

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LILIBETH CACO Y PALMARIO AND TEODORO CACO Y LAPADA, ACCUSED, LILIBETH CACO Y PALMARIO, ACCUSED- APPELLANT.

G.R. Nos. 94994-95. March 07, 1997

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In our decision promulgated on 14 May 1993, we affirmed in toto the decision of Branch 172 of the Regional Trial Court of Valenzuela, Metro Manila, in Criminal Case No. 10108-V-90 finding accused-appellant Lilibeth Caco y Palmario guilty beyond reasonable doubt of the violation of Section 4, Article II of the Dangerous Drugs Act of 1972 (R.A. No. 6425), as amended, and sentencing her to suffer the penalty of life imprisonment and to pay a fine of P20,000.00.

In a motion filed on 17 November 1995, the appellant, through the Public Attorney's Office, filed a "Motion for Modification of Sentence Pursuant to R.A. 7659." She alleged therein that she has been detained since 23 February 1990 and is presently serving her sentence at the Correctional Institution for Women at Mandaluyong City; that the marijuana involved in this case is "ten (10) sticks, ... costing P20.00 only which is less than 200 grams"; and that pursuant to *People v. Simon* (234 SCRA 555 [1994]) and *People v. De Lara* (236 SCRA 291[1994]), the penalty imposable therefor under R.A. No. 7659 is prison correccional whose duration is from six months and one day to six years. She then prayed that the decision of 14 May 1993 be reconsidered and the life imprisonment meted upon her be reduced accordingly.

We required the Office of the Solicitor General to comment on the motion. On 17 January 1997, the Office of the Solicitor General filed a Manifestation in Lieu of Comment wherein it agreed with the appellant that she is entitled to the application of the decisions in *People v. Simon* and *People v. De Lara*. It did not refute the allegations of the appellant that the marijuana involved in this case is less than 200 grams and that she has been in detention since 23 February 1990. It then concluded that the appellant deserves to be released from prison.

Amplifying *People v. Simon*, we ruled in *People v. De Lara*:

If the marijuana involved is from 500 to 749 grams, the penalty to be imposed is reclusion temporal. If the marijuana involved is from 250 to 499 grams, the penalty to be imposed is prison mayor, and if the weight of the marijuana involved is below 250 grams, the penalty to be imposed is prison correccional.

Since the weight of the marijuana involved in the instant case is below 250 grams, the penalty imposable pursuant to R.A. No. 7659, as interpreted in *People v. Simon* and in *People v. De Lara*, is prison correccional, whose duration is from six months and one day to six years. We declared in *People v. Simon* that provisions of R.A. No. 7659 which are favorable to the accused should be given retroactive effect.

Our decision of 14 May 1993 cannot, however, be modified because it had long become final and the appellant is already serving the sentence.

It is settled that where the decision is already final, the appropriate remedy of an accused to secure release from prison in view of the retroactive effect of a favorable law is to file a petition for habeas corpus. Nonetheless, although the remedy availed of by the appellant is a motion for modification of sentence, it may be treated as a substantial compliance with the rules on habeas corpus. This is an approach we recognized in *Angeles v. Director of the New Bilibid Prison* (240 SCRA 49 [1995]), *People v. Agustin* (248 SCRA 44 [1995]), and *People v. Labriaga* (250 SCRA 163 [1995]). We treat the motion in question as one for habeas corpus.

WHEREFORE, considering that as of now the accused-appellant has been in detention for seven (7) years, or for more than the maximum imposable penalty for the offense she committed, which is only six (6) years in light of *People v. Simon* and *People v. De Lara*, the Director of the Bureau of Corrections is hereby ORDERED to RELEASE immediately from confinement accused-appellant LILIBETH CACO y PALMARIO unless her further detention is justified by other lawful cause.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, Francisco, and Panganiban, JJ., concur.

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