

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GEORGE AGUSTIN Y POCNO, ACCUSED-APPELLANT.

G.R. No. 98362. September 05, 1995

Ponente: VITUG, J.

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VITUG, J.:

Herein movant George Agustin y Pocno was already under detention when charged in an information, dated 25 January 1988, with having sold and delivered ninety (90) grams of dried marijuana leaves in violation of Section 4, Article II, of Republic Act ("R.A.") No. 6425, as amended, in which the 1st Assistant City Fiscal of Baguio City then rightfully recommended "no bail." In a decision, dated 06 March 1990, the accused was convicted by the Regional Trial Court of Baguio City, Branch 3, which thereupon imposed on him the penalty of life imprisonment, as well as the payment of P20,000.00, and costs. The judgment was affirmed by this Court on 13 November 1992.[1]

Invoking the second paragraph of Section 20 of R.A. No. 6425, as amended by Section 17 of R.A. No. 7659 and as construed and applied in *People v. Simon*,[2] i.e., that if the quantity of the marijuana involved is less than 250 grams, the newly prescribed penalty for the offense would be prison correccional,[3] Agustin, through the Public Attorney's Office, filed the present motion for reconsideration and modification of sentence.

It appears that Agustin has already been incarcerated for eight (8) years and nineteen (19) days as of 17 April 1995 as per his prison records[4] or well beyond the presently possible maximum sentence, in his particular case, of six (6) years of prison correccional. In line with this Court's Resolution in *Rolando Angeles y Bombita v. Director of New Bilibid Prison*, dated 04 January 1995, allowing a liberal application in cases of this nature of the rules on habeas corpus, the usual proper remedy for invoking the retroactive effect of R.A. No. 7659, we now hereby so treat the instant motion as a substantial compliance therewith. Thus, for having served more than the imposable penalty of prison correccional, Agustin should be released forthwith from further detention.

WHEREFORE, the Director, Bureau of Corrections, is hereby ordered to release George Agustin y Pocno from confinement unless he is being detained for some other lawful cause. Costs de oficio.

SO ORDERED.

Romero, (Acting Chairman), and Melo, JJ., concur.

Feliciano, J. (Chairman), on leave.

[1] 215 SCRA 725.

[2] 234 SCRA 555 (1994).

[3] The said penalty has a duration of six (6) months and one (1) day to six (6) years.

[4] Issued by Magdalena Mogridge in her capacity as Chief of the Documents Section of the Bureau of Corrections (Rollo, p. 105).

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