

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
CASIMIRO CONCEPCION, DEFENDANT AND APPELLANT.***G.R. No. 46666. October 30, 1939*

Ponente: LAUREL, J.

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On January 21, 1939, Casimiro Concepcion was charged with estafa in the Court of First Instance of Manila. Upon arraignment, he pleaded guilty to the information. On April 25, 1939, he was sentenced to imprisonment of four months and one day of arresto mayor, and being a habitual delinquent he was given an additional penalty of twelve years of prision mayor; in addition, to indemnify the offended parties in the sum of P225, and to pay the costs. He has appealed to this court.

In view of the plea of guilty entered before the court below, we shall confine ourselves to reviewing the judgment as to the qualification given to the crime and the propriety of the penalty imposed. (*Macali vs. Revilla and Ocampo*, 48 Phil., 751, 755.)

The amount involved being P225, the offense falls under the 3rd paragraph of article 315 of the Revised Penal Code, which prescribes the penalty of arresto mayor in its maximum period to prision correccional in its minimum period. The penalty imposed by the trial court is within the minimum period, and should be raised to the medium, because his plea of guilty is offset by recidivism. (*People vs. Hipolito*, 53 Phil., 219; *People vs. Aguinaldo*, 47 Phil., 728.)

The accused is a habitual delinquent, but for the purposes of the application of the additional penalty he has had heretofore three convictions only: those of December 12, 1922, August 17, 1928, and September 6, 1933. His twelve other convictions should not be taken into account, because the various commissions of the crime prior to at least one of the said three convictions cannot be counted against him. (*People vs. Santiago*, 55 Phil., 266.) The conviction of the appellant in the instant case being his fourth, he should be sentenced to the additional penalty, within the minimum and medium periods of prision mayor (art. 62, par. 5 [b], Revised Penal Code), or from six years and one day to ten years.

Accordingly, the judgment of the lower court is hereby modified, by imposing upon the appellant the principal penalty of one year and one day of prision correccional, and, as a habitual delinquent, the additional penalty of ten years of prision mayor: and in all other respects, the decision of the lower court is confirmed. It appearing that the appellant has also been prosecuted in various criminal cases in which he appears to have pleaded guilty (*G. R. Nos. 46652, 46660, 46661, and 46662*), the rule prescribed in article 70 of the Revised Penal Code, as amended by Commonwealth Act No. 217, should be observed, so that "the maximum duration of the convict's sentence shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon him," the maximum period in no case exceeding forty years. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, and Moran, JJ., concur.

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