REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **21 January 2015** *which reads as follows*:

G.R. No. 214648 - Antonio Canoy v. People of the Philippines.

This is a petition for review under Rule 45 of the Rules of Court assailing the December 20, 2011 Decision[1] of the Court of Appeals *(CA)* and its May 21, 2013 Resolution[2] denying the first motion for reconsideration of petitioner Antonio Canoy *(Canoy)* and the August 28, 2014 Resolution[3] denying his second and third motions for reconsideration.

On December 4, 1998, the Information charging Canoy with violation of Section 68 (now 78) of Presidential Decree (P.D.) No. 705, otherwise known as The Revised Forestry Code, was filed before the Regional Trial Court, Branch 13, Cebu City *(RTC)*.

During the pre-trial, the following facts were admitted: (1) that forest products were seized from the premises of Canoy in Cebu; (2) that there was a valid search warrant issued by the court; and (3) that the forest products were confiscated with the qualification that there were errors in the classification of the same.

The evidence for the prosecution tended to prove that on December 3, 1998, the Chief of the Barangay Tanods received a tip that lumber were being kept inside a compound owned by Canoy; that thereafter a team was formed composed of DENR personnel and members of the Presidential Anti-Organized Crime Task Force-Visayas *(PAOC-TF)*; that the team attempted to enter the premises of Canoy, who refused to let them in without a search warrant; that at about 5:00 o'clock in the afternoon of the same date, after having secured a search warrant, the team was finally able to enter the compound; that inside, the team found molave, mahogany and camachile lumber; that Forester Delos Reyes, one of the apprehending forest officers, prepared the Tally Sheet of Confiscated Forest Product Owned by Antonio Canoy; that Canoy was not able to produce any document, such as the Certificate of Verification or the Special Tree Planting Permit which would show his lawful entitlement to the possession of the said lumber; that the

[1] *Rollo*, pp. 15-30. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justice Myra V. Garcia-Fernandez and Associate Justice Victoria Isabela A. Paredes, concurring.
[2] *Rollo*, pp. 12-13.
[3] Id. at 8-10.

confiscated lumber were then surrendered to the Community Environment and Natural Resource Office *(CENRO)*; that the CENRO custodian, Norberta Jaramilla, received the assorted lumber with the accompanying Receipt for Forest Products Seized Under Authority of the DENR listing the following items: 375 pieces of molave lumber, 104 pieces of mahogany, and 50 pieces of camachile; and that the total estimated value of the lumber was ₱83,734.00.

When it was the turn of the defense to present evidence, trial was suspended for several times. On February 8, 2005, the RTC issued the order resetting the hearing of the case to February 15, 2005 and warning that should Canoy fail to present evidence on the said date, the case would be considered submitted for decision. For failure of Canoy and his counsel to appear, the RTC issued another order resetting the hearing of the case to July 5, 2005. Because Canoy again failed to make an appearance, the July 5, 2005 hearing was reset and several other hearings were suspended, mainly upon the instance of Canoy.

Finally, on April 11, 2006, after Canoy again failed to appear, the RTC issued the order considering the case submitted for decision without defense evidence. The RTC was of the opinion that the defense was delaying the disposition of the case. Canoy filed a motion for reconsideration but the trial court denied it. Canoy filed a motion for relief from order but it was likewise denied.

On May 8, 2006, the RTC held that all the elements of the crime charged were sufficiently established beyond reasonable doubt by the prosecution and found Canoy guilty as charged. The Court disposed:

> WHEREFORE, judgment is hereby rendered finding accused Antonio C. Canoy GUILTY beyond reasonable doubt of the crime of Violation of Section 68 (now 78). P.D. 705, as amended by E.O. 277, and sentences him to penalty of imprisonment of SEVEN (7) YEARS, FOUR (4) MONTHS and ONE (1) DAY of Prision Mayor, as minimum to TWELVE (12) YEARS, as maximum.
>
> With costs against the accused.
>
> SO ORDERED.[4]

Aggrieved, Canoy filed an appeal with the CA in Cebu City.

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[4] Id. at 61-62.

In the questioned decision, the CA affirmed the May 8, 2006 decision of the RTC and wrote that the prosecution was able to discharge the burden of proof. The testimonies of prosecution witnesses established that molave, mahogany, and camachile were found inside Canoy's compound and the latter was not able to present the necessary documents for the said forest products.

The CA also pointed out that it would not consider the several arguments that Canoy raised in the appeal because the same were not raised at the trial level, citing the rule that no issue would be entertained on appeal unless it had been raised in the court below.[5] It noted that the RTC considered the case submitted for decision sans evidence of Canoy because of his repeated failure to appear at the scheduled hearings.

Canoy would later file three (3) motions for reconsideration which were all denied by the CA.

Hence, this petition.

Issue:

Whether or not the CA erred in affirming the RTC decision which found petitioner Canoy guilty of violating Section 68 (now 78) of P.D. No. 705, as amended by Executive Order (E.O.) No. 277.

The Court's Ruling

The petition should be denied for utter lack of merit.

Canoy basically insists that he was deprived of his fundamental right to be heard when the trial court convicted him without affording him the opportunity to present his defense; and that the RTC did not consider the fact that the seized lumber were found in the place owned by his mother who also operated a lumber business.

The CA was correct in disregarding the abovementioned arguments, for the reason that all of them were raised only on appeal. This is in consonance with the well-settled principle that issues of fact and arguments not adequately brought to the attention of the lower courts will not be

[5] Id. at 29.

considered by the reviewing courts as they cannot be raised for the first time on appeal.[6] Points of law, theories, issues, and arguments not brought to the attention of the trial court are barred by estoppel and cannot be considered by a reviewing court, as these cannot be raised for the first time on appeal.[7]

In the case at bench, Canoy was not able to present the abovementioned arguments because he and his counsel failed to appear in court despite several resetting of the trial date. He was given several chances to present his defense but he did not utilize the opportunities. In fact, this was the reason why the RTC issued its order dated April 11, 2006 submitting the case for decision without the evidence for the defense. Thus, the CA did not err in discounting Canoy's arguments.

Regarding the substantial matters, Canoy contends that he should have been acquitted because he did not operate a lumber business and he was not the owner of the lot where the assorted lumber were found.

The Court is not convinced.

There are two distinct and separate offenses punishable under Section 68 of P.D. No. 705, to wit:

> (1) Cutting, gathering, collecting and removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authorization; and
>
> (2) Possession of timber or other forest products without the legal documents required under existing forest laws and regulations."[8]

Canoy was charged with illegal possession of timber or other forest products.

Even considering Canoy's position, still it would not result in his acquittal. The mere possession of timber without the legal documents

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[6] *Del Rosario v. Bonga*, 402 Phil. 949 (2001).
[7] *Garcia v. Sandiganbayan*, G.R. No. 197204, March 26, 2014.
[8] *Revnaldo v. People*, G.R. No. 170589, April 16, 2009.

required under forest laws and regulations makes one automatically liable for violation of Section 68, P.D. No. 705.[9]

Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the object of the crime is in the immediate physical control of the accused. On the other hand, constructive possession exists when the object of the crime is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.[10]

As correctly observed by the CA, Canoy was in constructive possession of the seized forest products. He exercised dominion and control over the premises where the assorted lumber were discovered. During the pre-trial it was admitted that the forest products were seized from his premises. In fact, Canoy initially prevented the raiding team from entering the compound because the team was not yet authorized with a search warrant. Therefore, whether or not he owned the lumber business or the premises where the lumber were discovered are immaterial. His constructive possession of the lumber and his inability to show the required documents under forest laws and regulations are sufficient grounds to convict him of the crime with which he was charged.

The Court, however, modifies the penalty imposed by the court *a quo,*

Violation of Section 68 of P.D. No. 705, as amended, is penalized as qualified theft under Article 310 in relation to Article 309 of the Revised Penal Code *(RPC).* The pertinent portions of these provisions read:

> Art. 310. Qualified Theft – The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding articles, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of the plantation or fish taken from a fishpond or fishery, or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any calamity, vehicular accident or civil disturbance.
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> Art. 309. Penalties. – Any person guilty of theft shall be punished by: 1. The penalty of prision mayor in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the

[9] *Calub v. CA,* 387 Phil. 67 (2000); Revised Forestry Code of the Philippines
[10] *Villarin and Latayad v. People,* 656 SCRA 500 (2011).

> maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be. x x x

The prosecution was able to sufficiently prove that the 375 pieces of molave lumber; 104 pieces of mahogany lumber; and 50 pieces of camachile were valued at ₱83,734.00 as alleged in the Information filed against Canoy. With the value of the seized forest products exceeding ₱22,000.00, the basic penalty is *prision mayor* in its minimum and medium periods to be imposed in its maximum, the range of which is eight (8) years, eight (8) months and one (1) day to ten (10) years. Since none of the qualifying circumstances in Article 310 of the RPC was alleged in the Information, the penalty cannot be increased two degrees higher.

In determining the additional years of imprisonment, ₱22,000.00 is to be deducted from ₱83,734.00, which results to ₱61,734.00. This remainder must be divided by ₱10,000.00, disregarding any amount less than ₱10,000.00. Consequently, six (6) years must be added to the basic penalty. Thus, the maximum imposable penalty ranges from fourteen (14) years, eight (8) months and one (1) day to sixteen (16) years of reclusion temporal.

Applying the Indeterminate Sentence Law, the minimum imposable penalty should be taken anywhere within the range of the penalty next lower in degree, without considering the modifying circumstances. The penalty one degree lower from prision mayor in its minimum and medium periods is prision correccional in its medium and maximum periods, the range of which is from two (2) years, four (4) months and one (1) day to six (6) years. Thus, the RTC, as affirmed by the CA, erroneously fixed the penalty of imprisonment of seven (7) years, four (4) months and one (1) day of p*rision mayor*, as minimum, to twelve (12) years, as maximum. The proper penalty should have been two (2) years, four (4) months, and one (1) day of *prision correccional*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum.[11]

WHEREFORE, the dispositive portion of the decision of the Regional Trial Court should read as follows.

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[11] Id. at 500.

"**WHEREFORE,** finding the petitioner GUILTY beyond reasonable doubt of having committed the crime of Violation of Section 68 (now 78). P.D. 705, as amended by E.O. 277, the Court hereby sentences him to an indeterminate penalty of imprisonment ranging from Two (2) Years, Four (4) Months, and one (1) day of *Prision Correccional*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *Reclusion Temporal*, as maximum."

*(**Brion, J.,** on official leave: **Velasco, J.,** designated Acting Member, per Special Order No. 1910, dated January 12, 2015)*

SO ORDERED.

Very truly yours,

MA. LOURDES C. PERFECTO
Division Clerk of Court

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Cebu City
Crim. Case No. CBV-48985

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