



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

**JEOFFY GEROBIESE**  
**ALEMANIA alias "JEFF,"**  
Petitioner,

y **G.R. No. 221006**

Present:

-versus-

**LEONEN, J., Chairperson,**  
**PERLAS-BERNABE,\***  
**CARANDANG\*\*,**  
**ROSARIO\*\*\*, and**  
**LOPEZ, JJ.**

**PEOPLE OF THE PHILIPPINES,**  
Respondent.

**Promulgated:**  
**July 7, 2021**

*MisADCBAH*

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**DECISION**

**LEONEN, J.:**

Petitioner seeks to dismiss the criminal case against him in order to apply for probation. However, the case sought to be dismissed had long become final and executory. Reopening it would violate the doctrine of immutability of judgments.

In addition, the registry return card creates a presumption that petitioner's counsel was duly served a copy of the Resolution denying petitioner's Motion for Reconsideration. Absent any evidence to the contrary, the presumption of regularity of service will stand.

\* Designated additional Member per Raffle dated November 11, 2020.

\*\* Designated additional Member per Raffle dated June 25, 2021.

\*\*\* Designated additional Member per Special Order No. 2833.

This is a Petition for Review on Certiorari<sup>1</sup> under Rule 45 of the Rules of Court, assailing the Decision<sup>2</sup> and Resolution<sup>3</sup> of the Court of Appeals which dismissed Jeoffy Gerobiese y Alemania's (Gerobiese) Petition for Certiorari, finding no grave abuse of discretion by the trial court.

In 2001, Gerobiese was charged for violating Republic Act No. 8294<sup>4</sup> by illegally possessing 12 caliber .38 live ammunitions, and for violating Section 16 of Republic Act No. 6425<sup>5</sup> by possessing illegal drugs.<sup>6</sup>

The case for violation of Republic Act No. 8294 (illegal possession of ammunition) was docketed as Criminal Case No. H-1201. The Information reads:

That on or about the 2<sup>nd</sup> day of March 2001 at around 6:45 o'clock in the morning, in the Municipality of Bato, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did, then and there, wilfully, unlawfully and feloniously have in his possession, control and custody twelve (12) pcs. of live ammunitions for caliber .38 without any license or permit to possess the same from a competent authority.

CONTRARY TO LAW.<sup>7</sup>

Branch 18 of the Municipal Circuit Trial Court of Bato-Matalom, Leyte subsequently found him guilty:

WHEREFORE, premises considered, the court finds JEOFFY GEROBIESE y ALEMANIA alias "Jeff" GUILTY beyond reasonable doubt of Unlawful Possession of Ammunition defined and penalized under Sec. 1, paragraph 1 of Presidential Decree No. 1866, as amended by Republic Act No. 8294 and hereby sentences him to Four (4) years, Two (2) months and One (1) day to Six (6) years of prision correccional and a Fine of Fifteen thousand pesos (P15,000.00). The twelve live ammunition seized from his possession are hereby ordered confiscated and forfeited in favor of the government.

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<sup>1</sup> *Rollo*, pp. 14-34.

<sup>2</sup> *Id.* at 49-63. The December 16, 2014 Decision in CA-G.R. CEB-SP No. 08335 was penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Ramon Paul L. Hernando (now a member of this Court) and Marie Christine Azcarraga-Jacob of the Twentieth Division of the Court of Appeals, Cebu City

<sup>3</sup> *Id.* at 64-67. The August 27, 2015 Resolution in CA-G.R. SP No. 08335 was penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Marie Christine Azcarraga-Jacob and Edward B. Contreras of the Special Former Twentieth Division of the Court of Appeals, Cebu City.

<sup>4</sup> *Id.* at 17. An Act Amending the Provisions of Presidential Decree No. 1866, As Amended, Entitled "Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and For Relevant Purposes."

<sup>5</sup> *Id.* at 19. Dangerous Drugs Act of 1972.

<sup>6</sup> *Id.* at 17-19.

<sup>7</sup> *Id.* at 17-18.

SO ORDERED.<sup>8</sup>

On appeal, the Regional Trial Court decreased the penalty to six (6) months and one (1) day to four (4) years and two (2) months.<sup>9</sup> Gerobiese filed a Motion for Reconsideration on November 14, 2005 before the Regional Trial Court which was denied in a March 20, 2006 Order.<sup>10</sup>

Meanwhile, the Information for violation of Republic Act No. 6425 (illegal possession of dangerous drugs) in Criminal Case No. H-1051 reads:

That on or about the 2<sup>nd</sup> day of March [2]001, at around 6:45 o'clock in the morning, in the Municipality of Bato, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there, wilfully, unlawfully and feloniously (sic) have in his possession and control One (1) sachet of Methamphetamine [sic] Hydrochloride locally known as 'Shabu' with an estimated weight of 0.4 grams kept inside from the pocket of his red wallet; Ten (10) pcs. decks of Methamphetamine Hydrochloride with an estimated weight of .5 grams placed inside a transparent cellophane pack; One (1) pc. deck of Methamphetamine Hydrochloride with an estimated weight of .03 gram; Three (3) pcs. tinfoil used as tooter for inhaling shabu; One (1) pc. plastic straw color blue used in inhaling shabu; One (1) pc. tinfoil with residue of shabu; Two (2) pcs. crumpled tinfoil with residue of shabu; One (1) pcs. improvised bamboo clip used in heatsealing decks/sachet; Three (3) pcs. lighter; Two (2) pcs. scissors; One (1) pc. blade marked 'Panda' used for cracking shabu; One (1) pc. white lighted candle; Two (2) pcs. One Thousand Peso Bills; One (1) pc. Fifty peso Bills; Five (5) pcs. Twenty Peso Bills and Two (2) pcs. Ten Peso Bills as proceeds of illegal activities.

CONTRARY TO LAW.<sup>11</sup>

On September 17, 2012, Branch 18 of the Regional Trial Court of Hilongos, Leyte found Gerobiese guilty of illegal possession of dangerous drugs. The dispositive portion of its Decision states:

WHEREFORE, in view of the foregoing, accused JEFFY (sic) GEROBIESE Y ALEMANIA @ 'JEFF' is hereby found GUILTY beyond reasonable doubt in Violation of Sec. 16, Article III of R.A. 6425, as amended, and hereby sentenced to suffer the imprisonment of Six (6) Months of Arresto Mayor as minimum, to Four (4) Years and Two (2) Months of Prision Correccional as Maximum. Costs against the accused.

SO ORDERED.<sup>12</sup>

On September 20, 2012, Gerobiese filed an application for probation 

<sup>8</sup> Id. at 18.

<sup>9</sup> Id.

<sup>10</sup> Id. at 50.

<sup>11</sup> Id. at 19-20.

<sup>12</sup> Id. at 20.

under Presidential Decree No. 968, or the Probation Law of 1976.<sup>13</sup>

The Chief Probation and Parole Officer of Baybay City Parole and Probation Office filed a motion to deny the petition for probation, arguing that Gerobiese is disqualified due to his previous conviction for illegal possession of ammunition.<sup>14</sup>

Gerobiese admitted that he was convicted of illegal possession of ammunition but argues that “he was not duly notified of the Order dated March 20, 200[6] which denied [his] Motion for Reconsideration.”<sup>15</sup>

On December 2, 2013, Gerobiese’s Application for Probation was denied by Judge Ephrem Suarez Abando in an Order<sup>16</sup> which states:

The assertion of the accused that he was not being duly notified [sic] by the Order dated March 20, 2006<sup>17</sup> is a factual issue which can be determined by perusing the records of Criminal Case Nos. H-1201 and H-1051.

In criminal case no. H-1051 the record shows that on the hearing of instant Motion to deny application for probation the prosecution submitted a Certification (Exhibit “A”[D]) issued by Ricse I. Corpin, Officer-in-Charge, Philippine Postal Corporation, Hilongos, Leyte, dated May 15, 2013, certifying that “One (1) Registered Letter from the Regional Trial Court, Branch 18, Hilongos, Leyte bearing Registry Receipt No. 1590 posted on March 30, 2006, addressed to Atty. Joseph Fulache was received by his wife, Imelda Fulache on March 31, 2006.

For this Court, the accused was duly notified and he was properly served of [sic] the subject Order (denying the motion for reconsideration) through his counsel. It is worthy to note that service to the counsel on record is considered service to the party he is [representing].<sup>18</sup>

On December 19, 2013, Gerobiese filed a Joint Omnibus Motion before the Regional Trial Court, praying that Criminal Case No. H-1201 for illegal possession of ammunition be dismissed, and that the Order denying the application for probation be reconsidered.<sup>19</sup>

In its January 16, 2014 Order,<sup>20</sup> the Regional Trial Court denied the Joint Omnibus Motion. Portions of the Order state:

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<sup>13</sup> Id. As Amended by Presidential Decree No. 11866 (1983) and Presidential Decree No. 1990 (1985).

<sup>14</sup> Id. at 51.

<sup>15</sup> Id. at 21.

<sup>16</sup> Copy of December 2, 2013 Order not attached to Petition.

<sup>17</sup> It appears that the correct date should be March 20, 2006.

<sup>18</sup> *Rollo*, pp. 21–22.

<sup>19</sup> Id. at 23.

<sup>20</sup> Copy of the January 16, 2014 RTC Order not attached to Petition.

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The grounds relied upon by the accused in seeking the dismissal of the first case (Crim. Case No. 1201) is by virtue of the express provision of the law. Under Sec. 1 of R.A. 8294 it states that if illegal possession of ammunition is committed together with another crime regardless of the nature of the crime and its penalty imposable, the crime under R.A. 8294 could not be prosecuted. This principle was brought about upon the effectivity of R.A 8294.

After a thorough review of the exhaustive arguments made by the accused-movant in his motion for dismissal of criminal case no. 1201, the court is not inclined with his assertion as the instant criminal case has become final and executory on April 20, 2006 as per ENTRY OF FINAL JUDGMENT dated January 22, 2013. Otherwise, if the court will consider the dismissal, it might espouse into a dangerous doctrine of never ending litigation.

On the motion for reconsideration of the Order dated December 2, 2013, the court resolves to maintain its stand.

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WHEREFORE, premises considered, the JOINT OMNIBUS MOTION is DENIED. The Order dated December 2, 2013 STAYS.

SO ORDERED.<sup>21</sup>

The Court of Appeals in its December 16, 2016 Decision<sup>22</sup> affirmed the trial court's Order denying the Joint Omnibus Motion.

The Court of Appeals upheld the trial court's factual finding that a copy of the Order denying Gerobiese's Motion for Reconsideration was served to his counsel:

It bears stressing that the motion for reconsideration in Criminal Case H-1201 was filed by the petitioner in 2005, while the denial of the Application for Probation was issued on December 2, 2013. It baffles this Court that from the year 2005 to 2013, the petitioner never bothered to make a follow up as to the status of his motion for reconsideration in Criminal Case No. H-1201 for Violation of R.A. 8294. Such inaction over a considerable length of time militates against the petitioner's claim.<sup>23</sup>

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First and foremost, as earlier observed, it took petitioner eight (8) long years after the filing of his motion for reconsideration to assail the finality of its denial and to allege non-receipt thereof. In the same vein, petitioner's invocation of dismissal came only after seven (7) years have passed since the finality of the ruling. Verily, it is the considered view of this Court that the ruling in Criminal Case No. H-1201 for Violation of R.A. 8294 has already attained finality. Hence, issues pertaining thereto must be

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<sup>21</sup> *Rollo*, pp. 23–24.

<sup>22</sup> *Id.* at 49–63.

<sup>23</sup> *Id.* at 56.

laid to rest in accordance with the principle of immutability of judgments.<sup>24</sup>

The Court of Appeals also found that the trial court did not gravely abuse its discretion.<sup>25</sup> It held that the ruling in Criminal Case No. H-1201 for illegal possession of ammunition had attained finality, and must be laid to rest in accordance with the principle of immutability of judgments.<sup>26</sup> Thus, under Section 9(c) of Presidential Decree No. 968,<sup>27</sup> Gerobiese is disqualified for probation.

The dispositive portion of the Court of Appeals Decision reads:

**WHEREFORE**, in view of the foregoing, the Petition is **DENIED**. The Order dated December 2, 2013 of the Regional Trial Court, Branch 18, Hilongos, Leyte, in Criminal Case No. H-1051 for Violation of Section 16, Article III of R.A. 6425, which denied the Application for Probation, as well as the Order dated January 16, 2014 of the same RTC denying the Joint Omnibus Motion of the petitioner are hereby **AFFIRMED**.

**SO ORDERED.**<sup>28</sup>

The Court of Appeals denied Gerobiese's Motion for Reconsideration in its Resolution.<sup>29</sup>

IN LIGHT OF THE FOREGOING, petitioner's motion for reconsideration is denied for lack of merit.

**SO ORDERED.**<sup>30</sup>

Hence, Gerobiese filed a Petition for Review under Rule 45 before this Court.<sup>31</sup>

Petitioner claims that the Certification issued by the Philippine Post Office was insufficient proof of his receipt of the Regional Trial Court Order denying his Motion for Reconsideration. As it failed to specify for which document it was issued, it could have been for a different case handled by the same counsel.<sup>32</sup>

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<sup>24</sup> Id at. 59.

<sup>25</sup> Id. at 55

<sup>26</sup> Id. at 59.

<sup>27</sup> SECTION 9. *Disqualified Offenders*. — The benefits of this Decree shall not be extended to those: (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.

<sup>28</sup> *Rollo*, pp. 62–63.

<sup>29</sup> Id. at 64–67. The August 27, 2015 Court of Appeals Resolution was penned by Associate Justice Pamela Ann Abella Maxinc and concurred in by Associate Justices Marie Christine Azcarraga-Jacob and Edward B. Contreras of the Special Former Twentieth Division, Court of Appeals, Cebu City.

<sup>30</sup> Id. at 67.

<sup>31</sup> Id. at 14–34

<sup>32</sup> Id. at 25.

Petitioner argues that assuming it was the Order that was sent to his counsel, the service is still invalid as it was served to his counsel's wife.<sup>33</sup>

Petitioner contends that Criminal Case No. H-1201 for illegal possession of ammunition should have been dismissed for lack of jurisdiction.<sup>34</sup> He claims that since the two offenses arose from one incident and he was already convicted for illegal possession of dangerous drugs, unlawful possession of ammunition cannot be considered a separate offense under Section 1(2)<sup>35</sup> of Presidential Decree No. 1866, as amended by Republic Act No. 8294.<sup>36</sup>

In its Comment,<sup>37</sup> the Office of the Solicitor General counters that petitioner should have presented evidence proving that the Postmaster's Certification presented by the prosecution pertained to a different case.<sup>38</sup>

In addition, the issue of whether petitioner's counsel was duly notified of the denial of his Motion for Reconsideration is a question of fact which has been settled by the Regional Trial Court.<sup>39</sup>

Further, it argues that all litigations must come to an end and the principle of immutability of judgments applies to petitioner's conviction.<sup>40</sup>

The Office of the Solicitor General posits that Section 1 of Republic Act No. 8294 does not divest the trial courts of jurisdiction over cases of illegal possession of firearm or ammunition merely on the basis of a prosecution for another crime arising from the same incident.<sup>41</sup>

Furthermore, it argues that Presidential Decree No. 1866, as amended by Republic Act No. 8294, imposes the penalty of *prision correccional* in its maximum period for the crime of illegal possession of ammunition which vests the Municipal Circuit Trial Court with jurisdiction over the offense

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<sup>33</sup> Id. at 26.

<sup>34</sup> Id. at 27.

<sup>35</sup> SECTION 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition... The penalty of prision mayor in its minimum period and a fine of Thirty Thousand Pesos (P30,000.00) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter caliber such as calibre .40, .41, .44, .45 and also lesser caliber firearms but considered powerful such as caliber .357 and caliber .22 center fire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, that no other crime was committed by the person arrested.

<sup>36</sup> *Rollo*, pp. 29–30.

<sup>37</sup> Id. at 37–38. Respondent was required to file a Comment through a Resolution dated June 22, 2016.

<sup>38</sup> Id. at 75–76.

<sup>39</sup> Id. at 76.

<sup>40</sup> Id. at 77.

<sup>41</sup> Id. at 80.

charged.<sup>42</sup>

The issues for this Court's resolution are:

First, whether or not the Regional Trial Court Decision in Criminal Case No. H-1201 for unlawful possession of ammunition, in violation of Republic Act No. 8294, has attained finality. Subsumed under this issue is whether or not petitioner Jeoffy Gerobiese y Alemania was properly served a copy of the March 26, 2006 Order denying his Motion for Reconsideration; and

Second, whether or not the Court of Appeals erred in not finding grave abuse of discretion on the part of the Regional Trial Court, when it refused to dismiss Criminal Case No. H-1201 on the ground that it would violate the principle of immutability of judgments.

This Court denies the petition.

## I

The Decision in Criminal Case No. H-1201 for illegal possession of ammunition has attained finality as petitioner was properly served a copy of the March 20, 2006 Order denying his Motion for Reconsideration.

On petitioner's alleged non-receipt of the Order, the trial court stated:

In criminal case No. H-1051, the record shows that on the hearing of (the) instant Motion to deny application for probation the prosecution submitted a Certification (Exhibit "A") issued by Ricste L. Corpez, Officer-In-Charge, Philippine Postal Corporation, Hilongos, Leyte, dated May 15, 2013, certifying that "one (1) Registered Letter from the Regional Trial Court, Branch 18, Hilongos, Leyte, bearing Registry No. 1590 posted on March 30, 2006, addressed to Atty. Joseph Fulache was received by his wife, Imelda Fulache on March 31, 2006."<sup>43</sup>

Rule 13, Sections 7, 9, and 10 of the 1997 Rules of Civil Procedure provide:

SECTION 7. *Service by mail.* — Service by registered mail shall be made by depositing the copy in the post office in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10)

<sup>42</sup> Id. at 82.

<sup>43</sup> Id. at 54.

days if undelivered. If no registry service is available in the locality of either the senders or the addressee, service may be done by ordinary mail.

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SECTION 9. *Service of judgments, final orders, or resolutions.* — Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him shall be served upon him also by publication at the expense of the prevailing party. (7a)

SECTION 10. *Completeness of service.* — Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.

In *Ong Lay Hin v. CA*,<sup>44</sup> a similar issue was resolved by this Court. There, the Court of Appeals affirmed Ong's conviction for estafa and denied his motion for reconsideration.<sup>45</sup> Six years after the decision became final and executory, Ong was arrested.<sup>46</sup> He then filed a petition for certiorari before this Court arguing "that his counsel never received a copy of the Court of Appeals' resolution denying his Motion for Reconsideration."<sup>47</sup> Hence, it was grave abuse of discretion for the Court of Appeals to have made an entry of judgment and issue a warrant of arrest against him as the decision had not yet attained finality.<sup>48</sup>

Ong further argued that assuming his counsel received a copy of the resolution denying his motion for reconsideration, then "his counsel was grossly negligent in failing to appeal the Court of Appeals' Resolution."<sup>49</sup> This effectively "deprived him of due process and, therefore, should not bind him."<sup>50</sup>

In dismissing Ong's petition, this Court discussed:

The registry return card is the "official . . . record evidencing service by mail." It "carries the presumption that it was prepared in the course of official duties that have been regularly performed [and, therefore,] it is presumed to be accurate, unless proven otherwise[.]"

Petitioner failed to rebut this presumption.

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<sup>44</sup> 752 Phil. 15 (2015) [Per J. Leonen, Second Division].

<sup>45</sup> Id.

<sup>46</sup> Id. at 18–19.

<sup>47</sup> Id. at 19–20.

<sup>48</sup> Id. at 20.

<sup>49</sup> Id.

<sup>50</sup> Id.

With petitioner failing to rebut this presumption, it must be presumed that his former counsel received a copy of the Resolution on April 29, 2003 as indicated in the registry return card. The 15-day period to appeal commenced from this date. Since petitioner did not file an Appeal within 15 days from April 29, 2003, the Decision became final and executory on May 15, 2003.<sup>51</sup> (Citations omitted)

This Court further discussed that “hiring legal counsel does not relieve litigants of their duty to ‘monitor the status of [their] case[s],’ especially if their cases are taking an ‘unreasonably long time’ to be resolved.”<sup>52</sup>

Here, this Court agrees with the Court of Appeals when it stated that:

It bears stressing that the motion for reconsideration in Criminal Case [No.] H-1201 was filed by the petitioner in 2005, while the denial of the Application for Probation was issued on December 2, 2013. It baffles this Court that from the year 2005 to 2013, the petitioner never bothered to make a follow up as to the status of his motion for reconsideration in Criminal Case No. H-1201 for Violation of R.A. 8294. Such inaction over a considerable length of time militates against the petitioner’s claim.<sup>53</sup>

Eight years passed between the filing of the Motion for Reconsideration in Criminal Case No. H-1201 and the denial of the Application for Probation in Criminal Case No. H-1051. Petitioner did not present evidence to show that he inquired with his counsel or with the Court of Appeals regarding the status of his Motion for Reconsideration. This shows negligence which this Court cannot sympathize with. Petitioner cannot now ask for this Court’s leniency when he sat on his rights. As this Court stated in *Ong Lay Hin*:

We cannot accept a standard of negligence on the part of a client to fail to follow through or address counsel to get updates on his case. Either this or the alternative that counsel’s alleged actions are merely subterfuge to avail a penalty well deserved.<sup>54</sup>

## II

On the second issue, this Court finds that the Court of Appeals did not err when it refused to dismiss Criminal Case No. H-1201 for illegal possession of ammunition.

The Court of Appeals found that the trial court’s Decision was justified by the following: (1) petitioner’s receipt of the Order denying his Motion for

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<sup>51</sup> Id. at 22–23.

<sup>52</sup> Id. at 16.

<sup>53</sup> *Rollo*, p. 56.

<sup>54</sup> *Ong Lay Hin v. CA*, 752 Phil. 15, 26 (2015) [Per J. Leonen, Second Division].

Reconsideration;<sup>55</sup> and (2) the Decision already being final and executory.<sup>56</sup>

Parenthetically, petitioner is asking this Court to reopen a case which had long attained finality.

In *Mercury Drug v. Spouses Huang*,<sup>57</sup> the doctrine of immutability of judgments and its exceptions were discussed as follows:

It is a fundamental principle that a judgment that lapses into finality becomes immutable and unalterable. The primary consequence of this principle is that the judgment may no longer be modified or amended by any court in any manner even if the purpose of the modification or amendment is to correct perceived errors of law or fact. This principle known as the doctrine of immutability of judgment is a matter of sound public policy, which rests upon the practical consideration that every litigation must come to an end.

The rationale behind the rule was further explained in *Social Security System v. Isip*, thus:

The doctrine of immutability and inalterability of a final judgment has a two-fold purpose: (1) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business and (2) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Controversies cannot drag on indefinitely. The rights and obligations of every litigant must not hang in suspense for an indefinite period of time.

The doctrine of immutability of judgment, however, is not an iron-clad rule. It is subject to several exceptions, namely:

- (1) [T]he correction of clerical errors;
- (2) [T]he so-called *nunc pro tunc* entries which cause no prejudice to any party;
- (3) [V]oid judgments; and
- (4) [W]henever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.<sup>58</sup> (Citations omitted)

None of the exceptions apply in this case.

The Regional Trial Court's Decision does not have any clerical error that needs modification. Its *falla* is in accord with the body of the decision, removing the need for any *nunc pro tunc* order. Finally, its execution was not tainted with any matter which makes it unjust or inequitable.

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<sup>55</sup> *Rollo*, pp. 54–55.

<sup>56</sup> *Id.* at 62.

<sup>57</sup> 817 Phil. 434 (2017) [Per J. Leonen, Third Division].

<sup>58</sup> *Id.* at 445–446.

Moreover, petitioner was praying for the dismissal of Criminal Case No. H-1201 before a court that had no jurisdiction over it. Here, Criminal Case No. H-1201 for illegal possession of ammunition was first filed before the Municipal Circuit Trial Court. Petitioner prayed for its dismissal before the Regional Trial Court where his other case, Criminal Case No. H-1051 for illegal possession of dangerous drugs, was pending even though there is nothing in the records to show that the two cases were consolidated.

### III

Petitioner argues that the two offenses for which he was convicted arose from one incident, and since he was already convicted for illegal possession of dangerous drugs, illegal possession of ammunition cannot be considered a separate offense under Section 1(2) of Presidential Decree No. 1866, as amended by Republic Act No. 8294. We now examine the application of Republic Act No. 8294 as discussed by this Court in several cases.

*People v. Jayson*<sup>59</sup> involved separate charges for murder and illegal possession of firearm. The case for murder was first filed where accused Jayson was allowed to plead guilty to the lesser offense of homicide and was sentenced to “imprisonment of 6 years and 1 day of *prision mayor*, as minimum, to 12 years and 1 day of *reclusion temporal*, as maximum.”<sup>60</sup> While his case for homicide was pending, he was charged for illegal possession of firearms.<sup>61</sup> The amended information for illegal possession of firearms averred “that the firearm subject of the charge had been used in the killing of a person[.]”<sup>62</sup> Jayson was subsequently found guilty of illegal possession of firearms and sentenced to 20 years imprisonment.<sup>63</sup>

One of the issues resolved in *Jayson* was whether Republic Act No. 8294 should be applied since it was more favorable to the accused:

SECTION 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.* — The penalty of *prision correccional* in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: ***Provided, That no other crime was committed.***

<sup>59</sup> 346 Phil. 847 (1997) [Per J. Mendoza, Second Division].

<sup>60</sup> Id. at 852.

<sup>61</sup> Id.

<sup>62</sup> Id.

<sup>63</sup> Id.

.....

***If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.*** (Emphasis supplied)

This Court answered in the negative and explained that:

Apparently, even though the penalty for illegal possession of firearm has been reduced in the new law, the latter cannot be applied in this case so as to favor accused-appellant in view of the proviso in §1 that the first paragraph, providing for lighter penalty, does not apply to cases where another crime has been committed. ***Nor can the third paragraph be applied by considering the illegal possession of firearm as a mere aggravating circumstance because, although the gun seized was used in the commission of a crime, this case concerns solely the charge of illegal possession of firearm. The criminal case for homicide is not before us for consideration.***<sup>64</sup> (Emphasis supplied)

In *People v. Valdez*,<sup>65</sup> the accused was found guilty of the complex crime of multiple murder with double frustrated murder and was sentenced to death.<sup>66</sup> Accused was also found guilty of illegal possession of firearms and ammunitions under Presidential Decree No. 1866,<sup>67</sup> prior to its amendment, and was sentenced with *reclusion perpetua*.<sup>68</sup> Then Section 1 of Presidential Decree No. 1866 stated:

SECTION 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.* — The penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearm, part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

***If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed.***

If the violation of this Section is in furtherance of, or incident to, or in connection with the crimes of rebellion, insurrection or subversion, the penalty of death shall be imposed.

The penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the

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<sup>64</sup> Id. at 859.

<sup>65</sup> 364 Phil. 259 (1999) [Per J. Melo, En Banc].

<sup>66</sup> Id. at 265.

<sup>67</sup> Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used In The Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties For Certain Violations Thereof and For Relevant Purposes. 1983.

<sup>68</sup> *People v. Valdez*, 364 Phil. 259, 265 (1999) [Per J. Melo, En Banc].

firearms owned by such firm, company, corporation or entity to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs.

The penalty of *prision mayor* shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor. (Emphasis supplied)

In *Valdez*, this Court retroactively applied Republic Act No. 8294 to spare the appellant “from a separate conviction for the crime of illegal possession of firearms[.]”<sup>69</sup> This would have raised the imposable penalty to death because the use of unlicensed firearm would be appreciated as a special aggravating circumstance in the crime of multiple murder pursuant to Section 1 of Presidential Decree No. 1866, as amended by Republic Act No. 8294:

SECTION I. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.* — The penalty of *prision correccional* in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: *Provided*, That no other crime was committed.

....

If *homicide or murder is committed with the use of an unlicensed firearm*, such use of an unlicensed firearm *shall be considered as an aggravating circumstance*. (Emphasis supplied)

However, this Court refused to impose the death penalty:

However, the use of an unlicensed firearm in the case at bar cannot be considered as a special aggravating circumstance in Criminal Case No. U-8747 (for Complex Crime of Multiple Murder), also under review herein, because it will unduly raise the penalty for the four counts of murder from four *reclusion perpetua* to that of four-fold death. Insofar as this particular provision of Republic Act No. 8294 is not beneficial to accused-appellant because it unduly aggravates the crime, this new law will not be given retroactive application, lest it might acquire the character of an *ex-post facto* law.<sup>70</sup>

This Court also clarified:

As a word of caution, however, the dismissal of the present case for illegal possession of firearm should not be misinterpreted as meaning that

<sup>69</sup> Id. at 279.

<sup>70</sup> Id. at 280.

there can no longer be any prosecution for the crime of illegal possession of firearm. *In general, all pending cases involving illegal possession of firearm should continue to be prosecuted and tried if no other crimes expressly indicated in Republic Act No. 8294 are involved* (murder or homicide under Section 1, and rebellion, insurrection, sedition or attempted *coup d'etat* under Section 3).<sup>71</sup> (Emphasis supplied)

In *People v. Ladjaalam*,<sup>72</sup> the accused was convicted for the crimes of maintaining a drug den, direct assault with multiple attempted homicide, and illegal possession of firearms.<sup>73</sup> Applying Republic Act No. 8294, this Court held:

A simple reading thereof shows that if an unlicensed firearm is used in the commission of any crime, there can be no separate offense of simple illegal possession of firearms. Hence, if the “other crime” is murder or homicide, illegal possession of firearms becomes merely an aggravating circumstance, not a separate offense. Since direct assault with multiple attempted homicide was committed in this case, appellant can no longer be held liable for illegal possession of firearms.<sup>74</sup>

In *People v. Almeida*,<sup>75</sup> the appellant was charged with illegal sale of dangerous drugs, illegal possession of ammunition, and illegal possession of dangerous drugs, which were consolidated. There, the appellant was acquitted of illegal possession of ammunition as it was not proven that they were his.<sup>76</sup> In its ruling, this Court stated that even assuming the ammunition belonged to Almeida, the complaint would still be dismissed in view of Republic Act No. 8294:

Furthermore, in any event, the Court has ruled in previous cases that in view of the enactment of Republic Act No. 8294, there can be no separate offense of illegal possession of firearms and ammunition if there is another crime committed such as, in this case, that of illegal possession of dangerous drugs.<sup>77</sup>

However, this statement is not *ratio decidendi* but an *obiter dictum* as it did not pertain to the main issue of whether the accused was guilty of illegal possession of dangerous drugs.

An *obiter dictum* is “an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before [the court].”<sup>78</sup> In addition, “it does not embody the resolution or determination of

<sup>71</sup> Id. at 279.

<sup>72</sup> 395 Phil. 1 (2000) [Per J. Panganiban, Third Division].

<sup>73</sup> Id. at 8–9.

<sup>74</sup> Id. at 35.

<sup>75</sup> 463 Phil. 637 (2003) [Per J. Azcuna, First Division].

<sup>76</sup> Id. at 649.

<sup>77</sup> Id.

<sup>78</sup> *Philippine National Bank v. Heirs of Entapa*, 794 Phil. 526, 542 (2016) [Per J. Leonen, Second Division] (Citations omitted).

the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*.”<sup>79</sup>

Meanwhile, *Agote v. Lorenzo*<sup>80</sup> involved a complaint for illegal possession of firearm and violation of the Commission on Election’s gun ban. There, this Court set aside Agote’s conviction for illegal possession of firearm because “another crime was committed at the same time, i.e., violation of Commission on Election Resolution No. 2826 or the Gun Ban.”<sup>81</sup>

To properly examine the applicability of Section 1 of Republic Act No. 8294 in a given case, it is important to define the word “committed” which appears repeatedly in the provision:

SECTION 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.* — The penalty of *prision correccional* in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: *Provided, That no other crime was committed.*

The penalty of *prision mayor* in its minimum period and a fine of Thirty thousand pesos (P30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: *Provided, however, That no other crime was committed by the person arrested.*

*If homicide or murder is committed* with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

If the violation of this Section is in furtherance of or incident to, or in connection with the crime of rebellion or insurrection, sedition, or attempted *coup d’état*, such violation shall be absorbed as an element of the crime of rebellion, or insurrection, sedition, or attempted *coup d’état*.

The same penalty shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the firearms owned by such firm, company, corporation or entity to be

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<sup>79</sup> *The Wellex Group, Inc. v U-Land Airlines, Co., Ltd.*, 750 Phil. 530, 590 (2015) [Per J. Leonen, Second Division] citing *Lana Bank of the Philippines v. Sunatay*, 678 Phil. 879, 913–914 (2011) [Per J. Bersamin, First Division].

<sup>80</sup> 502 Phil. 318 (2005) [Per J. Garcia, En Banc].

<sup>81</sup> *Id.*

used by any person or persons found guilty of violating the provisions of the preceding paragraphs or willfully or knowingly allow any of them to use unlicensed firearms or firearms without any legal authority to be carried outside of their residence in the course of their employment.

The penalty of *arresto mayor* shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor. (Emphasis supplied)

*Celino, Sr. v. CA*<sup>82</sup> explained the proper interpretation of the word “committed” as used in Republic Act No. 8294:

The law is indeed clear. The accused can be convicted of illegal possession of firearms, provided no other crime was committed by the person arrested. The word “committed” taken in its ordinary sense, and in light of the constitutional presumption of innocence, necessarily implies a prior determination of guilt by final conviction resulting from successful prosecution or voluntary admission.

....

In sum, when the other offense involved is one of those enumerated under R.A. 8294, any information for illegal possession of firearm should be quashed because the illegal possession of firearm would have to be tried together with such other offense, either considered as an aggravating circumstance in murder or homicide, or absorbed as an element of rebellion, insurrection, sedition or attempted *coup d’etat*. Conversely, when the other offense involved is not one of those enumerated under R.A. 8294, then the separate case for illegal possession of firearm should continue to be prosecuted.<sup>83</sup> (Emphasis in the original)

In the cited cases, only *Jayson*<sup>84</sup> involved several charges that were separately tried. Meanwhile, *Valdez, Ladjaalam, Almeida, Agote, and Celino, Sr.* involved charges jointly tried by the same court, which made it easier to determine whether another crime had been committed. In *Jayson*, the prosecution indirectly mentioned that Republic Act No. 8294 may possibly benefit the accused because the amended information stated that the firearm was “used in the killing of a person.”<sup>85</sup> Still, it was not applied in that case as homicide was not part of the conviction appealed from, which was a separate case for illegal possession of firearms.

In this case, the charges against petitioner were tried by different courts. The complaint for illegal possession of ammunition under Republic Act No. 8294 was filed before a Municipal Circuit Trial Court, while the complaint for violation of Republic Act No. 6425 for illegal possession of dangerous drugs was filed before a Regional Trial Court.

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<sup>82</sup> 553 Phil. 178 (2007) [Per J. Carpio-Morales, Second Division].

<sup>83</sup> Id at 185–187.

<sup>84</sup> 346 Phil. 847 (1997) [Per J. Mendoza, Second Division].

<sup>85</sup> Id. at 852.

Based on jurisprudence, it appears that Republic Act No. 8294 is usually applied when the charges against an accused is tried by the same court. In that case, illegal possession of ammunition or firearms may be absorbed and treated as a special aggravating circumstance if committed with any of the crimes enumerated in Section 1. Still, courts may refuse to apply Section 1 if it will not be beneficial to the accused, as in the case of *Valdez*.<sup>86</sup>

In contrast, when the charges are filed and tried separately, even if arising from the same incident, Republic Act No. 8294 will not be applied. This is because separate trials mean different judges, with different timetables for scheduling of cases, which would make it difficult to determine if the charges are linked to each other or if Section 1 is even applicable.

It may be fairly argued that for efficiency, the charges against petitioner should have been jointly tried in this case. However, the decision to file separate charges against petitioner is within the discretion of the prosecutor and cannot be interfered with by courts. As held in *Crespo v. Mogul*:<sup>87</sup>

It is a cardinal principle that all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal. The institution of a criminal action depends upon the sound discretion of the fiscal. He may or may not file the complaint or information, follow or not follow that presented by the offended party, according to whether the evidence in his opinion, is sufficient or not to establish the guilt of the accused beyond reasonable doubt.

. . . .

It is through the conduct of a preliminary investigation that the fiscal determines the existence of a *prima facie* case that would warrant the prosecution of a case. The Courts cannot interfere with the fiscal's discretion and control of the criminal prosecution[.]<sup>88</sup> (Citations omitted)

Further, the charge against petitioner for illegal possession of dangerous drugs is not one of the crimes enumerated in Republic Act No. 8294 where the use of firearms can be considered as an aggravating circumstance. Thus, following *Celino*, the two cases could be separately prosecuted.

Lastly, the crime for illegal possession of ammunition was decided ahead of the complaint for illegal possession of dangerous drugs. When petitioner was convicted of illegal possession of ammunition, he had not yet technically "committed" any other crime since his trial for violation of illegal possession of dangerous drugs was still pending.

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<sup>86</sup> *People v. Valdez*, 364 Phil. 259 (1999) [Per J. Melc, En Banc].

<sup>87</sup> 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].

<sup>88</sup> *Id.* at 472.

When petitioner's application for probation was denied, Presidential Decree No. 968<sup>89</sup> had not yet been amended. Section 9 of which stated:

SECTION 9. *Disqualified Offenders.* — The benefits of this Decree shall not be extended to those:

- (a) sentenced to serve a maximum term of imprisonment of more than six years;
- (b) convicted of any offense against the security of the State;
- (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;**
- (d) who have been once on probation under the provisions of this Decree; and
- (e) who are already serving sentence at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof. (Emphasis supplied).

While this Petition was pending before this Court, Republic Act No. 10707<sup>90</sup> came into effect. It amended Presidential Decree No. 968 as follows:

SECTION 9. *Disqualified Offenders.* — The benefits of this Decree shall not be extended to those:

- (a) sentenced to serve a maximum term of imprisonment of more than six (6) years;
- (b) convicted of any crime against the national security;
- (c) who have previously been convicted by **final judgment of an offense punished by imprisonment of more than six (6) months and one (1) day and/or a fine of not more than one thousand pesos (P1,000.00);**
- (d) who have been once on probation under the provisions of this Decree; and
- (e) who are already serving sentence at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof. (Emphasis supplied).<sup>91</sup>

Here, petitioner is not qualified for probation under either of the two probation laws since he had previously been convicted with finality and was sentenced to imprisonment for six (6) months and one (1) day to four (4) years and two (2) months.<sup>92</sup>

<sup>89</sup> Probation Law of 1976.

<sup>90</sup> An Act Amending Presidential Decree No. 968, Otherwise Known as the "Probation Law of 1976," as amended. 2015.

<sup>91</sup> Republic Act No. 10707. An Act Amending Presidential Decree No. 968, Otherwise Known as the "Probation Law of 1976," as amended.

<sup>92</sup> *Rollo*, p. 18. When the Regional Trial Court decision was promulgated on August 31, 2005, Presidential Decree No. 968 had not yet been amended by Republic Act No. 10707.

We are aware of Republic Act No. 10591,<sup>93</sup> which repealed certain provisions of Presidential Decree No. 1866 and Republic Act No. 8294.<sup>94</sup>

The applicable provision under Republic Act No. 8294 states:

SECTION 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.* — **The penalty of prision correccional in its maximum period** and a fine of not less than Fifteen thousand pesos (₱15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: *Provided*, That no other crime was committed.

Republic Act No. 10591 increased the penalty to *prision mayor*:

SECTION 28. *Unlawful Acquisition, or Possession of Firearms and Ammunition.* — The unlawful acquisition, possession of firearms and ammunition shall be penalized as follows:

...  
 (g) **The penalty of prision mayor in its minimum period** shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a small arm or Class-A light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a small arm, the former violation shall be absorbed by the latter;<sup>95</sup>

<sup>93</sup> Comprehensive Firearms and Ammunition Regulation Act. (2013).

<sup>94</sup> The repealing clause of Republic Act No. 10591 states:

SECTION 45. *Repealing Clause.* — This Act repeals Sections 1, 2, 5 and 7 of Presidential Decree No. 1866, as amended, and Section 6 of Republic Act No. 8294 and all other laws, executive orders, letters of instruction, issuances, circulars, administrative orders, rules or regulations that are inconsistent herewith.

<sup>95</sup> "Small arm" and "Class-A Light weapon" are defined under Republic Act No. 10591:

SECTION 3. *Definition of Terms.* — As used in this Act:

...  
 (t) *Light weapons* are: Class-A Light weapons which refer to self-loading pistols, rifles and carbines, submachine guns, assault rifles and light machine guns not exceeding caliber 7.62MM which have fully automatic mode, and Class-B Light weapons which refer to weapons designed for use by two (2) or more persons serving as a crew, or rifles and machine guns exceeding caliber 7.62MM such as heavy machine guns, handheld underbarrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a caliber of less than 100MM.

...  
 (dd) *Small arms* refer to firearms intended to be or primarily designed for individual use or that which is generally considered to mean a weapon intended to be fired from the hand or shoulder, which are not capable of fully automatic bursts of discharge, such as:

(1) Handgun which is a firearm intended to be fired from the hand, which includes:

(i) A pistol which is a hand-operated firearm having a chamber integral with or permanently aligned with the bore which may be self-loading; and

(ii) Revolver which is a hand-operated firearm with a revolving cylinder containing chambers for individual cartridges

(2) Rifle which is a shoulder firearm or designed to be fired from the shoulder that can discharge a bullet through a rifled barrel by different actions of loading, which may be classified as lever, bolt, or self loading; and

(3) Shotgun which is a weapon designed, made and intended to fire a number of ball shots or a single

However, since Republic Act No. 10591 is not beneficial to the petitioner,<sup>96</sup> this Court cannot give it retroactive effect for this particular case.

**WHEREFORE**, the December 16, 2014 Decision and August 27, 2015 Resolution of the Court of Appeals in CA-G.R. CEB-SP No. 08335 are **AFFIRMED**.

**SO ORDERED.**

  
**MARVIC M.V.F. LEONEN**  
 Associate Justice

WE CONCUR:

  
**ESTELA M. PERLAS-BERNABE**  
 Associate Justice

  
**ROSMARI D. CARANDANG**  
 Associate Justice

  
**RICARDO R. ROSARIO**  
 Associate Justice

  
**JHOSEP Y. LOPEZ**  
 Associate Justice

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projectile through a smooth bore by the action or energy from burning gunpowder.

<sup>96</sup> The applicable provision of Republic Act No. 10591 states:

SECTION 28. *Unlawful Acquisition, or Possession of Firearms and Ammunition.* — The unlawful acquisition, possession of firearms and ammunition shall be penalized as follows:

.....

(g) The penalty of *prision mayor* in its minimum period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a small arm or Class-A light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a small arm, the former violation shall be absorbed by the latter[.]

**ATTESTATION**

I attest 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's Division.

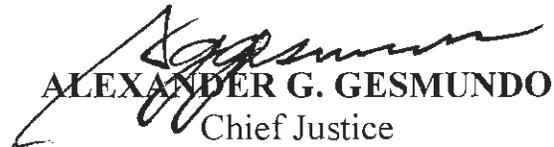
**MARVIC M.V.F. LEONEN**

Associate Justice

Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify 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's Division.

**ALEXANDER G. GESMUNDO**

Chief Justice