

**TEODULO RURA, PETITIONER, VS. THE HON. GERVACIO A. LOPENA,
PRESIDING JUDGE OF THE 2ND MUNICIPAL CIRCUIT TRIAL COURT
OF TUBIGON-CLARIN, TUBIGON, BOHOL AND PEOPLE OF THE
PHILIPPIN...**

G.R. Nos. 69810-14. June 19, 1985

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This case involves the application of the Probation Law (P.D. No. 968, as amended), more specifically Section 9 thereof which disqualifies from probation those persons:

"(c) 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."

Petitioner Teodulo Rura was accused, tried and convicted of five (5) counts of estafa committed on different dates in the Municipal Circuit Trial Court of Tubigon-Clarin, Tubigon, Bohol, denominated as Criminal Case Nos. 523, 524, 525, 526 and 527.

The five cases were jointly tried and a single decision was rendered on August 18, 1983. Rura was sentenced to a total prison term of seventeen (17) months and twenty-five (25) days. In each criminal case the sentence was three (3) months and fifteen (15) days.

Rura appealed to the Regional Trial Court of Bohol but said court affirmed the decision of the lower court. When the case was remanded to the court of origin for execution of judgment, Rura applied for probation. The application was opposed by a probation officer of Bohol on the ground that Rura is disqualified for probation under Sec. 9 (c) of the Probation Law quoted above. The court denied the application for probation. A motion for reconsideration was likewise denied. Hence the instant petition.

The question which is raised is whether or not the petitioner is disqualified for probation.

In denying the application for probation, the respondent judge said:

"Though the five estafa cases were jointly tried and decided by the Court convicting the accused thereof, yet the dates of commission are different. Upon conviction, he was guilty of said offenses as of the dates of commission of the acts complained of." (Rollo, p. 58.)

Upon the other hand, the petitioner argues:

"We beg to disagree. There is no previous conviction by final judgment to speak of. The five (5) cases of Estafa were tried jointly and there is only one decision rendered on the same date — August 18, 1983. It could not be presumed that accused-petitioner had been con-victed one after the other for the five cases of Estafa because the conviction in these cases took place within the same day, August 18, 1983 by means of a Joint Decision, and not in a separate decision.

"Previous conviction, we submit, presupposes that there is a prior sentence or that there was already a decision rendered which convicted the accused. In this instant cases, however, there is only one decision rendered on the five (5) counts of Estafa which was promulgated on the same date. In other words the effects of conviction does not retract to the date of the commission of the offense as the trial court held." (Id., pp. 8-9.)

We hold for the petitioner. When he applied for probation he had no previous conviction by final judgment. When he applied for probation the only conviction against him was the judgment which was the subject of his application. The statute relates "previous" to the date of conviction, not to the date of the commission of the crime.

WHEREFORE, the petition is granted and the respondent judge is directed to give due course to the petitioner's application for probation. No costs.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Escolin, and Cuevas, JJ., concur.

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