



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

OCA CIRCULAR NO. 234-2018

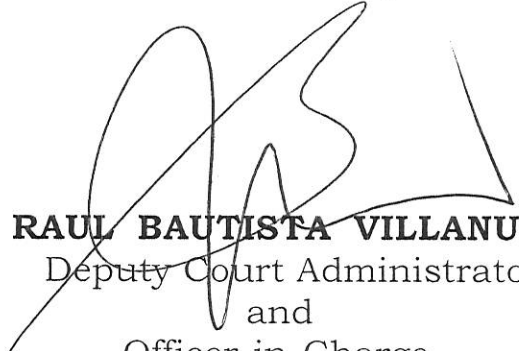
TO : ALL JUDGES AND CLERKS OF COURT OF THE FIRST AND SECOND LEVEL COURTS

SUBJECT : REOPENING AND REMANDING OF THE CRIMINAL CASES TO THE REGIONAL TRIAL COURT OF MANDALUYONG CITY FOR THE DETERMINATION OF: (A) THE PROPER PENALTIES IN ACCORDANCE WITH REPUBLIC ACT NO. 10951; AND (B) WHETHER PETITIONER RACQUEL DELA CRUZ Y GENESE IS ENTITLED TO IMMEDIATE RELEASE ON ACCOUNT OF FULL SERVICE OF HER SENTENCES, AS MODIFIED

Pursuant to the 14 August 2018 Resolution in **G. R. Nos. 240394-95** (*In Re: Correction/Adjustment of Penalty Pursuant to Republic Act No. 10951, in Relation to Hernan V. Sandiganbayan – Racquel Dela Cruz y Genese*), the Court *En Banc* **REOPENED** and **REMANDED** Criminal Cases Nos. 36720-R and 36743-R to the Regional Trial Court of Mandaluyong City for the determination of: (a) the proper penalties in accordance with Republic Act No. 10951; and (b) whether petitioner Racquel Dela Cruz y Genese is entitled to immediate release on account of full service of her sentences, as modified, the full text of which is appended herein as Annex “A” for immediate reference.

For your information, guidance and strict compliance.

9 November 2018


RAUL BAUTISTA VILLANUEVA
Deputy Court Administrator
and
Officer-in-Charge
Office of the Court Administrator
(Per Special Order No. 12-2018
dated 31 October 2018)



Annex "A"

Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **AUGUST 14, 2018**, which reads as follows:

Sirs/Mesdames:

"G.R. Nos. 240394-95 – IN RE: CORRECTION/ADJUSTMENT OF PENALTY PURSUANT TO REPUBLIC ACT NO. 10951, IN RELATION TO *HERNAN V. SANDIGANBAYAN – RACQUEL DELA CRUZ, y GENESE*, petitioner.

x-----x

This is a Petition for Release¹ (Petition) filed by petitioner Racquel Dela Cruz y Genese (petitioner), through the Public Attorney's Office, praying for her release pursuant to the provisions of Republic Act No. (R.A.) 10951².

The Facts

Petitioner was charged with two (2) counts of *Estafa* under Article 315(2)(a) of the Revised Penal Code before the Regional Trial Court (RTC) of Baguio City, Branch 6, docketed as Criminal Case (CC) Nos. 36720-R and 36743-R. After trial, the RTC, in separate Decisions³ both dated January 28, 2016, found her guilty beyond reasonable doubt of the crimes charged, and sentenced her as follows:

[In CC No. 36720-R:]

WHEREFORE, the Court finds accused Racquel Genese dela Cruz a.k.a. Racquel Genese Rimando guilty beyond reasonable doubt of *Estafa* as penalized under Article 315 (2) (a) of the *Revised Penal Code* and is hereby sentenced to suffer the indeterminate penalty of Four (4) years and

¹ *Rollo*, pp. 3-18.

² Entitled "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," approved on August 29, 2017.

³ *Rollo*, pp. 23-24, 25-27. Penned by Acting Presiding Judge Cecilia Corazon S. Dulay-Archog.

two (2) months of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum.

Accused is further directed to pay the private complainant, Teresita Madiaga, the amount of one hundred sixty five thousand (Php165,000.00) pesos with 6% interest per annum from the filing of the Information until fully paid.

SO ORDERED.

[In CC No. 36743-R:]

WHEREFORE, the Court finds accused Racquel Genese dela Cruz a.k.a. Racquel Genese Rimando guilty beyond reasonable doubt of Estafa as penalized under Article 315 (2) (a) of the *Revised Penal Code* and is hereby sentenced to suffer the indeterminate penalty of Four (4) years and two (2) months of *prision correccional* as minimum to thirteen (13) years of *reclusion temporal* as maximum.

Accused is further directed to pay the private complainant, Rosalina Javier Calpito, the amount of [seventy seven thousand five hundred pesos (Php77,500.00)] with 6% interest per annum from the filing of the Information until the obligation is paid.

SO ORDERED.⁴ (Emphasis supplied)

The Decisions became final and executory on June 3, 2016.⁵

Meanwhile, on August 29, 2017, R.A. 10951 was enacted into law, which adjusted the values of the property and damage on which various penalties are based and expressly provided a retroactive effect insofar as it was favorable to the accused. Thus, in *Hernan v. Sandiganbayan*,⁶ the Court re-opened an otherwise terminated case and recalled the entry of judgment therein for purposes of re-computing the penalty imposed in light of the passage of R.A. 10951.

Applied to this case, Article 315 of the Revised Penal Code, as amended by R.A. 10951, now reads:

ART. 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of *prisión correccional* in its maximum period to *prisión mayor* in its minimum period, if the amount of the fraud is over Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos (P4,400,000), and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional Two million pesos (P2,000,000); but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the

⁴ Id. at 24, 27.

⁵ Id. at 28-29.

⁶ G.R. No. 217874, December 5, 2017.

purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusion temporal*, as the case may be.

2nd. The penalty of *prisión correccional* in its minimum and medium periods, if the amount of the fraud is over One million two hundred thousand pesos (P1,200,000) but does not exceed Two million four hundred thousand pesos (P2,400,000).

3rd. **The penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum period, if such amount is over Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).**

4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed Forty thousand pesos (P40,000): *Provided*, That in the four cases mentioned, the fraud be committed by any of the following means:⁷ (Emphasis supplied)

Considering that the amounts involved in CC No. 36720-R and CC No. 36743-R fall under the third paragraph of the above cited provision, *i.e.*, exceeds Forty Thousand Pesos (P40,000.00) but does not exceed One Million Two Hundred Thousand Pesos (P1,200,000.00), a modification of the penalties imposed on petitioner is in order.

Thus, in this Petition, petitioner prays that her period of imprisonment be modified as follows:

- (i) one (1) month and one (1) day to four (4) months, as minimum, to one (1) year and one day to one (1) year, eight (8) months, as maximum for CC No. 36720-R; and
- (ii) one (1) month and one (1) day to four (4) months, as minimum, to one (1) year and one (1) day to one (1) year, eight months, as maximum for CC No. 36743-R.⁸

Petitioner further prays for her immediate release from confinement, considering that her Time Served with Earned Good Conduct Time Allowance is three (3) years, two (2) months and eighteen (18) days, as of April 5, 2018.⁹

Issue

Whether petitioner is entitled to the relief prayed for.

The Court's Ruling

In the recent case of *In Re: Correction/Adjustment of Penalty Pursuant to Republic Act No. 10951, in Relation to Hernan v.*⁹

⁷ R.A. 10951, Sec. 85.

⁸ *Rollo*, p. 12.

⁹ *Id.* at 5, 22.

Sandiganbayan – Rolando Elbanbuena y Marfil,¹⁰ the Court laid down guidelines on the disposal of petitions arising from the adjustment of penalties in R.A. 10951:

- 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.
- 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;

¹⁰ G.R. No. 237721, July 31, 2018.

- 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.¹¹

Given the foregoing, the Court finds it appropriate to remand the Petition to the RTC exercising territorial jurisdiction over the locality where petitioner is confined — in this case, the RTC of Mandaluyong City since petitioner is confined at the Correctional Institution for Women, Nueve De Febrero, 1550 Mandaluyong City — for the adjustment of petitioner's penalties and for the determination as to whether she had fully served her adjusted sentences, and thus, entitled to immediate release. This includes as well the determination of any subsidiary penalty that may be proper under the circumstances.

WHEREFORE, Criminal Case Nos. 36720-R and 36743-R are hereby ordered **REOPENED** and **REMANDED** to the Regional Trial Court of Mandaluyong City for the determination of: (a) the proper penalties in accordance with R.A. 10951; and (b) whether petitioner Racquel Dela Cruz y Genese is entitled to immediate release on account of full service of her sentences, as modified.

Let copies of this Resolution 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." (adv15)

Very truly yours,


EDGAR O. ARICHETA

Clerk of Court

¹¹ Id. at 6-7.

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PUBLIC INFORMATION OFFICE (x)
JUDICIAL RECORDS OFFICE (x)
**JUDGMENT DIVISION (x)
Supreme Court

G.R. Nos. 240394-95
kat 8/14/18 (URes15) 9/3/18

THE EXECUTIVE JUDGE (reg)
Regional Trial Court
Mandaluyong City

HON. ROMEO F. BARZA (x)
Presiding Justice
ATTY. TERESITA R. MARIGOMEN (x)
Executive Clerk of Court IV
Court of Appeals
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HON. ROMAN G. DEL ROSARIO (reg)
Presiding Justice
THE CLERK OF COURT (reg)
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HON. AMPARO M. CABOTAJE-TANG (reg)
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**W/records

