EN BANC

G.R. No. 206513 – (*Mustapha Dimakuta y Maruhom v. People of the Philippines*)

Promulgated:

October 20, 2015

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DISSENTING OPINION

VELASCO, JR., *J.*:

When the law does not qualify, We should not qualify.[1]

For resolution is the recurring question of whether an appellate court's downgrading of a convict's offense or penalty - from a non-probationable to a probationable one - subsequently entitles the accused to apply for the privilege of probation in spite of his prior perfection of an appeal. Ultimately, this issue boils down to the interpretation of Section 4 of Presidential Decree (PD) No. 968, otherwise known as the Probation Law of 1976, as amended by PD No. 1990.[2] The provision pertinently reads:

> Sec. 4. *Grant of Probation.* – Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best; *Provided*, **that no application for probation shall be entertained or granted if the defendant perfected the appeal from the judgment of conviction.** (emphasis ours)

Initially, the Court strictly interpreted the provision as barring the convicted felon from applying for probation if he opted to resort to filing an appeal.[3] The rationale behind the disqualification was enunciated by the Court in *Francisco v. Court of Appeals*, thus:

> Probation is a special privilege granted by the state to a penitent qualified offender. **It essentially rejects appeals and encourages an otherwise eligible convict to immediately admit his liability** and save the state of time, effort and expenses to jettison an appeal. **The law expressly requires that an accused must not have appealed his conviction before he can avail of probation.** This outlaws the element of speculation on the part of the accused — to wager on the result of his

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[1] *Corpuz v. People*, G.R. No. 180016, April 29, 2014, 724 SCRA 1, 33, citing *Asejo v. People*, 555 Phil. 106.

[2] AMENDING PRESIDENTIAL DECREE NO. 968, OTHERWISE KNOWN AS THE PROBATION LAW OF 1976.

[3] *See Almero v. People*, G.R. No. 188191, March 12, 2014, 718 SCRA 698; *Colinares v. People*, G.R. No. 182748, December 13, 2011, 662 SCRA 266; *Sable v. People*, G. R. No. 177961, April 7, 2009, 584 SCRA 619; *Soriano v. Court of Appeals*, G.R. No. 123936, March 4, 1999, 304 SCRA 231.

> appeal — that when his conviction is finally affirmed on appeal, the moment of truth well-nigh at hand, and the service of his sentence inevitable, he now applies for probation as an "escape hatch" thus rendering nugatory the appellate court's affirmance of his conviction. Consequently, **probation should be availed of at the first opportunity** by convicts who are willing to be reformed and rehabilitated, who manifest spontaneity, contrition and remorse.[4] (emphasis ours)

So it was held that perfecting an appeal automatically disqualifies a convicted offender from availing of the benefits of the Probation Law, regardless of the grounds invoked in the appeal lodged, and of whether or not the appeal resulted in the downward modification of the offense or the penalty imposed from a non-probationable to a probationable one.

This reading of the afore-quoted proviso, however, has repeatedly been debated upon in various cases of differing factual settings.[5] And in these cases, the Court constantly entertained the prospect of abandoning, if not substantially modifying, this rigid interpretation to allow a penitent offender to apply for probation if he only became qualified to apply for the benefits under the law after an appellate court downgraded his offense or the penalty meted.

It will not be until December of 2011, in *Colinares v. People*,[6] when the Court would take a different posture in interpreting Sec. 4 of PD No. 968, as amended.

In *Colinares*, the Court was emphatic in its position that the error of a lower court should not deprive the offender of the opportunity to seek the privilege of probation. In the words of the *ponencia* therein, "*[a]ng kabayo ang nagkasala, ang hagupit ay sa kalabaw* (The horse errs, the carabao gets the whip)."[7] Thus, in the face of strong dissent, the majority rejected the traditional interpretation of Sec. 4 and refused to read the provision as prohibiting the offender from applying for the benefit of probation if the appeal was made when the *privilege of probation is not yet available.*[8]

As held in *Colinares*, the appellate court's downward modification of the penalty meted, from a non-probationable to a probationable one, amounted to an ***original conviction*** for a probationable penalty. Under such circumstance, the Court held that the offender should still be allowed to apply for the privilege of probation in spite of his prior perfection of an appeal **because the appeal was made at a time when he was not yet a qualified offender**. In other words, therein offender has not yet lodged an appeal from the original judgment of conviction of a probationable penalty, qualifying him to apply for probation under Sec. 4.

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[4] *Francisco v. Court of Appeals*, G.R. No. 108747, April 6, 1995, 243 SCRA 384, 386-387.

[5] *See Colinares v. People*, supra note 3; *Lagrosa v. People*, G.R. No. 152044, July 3, 2003, 405 SCRA 357; *Francisco v. Court of Appeals*, id.

[6] G.R. No. 182748, December 13, 2011, 662 SCRA 266.

[7] *Colinares v. People*, supra at 279.

[8] Id. at 280.

Regrettably, several members of the Court remain reluctant in adopting this novel interpretation in *Colinares*, continually reasoning that the wording of the proviso is clear and leaves no room for interpretation, and arguing that the Probation Law is not a penal statute that must be construed liberally in favor of the accused.[9] As in the case at bar, instead of applying squarely the teaching in *Colinares*, the majority deviated therefrom and needlessly imposed additional restrictions before one could avail of the benefits under the Probation Law.

The *ponencia* ruled herein that for the accused to be allowed to apply for probation even if he has filed an appeal, the appeal should be anchored only on the following grounds:

1. When the appeal is merely intended for the *correction of the penalty imposed* by the lower court, which, when corrected, would entitle the accused to apply for probation; and
2. When the appeal is merely intended *to review the crime* for which the accused was convicted and that the accused should only be liable for the lesser offense which is necessarily included in the crime for which he was originally convicted and the proper penalty imposable is within the probationable period.

The majority is, in effect, affirming *Colinares* in making the grant of probation allowable even after appeal, to which I agree. The similarity between the interpretations of Sec. 4 in *Colinares* and in the disposition of this case, however, ends here. Meanwhile, divergence arises from the varying analysis of the phrase "appeal from the judgment of conviction," which is a basis for disqualification under Sec. 4. Here, the majority puts premium on the grounds invoked in the "appeal" adverted to, in that the appeal should not question the finding of guilt and should not insist on the defendant's acquittal, regardless of the penalty imposed and the crime the offender is convicted of. In contrast, *Colinares* deems more significant the "judgment of conviction," rendering the grounds the appeal was anchored on immaterial. Instead, what is of primordial consideration in *Colinares* was whether or not the defendant was convicted of a probationable offense or was meted a probationable penalty. If not, the defendant will still be allowed to appeal his conviction on any ground, without losing the right to apply for probation in the event that the appellate court reclassifies his offense or downgrades his sentence to a probationable one.

Of the two interpretations, I respectfully submit that the Court's holding in *Colinares* should be sustained. Therefore, I register my vote to **GRANT** the instant petition.

With all due respect to my colleagues, allow me to express my reservations on the Court's imposition of prerequisites before an offender may avail of the benefits of the Probation Law.

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[9] *Francisco v. Court of Appeals*, supra note 3, at 390.

Firstly, the conditions imposed by the majority run counter to the spirit of the Probation Law.

Recall the wording of the provision:

> Sec. 4. *Grant of Probation*. – Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best; *Provided*, that no application for probation shall be entertained or granted if the defendant perfected the appeal from the judgment of conviction.

Sec. 4 clearly commands that "no application for probation shall be entertained or granted *if the defendant perfected the appeal from the judgment of conviction*." At first blush, there is nothing vague in the provision that calls for judicial interpretation. The provision, as couched, mandates that the perfection of an appeal disqualifies an otherwise qualified offender from applying for probation.

Nevertheless, I fully concur with the Court's ruling in *Colinares* that the bar must be applied only to offenders who were *already qualified* to apply for probation but opted to file an appeal instead. An otherwise rigid application of the rule would defeat the very purpose of the Probation Law, which is giving a *qualified* penitent offender the opportunity to be placed on probation instead of being incarcerated. The preambulatory clause of PD No. 1990 says as much:

> WHEREAS, it has been the sad experience that **persons who are convicted of offenses <u>and</u> who may be entitled to probation** still appeal the judgment of conviction even up to the Supreme Court, only to pursue their application for probation when their appeal is eventually dismissed; xxx. (emphasis ours)

Verily, the clause uses the conjunctive word "and" in qualifying the type of offenders to whom the amendment applies. Unmistakably, it refers not simply to convicted offenders in general, but more specifically to *qualified convicted offenders*. What PD No. 1990 then contemplates and seeks to address is the situation where *qualified* convicted offenders showed lack of repentance by appealing their conviction instead of admitting their guilt and asking for the State's graciousness and liberality by applying for the privilege of probation.

This supports the majority opinion in *Colinares* that the disqualification under Sec. 4 does not cover a formerly disqualified convicted offender who later on becomes qualified to apply for probation by reason of a partially meritorious appeal, sustaining the conviction but for a lesser offense or penalty. To reiterate, the reduction of the penalty imposed in *Colinares*, from a non-probationable to a probationable one, amounted to

an original conviction from which no appeal has yet been taken, and thereby qualifies the convicted felon to apply for probation under the law.

Unlike this modification in the interpretation of Sec. 4 of PD No. 968 that was introduced in *Colinares*, the *ponencia*'s imposition of additional restrictions for availing of the benefits under the Probation Law is not in keeping with the spirit of the law. To recall, the *ponencia* intimates that the added restrictions are based on the argument that what is prohibited under the Probation Law is challenging the *judgment of conviction*, which, in the majority's posture, is the finding of guilt, without distinction on whether the penalty imposed is probationable or not. According to the majority, the accused may still lodge an appeal and qualify for probation if the appeal is limited to praying for the reduction of the penalty imposed or downgrading the crime he is convicted of, and should in no way insist on his innocence. With these requirements in place, the majority effectively would want the accused to change his theory of the case and belatedly plead guilty on appeal to a lesser offense, akin to a last minute plea-bargain.

The problem here is that the *ponencia*'s interpretation is tantamount to forcing the accused to already forego appealing for his acquittal at a time that probation is not yet available. This goes against the rationale of the law, which seeks to discourage from appealing **only those who are, in the first place, already qualified to apply for probation**, **but waste the opportunity by insisting on their innocence.** What is more, the *ponencia*'s restrictive proposition would lead to a baffling result - **the very appeal that would have qualified the convicted felon to apply for probation (i.e., the appeal that resulted in the downgrading of the offense or the reduction of the penalty to a probationable one) would also be the very same appeal that would disqualify him from availing thereof.**

More on this first point, recall that the Probation Law was enacted for the following reasons:

> WHEREAS, one of the major goals of the government is to establish a more enlightened and humane correctional system that will promote the reformation of offenders and thereby reduce the incidence of recidivism;
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> WHEREAS, the confinement of all offenders in prisons and other institutions with rehabilitation programs constitutes an onerous drain on the financial resources of the country; and
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> WHEREAS, there is a need to provide a less costly alternative to the imprisonment of offenders who are likely to respond to individualized, community-based treatment programs;

On the basis thereof, PD No. 968 commands that it shall be interpreted as to:

> (a) Promote the correction and rehabilitation of an offender by providing him with individualized treatment;
> (b) Provide an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence; and
> (c) Prevent the commission of offenses.[10]

Now, relate the legislature's above-stated rationale of the Probation Law to the preambulatory clauses of PD No. 1990, which introduced the amendment removing the allowance of probation after the already qualified offender appealed his conviction, to wit:

> WHEREAS**, it has been the sad experience that persons who are convicted of offenses and <u>who may be entitled to probation</u> still appeal the judgment of conviction even up to the Supreme Court, only to pursue their application for probation when their appeal is eventually dismissed**;
>
> WHEREAS, the process of criminal investigation, prosecution, conviction and appeal entails too much time and effort, not to mention the huge expenses of litigation, on the part of the State;
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> WHEREAS, the time, effort and expenses of the Government in investigating and prosecuting accused persons from the lower courts up to the Supreme Court, are oftentimes rendered nugatory when, after the appellate Court finally affirms the judgment of conviction, the defendant applies for and is granted probation;
>
> WHEREAS, **probation was not intended as an escape hatch and should not be used to obstruct and delay the administration of justice, but should be availed of <u>at the first opportunity</u> by offenders who are willing to be reformed and rehabilitated**;
>
> WHEREAS, it becomes imperative to remedy the problems above-mentioned confronting our probation system;[11] (emphasis ours)

As can be gleaned, the declared purposes of the Probation Law and its amendatory law all echo the State's inclination towards a rehabilitative, as opposed to a punitive, system. In fact, the proviso that the perfection of an appeal disqualifies the offender from applying for probation is to ensure that the privilege of probation is extended only to *penitent* qualified offenders, those the state deems to have the potential to be rehabilitated.

In ascertaining an offender's penitence, the Court has repeatedly held that *the qualified offender's perfection of an appeal questioning his conviction, instead of beseeching the State's generosity through an application for probation* ***<u>at the first opportunity</u>****, is antithetical to remorse and penitence.* Bear in mind, though, that the amendment was prompted by the State's past experience where qualified offenders "wager" their chances and still seek an acquittal, only to invoke the privilege of probation when it is almost certain that they would not be found innocent. **It would, therefore,**

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[10] PRESIDENTIAL DECREE NO. 968, Sec. 2.
[11] PRESIDENTIAL DECREE NO. 1990.

be erroneous to apply the same principle to offenders who are not qualified, those who had no opportunity, to seek the privilege in the first place. We cannot expect them to immediately show remorse via applying for probation, putting their right to appeal on the line in so doing, when they are not even qualified for the privilege under the law. In their case, there is no wager and no "first opportunity" to apply for probation to speak off, but a clear lack of option on the part of the offenders. They had no other choice but to appeal.

Secondly, the majority's imposition of said conditions is in violation of the constitutionally-mandated separation of powers underlying the very existence of the government.

Well-entrenched is the rule that the primordial duty of the Court is merely to apply the law in such a way that it does not usurp legislative powers by judicial legislation.[12] Thus, in the course of such application or construction, it should not make or supervise legislation, or under the guise of interpretation, modify, revise, amend, distort, remodel, or rewrite the law, or give the law a construction which is repugnant to its terms.[13] The Court should shy away from encroaching upon the primary function of a co-equal branch of the Government; otherwise, this would lead to an inexcusable breach of the doctrine of separation of powers by means of judicial legislation.[14]

To hold, in the case at bar, that a formerly disqualified offender who only became qualified for probation after judgment by an appellate court is still disqualified from applying for the privilege is tantamount to amending the law via judicial interpretation. With the Court's disposition of the instant petition, the majority is effectively placing additional qualifications and grounds for disqualification that not only cannot be found anywhere in the four corners of the statute, but, worse, defeat the very purpose for which the Probation Law was enacted.

Had the Probation Law intended the exclusion of *formerly disqualified offenders* from those who may avail of the privilege, then it would have included such exclusion in the list of disqualified offenders under Sec. 9 of PD No. 968, as amended, which, in its entirety, reads:

> Sec. 9. Disqualified Offenders. - The benefits of this Decree shall not be extended to those:
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> > (a) sentenced to serve a maximum term of imprisonment of more than six years;
> > (b) convicted of subversion or any crime against the national security or the public order;
> > (c) who have previously been convicted by final judgment of an offense punished by imprisonment of not less than

[12] *Corpuz v. People*, supra note 1, at 57.
[13] Id.
[14] Id.

> 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.

These disqualifications listed under Sec. 9 should be differentiated from the disqualification under Sec. 4. Sec. 9 enumerates **the legal bars from acquiring the eligibility** to apply for probation. Meanwhile, the Sec. 4 proviso states the **manner on how one loses the eligibility** to apply for probation **which he already possesses**. To interpret here then that an offender who is not yet qualified to apply for probation may be prejudiced by the grounds he would raise in his appeal would mean amending Sec. 9 so as to include those who have raised their guilt as an issue on appeal.

This unwarranted judicial amendment to the law violates the fundamental maxim "*expressio unius est exclusio alterius*." The express mention of one person, thing, act, or consequence excludes all others. Thus, where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. This rule is based on the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.[15]

Moreover, the *ponencia*, in its postulation, basically legislates the timeframe for an offender's penitence. The *ponencia* is virtually sending a message to convicted felons that they should already be penitent even before they are qualified to apply for probation to be allowed to avail of the privilege in the off-chance that the penalty meted on them is reduced or the crime they are convicted of is downgraded on appeal.

We have to consider though that it is only natural for a person charged with a crime, subjected to a highly adversarial process, and going up against the "People of the Philippines" in litigation, to be on the defensive and insist on his innocence rather than readily sacrifice his liberty in gambling for a mere probability of becoming eligible for, not necessarily entitled to, probation. This does not mean, however, that he who is guilty but denies the commission of the crime even after having been convicted by the trial court will never ever regret having committed the offense. For his perceived lack of option, a litigant may be compelled to appeal his conviction, without necessarily making him any less repentant later on. It would not come as a surprise if it will only be after his appeal is heard, after the penalty imposed upon him is lessened or after his crime was downgraded, after a window of opportunity to receive a second lease in life opens, would his penitence be manifest in his pleadings, would he apply for probation, and would he no longer pursue the case or push his luck.

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[15] *Romualdez v. Marcelo*, G.R. Nos. 165510-33, July 28, 2006, 497 SCRA 89, 108.

As explained, insisting on proving one's innocence is an understandable natural human behavior. It is not, at all times and in all cases, proof of depravity. In the same way, the observance of the proposed restrictions, which are supposedly intended to ensure that only *penitent* offenders are allowed to apply for the privilege of probation, cannot guarantee that the person invoking the limited grounds on appeal is, in fact, remorseful. Furthermore, one cannot expect an offender to be, in all cases, impelled by remorse in applying for the probation instead of appealing, for it may be that he sacrificed his right to fight for his innocence out of fear of losing the privilege if he makes any further attempt thereat.

Fortunately, the grant of the privilege is entirely different from the right to apply for its grant.[16] Consider, too, that the grant is discretionary upon the trial court, hence the use of the word "may."[17] Thus, there are other means by which the courts may determine whether the qualified offender is indeed penitent or not, other than looking to the grounds on which his appeal was hinged. The grounds raised in the appeal should then be immaterial. And instead of restraining an erstwhile disqualified offender's right to appeal, the Court should adopt an effective system for weeding out those who abuse the State's generosity. This way, we can assist in the administration of the restorative justice that the Probation Law seeks to enforce without sacrificing civil liberties or encroaching upon the power of the Legislative Branch. To impose such restrictions on the filing of an appeal by the disqualified convicted offender would, more often than not, result in injustice, rather than promote the laudable purpose of the Probation Law.

Thirdly, following *Colinares*, the "judgment of conviction" referred to in Sec. 4 from which no appeal should be taken should, as earlier stressed, be understood to be the **original conviction for a probationable penalty or offense**, and not simply to the trial court's first finding of guilt.

It may be tempting to interpret the phrase "judgment of conviction" to refer to the trial court's finding of guilt since "trial court" was specifically mentioned in Sec. 4, without any reference to appellate courts. This, however, does not come as a shock. The trial court's mention, after all, comes naturally since, as the court of origin,[18] the suspension of the execution of the sentence and the placing of the defendant on probation are

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[16] *Colinares v. People*, supra note 3, at 278.

[17] Section 4, PD No. 968, as amended, provides: "Subject to the provisions of this Decree, the trial court **may**, after it shall have convicted and sentenced a defendant and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best; xxx." (emphasis ours)

[18] Section 1. *Execution upon judgments or final orders*. – Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment oblige, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.

The appellate court may, on motion in the same case when, the interest of justice so requires, direct the court of origin to issue the writ of execution. (RULES OF COURT, Rule 39.)

just a few of its functions. The first part of Sec. 4, thus, merely echoes the rule that the execution of judgments[19] and the resolution of an application for probation[20] are the duties of the trial courts, nothing more. It should not be construed in such a way that the appeal being referred to in said Sec. 4 is that taken only from the trial court to an appellate court as this is an entirely different matter.

To be clear, nowhere in the Probation Law does it provide that the "appeal" from the judgment of conviction should be that made from the trial court to the appellate court. Hence, the "appeal" could very well refer to any of the three (3) opportunities to seek a review of a judgment of conviction in criminal procedure: (a) questioning the judgments of the Municipal Trial Court, Metropolitan Trial Court, Municipal Circuit Trial Court, and of the Municipal Trial Court in Cities before the Regional Trial Court; (b) elevating the case from the Regional Trial Court to the Court of Appeals; and (c) by assailing the unfavorable Decision of the Court of Appeals to this Court – the court of last resort.[21]

Corollarily, it is submitted that the "judgment of conviction" should not be taken to mean the initial finding of guilt, since, as maintained by the majority in *Colinares*, an original judgment of conviction may also be handed down by the appellate courts, especially when it involves the annulment or modification of the trial court's decision. As discussed, the appellate court's judgment convicting therein defendant, for the first time, of a probationable crime or imposing upon him a probationable penalty should be treated as an **original conviction,** entitling him to apply for probation in spite of perfecting an appeal.[22] The appeal lodged by the offender, which reduced his conviction to a probationable one, in no way adversely affected his later-acquired eligibility.

In line with the teachings in *Colinares*, the Court should view the **appellate court's judgment which effectively qualified the offender for probation as *the conviction from which the defendant should not appeal from if he wishes to apply for the privilege of probation***. This should be the case for the simple reason that he has not yet questioned this second original conviction which qualifies him for probation. To reiterate**,** what the law proscribes is the application for probation by a defendant who has appealed his conviction for a probationable crime or with a probationable penalty. This proscription should, therefore, come in only when the offender has already been convicted of a probationable crime or imposed a probationable penalty, not when he was still disqualified for probation.

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[19] *See* RULES OF COURT, Rule 39, Sec. 1.

[20] *See* Section 3, PD 968. Meaning of Terms. – xxx

(a) "Probation" is a disposition under which a defendant, after conviction and sentence, is released **subject to conditions imposed by the court** and to the supervision of a probation officer. (emphasis ours)

[21] REVISED RULES OF CRIMINAL PROCEDURE, Rule 122, Section 2.

[22] *Colinares v. People*, supra note 3, at 280.

Fourthly, the adoption of the conditions set by the majority in the instant case will result in a situation where We would be requiring from the defense lawyer a degree of diligence that is less than that expected of him under our Rules, at his client's expense.

To elucidate, We are all very much aware of a defense lawyer's duty to his client in that:

> xxx A lawyer engaged to represent a client bears the responsibility of protecting the latter's interest with utmost diligence. It is his duty to serve his client with competence and diligence, and he should exert his best efforts to protect, within the bounds of the law, the interests of his client. A lawyer's diligence and vigilance is more imperative in criminal cases, where the life and liberty of an accused is at stake.[23]

Simply put, **a defense lawyer is expected to advocate his client's innocence in line with the principle deeply embedded in our legal system that an accused is presumed innocent until proven guilty beyond reasonable doubt.** The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from the latter, save by the rules of law, legally applied.[24] Thus, unless and until his client has been convicted with finality, we cannot expect his counsel to detract, or even require him to detract from this duty, and convince his client to simply admit guilt and either seek a reduction of the penalty imposed or the downgrading of the crime he has been convicted of just so the client may have a window of opportunity to apply for the privilege of probation if and only if the appeal is granted. Instead, the client, in the judicial forum, should be afforded the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense.[25]

Lastly, in rejecting the petitioner's plea that the Probation Law be liberally construed in his favor, the Court ruled that PD 968 is not a penal law that would warrant the application of the pro reo doctrine. The ruling was premised on the instruction of the Court in *Llamado v. Court of Appeals, viz*:

> Turning to petitioner's invocation of "liberal interpretation" of penal statutes, we note at the outset that the Probation Law is not a penal statute. We, however, understand petitioner's argument to be really that any statutory language that appears to favor the accused in a criminal case should be given a "liberal interpretation." Courts, however, have no authority to invoke "liberal interpretation" or "the spirit of the law" where the words of the statute themselves, and as illuminated by the history of that statute, leave no room for doubt or interpretation. We do not believe that "the spirit of law" may legitimately be invoked to set at naught words

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[23] *Mattus v. Villaseca*, A.C. No. 7922, October 1, 2013, 706 SCRA 477, 484.

[24] *Regala v. Sandiganbayan, First Division*, G.R. Nos. 105938 & 108113, September 20, 1996, 262 SCRA 122, 140.

[25] Id.

> which have a clear and definite meaning imparted to them by our procedural law. The "true legislative intent" must obviously be given effect by judges and all others who are charged with the application and implementation of a statute. It is absolutely essential to bear in mind, however, that the spirit of the law and the intent that is to be given effect are to be derived from the words actually used by the law-maker, and not from some external, mystical or metajuridical source independent of and transcending the words of the legislature.
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> The Court is not here to be understood as giving a "strict interpretation" rather than a "liberal" one to Section 4 of the Probation Law of 1976 as amended by P.D. No. 1990. "Strict" and "liberal" are adjectives which too frequently impede a disciplined and principled search for the meaning which the law-making authority projected when it promulgated the language which we must apply. That meaning is clearly visible in the text of Section 4, as plain and unmistakable as the nose on a man's face. The Court is simply reading Section 4 as it is in fact written. There is no need for the involved process of construction that petitioner invites us to engage in, a process made necessary only because petitioner rejects the conclusion or meaning which shines through the words of the statute. The first duty of a judge is to take and apply a statute as he finds it, not as he would like it to be.[26]

This oft-cited *ratio* in supporting the continued refusal to reject the proposed application of Sec. 4, however, must also be reconsidered since this cited pronouncement of the Court actually deals with a different issue, albeit pertaining to the same provision.

It bears noting that *Llamado* dealt with the issue of whether or not petitioner's application for probation, which was filed after a notice of appeal had been filed with the trial court, after the records of the case had been forwarded to the Court of Appeals, after the Court of Appeals had issued the notice to file Appellant's Brief, after several extensions of time to file Appellant's Brief had been sought from and granted by the Court of Appeals, but before actual filing of such brief, is barred under PD No. 968, as amended.[27] In essence, it dealt with the alleged establishment by the amendment of a narrower period during which an application for probation may be filed with the trial court. As the Court clarified:

> In applying Section 4 in the form it exists today (and at the time petitioner Llamado was convicted by the trial court), to the instant case, we must then inquire whether petitioner Llamado had submitted his application for probation "within the period for perfecting an appeal." Put a little differently, **the question is whether by the time petitioner Llamado's application was filed, he had already "perfected an appeal" from the judgment of conviction of the Regional Trial Court of Manila**.[28] (emphasis ours)

A reading of *Llamado* reveals that the Court's refusal to liberally interpret Sec. 4 actually referred to the phrase "period for perfecting an

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[26] *Llamado v. Court of Appeals*, G.R. No. 84850, June 29, 1989, 174 SCRA 566, 577-578.
[27] Id. at 576.
[28] Id. at 574.

appeal" and not the proviso being discussed in the present case. It was therein petitioner's argument that:

> xxx the phrase "period for perfecting an appeal" and the clause "if the defendant has perfected an appeal from the judgment of conviction" found in Section 4 in its current form, should not be interpreted to refer to Rule 122 of the Revised Rules of Court; and that the "whereas" or preambulatory clauses of P.D. No. 1990 did not specify a period of fifteen (15) days for perfecting an appeal.[3] It is also urged that "the *true legislative intent* of the amendment (P.D. No. 1990) should not apply to petitioner who filed his Petition for probation *at the earliest opportunity* then prevailing and withdrew his appeal."[29]

which the Court flatly rejected for the ensuing reason:

> We find ourselves unable to accept the eloquently stated arguments of petitioner's counsel and the dissenting opinion. **We are unable to persuade ourselves that Section 4 as it now stands, in authorizing the trial court to grant probation "upon application by [the] defendant *within the period for perfecting an appeal*" and in reiterating in the proviso that**
>
> > ***no application* for probation *shall be* entertained or *granted if the defendant has perfected an appeal* from the judgment of conviction.**
>
> **did not really mean to refer to the fifteen-day period established, as indicated above, by B.P. Blg. 129, the Interim Rules and Guidelines Implementing B.P. Blg. 129 and the 1985 Rules on Criminal Procedure, but rather to some vague and undefined time, i.e., "the earliest opportunity" to withdraw the defendant's appeal.** The *whereas* clauses invoked by petitioner did not, of course, refer to the fifteen-day period. There was absolutely no reason why they should have so referred to that period for the operative words of Section 4 already do refer, in our view, to such fifteen-day period. xxxx Upon the other hand, the term "period for perfecting an appeal" used in Section 4 may be seen to furnish specification for the loose language "first opportunity" employed in the fourth whereas clause. "Perfection of an appeal" is, of course, a term of art but it is a term of art widely understood by lawyers and judges and Section 4 of the Probation Law addresses itself essentially to judges and lawyers. **"Perfecting an appeal" has no sensible meaning apart from the meaning given to those words in our procedural law and so the law-making agency could only have intended to refer to the meaning of those words in the context of procedural law.**[30] (emphasis ours)

With the above, it is evident that when this Court pronounced in *Llamado* its refusal to liberally apply Sec. 4 of the Probation Law, as amended, it was doing so within the context of interpreting the phrase "period for perfecting an appeal," which, as we all know, has a definite meaning in procedural law. It is therefore, understandable why the Court, in

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[29] Id. at 575.
[30] Id. at 576-577.

Llamado, rejected therein petitioner's request for a liberal interpretation of the phrase.

In conclusion, it is simply incorrect for the Court to interpret Sec. 4 as prohibiting the defendant from arguing for his acquittal at a time that the privilege of probation is not yet available to him. To follow the *ponencia*'s interpretation would lead to a scenario wherein the Court would be subjecting *disqualified* offenders to the requirements of applying for probation in spite of their patent ineligibility (by reason of the penalty imposed or the categorization of the offense).

The more precise interpretation, therefore, would be to **grant this opportunity to apply for probation when the accused is originally convicted for a probationable offense or sentenced to suffer a probationable penalty, without distinction on whether the said "original conviction" was issued by the trial court or appellate court.** What is material is that the application for the privilege of probation be made ***at the first opportunity,*** **which is the period to appeal from when the offender first became qualified for the privilege**. For how can we say that the convicted offender wagered for an acquittal on appeal instead of applying for probation when he is not qualified to avail of the benefits of the Probation Law in the first place? He simply had no other option at that point.

As in *Colinares*, petitioner in this case became qualified for probation only after the appellate court modified the trial court's ruling. **If, notwithstanding this downward modification of the penalty imposed or the crime the accused is convicted of, the *now qualified defendant* still appeals his new conviction on whatever ground, then, this would be the time when his appeal would bar him from applying for the privilege under Sec. 4.**

While it is true that there is a risk that the abuse of the State's generosity by convicted offenders may still persist because of *Colinares*, we should not, however, deprive all accused persons, whether guilty or not, the opportunity to defend themselves and their liberty and to prove their case, lest we run the risk of forcing innocent persons to forego their liberty simply because applying for probation is easier than proving their innocence. To me, this might, more often than not, result in a failure of justice rather than its administration.

In view of the foregoing disquisitions, I reiterate my vote to **GRANT** the instant petition.

PRESBITERO J. VELASCO, JR.
Associate Justice

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