

## EN BANC

[ G.R. No. 240563, August 14, 2018 ]

**IN RE: CORRECTION/ ADJUSTMENT OF PENALTY PURSUANT TO  
REPUBLIC ACT NO. 10951, IN RELATION TO HERNAN V.  
SANDIGANBAYAN,**

**EMALYN MONTILLANO y BASIG, PETITIONER.**

### R E S O L U T I O N

**TIJAM, J.:**

Before Us is a Petition for Release,<sup>[1]</sup> praying for the modification of the penalty imposed by the Regional Trial Court (RTC) of Muntinlupa City, Branch 204 in Criminal Case No. 16-782, and consequently, for the immediate release of Emalyn Montillano y Basig (petitioner) pursuant to the provisions of Republic Act (R.A.) No. 10951,<sup>[2]</sup> and this Court's ruling in *Hernan v. Sandiganbayan*.<sup>[3]</sup>

#### The Facts

In the said RTC Judgment<sup>[4]</sup> dated June 15, 2017, petitioner was convicted of the crime of Simple Theft and thus, sentenced as follows:

**WHEREFORE**, finding the [petitioner], GUILTY beyond reasonable doubt by her own admission for the offense of "Simple Theft" of personal property worth Php 6,000.00, she is sentenced to suffer an indeterminate penalty of imprisonment of six (6) months of *arresto mayor* as minimum, to four (4) years of *prision correccional* as maximum. Considering that the property in this case has been recovered, no civil liability is imposed.

The preventive imprisonment undergone by [petitioner] shall be credited in her favor.

Issue a commitment order for the commitment of [petitioner] to the Correctional Institute for Women for the service of her sentence.

SO ORDERED.<sup>[5]</sup>

Per the RTC Branch Clerk of Court's Certification<sup>[6]</sup> dated November 7, 2017, no appeal was filed in the said case.

Per her Prison Record,<sup>[7]</sup> petitioner already has two (2) years, three (3) months, and twenty-seven (27) days time served with earned good conduct time allowance as of May 8, 2018.

Meanwhile, R.A. No. 10951 was promulgated on August 29, 2017, which provides under Section 81, paragraph 4 thereof, that any person guilty of theft shall be

punished by *arresto mayor* in its medium period to *prision correccional* in its minimum period<sup>[8]</sup> if the value of the property stolen is over P5,000.00 but does not exceed P20,000.00.

Applying, thus, the Indeterminate Sentence Law and invoking our ruling in *Hernan*, allowing for the re-opening of an already terminated case for purposes of modifying/reducing the penalty to be served, petitioner comes before this Court averring that she is entitled to have her sentence modified in accordance with R.A. No. 10951 and thereafter, to be immediately released from confinement in view of the aforesaid circumstances.

### **The Issue**

Is petitioner entitled to the relief prayed for?

### **Ruling of the Court**

While the petitioner correctly invoked R.A. No. 10951 for the modification of her sentence, in the recent case of *In Re: Correction/Adjustment of Penalty pursuant to R.A. No. 10951 in Relation to Hernan v. Sandiganbayan – Rolando Elbanbuena y Marfil*,<sup>[9]</sup> however, this Court ruled that the determination of whether the petitioner is entitled to immediate release would necessarily involve ascertaining, among others, the actual length of time actually served and whether good conduct time allowance should actually be allowed, and thus should be better undertaken by the trial court, which is relatively more equipped to make findings of both fact and law. Thus, the Court issued Guidelines considering the anticipated influx of similar petitions, in the interest of justice and efficiency, which states:

- I. *Scope.*  
These guidelines shall govern the procedure for actions seeking (1) the modification, based on the amendments introduced by R[.]A[.] No. 10951, of penalties imposed by final judgments; and (2) the immediate release of the petitioner-convict on account of full service of the penalty/penalties, as modified.
- II. *Who may file.*  
The Public Attorney's Office, the concerned inmate, or his/her counsel/representative, may file the petition.
- III. *Where to file.*  
The petition shall be filed with the Regional Trial Court exercising territorial jurisdiction over the locality where the petitioner-convict is confined. The case shall be raffled and referred to the branch to which it is assigned within three (3) days from the filing of the petition.
- IV. *Pleadings.*  
  - (A) *Pleadings allowed.* – The only pleadings allowed to be filed are the petition and the comment from the OSG. No motions for extension of time, or other dilatory motions for postponement shall be allowed. The petition must