



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 3, 2021 which reads as follows:

“G.R. No. 248377 (*Gilbert Valerio and Seniades Valerio vs. People of the Philippines*). – This is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Resolutions dated October 11, 2018² and December 17, 2018³ of the Court of Appeals (CA) in CA-G.R. CR No. 41066.

The CA correctly withdrew the petition from its active dockets due to petitioners’ failure to file the same within the extended period granted. However, As of October 8, 2018 – or almost 8 months from the extended period of February 18, 2018, which they prayed for – no petition was filed. Petitioners claim that they were focused on complying with the requirements to litigate as pauper litigants is inexcusable. The Rules of Court do not allow the suspension of filing a petition for review in order to comply with the requirements to litigate as pauper litigants. Section 1, Rule 42 of the Rules of Court specifically allows a 15-day extension only. Thus, the Regional Trial Court’s Decision⁴ dated October 24, 2017, which affirmed the Decision⁵ dated September 26, 2016 of the Municipal Trial Court in Cities (MTCC), became final and executory.

However, this Court is not precluded from correcting erroneous penalties meted on the accused in final and executory judgments.⁶

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¹ *Rollo*, pp. 15-37.

² Penned by Associate Justice Marie Christine Azcarraga-Jacob, with the concurrence of Associate Justices Fernanda Lampas Peralta and Rodil V. Zalameda (now a Member of this Court); *id.* at 86-87.

³ *Id.* at 42-45.

⁴ Penned by Acting Presiding Judge Jaime L. Dojillo, Jr.; *id.* at 68-72.

⁵ Penned by Presiding Judge Grace Gliceria Devera-Muralla; *id.* at 55-67.

⁶ *Sumbilla v. Matrix Finance Corporation*, 762 Phil. 130 (2015), citing *Peple v. Gatward*, 335 Phil. 440, 460 (1997) and *People v. Barro*, 392 Phil. 852, 876 (2000).

Since the MTCC incorrectly applied the Indeterminate Sentence Law, its Decision dated September 26, 2016 is erroneous. Under Section 2 of the Indeterminate Sentence Law, “[t]his Act shall not apply to persons convicted of offenses x x x whose maximum term of imprisonment does not exceed one year.”

Section 88 of Republic Act No. (R.A.) 10951 adjusted the penalty imposed for malicious mischief under Article 329 of the Revised Penal Code to “*arresto menor* or a fine of not less than the value of the damage caused and not more than Forty thousand pesos (₱40,000), if the amount involved does not exceed Forty thousand pesos (₱40,000.00) or cannot be estimated.” The duration of the penalty of *arresto menor* is one (1) day to thirty (30) days. Since R.A. 10951 has a “retroactive effect to the extent that it is favorable to the accused or person serving sentence by final judgment,” this Court reduces the penalty to a straight penalty of 30 days.

Section 3⁷ of Community Service Act allows the rendition of community service in lieu of imprisonment in the service of penalty for *arresto menor*. Accused can avail the privilege of this Act, if eligible.

Lastly, this Court imposes a legal interest of six percent (6%) *per annum* on the ₱2,000.00 damages awarded by the MTCC from finality

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⁷ Section 3. *Community Service*. – Article 88a of Act No. 3815 is hereby inserted to read as follows:

Article 88a. *Community Service*. – The court in its discretion may, in lieu of service in jail, require that the penalties of *arresto menor* and *arresto mayor* be served by the defendant by rendering community service in the place where the crime was committed, under such terms as the court shall determine, taking into consideration the gravity of the offense and the circumstances of the case, which shall be under the supervision of a probation officer: *Provided*, That the court will prepare an order imposing the community service, specifying the number of hours to be worked and the period within which to complete the service. The order is then referred to the assigned probation officer who shall have responsibility of the defendant.

The defendant shall likewise be required to undergo rehabilitative counseling under the social welfare and development officer of the city or municipality concerned with the assistance of the Department of Social Welfare and Development (DSWD). In requiring community service, the court shall consider the welfare of the society and the reasonable probability that the person sentenced shall not violate the law while rendering the service.

Community service shall consist of any actual physical activity which inculcates civic consciousness, and is intended towards the improvement of a public work or promotion of a public service.

If the defendant violates the terms of the community service, the court shall order his/her re-arrest and the defendant shall serve the full term of the penalty, as the case may be, in jail, or in the house of the defendant as provided under Article 88. However, if the defendant has fully complied with the terms of the community service, the court shall order the release of the defendant unless detained for some other offense.

The privilege of rendering community service in lieu of service in jail shall be availed of only once.

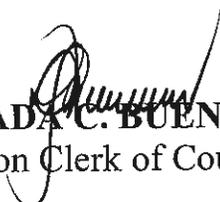
of this Resolution until fully paid, following Our ruling in *Nacar v. Gallery Frames*.⁸

WHEREFORE, the petition is **DENIED**. However, the penalty imposed by the Municipal Trial Court in Cities of San Carlos City, Pangasinan, as affirmed by the Regional Trial Court, is **MODIFIED** as follows: petitioners Gilbert Valerio and Seniades Valerio are sentenced to suffer the straight penalty of thirty (30) days and pay damages in the amount of ₱2,000.00 with six percent (6%) *per annum* interest from the finality of this Resolution until fully paid. Petitioners can avail of the provisions of the Community Service Act and its guidelines, if eligible.

The Office of the Solicitor General's manifestation stating that it received a copy of the Resolution dated July 1, 2020 requiring it to file a comment on the petition for review on certiorari, but it has not received a copy of the said petition, is **NOTED**, and its motion to suspend the period within which to file a comment, praying that petitioners be directed to furnish the Office of the Solicitor General with a copy of the petition and its annexes and the period to file a comment be reckoned from the date of receipt of the petition, is **DENIED** as the filing of said comment is hereby **DISPENSED WITH**.

SO ORDERED." *Peralta, C.J., Zalameda, and Gaerlan, JJ., took no part; Inting, Lopez, and Delos Santos, JJJ., designated Additional Members per Raffle dated February 3, 2021.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *mst*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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⁸ 716 Phil. 267 (2013).



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The Hon. Presiding Judge
Regional Trial Court, Branch 57
San Carlos City, 2420 Pangasinan
(Crim. Case No. SCC-8993)

The Hon. Presiding Judge
Municipal Trial Court in Cities
San Carlos City, 2420 Pangasinan
(Crim. Case No. MTCC-8167)

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