

EN BANC

G.R. No. 226679 – SALVADOR A. ESTIPONA, JR., v. HON. FRANK E. LOBRIGO, Presiding Judge, RTC-Legaspi City, Branch 3, and PEOPLE OF THE PHILIPPINES

Promulgated:

August 15, 2017

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SEPARATE CONCURRING OPINION

LEONEN, J.:

I concur with the ponencia.

In my view, the prohibition found in Section 23 of Republic Act No. 9165<sup>1</sup> is unconstitutional not only because it contravenes the rule-making power of this Court, it also constitutes “cruel, degrading, [and] inhuman” punishment for the accused.<sup>2</sup>

It is the declared policy of the law “to provide effective mechanisms or measures to re-integrate into society individuals who have fallen victims to drug abuse or dangerous drug dependence through sustainable programs of treatment and rehabilitation.”<sup>3</sup> The aim is to rehabilitate, not punish, those drug offenders.

When an accused pleads to a lesser offense, he or she waives all the fundamental rights guaranteed to an accused.<sup>4</sup> It is essentially a choice that only the accused can make, as a way to acknowledge his or her guilt and as atonement for that guilt.

The reality is that most “drug-pushers” that come before the courts are found with less than 0.1 gram of illegal drugs. While some of these accused will be charged with both selling and possession, most of them will have to

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<sup>1</sup> Rep. Act No. 9165 (2001), art. II, sec. 23. Plea-Bargaining Provision. – Any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining.

<sup>2</sup> CONST., art. III, sec. 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

<sup>3</sup> Rep. Act No. 9165 (2001), art. I, sec. 2.

<sup>4</sup> The rights include the right to be presumed innocent, to right to be heard, the right to meet witnesses face to face, (CONST., art. III, sec. 14 (2), and the right against self-incrimination (CONST., art III. Sec. 17).



suffer the penalty of selling, that is, life imprisonment.<sup>5</sup> They will be sentenced to life imprisonment for evidence amounting to “only about 2.5% of the weight of a five-centavo coin (1.9 grams) or a one-centavo coin (2.0 grams).”<sup>6</sup>

As we have observed in *People v. Holgado*:<sup>7</sup>

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial “big fish.” We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.<sup>8</sup>

The application of the mandatory penalty of life imprisonment, as practiced, appear to have a disproportionate impact on those who are poor and those caught with very miniscule quantities of drugs. A disproportionate impact in practice of a seemingly neutral penal law, in my view, will amount to an unusual punishment considering that drugs affect all economic classes.

Plea-bargaining does not necessarily mean that the accused will automatically be sentenced to the lesser offense. The plea is subject to the acceptance of the prosecution and is only allowed by discretion of the court.<sup>9</sup> What is essential is that the choice exists. Preventing the accused from pleading to the lesser offense of possession is a cruel, degrading, and unusual punishment for those who genuinely accept the consequences of their actions and seek to be rehabilitated. It will not advance the policy of the law to punish offenders with penalties not commensurate with the offense and to hinder their reintegration into society.

Having said all these, I am reserving judgment for an appropriate case where the issue is whether life imprisonment is by itself cruel for those caught trading miniscule amounts of illegal drugs.

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<sup>5</sup> See Rep. Act No. 9165 (2001), art. II, sec. 5.

<sup>6</sup> See *People v. Holgado*, 741Phil. 78, 99 (2014) [Per J. Leonen, Third Division].

<sup>7</sup> 741Phil. 78 (2014) [Per J. Leonen, Third Division].

<sup>8</sup> Id. at 100.

<sup>9</sup> See ponencia, pp. 17–18.

Accordingly, I vote to **GRANT** the Petition.



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

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**FELIPA B. ANAMA**  
CLERK OF COURT, EN BANC  
SUPREME COURT