

4 Phil. 223

[G.R. No. 1322. February 18, 1905]

**UNITED STATES, PLAINTIFF AND APPELLEE, VS. TEODORO PINEDA, DEFENDANT
AND APPELLANT.**

D E C I S I O N

ARELLANO, C.J.:

The defendant is guilty of the crime of discharging a firearm at a person, according to article 408 of the Penal Code. The complaint, however, charges him with the crime of frustrated murder.

Teodoro Pineda, a corporal in the Constabulary, while taking Melecio Roxas to the municipality of Bocaue, ordered three soldiers who were under his command to fire upon the prisoner. The judgment below sentenced him to the penalty of one year eight months and twenty-one days of *prision correccional*, with the costs, and credits him with one-half the time he has been held as a detention prisoner. This is in accordance with the law. Under section 29 of General Orders, No. 58, he can be sentenced for a crime of a less degree than that for which he has been prosecuted.

Therefore we affirm the sentence of the court below with the costs in this instance.

Torres, Mapa, Johnson, and Carson, JJ., concur.

