

EDUARDO TOLENTINO Y SAMONTE, PETITIONER, VS. HON. AMANTE Q. ALCONCEL, JUDGE, CIRCUIT CRIMINAL COURT, SIXTH JUDICIAL DISTRICT, MANILA, RESPONDENT.

G.R. No. 63400, March 18, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Challenged in this petition for certiorari is the order of respondent Judge Amante Q. Alconcel of the Circuit Criminal Court of Manila, in CCC VI-84[81], denying petitioner's application for probation under P.D. 968.

Petitioner was charged before the Circuit Criminal Court of Manila with violation of Section 4, Article II of Rep. Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972. Upon arraignment on September 4, 1981, petitioner entered a plea of not guilty.

On October 8, 1981, after the prosecution had presented part of its evidence, petitioner manifested his desire to change his plea of not guilty to that of guilty to the lesser offense of possession of Indian Hemp [marijuana], under Section 8 of Article II of Rep. Act No. 6425.

As no objection was interposed by the fiscal, the court allowed petitioner to withdraw his former plea of not guilty and to enter a plea of guilty to said lesser offense. Petitioner was thereupon sentenced to imprisonment of six [6] months and one [1] day to two [2] years and four [4] months, to pay a fine of P1,000.00, and to pay the costs, with subsidiary imprisonment in case of insolvency.

On October 13, 1981, petitioner applied for probation. Respondent judge forthwith directed the probation officer of the City of Manila to conduct a post sentence investigation on said application and to file said report thereon within 60 days. After conducting such investigation, the probation officer submitted its report, recommending that petitioner be placed on a two-year probation upon the claim that the latter was already on his way to reformation and that a prison cell would turn him in to a hardened criminal.

Such recommendation notwithstanding, the respondent judge issued the challenged order of March 9, 1982, denying petitioner's application on the ground that it will depreciate the seriousness of the offense committed.[1]

On March 23, 1982, petitioner moved for reconsideration of the March 9 order,[2] but the same was denied. The petitioner's "Ex-Parte Motion for Hearing on the case for Probation and for Deferment of Execution of Judgment"[3] was likewise denied.

Hence, the instant recourse. Petitioner's theme is that respondent judge acted with grave abuse of discretion in holding that "probation will depreciate the seriousness of the offense committed."

We find these contentions devoid of merit. Section 5 of P.D. 968 provides, to wit:

"SEC. 5. Post Sentence Investigation.— No person shall be placed on probation except upon prior investigation by the probation officer and a determination by the court that the ends of justice and the best interest of the

public as well as that of the defendant will be served thereby."

It is evident from the foregoing that the potentiality of the offender to reform is not the sole, much less the primordial factor, that should be considered in the grant or denial of an application for probation. Equal regard to the demands of justice and public interest must be observed. Thus, Section 8 of P.D. 968 lays down the criteria for the placing of an offender on probation, as follows:

"SEC. 8. Criteria for Placing an Offender on Probation.— In determining whether an offender may be placed on probation, the court shall consider all information, relative to the character, antecedents, environment, mental and physical condition of the offender and available institutional and community resources. Probation shall be denied if the court finds that:

a] . . .

b] . . .

c] probation will depreciate the seriousness of the offense committed."

The conclusion of respondent judge that "probation will depreciate the seriousness of the offense committed" is based principally on the admission by the petitioner himself, as reflected in the report of the probation officer, that he [petitioner] was actually caught in the act of selling marijuana cigarettes. Petitioner did not deny or dispute the veracity of the fact that he was caught in flagrante delicto of selling marijuana cigarettes. He merely attempted to justify his criminal act by explaining in his motion for reconsideration that "he did it only to make some money for the family during Christmas.[4] Such admission renders a hearing on the application for probation an unnecessary surplusage and an idle ceremony.

Probation is a mere privilege and its grant rests solely upon the discretion of the court.[5] As aptly noted in *U.S. vs. Durken*[6], this discretion is to be exercised primarily for the benefit of organized society and only incidentally for the benefit of the accused.

Proliferation of prohibited drugs in the country has remained a serious threat to the well-being of the people. It has necessitated an all-out intensified campaign on the part of the law-enforcers against users as well as pushers thereof. If only to emphasize the gravity of the drug menace, the Batasan Pambansa has seen fit to increase the penalty for violation of Section 8, Article II of Rep. Act 6425. Thus, while under Rep. Act 6425, as amended by P.D. 44, possession or use of marijuana was punishable by imprisonment of 6 months and 1 day to 2 years and 4 months and a fine ranging from P600.00 to P6,000.00—the penalty imposed upon petitioner herein—possession and use thereof is now punishable by imprisonment ranging from 6 years and 1 day to 12 years and fine ranging from P6,000.00 to P12,000.00 under B.P. Blg. 179.[7]

The observation of the Solicitor General on this increase of penalty is apropos:

"The implication is clear. The penalties were increased to take it out of the range of probationable offenses. Thus, the State has spoken and considers that this is one case where probation will depreciate the offense committed, and will not serve the ends of justice and the best interest of the community, particularly, the innocent and gullible young."[8]

IN VIEW OF THE FOREGOING, the petition is hereby dismissed. Respondent judge is hereby directed to effect execution of judgment in CCC No. VI-84 [81] without further delay.

SO ORDERED.

Makasiar, Concepcion Jr., Guerrero and De Castro, JJ., concur.

Abad Santos, J., I reserve my vote.

Aquino, J., is on leave.

[1] Annex A, p. 13, Rollo.

[2] Annex B, p. 17, Rollo.

[3] Annex D, p. 26, Rollo.

[4] Annex B, p. 20, Rollo.

[5] Section 20, Rules on Probation Methods and Procedures.

[6] Ill. 63 F. Supp. 570.

[7] Approved on March 2, 1982.

[8] Comment, p. 40, Rollo.

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