



Republic of the Philippines
Supreme Court
Office of the Court Administrator
Manila

OCA CIRCULAR NO. 179-2018


TO : ALL FIRST AND SECOND LEVEL COURTS

SUBJECT: DECISION DATED 31 JULY 2018 IN G.R. NO. 237721 (IN RE: CORRECTION/ADJUSTMENT OF PENALTY PURSUANT TO REPUBLIC ACT NO. 10951, IN RELATION TO *HERNAN V. SANDIGANBAYAN* - ROLANDO ELBANBUENA Y MARFIL, PETITIONER) PROVIDING, AMONG OTHERS, FOR THE GUIDELINES WHICH SHALL GOVERN THE PROCEDURE FOR ACTIONS SEEKING (1) THE MODIFICATION, BASED ON THE AMENDMENTS INTRODUCED BY RA NO. 10951, OF PENALTIES IMPOSED BY FINAL JUDGMENTS; AND (2) THE IMMEDIATE RELEASE OF THE PETITIONER-CONVICT ON ACCOUNT OF FULL SERVICE OF THE PENALTY/PENALTIES, AS MODIFIED

For the information, guidance and strict observance of all first and second level courts, appended herein as Annex "A" is the Decision dated 31 July 2018 of the Honorable Court, *En Banc*, in G.R. No. 237721 (In Re: Correction/Adjustment of Penalty Pursuant to Republic Act No. 10951¹, In Relation to *Hernan v. Sandiganbayan*² - Rolando Elbanbuena y Marfil, Petitioner).

Particular attention should be given to the highlighted portions of the quoted ruling in *Hernan v. Sandiganbayan* and the issued guidelines which shall govern the procedure for actions seeking (1) the modification, based on the amendments introduced by RA No. 10951, of penalties imposed by final judgments; and (2) the immediate release of the petitioner-convict on account of full service of the penalty/penalties, as modified.

24 August 2018


JOSE MIDAS P. MARQUEZ
Court Administrator

¹ An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code," as Amended.

² G.R. No. 217874, 5 December 2017



Republic of the Philippines
Supreme Court
Manila

EN BANC

IN RE: CORRECTION G.R. No. 237721

/ADJUSTMENT OF PENALTY
PURSUANT TO REPUBLIC ACT
NO. 10951, IN RELATION TO
HERNAN V. SANDIGANBAYAN –
ROLANDO ELBANBUENA Y
MARFIL,

Petitioner.

Present:

CARPIO, *Senior Associate Justice**
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
MARTIRES,
TIJAM,
REYES, JR., and
GISMUNDO, *JJ.*

Promulgated:

July 31, 2018

X -----X

DECISION

JARDELEZA, J.:

This is a petition¹ praying for the release of petitioner Rolando M. Elbanbuena (Elbanbuena) pursuant to the provisions of Republic Act (RA) No. 10951² and this Court's ruling in *Hernan v. Sandiganbayan*.³

Petitioner Elbanbuena worked as a Disbursing Officer of Alingilan National High School in Alingilan, Bacolod. He was charged with four

* Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, as amended.

¹ *Rollo*, pp. 3-20.

² An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code," as Amended.

³ G.R. No. 217874, December 5, 2017.

counts of malversation of public funds through falsification of a public document under Articles 217 and 171 in relation to Article 48 of the Revised Penal Code (RPC). After trial, Elbanbuena was found guilty beyond reasonable doubt of the crimes charged in the Information.⁴ The dispositive portion of the Decision states:

WHEREFORE, the accused is hereby found guilty of the complex crime of Malversation of Public Funds through falsification of public or commercial documents in Criminal Cases Nos. 95-17264, 95-17265, and 95-17266 and for Malversation of Public Funds in Criminal Case No. 95-17263, and the accused is hereby sentenced as follows:

- 1) To suffer imprisonment in Criminal Cases Nos. 95-17264, 95-17265, 95-17266, from prison mayor maximum or ten (10) years one (1) day to twelve (12) years to reclusion temporal maximum or seventeen (17) years four (4) months and one (1) day to twenty (20) years; in three (3) counts;
- 2) To suffer imprisonment in Criminal Case No. 95-17263 of prison mayor medium or eight years one (1) day to ten (10) years to reclusion temporal minimum or twelve (12) years one (1) day to fourteen (14) years and eight (8) months; and[]
- 3) To suffer civil interdiction and absolute disqualification during the period of the sentence.

SO ORDERED.⁵

Since Elbanbuena did not appeal the ruling, it became final and executory on August 10, 2000.⁶ On January 9, 2003, Elbanbuena started serving his sentence at the New Bilibid Prison in Muntinlupa City.⁷

On August 29, 2017, RA No. 10951 was promulgated. It amended Act No. 3815, otherwise known as the Revised Penal Code, and reduced the penalties for certain crimes. Pertinently, Section 40 of RA No. 10951 provides:

⁴ On October 15, 1993, and by virtue of his office, Elbanbuena received Land Bank Check No. 8617487 in the amount of ₱29,000.00, intended for deposit in the school's Maintenance and Other Operating Expenses (MOOE) account. He, however, failed to deposit said check.

On October 18, 1993, Elbanbuena received two (2) Land Bank Check Nos. 8617490 and 8617425 in the amount of ₱100.00 and ₱595.00, respectively. However, he falsified the amounts stated in the checks, making it appear that the checks were issued in the amounts of ₱38,100.00 and ₱24,595.00, respectively. He encashed the checks against the MOOE Fund account in Land Bank and misappropriated the same for his own personal use.

On October 20, 1993, Elbanbuena received Land Bank Check No. 8617486 in the amount of ₱8,350.24. Once again, he falsified the amount in the check by changing the amount in words and figures to ₱98,350.24. He encashed the check against the MOOE Fund account in Land Bank and misappropriated the amount of ₱98,350.24 for his own personal use. *Rollo*, pp. 28-32.

⁵ *Id.* at 32.

⁶ *Id.* at 33.

⁷ *Id.* at 25.

Sec. 40. Article 217 of the same Act, as amended by Republic Act No. 1060, is hereby further amended to read as follows:

Art. 217. *Malversation of public funds or property. – Presumption of malversation.* – Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (P40,000).

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than One million two hundred thousand pesos (P1,200,000) but does not exceed Two million four hundred thousand pesos (P2,400,000).

4. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos (P4,400,000).

5. The penalty of *reclusion temporal* in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (P4,400,000) but does not exceed Eight million eight hundred thousand pesos (P8,800,000). If the amount exceeds the latter, the penalty shall be *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized

officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses. (Emphasis supplied.)

On December 5, 2017, this Court issued its ruling in *Hernan v. Sandiganbayan*.⁸ There, the Court held:

The general rule is that a judgment that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. **When, however, circumstances transpire after the finality of the decision rendering its execution unjust and inequitable, the Court may sit *en banc* and give due regard to such exceptional circumstance warranting the relaxation of the doctrine of immutability.** The same is in line with Section 3(c), Rule II of the Internal Rules of the Supreme Court, which provides that cases raising novel questions of law are acted upon by the Court *en banc*. **To the Court, the recent passage of Republic Act (R.A.) No. 10951 x x x which accordingly reduced the penalty applicable to the crime charged herein is an example of such exceptional circumstance. x x x**

x x x x

Pursuant to the aforequoted provision, therefore, We have here a novel situation wherein the judgment convicting the accused, petitioner herein, has already become final and executory and yet the penalty imposed thereon has been reduced by virtue of the passage of said law. x x x

Thus, in order to effectively avoid any injustice that petitioner may suffer as well as a possible multiplicity of suits arising therefrom, the Court deems it proper to reopen the instant case and recall the Entry of Judgment dated June 26, 2013 of the Sandiganbayan, x x x.

On a final note, judges, public prosecutors, public attorneys, private counsels, and such other officers of the law are hereby advised to similarly apply the provisions of RA No. 10951 whenever it is, by reason of justice and equity, called for by the facts of each case. Hence, said recent legislation shall find application in cases where the impossible penalties of the affected crimes such as theft, qualified theft, estafa, robbery with force upon things, malicious mischief, malversation, and such other crimes, the penalty of which is dependent upon the value of the object in consideration thereof, have been reduced, as in the case at hand, taking into consideration the presence of

⁸ *Supra* note 3

existing circumstances attending its commission. For as long as it is favorable to the accused, said recent legislation shall find application regardless of whether its effectivity comes after the time when the judgment of conviction is rendered and even if service of sentence has already begun. The accused, in these applicable instances, shall be entitled to the benefits of the new law warranting him to serve a lesser sentence, or to his release, if he has already begun serving his previous sentence, and said service already accomplishes the term of the modified sentence. In the latter case, moreover, the Court, in the interest of justice and expediency, further directs **the appropriate filing of an action before the Court that seeks the reopening of the case rather than an original petition filed for a similar purpose.**

Indeed, when exceptional circumstances exist, such as the passage of the instant amendatory law imposing penalties more lenient and favorable to the accused, the Court shall not hesitate to direct the reopening of a final and immutable judgment, the objective of which is to correct not so much the findings of guilt but the applicable penalties to be imposed.⁹ (Emphasis supplied; citations omitted.)

Hence, this petition which seeks, among others, the modification, in conformity with RA No. 10951, of the Decision¹⁰ dated July 5, 2000 rendered by Branch 41 of the Regional Trial Court of Bacolod City and, pursuant thereto, Elbanbuena's immediate release from confinement.

In a Resolution¹¹ dated April 3, 2018, this Court required the Office of the Solicitor General (OSG) to comment on the petition (and its consolidated cases) and recommend guidelines relative thereto and similar petitions.

On July 4, 2018, the OSG filed its consolidated comment wherein it agreed that petitioners may invoke RA No. 10951 to seek a modification/reduction of the penalties for some of the crimes for which they are presently serving sentence. The OSG, however, took the position that Elbanbuena (and the other petitioners similarly situated) may not be immediately released at this point:

12. x x x While R.A. No. 10951 did reduce the impossible penalties for petitioners' crimes under the RPC, the reduced penalties to be *actually* imposed for these crimes have yet to be fixed by a court of competent jurisdiction.

13. The determination of whether petitioners are now entitled to be released requires that the court exercising

⁹ *Id.*

¹⁰ *Rollo*, pp. 27-32

¹¹ *Id.* at 34-37.

jurisdiction over this petition *first*: (a) fix the new penalties for the crimes for which petitioners are presently serving sentence, as provided under R.A. No. 10951; and, thereafter (b) ascertain whether petitioners have indeed fully served their respective sentences based on such new penalties. Both have yet to be made.¹² (Italics in the original.)

As held by this Court in *Hernan v. Sandiganbayan*, the passage of RA No. 10951 is an exceptional circumstance which warrants not only the re-opening of an already terminated case, but also the recall of an Entry of Judgment for purposes of modifying the penalty to be served. Thus, in *Hernan*, this Court re-opened the case for the sole purpose of re-computing the proper sentence to be imposed in accordance with RA No. 10951. In contrast, petitioner Elbanbuena here seeks not only a modification of his sentence in accordance with RA No. 10951; he also seeks **immediate release from confinement** on account of his alleged full service of the re-computed sentence. The determination of whether he is entitled to immediate release, however, would necessarily involve ascertaining, among others, the actual length of time Elbanbuena has *actually* been in confinement and whether time allowance for good conduct should be allowed. Such an exercise would, at the first instance, be better undertaken by a trial court, which is relatively more equipped to make findings of *both* fact and law.

However, and especially in view of the anticipated influx of similar petitions,¹³ the Court, in the interest of justice and efficiency, resolves to issue the following guidelines:¹⁴

I. *Scope.*

These guidelines shall govern the procedure for actions seeking (1) the modification, based on the amendments introduced by RA No. 10951, of penalties imposed by final judgments; and, (2) the immediate release of the petitioner-convict on account of full service of the penalty/penalties, as modified.

II. *Who may file.*

The Public Attorney's Office, the concerned inmate, or his/her counsel/representative, may file the petition.

¹² OSG consolidated comment, p. 6.

¹³ See list submitted by the Deputy Director General for Operations of the Bureau of Corrections pursuant to the Court's order in *Hernan v. Sandiganbayan*. (*Rollo*, pp. 21-24.)

¹⁴ Pursuant to this Court's power under Section 5(5) of Article VIII of the Constitution which provides:

Sec. 5(5). Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

III. *Where to file.*

The petition shall be filed with the Regional Trial Court exercising territorial jurisdiction over the locality where the petitioner-convict is confined. The case shall be raffled and referred to the branch to which it is assigned within three (3) days from the filing of the petition.

IV. *Pleadings.*

(A) *Pleadings allowed.* – The only pleadings allowed to be filed are the petition and the comment from the OSG. No motions for extension of time, or other dilatory motions for postponement, shall be allowed. The petition must contain a certified true copy of the Decision sought to be modified and, where applicable, the *mittimus* and/or a certification from the Bureau of Corrections as to the length of the sentence already served by petitioner-convict.

(B) *Verification.* – The petition must be in writing and verified by the petitioner-convict himself.

V. *Comment by the OSG.*

Within ten (10) days from notice, the OSG shall file its comment to the petition.

VI. *Effect of failure to file comment.*

Should the OSG fail to file the comment within the period provided, the court, *motu proprio*, or upon motion of the petitioner-convict, shall render judgment as may be warranted.

VII. *Judgment of the court.*

To avoid any prolonged imprisonment, the court shall promulgate judgment no later than ten (10) calendar days after the lapse of the period to file comment. The judgment shall set forth the following:

- a. The penalty/penalties imposable in accordance with RA No. 10951;
- b. Where proper, the length of time the petitioner-convict has been in confinement (and whether time allowance for good conduct should be allowed); and
- c. Whether the petitioner-convict is entitled to immediate release due to complete service of his sentence/s, as modified in accordance with RA No. 10951.

The judgment of the court shall be immediately executory, without prejudice to the filing before the Supreme Court of a special civil action under Rule 65 of the Revised Rules of Court where there is showing of grave abuse of discretion amounting to lack or excess of jurisdiction.

VIII. *Applicability of the regular rules.*

The Rules of Court shall apply to the special cases herein provided in a suppletory capacity insofar as they are not inconsistent therewith. //

WHEREFORE, premises considered, the petition is **GRANTED**.
The Decision dated July 5, 2000 in Criminal Cases Nos. 95-17263, 95-

17264, 95-17265, and 95-17266 is hereby **REMANDED** to the Regional Trial Court in Muntinlupa City for the determination of: (1) the proper penalty/penalties in accordance with RA No. 10951; and (2) whether petitioner **ROLANDO ELBANBUENA y MARFIL** is entitled to immediate release on account of full service of his sentences, as modified.


Let copies of this Decision also be furnished to the Office of the Court Administrator for dissemination to the First and Second Level courts, and also to the Presiding Justices of the appellate courts, the Department of Justice, Office of the Solicitor General, Public Attorney's Office, Prosecutor General's Office, the Directors of the National Penitentiary and Correctional Institution for Women, and the Integrated Bar of the Philippines for their information, guidance, and appropriate action.

SO ORDERED.



FRANCIS H. JARDELEZA
Associate Justice

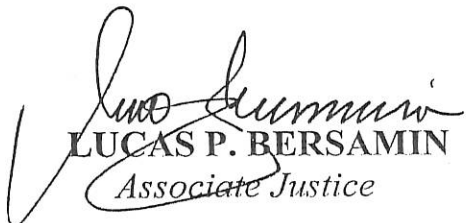
WE CONCUR:


ANTONIO T. CARPIO
Senior Associate Justice


PRESBITERO J. VELASCO, JR.
Associate Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M. V. F. LEONEN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


SAMUEL R. MARTIRES
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice


ANDRES B. REYES, JR.
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


ANTONIO T. CARPIO
Senior Associate Justice

CERTIFIED TRUE COPY


EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court