

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

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

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.[6]

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:

"However, where the penalty imposed on the co-accused who did not appeal was a nullity because it was never authorized by law, that penalty imposed on the accused who did not appeal can be corrected to make it conform to the penalty prescribed by law, the reason being that, said penalty can never become final and executory and it is within the duty and inherent power of the Court to have it conformable with law.[13]

the error of the trial court in the present case can be corrected to make it conform to the penalty prescribed by law as it is within the Court's duty and inherent power. As held in *People vs. Gatward*, to wit:

"But a judgment which ordains a penalty which does not exist in the catalogue of penalties or which is an impossible version of that in the roster of lawful penalties is necessarily void, since the error goes into the very essence of the penalty and does not merely arise from the misapplication thereof. Corollarily, such a judgment can never become final and executory."[14]

Thus, the correction to be made by this Court is meant only for the penalty imposed against petitioner to be in accordance with law and nothing else. It is not tantamount to a reduction in order to be favorable to the petitioner nor an increase so as to be prejudicial to him.

Contrary to petitioner's position, the trial court took into consideration the provisions of Rep. Act No. 7659. The penalties imposed by the trial court, as duly corrected above, are within the ambit of Rep. Act No. 7659, and there is nothing more to reduce.

Even assuming that the petition seeks that Rep. Act No. 7659 be retroactively applied to his benefit, still, he cannot be released from detention at this point. Petitioner apparently had an erroneous appreciation of the law and jurisprudence, or worse, was ill advised as to its implications.

As aptly pointed out by the OSG, petitioner first must successively serve the penalty of imprisonment imposed on his two convictions up to its maximum term before he can be released.

Under Article 70 of the Revised Penal Code, when an offender has to serve two or more penalties, he should serve them simultaneously if the nature of the penalties will so permit. Otherwise said penalties shall be executed successively, following the order of their respective severity, in such case, the second sentence will not commence to run until the expiration of the first.[15]

The nature of petitioner's sentences does not allow its simultaneous service; hence he must serve it successively.[16] Not only that he must serve it successively, he must also serve it up to its maximum term. In the case of *Angeles vs. Director of New Bilibid Prisons*[17] cited by petitioner, the petition for habeas corpus was not granted because it appeared that petitioner has only served the minimum of his sentence.

Petitioner must therefore first serve the penalty in Crim. Case No. MC-99-1235-D up to its maximum term, before service of the penalty in Crim. Case No. MC-99-1236-D also up to its maximum term, or a total maximum period of eight years and four months.

WHEREFORE, the petition for habeas corpus is hereby DENIED.

However, in the interest of justice to the end that the correct periods of imprisonment are imposed, the sentences on petitioner in the Joint Decision of the Regional Trial Court of Mandaluyong City (Branch 214) in Criminal Cases Nos. MC-99-1235-D and MC-99-1236-D are MODIFIED, as follows: Petitioner is sentenced to suffer six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum; and in Criminal Case No. MC-99-1236-D, petitioner is sentenced to suffer six (6) months of *arresto mayor* maximum, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.

Let the Regional Trial Court of Mandaluyong City (Branch 214) be furnished a copy of herein Resolution for guidance on the proper imposition of penalties in similar cases, as discussed in the text of the Resolution.

Likewise, let the Superintendent of the New Bilibid Prison be furnished a copy of the Resolution for the enforcement of the corrected penalties.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Callejo, Sr., and Tinga, JJ., concur.

[1] Rollo, pp. 10-11.

[2] *Id.*, p. 4.

[3] *Ibid.*

[4] *People vs. Batimana*, CA-G.R. CR No. 21459; *Dante Cruz y Castro case*, CA-G.R. CR No. 22218; *People vs. Ruelo*, 237 SCRA 737; *Villa vs. Court of Appeals*, G.R. No. 125834, December 6, 1999; *et seq.*

[5] Rollo, pp. 2-3.

[6] *Id.*, pp. 23-24.

[7] Id., p. 6.

[8] Rule 120, Section 7, Revised Rules of Criminal Procedure, as amended; *People vs. Taboga*, G.R. Nos. 144086-87, February 6, 2002; *Rafael Reyes Trucking Corporation vs. People*, G.R. No. 129029, April 3, 2000, 329 SCRA 600, 615; *People vs. Pajo*, G.R. No. 135109-13, December 18, 2000, 348 SCRA 492, 505.

[9] Article 27, Revised Penal Code, as amended by Section 21 of Rep. Act No. 7659.

[10] Ibid.

[11] *Cruz vs. Correctional Institution for Women in Mandaluyong*, G.R. No. 125672, September 27, 1996, 262 SCRA 552, 554.

[12] *People vs. Piasidad*, G.R. No. 119290, October 4, 1996, 262 SCRA 752, 754.

[13] *People vs. Barro, Sr.*, G.R. No. 118098, August 17, 2000, 338 SCRA 312, 328.

[14] *People vs. Gatward*, G.R. Nos. 119772-73, February 7, 1997, 267 SCRA 785, 844.

[15] *Evangelista vs. Sistoza*, G.R. No. 143881, August 9, 2001, 362 SCRA 563, 567.

[16] *In the Matter of the Petition for Habeas Corpus of Pete C. Lagran*, G.R. No. 147270, August 15, 2001, 363 SCRA 275, 277-278.

[17] G.R. No. 117568, January 4, 1995, 240 SCRA 49, 50.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.