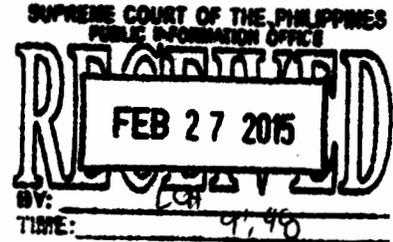




Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated January 28, 2015, which reads as follows:*

**“G.R. No. 213708 (Gerardo G. Basilio vs. People of the Philippines).** – Considering the allegations, issues, and arguments presented, the Court resolves to **DENY** the petition for failure to sufficiently show that the Court of Appeals (CA) committed any reversible error in its assailed Decision<sup>1</sup> dated July 28, 2011 and Resolution dated June 9, 2014 in CA-G.R. CEB-CR No. 00961 as to warrant the exercise of the Court’s appellate jurisdiction.

Petitioner was initially charged in an Information with violation of Section 2(g)<sup>2</sup> in relation to Section 3(c)<sup>3</sup> of Republic Act No. (RA) 9287<sup>4</sup> for “Collecting/Soliciting Bets.” He was likewise alleged in the Information to be a recidivist for having been previously convicted by final judgment of violation of Presidential Decree No. (PD) 1602, as amended by RA 9287. Upon arraignment, petitioner pleaded “guilty” to the violation of Section 2(e)<sup>5</sup> in relation to Section 3(a)<sup>6</sup> of RA 9287, or “betting,” which is considered as an offense necessarily included in the offense of “Collecting/Soliciting Bets” charged in the Information.

<sup>1</sup> Pinned by Associate Justice Nina G. Antonio-Valenzuela, with the concurrence of Associate Justices Pampio A. Abarintos and Myra V. Garcia-Fernandez.

<sup>2</sup> Sec. 2. Definition of Terms. - As used in this Act, the following terms shall mean:

g) *Collector or Agent (“Cabo”, “Cobrador”, “Coriador” or variants thereof).* - Any person who collects, solicits or produces bets in behalf of his/her principal for any illegal numbers game who is usually in possession of gambling paraphernalia.

<sup>3</sup> Sec. 3. Punishable Acts. - Any person who participates in any illegal numbers game shall suffer the following penalties:

c) The penalty of imprisonment from eight (8) years and one (1) day to ten (10) years, if such person acts as a collector or agent;

<sup>4</sup> An Act Increasing the Penalties for Illegal Numbers Games, amending certain provisions of Presidential Decree No. 1602, and for Other Purposes.

<sup>5</sup> Sec. 2. Definition of Terms. - As used in this Act, the following terms shall mean:

e) *Bettor (“Mananaya”, “Tayador” or variants thereof).* - Any person who places bets for himself/herself or in behalf of another person, or any person, other than the personnel or staff of any illegal numbers game operation.

<sup>6</sup> Sec. 3. Punishable Acts. - Any person who participates in any illegal numbers game shall suffer the following penalties:

a) The penalty of imprisonment from thirty (30) days to ninety (90) days, if such person acts as a bettor.

In its Sentence dated March 26, 2008, the Regional Trial Court (RTC), Branch 65 in San Miguel, Jordan, Guimaras convicted petitioner of violating Section 2(e) in relation to Section 3(a) of RA 9287, and sentenced him to suffer the penalty of six (6) years and thirty (30) days imprisonment. While petitioner pleaded guilty to "betting," which carries with it the penalty of thirty (30) days to ninety (90) days imprisonment, Section 7<sup>7</sup> of RA 9287 specifically provides that the penalty next higher in degree as provided under Section 3 shall be imposed upon a recidivist who commits any of the offenses thereunder. Thus, in imposing the said penalty against petitioner, the RTC appreciated the aggravating circumstance of recidivism.

Petitioner appealed the adverse decision to the CA.

The CA affirmed *in toto* the Sentence dated March 26, 2008 promulgated by the RTC. The dispositive portion of the CA's Decision reads:

WHEREFORE, the appeal is DENIED. The assailed Sentence dated 26 March 2008 of the Regional Trial Court, Branch 65, San Miguel, Jordan, Guimaras in Criminal Case No. 06-0985 is AFFIRMED in toto.

SO ORDERED.

Petitioner moved for the reconsideration of the said Decision, which was denied by the CA in its Resolution dated June 9, 2014.

A plea of guilty admits the truth of all the material facts alleged in the information, including all the aggravating circumstances mentioned therein.<sup>8</sup> In pleading guilty to the lesser offense of "betting," petitioner likewise admitted all the attendant circumstances in the Information as charged, including the charge of recidivism.

Since petitioner was convicted of the offense of participating "in any illegal numbers game" under Sec. 3(a) of RA 9287 aggravated by the circumstance of recidivism under Section 7 of the same law, the impossible penalty should be taken within the range of the penalty next higher in degree provided for under Section 3(b)<sup>9</sup> of RA 9287, which is six (6) years and (1) day to eight (8) years. However, applying the rules of the Indeterminate Sentence Law, the penalty imposed should be modified, and the petitioner should be meted out with an indeterminate penalty of six (6) years and one (1) day, as the minimum term, to seven (7) years, as the maximum term, of imprisonment.

<sup>7</sup> Sec. 7. Recidivism. - The penalty next higher in degree as provided for under Section 3 hereof shall be imposed upon a recidivist who commits any of the offenses punishable in this Act.

<sup>8</sup> *People v. Pohong*, No. L-32332, August 15, 1973, 52 SCRA 287.

<sup>9</sup> Sec. 3. Punishable Acts. - Any person who participates in any illegal numbers game shall suffer the following penalties:

x x x x

b) The penalty of imprisonment from six (6) years and one (1) day to eight (8) years, if such person acts as a personnel or staff of an illegal numbers game operation.

January 28, 2015

**IN VIEW OF THE FOREGOING**, the petition is **DENIED**. The Court of Appeals' Decision dated July 28, 2011 and Resolution dated June 9, 2014 in CA-G.R. CEB-CR No. 00961 are hereby **AFFIRMED** with **MODIFICATION**. As modified, the said Decision shall read as follows:

WHEREFORE, the appeal is DENIED. The assailed Sentence dated 26 March 2008 of the Regional Trial Court, Branch 65, San Miguel, Jordan, Guimaras in Criminal Case No. 06-0985 is AFFIRMED with MODIFICATION. Petitioner Gerardo G. Basilio is sentenced to suffer the penalty of imprisonment for six (6) years and one (1) day, as the minimum term to seven (7) years, as the maximum term.

**SO ORDERED."**

Very truly yours,

  
**WILFREDO V. LAPAT**  
*Division Clerk of Court* 2/10/15

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The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 65, San Miguel, Jordan 5045 Guimaras  
(Criminal Case No. 06-0985)

COURT OF APPEALS  
CA G.R. CEB CR No. 00961  
6000 Cebu City

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