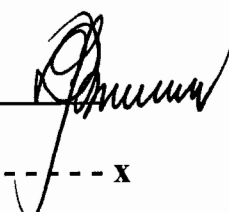


Promulgated:

MAR 25 2019



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CONCURRING OPINION

PERALTA, J.:

I fully concur with the *ponencia* in dismissing the appeal and affirming the Court of Appeals Decision dated March 9, 2015, finding the accused-appellant Siegfredo Obias, Jr. y Arroyo guilty of violation of Sections 11 and 12 of Republic Act (R.A.) No. 9165 for illegal possession of dangerous drugs with a total weight of 6.69 grams, and illegal possession of drug paraphernalia, respectively. I also agree with the *ponencia* in affirming the penalties imposed for the said offenses: for illegal possession of dangerous drugs – twenty (20) years and one (1) day, as minimum, to thirty (30) years, as maximum, and to pay a fine of ₱400,000.00; and for illegal possession of drug paraphernalia – six (6) months and one (1) day, as minimum, to two (2) years, as maximum, and to pay a fine of ₱10,000.00

However, I will elaborate on the proper application of the Indeterminate Sentence Law where the imposable penalty for illegal possession of dangerous drugs under Section 11(2)¹ of R.A. No. 9165 is twenty (20) years and one (1) day to life imprisonment.

The imposable penalty for the offense under Section 11(2), R.A. No. 9165, for which the accused-appellant was convicted, is Twenty (20) years

¹ Section 11. *Possession of Dangerous Drugs.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) 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

(2) Imprisonment of **twenty (20) years and one (1) day to life imprisonment** and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) 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 three hundred (300) grams or more but less than five (hundred) 500) grams of marijuana; x x x. (Emphasis added)



and One (1) day to life imprisonment, a penalty not provided for in the Revised Penal Code (RPC) because R.A. No. 9165 is a *malum prohibitum*. Hence, the principles of graduation of penalties under Article 61² of the RPC, penalties consisting of several periods and computation of penalties under Articles 63³ and 64⁴ of the RPC may not be applicable.

² Art. 61. *Rules for graduating penalties.* — For the purpose of graduating the penalties which, according to the provisions of Articles 50 to 57, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

1. When the penalty prescribed for the felony is single and indivisible, the penalty next lower in degrees shall be that immediately following that indivisible penalty in the respective graduated scale prescribed in Article 71 of this Code.

2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be impose to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.

3. When the penalty prescribed for the crime is composed of one or two indivisible penalties and the maximum period of another divisible penalty, the penalty next lower in degree shall be composed of the medium and minimum periods of the proper divisible penalty and the maximum periods of the proper divisible penalty and the maximum period of that immediately following in said respective graduated scale.

4. when the penalty prescribed for the crime is composed of several periods, corresponding to different divisible penalties, the penalty next lower in degree shall be composed of the period immediately following the minimum prescribed and of the two next following, which shall be taken from the penalty prescribed, if possible; otherwise from the penalty immediately following in the above mentioned respective graduated scale.

5. When the law prescribes a penalty for a crime in some manner not especially provided for in the four preceding rules, the courts, proceeding by analogy, shall impose corresponding penalties upon those guilty as principals of the frustrated felony, or of attempt to commit the same, and upon accomplices and accessories.

³ Art. 63. *Rules for the application of indivisible penalties.* — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

4. When both mitigating and aggravating circumstances attended the commission of the act, the court shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

⁴ Art. 64. *Rules for the application of penalties which contain three periods.* — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

2. When only a mitigating circumstances is present in the commission of the act, they shall impose the penalty in its minimum period.

3. When an aggravating circumstance is present in the commission of the act, they shall impose the penalty in its maximum period.

4. When both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight.

5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

6. Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law, in its maximum period.

7. Within the limits of each period, the court shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater and lesser extent of the evil produced by the crime.



Nevertheless, the provisions of the Indeterminate Sentence Law⁵ should still apply if the penalty consists of a range, like in this particular case, as provided for under the second sentence of Section 1 of Act No. 4103, as amended by R.A. No. 4203 and R.A. No. 4225, which is hereto highlighted:

Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and **if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.** (Emphasis added)

From the highlighted portion, it is clear that if the impossible penalty consists of a range of twenty (20) years and one (1) day to life imprisonment, like in this case, the Court should impose a minimum term not less than the minimum of the penalty, which is twenty (20) years and one (1) day, and a maximum term not higher than life imprisonment. Thus, imposing an indeterminate sentence of 20 years and 1 day, as minimum, to life imprisonment, as maximum, would appear to be compliant with the above-quoted provision.

However, by imposing such an indeterminate sentence, the accused, after serving the minimum term of 20 years and 1 day, will not be entitled to be released on parole because he will still serve the maximum term of life imprisonment. Besides, if the penalty of life imprisonment is imposed, the Indeterminate Sentence Law is no longer applicable because Section 2 of Act No. 4103, as amended, expressly provides that it shall not apply to persons convicted of offenses punished with life imprisonment:

Sec. 2. **This Act shall not apply to persons convicted of offenses punished with death penalty or life-imprisonment;** to those convicted of treason, conspiracy or proposal to commit treason; to those convicted of misprision of treason, rebellion, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who have escaped from confinement or evaded sentence; to those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose maximum term of imprisonment does not exceed

⁵ AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES. ACT NO. 4103 (As Amended by Act No. 4225 and R. A. No. 4203 [June 19, 1965])

one year, not to those already sentenced by final judgment at the time of approval of this Act, except as provided in Section 5 hereof. (Emphasis added)

Imposing a maximum term of life imprisonment upon the accused will not be consistent with the objectives of the Indeterminate Sentence Law which is "to uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness"⁶ of the accused since he/she may be exempted from serving the entire sentence, depending upon his/her behavior and his/her physical, mental, and moral record.⁷

It will not be good for the person who may have already been reformed and rehabilitated while serving sentence in a correctional institution and deprived of the benefits of the Indeterminate Sentence Law. That is why in *Argoncillo v. Court of Appeals*,⁸ where the penalty for violation of P.D. 704⁹ is 20 years to life imprisonment, the Court imposed a penalty of 20 years to 25 years because any period in excess of 20 years is within the range of the penalty. This penalty has a legal basis because under the second sentence of Section 1 of Act No. 4103, as highlighted above, the minimum term (20 years) is not less than the minimum penalty provided for by law, and the maximum term (25 years) is not higher than the maximum penalty of life imprisonment, and the penalty imposed is within the range of the penalty provided for by law. In accordance with the doctrine laid down in *Argoncillo v. Court of Appeals* and the above-cited provisions of law, the *ponencia* correctly imposed a minimum term of not less than twenty (20) years and one (1) day, and a maximum term not higher than life imprisonment, like thirty (30) years of imprisonment for illegal possession of dangerous drugs under Section 11(2) of R.A. No. 9165.

This will give effect to the very purpose of the Indeterminate Sentence Law because when the penalty of life imprisonment is no longer imposed as a maximum term, then the accused, after serving 20 years or even less, taking into account his good conduct time allowance, may be already released on parole, subject to Section 6 of said law:

Sec. 6. Every prisoner released from confinement on parole by virtue of this Act shall, at such times and in such manner as may be required by the conditions of his parole, as may be designated by the said Board for such purpose, report personally to such government officials or other parole officers hereafter appointed by the Board of Indeterminate Sentence for a

⁶ *People v. Ducosin*, 59 Phil. 109, 117 (1933), citing Message of the Governor-General, Official Gazette No. 92, Vol. XXXI, August 3, 1933.

⁷ *Argoncillo v. Court of Appeals*, 354 Phil. 324, 341 (1998).

⁸ *Id.*

⁹ *REVISING AND CONSOLIDATING ALL LAWS AND DECREES AFFECTING FISHING AND FISHERIES*. May 16, 1974.



period of surveillance equivalent to the remaining portion of the maximum sentence imposed upon him or until final release and discharge by the Board of Indeterminate Sentence as herein provided. The officials so designated shall keep such records and make such reports and perform such other duties hereunder as may be required by said Board. The limits of residence of such paroled prisoner during his parole may be fixed and from time to time changed by the said Board in its discretion. If during the period of surveillance such paroled prisoner shall show himself to be a law-abiding citizen and shall not violate any of the laws of the Philippine Islands, the Board of Indeterminate Sentence may issue a final certificate of release in his favor, which shall entitle him to final release and discharge.

It is only when the illegal possession under Section 11, R.A. No. 9165 is committed in the presence of two or more persons or in a social gathering that the maximum penalty of life imprisonment may be imposed pursuant to Section 13,¹⁰ R.A. No. 9165. It is only then that the Indeterminate Sentence Law is no longer applicable.

Accordingly, for illegal possession of dangerous drugs with a weight of 6.69 grams, the indeterminate sentence of twenty (20) years and one (1) day, as minimum, to thirty (30) years, as maximum, was properly sustained by the *ponencia*.



DIOSDADO M. PERALTA
Associate Justice

¹⁰ Section 13. *Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings.* – Any person found possessing any dangerous drug ~~during a party~~, or at a social gathering or meeting, or in the proximate company of at least two (2) persons, shall suffer the maximum penalties provided for in Section 11 of this Act, regardless of the quantity and purity of such dangerous drugs.