

**PEDRO SANTOS TO, PETITIONER, VS. HON. ERNANI CRUZ-PAÑO,
PRESIDING JUDGE, COURT OF FIRST INSTANCE OF RIZAL, QUEZON
CITY BRANCH XVIII, AND JUAN Y. OCAMPO, RESPONDENTS.**

G.R. No. 55130. January 17, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petitioner was convicted by respondent judge of the Court of First Instance of Rizal (Quezon City Branch) of the crime of estafa for having issued a bouncing check for P5,000.00, and sentenced to an indeterminate penalty of from seven years and eight months of prision mayor as minimum, to nine years and four months of prision mayor, as maximum.[1] He appealed to the Court of Appeals which reduced the penalty to one year and one day of prision correccional as minimum, to one year and eight months as maximum.[2]

Upon the Court of Appeals' decision becoming final, petitioner not having appealed therefrom, he filed a petition for probation[3] with respondent judge, who, despite the favorable recommendation of the Probation Office, denied the petition on July 24, 1980, on the following grounds:

"(a) to grant probation to petitioner will depreciate the seriousness of the offense committed, and

"(b) petitioner is not a penitent offender."

A motion for reconsideration filed by petitioner having been denied by the respondent judge, the present proceeding was resorted to, petitioner averring that the respondent judge erred in denying his petition for probation despite the recommendation for its approval by the Probation Office.

We find for the petitioner.

At the outset, it might be stated that the Solicitor General whose comment was required by this Court, recommends the granting of probation. As he points out, petitioner is not among the offenders enumerated in the probation law (Presidential Decree No. 968) from availing of the benefits of probation. Under Section 9 of said law, the disqualified offenders are the following:

"(a) those sentenced to serve a maximum term of imprisonment of more than six years;

"(b) those convicted of any offense against the security of the State;

"(c) those who have previously been convicted by final judgment of an offense punished by imprisonment of not less than one month and one day and/or a fine of not less than two hundred pesos;

"(d) those who have been once on probation under the provisions of the decree; and

"(e) those who were already serving sentence at the time the substantive provisions of the decree became applicable, pursuant to Section 33."

Under the abovequoted provision, petitioner may not be disqualified from being entitled to the benefits of probation. Some other provisions have to be sought, if any, upon which to deny petitioner the benefits of probation which, from a reading of the law in its entirety, should with liberality, rather than undue strictness, be extended to anyone not listed as disqualified. In expressly enumerating offenders not qualified to enjoy the benefits of probation, the clear intent is to allow said benefits to those not included in the enumeration.

If only for the above observation as to how the law should be applied in order that its objective could be realized and achieved, We cannot but find respondent judge's reasons for his denial of the petition for probation insufficient to justify a deviation from a policy of liberality with which the law should be applied.

The first reason given by the judge is that "probation will depreciate the seriousness of the offense committed." According to him, the State has shown serious concern with the abuse of checks as a commercial paper, as shown by various measures taken to curb the pernicious practice of issuing bouncing checks.

For purpose of probation, what the law gives more importance to is the offender, not the crime. The inquiry is more on whether probation will help the offender along the lines for which the probation system has been established, such as giving the first-time offender a second chance to maintain his place in society through a process of reformation, which is better achieved, at least as to one who has not committed a very serious offense, when he is not mixed with hardened criminals in an atmosphere not conducive to soul-searching as within prison walls. The consciousness of the State's benignity in giving him that second chance to continue in peaceful and cordial association with his fellowmen will advance, rather than retard, the process of reformation in him.

If, therefore, reformation is what the law is more, if not solely, concerned with, not the prevention by means of punitive measures, of the commission of the offense, it is readily seen that the respondent judge has fallen into a wrong obsession. He would, in effect, disqualify all those who commit estafa through bouncing checks from enjoying the benefits of probation. He would thereby add to the crimes expressly mentioned in the law which are not subject to probation. Thus, the only crimes mentioned in the law based on the nature thereof are those against national security (Section 9, paragraph b), the other crimes being those punished by more than six years imprisonment. Respondent judge would thus be writing into the law a new ground for disqualifying a first-offender from the benefits of probation, based on the nature of the crime, not on the penalty imposed as is the main criterion laid down by the law in determining who may be granted probation. That crime would be estafa only by issuing bouncing check, but not all forms of estafa, which, incidentally, is one offense the criminal liability for which is generally separated by a thin line from mere civil liability.

For those who would commit the offense a second time or oftener, or commit an offense of manifest gravity, it is the long prison term which must be served that will act as deterrent to protect society. In protecting society, the family of the offender which might be dependent on the latter to a greater or lesser extent for support or other necessities of life should not be lost sight of, it being the basic unit of that society. By the relative lightness of the offense, as measured by the penalty imposed, more than by its nature, as the law so ordains, the offender is not such a serious menace to society as to be wrested away therefrom, as the more dangerous type of criminals should be.

The second reason of respondent judge for denying petitioner's bid for probation, is that petitioner is allegedly not a penitent offender, as shown by his protestation of innocence even after his conviction by the trial court and the affirmance of his conviction by the Court of Appeals.

We find the respondent judge, likewise, in error in assuming that petitioner has not shown repentance in committing the crime of which he has been found guilty by both the trial and appellate courts. If petitioner appealed the decision of the respondent judge to the Court of Appeals, he cannot be blamed for insisting on his

version by which he could hope either to be acquitted or at least given a lighter penalty that would entitle him to the benefits of probation. The recourse he took has, indeed, proved to be well worth the effort. His penalty was reduced on appeal which placed him within the benign purpose of the Probation Law. By the move he took by which to achieve this objective, acquittal not quite being within reach, petitioner cannot be said to be a non-penitent offender, undeserving of probation benefits. Once the opportunity was laid open to him, he grasped it; for instead of appealing further to the Supreme Court, he promptly applied for probation, made possible only by the reduced penalty imposed by the Court of Appeals. The penalty imposed by respondent court placed petitioner beyond the pale of the Probation Law. How can he be said to be a non-penitent offender, as the law would judge one to be so, just because he appealed, as he could not have them applied for probation even if he wanted to? Who knows but that if the penalty imposed by the trial court is that imposed by the Court of Appeals petitioner would have applied for probation forthwith?

Under the circumstances as just pointed out, We find no sufficient justification for respondent judge's holding petitioner to be a non-penitent offender. We find, instead, that the liberality with which the Probation Law should be applied in favor of the applicant for its benefits affords the better means of achieving the purpose of the law, as indicated in Our decision in the case of *Balleta Jr. vs. Hon. Leviste*, G. R. No. 49907, August 21, 1979, 92 SCRA 719, cited by the Solicitor General who, as earlier stated, recommends granting of the instant petition for probation.

WHEREFORE, the order of the respondent judge denying probation is set aside, and petitioner is hereby declared admitted to probation, subject to the terms and conditions as are prescribed by the law, and recommended by the probation officer.

Makasiar (Chairman), Concepcion, Jr., Guerrero and Abad Santos, JJ., concur.
Aquino and Escolin, JJ., in the result.

[1] p. 24, Rollo.

[2] p. 31, Rollo.

[3] Annex "C" to the Petition, p. 32, Rollo.

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