

**NORMA DE JOYA, PETITIONER, VS. THE JAIL WARDEN OF
BATANGAS CITY AND HON. RUBEN A. GALVEZ AS PRESIDING JUDGE
OF BATANGAS CITY MUNICIPAL TRIAL COURT IN CITIES, BRANCH I,
RESPONDENTS.**

G.R. Nos. 159418-19. December 10, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for a writ of habeas corpus filed by Norma de Joya praying for her release from the Batangas City Jail on the claim that her detention was illegal.

The Antecedents

The petitioner was charged separately with violations of Batas Pambansa Blg. 22 before the Municipal Trial Court In Cities in Batangas City. The docket numbers and accusatory portion of each of the Informations reads:

Criminal Case No. 25484

That on or about September 28, 1994 at Batangas City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, well-knowing that she does not have funds in or credit with the Solid Bank, Batangas Branch, Batangas City, did then and there, wilfully, unlawfully and feloniously draw, make and issue to Flor Catapang de Tenorio, Solid Bank Check No. 040297 postdated to October 28, 1994 in the amount of ONE HUNDRED FIFTY THOUSAND (P150,000.00) PESOS, Philippine Currency, to apply on account or for value, but when said check was presented for full payment with the drawee bank within a period of ninety (90) days from the date of the check, the same was dishonored by the drawee bank on the ground 'account closed,' which in effect is even more than a dishonor for insufficiency of funds, and despite notice of dishonor and demands made upon her to make good her check by making proper arrangement with the drawee bank or pay her obligation in full directly to Flor Catapang de Tenorio, accused failed and refused to do so, which acts constitute a clear violation of the aforecited law, to the damage and prejudice of transaction in commercial documents in general and of Flor Catapang de Tenorio in particular in the aforementioned amount.

CONTRARY TO LAW.[1]

...

Criminal Case No. 25773

That on or about October 17, 1994 at Batangas City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, well-knowing that she does not have fund in or credit with the Security Bank and Trust Company, Batangas Branch, Batangas City, did then and there, wilfully, unlawfully and feloniously draw, make and issue to Resurreccion T. Castillo, Security Bank and Trust Company Check No. 038111 postdated to October 24, 1994 in the amount of TWO HUNDRED TWENTY-FIVE THOUSAND PESOS (P225,000.00), Philippine Currency, to apply on account or for value, but when said check was presented for

full payment with the drawee bank within a period of ninety (90) days from the date of the check, the same was dishonored by the drawee bank on the ground of 'account closed,' which in effect is even more than a dishonor for insufficiency of funds, and despite notice of dishonor and demands made upon her to make good her check by making proper arrangement with the drawee bank or pay her obligation in full directly to Resurreccion T. Castillo, accused failed and refused to do so, which acts constitute a clear violation of the aforecited law, to the damage and prejudice of transaction in commercial documents in general and of Resurreccion T. Castillo in particular in the aforementioned amount.

CONTRARY TO LAW.[2]

When arraigned in both cases, the petitioner, assisted by counsel, pleaded not guilty. While trial was going on, the petitioner jumped bail. No evidence was thereby adduced in her defense in any of the two cases.

On December 14, 1995, the trial court promulgated its decision in Criminal Case No. 25484. The petitioner and her counsel failed to appear despite due notice. The decretal portion of the decision reads as follows:

WHEREFORE, this Court finds the accused Norma de Joya guilty of the crime of Violation of Batas Pambansa Blg. 22, and hereby sentences said accused to suffer an imprisonment of one (1) year and to indemnify the offended party, Flor Catapang Tenorio, in the sum of ONE HUNDRED FIFTY THOUSAND (P150,000.00) PESOS, Philippine Currency.

SO ORDERED.[3]

On March 21, 1997, the decision in Criminal Case No. 25773 was likewise promulgated in absentia. The decretal portion of the said decision reads:

WHEREFORE, the Prosecution having satisfactorily established the guilt of the accused beyond reasonable doubt, this Court hereby sentences herein-accused Norma de Joya of imprisonment of ONE (1) YEAR and to pay complainant Resurreccion Castillo of the amount of TWO HUNDRED TWENTY-FIVE THOUSAND (P225,000.00) PESOS by way of damages.

SO ORDERED.[4]

The petitioner remained at large and no appeal was filed from any of the said decisions. In the meantime, the Court issued Supreme Court Administrative Circular No. 12-2000 on November 21, 2000 enjoining all courts and judges concerned to take notice of the ruling and policy of the Court enunciated in *Vaca v. Court of Appeals*[5] and *Lim v. People*[6] with regard to the imposition of the penalty for violations of B.P. Blg. 22.

After five years, the petitioner was finally arrested while she was applying for an NBI clearance. She was forthwith detained at the Batangas City Jail on December 3, 2002. On July 28, 2003, the petitioner filed an urgent motion with the Municipal Trial Court of Batangas City asking the court to apply SC Admin. Circular No. 12-2000 retroactively pursuant to Article 22 of the Revised Penal Code and to order her release from detention. The public prosecutor opposed the motion. In an Order dated August 15, 2003, the trial court denied the motion on three grounds: (a) its decision convicting the petitioner of violation of B.P. Blg. 22 had long become final and executory; hence, could no longer be amended to change the penalty imposed therein; (b) the SC Circular should be applied prospectively; and (c) the SC Circular did not amend B.P. Blg. 22, a substantive law, but merely encourages trial court judges to have a uniform imposition of fine.

Hence, the petition at bar.

The petitioner posits that SC Admin. Circular No. 12-2000 deleted the penalty of imprisonment for violation of B.P. Blg. 22 and allows only the imposition of a fine. The trial court was mandated to apply SC Admin. Circular No. 12-2000 retroactively conformably with Article 22 of the Revised Penal Code citing the ruling of this Court

in *United States v. Pacrose*.^[7] The petitioner prays that the Court declare her detention illegal and order her release from the Batangas City Jail.

The Office of the Solicitor General (OSG) opposed the petition contending that:

1)

THE TWO (2) JUDGMENTS OF CONVICTION AGAINST THE PETITIONER HAD LONG ATTAINED FINALITY AND COULD NO LONGER BE MODIFIED.

2)

ADMINISTRATIVE CIRCULAR NO. 12-2000 AS MODIFIED BY ADMINISTRATIVE CIRCULAR NO. 13-2001 DID NOT DELETE THE PENALTY OF IMPRISONMENT IN BP 22 CASES.^[8]

The OSG cited the ruling of this Court in *Abarquez v. Court of Appeals*.^[9]

The petition has no merit.

Section 4, Rule 102 of the Rules of Court, as amended, provides that the writ of habeas corpus is not allowed if the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record:

Sec. 4. When writ not allowed or discharged authorized. – If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment; or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

In this case, the petitioner was arrested and detained pursuant to the final judgment of the Municipal Trial Court of Batangas City, convicting her of violation of B.P. Blg. 22. Irrefragably then, the petitioner is not entitled to a writ of habeas corpus. Petitioner's reliance of our ruling in *Ordonez v. Vinarao*^[10] that a convicted person is entitled to benefit from the reduction of penalty introduced by the new law, citing *People v. Simon*,^[11] is misplaced. Thus, her plea that as provided for in Article 22 of the Revised Penal Code, SC Admin. Circular No. 12-2000 as modified by SC Admin. Circular No. 13-2001 should benefit her has no basis.

First. SC Admin. Circular No. 12-2000 is not a penal law; hence, Article 22 of the Revised Penal Code is not applicable. The circular applies only to those cases pending as of the date of its effectivity and not to cases already terminated by final judgment.

Second. As explained by the Court in SC Admin. Circular No. 13-2001, SC Admin. Circular No. 12-2000 merely lays down a rule of preference in the application of the penalties for violation of B.P. Blg. 22. It does not amend B.P. Blg. 22, nor defeat the legislative intent behind the law. SC Admin. Circular No. 12-2000 merely urges the courts to take into account not only the purpose of the law but also the circumstances of the accused – whether he acted in good faith or on a clear mistake of fact without taint of negligence – and such other circumstance which the trial court or the appellate court believes relevant to the penalty to be imposed. The Court thus emphasized that:

The clear tenor and intention of Administrative Circular No. 12-2000 is not to remove imprisonment as an alternative penalty, but to lay down a rule of preference in the application of the penalties provided for in B.P.

Blg. 22.

The pursuit of this purpose clearly does not foreclose the possibility of imprisonment for violators of B.P. Blg. 22. Neither does it defeat the legislative intent behind the law.

Thus, Administrative Circular No. 12-2000 establishes a rule of preference in the application of the penal provisions of B.P. Blg. 22 such that where the circumstances of both the offense and the offender clearly indicate good faith or a clear mistake of fact without taint of negligence, the imposition of a fine alone should be considered as the more appropriate penalty. Needless to say, the determination of whether the circumstances warrant the imposition of a fine alone rests solely upon the Judge. Should the Judge decide that imprisonment is the more appropriate penalty, Administrative Circular No. 12-2000 ought not be deemed a hindrance.

It is, therefore, understood that:

- Administrative Circular No. 12-2000 does not remove imprisonment as an alternative penalty for violations of B.P. Blg. 22;
- The Judges concerned may, in the exercise of sound discretion, and taking into consideration the peculiar circumstances of each case, determine whether the imposition of a fine alone would best serve the interests of justice or whether forbearing to impose imprisonment would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperatives of justice;
- Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the Revised Penal Code provisions on subsidiary imprisonment.[12]

B.P. Blg. 22 provides for alternative penalties of fine or imprisonment or both fine and imprisonment as follows:

SECTION 1. Checks without sufficient funds. – Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed two hundred thousand pesos, or both such fine and imprisonment at the discretion of the court.[13]

The courts are given the discretion to choose whether to impose a single penalty or conjunctive penalties; that is, whether to impose a penalty of fine, or a penalty of imprisonment only, or a penalty of both fine and imprisonment.

In providing for alternative penalties in B.P. Blg. 22, Congress took into account the principal objectives of the law, namely, the prohibition on the making of worthless checks and putting them in circulation. The practice is prohibited by law because of its deleterious effects on public interest. The effects of the increase of worthless checks transcend the private interest of the parties directly involved in the transaction and touches the interest of the community at large. The mischief it creates is not only a wrong to the payee or holder, but also an injury to the public. The harmful practice of putting valueless commercial papers in circulation multiplied a thousand-fold can very well pollute the channels of trade and commerce, injure the banking system and eventually hurt the welfare of society and the public interest. The law punishes the act not as an offense against property but an offense against public order.[14]

However, in imposing penalties for crimes, the courts must bear in mind that Philippine penal law is based on the Spanish penal code and has adopted features of the positivist theory of criminal law. The positivist theory states that the basis for criminal liability is the sum total of the social and economic phenomena to which the offense is

expressed. The adoption of the aspects of the theory is exemplified by the indeterminate sentence law, Article 4, paragraph 2 of the Revised Penal Code (impossible crime), Article 68 and Articles 11 to 14, not to mention Article 63 of the Revised Penal Code (penalties for heinous and quasi-heinous crimes). Philippine penal law looks at the convict as a member of society. Among the important factors to be considered in determining the penalty to be imposed on him are (1) his relationship towards his dependents, family and their relationship with him; and (2) his relationship towards society at large and the State. The State is concerned not only in the imperative necessity of protecting the social organization against the criminal acts of destructive individuals but also in redeeming the individual for economic usefulness and other social ends.[15] The purpose of penalties is to secure justice. The penalties imposed must not only be retributive but must also be reformatory, to give the convict an opportunity to live a new life and rejoin society as a productive and civic-spirited member of the community. The court has to consider not only the primary elements of punishment, namely, the moral responsibility of the convict, the relation of the convict to the private complainant, the intention of the convict, the temptation to the act or the excuse for the crime - was it done by a rich man in the insolence of his wealth or by a poor man in the extremity of his need? The court must also take into account the secondary elements of punishment, namely, the reformation of the offender, the prevention of further offenses by the offender, the repression of offenses in others.[16] As Rousseau said, crimes can be thoroughly repressed only by a system of penalties which, from the benignity they breathe, serve rather than to soften than to inflame those on whom they are imposed.[17] There is also merit in the view that punishment inflicted beyond the merit of the offense is so much punishment of innocence.[18]

In this case, even if the Court applies SC Admin. Circular No. 12-2000, as revised, retroactively, the petition must nevertheless be dismissed. The petitioner did not offer any evidence during trial. The judgment of the court became final and executory upon her failure to appeal therefrom. Worse, the petitioner remained at large for five long years. Were it not for her attempt to secure an NBI clearance, she would have been able to elude the long arm of the law.

IN LIGHT OF ALL THE FOREGOING, the petition is DISMISSED for lack of merit.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Rollo, p. 36.

[2] Id. at 42.

[3] Id. at 39.

[4] Id. at 44.

[5] 298 SCRA 656 (1998).

[6] 340 SCRA 497 (2000).

[7] 24 Phil. 35.

[8] Comment, p. 4.

[9] G.R. No. 148557, August 7, 2003.

[10] 239 SCRA 114 (1994).

[11] 234 SCRA 555 (1994).

[12] SC Administrative Circular No. 13-2001.

[13] Section 1, Batas Pambansa Blg. 22.

[14] Lozano v. Judge Martinez, 146 SCRA 323 (1986).

[15] People v. Ducosin, 59 Phil. 109 (1933).

[16] Sir Edward Fry, 5 Crim.L. May 16, cited in Wharton's Criminal Law, Vol. I, p. 1.

[17] Id. at 5.

[18] Dr. Franklin, cited in Wharton, Criminal Law, p. 6.

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