



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **20 January 2021** which reads as follows:*

“G.R. No. 250684 (*Dennis Decena y Ignacio v. People of the Philippines*). – After a second review of the petition, the Court resolves to **PARTIALLY GRANT** the motion for reconsideration of herein petitioner.

At the outset, it is to be stressed that arguments of petitioner relating to the finding of guilt beyond reasonable doubt for the offenses of illegal sale and illegal possession of dangerous drugs, which have been previously raised and passed upon by the Court, remain to be unmeritorious.

However, the Court agrees with petitioner’s argument that no subsidiary imprisonment can be imposed upon him. Hence, a partial reconsideration of the Court’s July 27, 2020 Resolution¹ is in order.

As correctly emphasized by petitioner, there can be no subsidiary imprisonment where the principal penalty imposed is higher than *prision correccional*. Article 39 of the Revised Penal Code clearly provides that:

Article 39. *Subsidiary Penalty.* – If the convict has no property with which to meet the fine mentioned in paragraph 3 of the next preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for each amount equivalent to the highest minimum wage rate prevailing in the Philippines at the time of the rendition of judgment of conviction by the trial court, subject to the following rules:

x x x x

¹ *Rollo*, pp. 124-125.

3. When the principal penalty imposed is higher than *prision correccional*, no subsidiary imprisonment shall be imposed upon the culprit.² (emphasis supplied)

Similarly, *Luy v. People*³ is instructive on this matter. The Court ruled therein that the RTC's imposition of subsidiary imprisonment was invalid and legally unenforceable, explaining that:

x x x. The imposition of subsidiary imprisonment, which is a subsidiary personal liability of a person found guilty by final judgment who has no property with which to meet the fine, is based on and in accord with Article 39 of the *Revised Penal Code*, a provision that is supplementary to special laws (like R.A. No. 9165) unless the latter should specially provide the contrary. But **subsidiary imprisonment cannot be imposed on the petitioner because her principal penalty, *supra*, was higher than *prision correccional* or imprisonment for six years.** x x x.⁴ (emphasis supplied)

Applying the foregoing in the instant case, We find the RTC's imposition of subsidiary imprisonment improper. Hence, the respective penalties for the offenses of illegal sale and illegal possession of dangerous drugs imposed upon petitioner shall be accordingly modified insofar as to indicate that the same are **without** subsidiary imprisonment in case of insolvency.

WHEREFORE, the Court **PARTIALLY GRANTS** the motion for reconsideration. The penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00), for violation of Section 5⁵ of Republic Act No. 9165, and the penalty of imprisonment of twelve (12) years and one (1) day to fifteen (15) years and the fine of Three Hundred Thousand Pesos (₱300,000.00), for violation of Section 11⁶ of Republic Act No. 9165, shall

² Article 39 of Act No. 3815, as amended by Republic Act No. 10159, April 10, 2012.

³ 797 Phil. 201 (2016).

⁴ Id. at 213-214.

⁵ **Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.** - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. x x x.

⁶ **Section 11. Possession of Dangerous Drugs.** - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

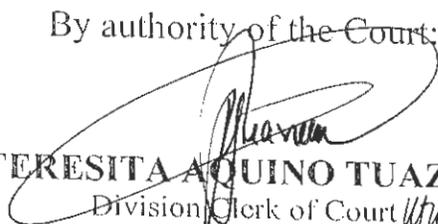
x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos

both be without subsidiary imprisonment in case of insolvency. All other matters remain.

SO ORDERED. (Rosario, *J.*, designated additional member per Special Order No. 2797 dated November 5, 2020, on official leave)”

By authority of the Court:


TERESITA AQUINO TUAZON
 Division Clerk of Court *Wh*
 15 FEB 2021 2/15

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 c/o The Director
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THE DIRECTOR (reg)

Bureau of Corrections
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)

Regional Trial Court, Branch 36
 Calamba City, 4027 Laguna
 (Crim. Case Nos. 23722-2014-C & 23723-2014-C)

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Please notify the Court of any change in your address.
 GR250684. 1/20/2021(58 & 173[b])URES

(P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or “shabu”, or other dangerous drugs such as, but not limited to, MDMA or “ecstasy”, PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.