

REPUBLIC OF THE PHILIPPINES
 SUPREME COURT
 Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Special Second Division, issued a Resolution dated **04 December 2019** which reads as follows:

"G.R. No. 248903 – Muhammad Hajeh Amen alias Jafar also known as Abdul Karim Hajeh Amen v. People of the Philippines

X -----X

Assailed in this Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court are the Decision² dated February 28, 2019 and Resolution³ dated July 22, 2019 of the Court of Appeals in CA-G.R. CR No. 01611-MIN which affirmed the Joint Judgment⁴ of the Regional Trial Court (RTC) of Gingoog City, Branch 43 in Criminal Cases Nos. 2015-6145 and 2015-6146 finding Muhammad Hajeh Amen (petitioner) guilty beyond reasonable doubt of violations of Section 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," and Section 28(a) of R. A. No. 10591, otherwise known as the "Comprehensive Firearms and Ammunition Regulation Act", respectively.

The facts, as culled from the records, are as follows:

Petitioner was charged with violation of Section 11, Article II of R.A. No. 9165 and Section 28(a) of R.A. No. 10591 in two separate Informations, the accusatory portions of which read:

Criminal Case No. 2015-6145

That on August 11, 2015, at more or less 7:30 o'clock in the morning, in Purok 3, Barangay 19, Gingoog City, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, without lawful authority, did then and there wilfully, unlawfully and feloniously possess and under his control, to wit: – Twelve (12) pieces of heat sealed transparent cellophane sachets containing of (sic) *Shabu* having a total weight of 1.6637 grams, a dangerous drug.

Contrary to and in violation of Section 11, Article II of Republic Act No. 9165.⁵

¹ *Rollo*, pp. 17-43.

² *Id.* at 45-68; Penned by Associate Justice Walter S. Ong and concurred in by Associate Justices Edgardo T. Lloren and Florencio M. Mamauag, Jr.

³ *Id.* at 70-72.

⁴ *Id.* at 106-121; penned by Presiding Judge Mirabeaus A. Undalok.

⁵ *Id.* at 46.

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Criminal Case No. 2015-6146

That on August 11, 2015, at more or less 7:30 o'clock in the morning, in Purok 3, Barangay 19, Gingoog City, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control, the following: – One (1) unit of caliber .45 Pistol bearing Serial No. 329098 with inserted magazine loaded with ten (10) rounds of live ammunitions without first having obtained any document or permit to carry outside his residence from the proper authority.

Contrary to and in violation of Republic Act No. 10591.⁶

During his arraignment, petitioner pleaded 'not guilty' to both charges. Joint trial ensued.

The prosecution's version of the facts is as follows: On the strength of a search warrant, a team of police officers headed by Senior Police Inspector Mark Pesigan (SPI Pesigan) headed to Purok 3, Barangay 19 in Gingoog City on August 11, 2015 to serve the warrant against petitioner who was suspected to have violated Section 11 of R.A. No. 9165. The search team was composed of Police Inspector Virgillo O. Gundaya (PI Gundaya), SPO4 Henry Legaspi (SPO4 Legaspi) and SPO4 Teddy V. Macarayo (SPO4 Macarayo). Upon arriving at petitioner's residence at around 7:30 a.m., the search team saw that the door to petitioner's house was open. The search team entered the house and immediately announced their purpose to enforce the search warrant. Therein, SPO4 Macarayo saw Michael Ortiz Magalzo (Magalzo) sleeping on a bench using a Samsonite sling bag as pillow. The police officers also noticed a handle of a gun protruding from the bag. The police officers took custody of the gun as well as Magalzo. The police officers proceeded upstairs where they saw petitioner and his wife still asleep on their bed.

SPO4 Legaspi and PI Gundaya informed petitioner about the search warrant. During the search, SPO4 Legaspi recovered the following:

1. a pink plastic container with twelve (12) sachets of shabu inside the right pocket of a short pants lying on the floor;
2. a pistol with black holster loaded with a magazine with ten (10) live ammunitions;
3. black wallet;

⁶ Id. at 46-47.

4. drug paraphernalia consisting of seventeen (17) pieces of empty transparent plastic sachets; and
5. two improvised plastic scoops.⁷

Prosecutor Alegado of the Department of Justice (DOJ), Barangay Chairman Melchor Apolinar and Barangay Kagawad Rey Kho witnessed the search. After the search, SPO4 Legaspi marked and inventoried all the seized items in the house and in the presence of petitioner and his wife. The search team then went back to the police station where SPO4 Legaspi prepared a request for examination of the firearm recovered from petitioner and a letter request to the crime laboratory, among others.⁸

The results of the laboratory examination showed that the subject specimens yielded positive for the presence of *shabu*.⁹ A memorandum issued by the Firearms and Explosive Office in Camp Crame stated that petitioner had no license to possess the subject firearm.¹⁰

The defense presented a different version. According to petitioner, he left his friends at the sala and slept at around 1:00 a.m. of August 11, 2015. He was awakened by the sound of the door banging. When he got up, he saw a man who identified himself as a police officer. The man ordered him not to move. He was then forced to lie flat on the bed and was handcuffed. At least four (4) men started to search his room. Petitioner claimed that the four (4) men did not find anything in his room but he heard them saying they found something. He then saw Prosecutor Alegado who read the search warrant to him. He was brought back to his room where it was searched for the second time. Petitioner denied owning a firearm.¹¹

On November 17, 2017, the RTC rendered its Joint Judgment finding petitioner guilty of the charges against him.¹² The *fallo* of the Joint Judgment reads:

WHEREFORE, premises considered, the Court finds Muhammad Hajeh Amen alias Jafar also known as Abdul Karim Hajeh Amen guilty beyond reasonable doubt in Criminal Case No. 2015-6145 for violation of Section 11 (3), Article II, RA No. 9165 and sentences him to a penalty of imprisonment of twelve (12) years and one (1) day to sixteen (16) years and a fine of Three hundred thousand pesos (Php300,000.00) and in Criminal

⁷ Id. at 48-49.

⁸ Id. at 49.

⁹ Id. at 49-50.

¹⁰ Id. at 50.

¹¹ Id. at 49-52.

¹² Id. at 120.

Case No. 2015-6146 also guilty beyond reasonable doubt for violation of Section 28 (a), RA No. 10591 and sentences him to an indeterminate penalty of 3 years, 6 months and 20 days of *prision correccional* in its medium period as minimum to 8 years and 8 months of *prision mayor* medium in its minimum period.

The *shabu* consisting of twelve (12) sachets weighing 1.6637 grams which is a dangerous drug and a Caspian .45 caliber pistol with serial number 329098, ten (10) live ammunitions and magazine are confiscated in favor of the government and disposed of in accordance with the existing laws and regulations.

He shall serve his sentences at Davao Penal Colony, Dujali, Davao del Norte. His preventive detention at BJMP-Gingoog City is fully credited in the service of his sentence.

SO ORDERED.¹³

In a Decision¹⁴ dated February 28, 2019, the Court of Appeals affirmed the RTC Joint Judgment.

Petitioner filed a Motion for Reconsideration¹⁵ but it was denied by the Court of Appeals in a Resolution¹⁶ dated July 22, 2019.

Hence, the instant petition for review.

The crime of illegal possession of dangerous drugs under Section 11 of R.A. No. 9165 carries the following elements: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.¹⁷ The prosecution was able to establish all these elements. Petitioner was deemed in constructive possession of twelve (12) sachets of *shabu* found inside the pocket of a short pants lying on the floor of his room. Moreover, he failed to present any authority to legally possess the same.

The penalty for illegal possession of 1.6637 grams of *shabu* under Section 11, Article II of RA No. 9165 is imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of *shabu*. Thus, the penalty imposed by the RTC, as affirmed by the Court of Appeals, is within the prescribed range.

¹³ Id. at 120-121.

¹⁴ Supra, note 2.

¹⁵ See July 22, 2019 Resolution of the Court of Appeals, p. 1; *rollo*, p. 70.

¹⁶ *Rollo*, pp. 70-72.

¹⁷ *People v. Ismael*, 806 Phil. 21, 29 (2017).

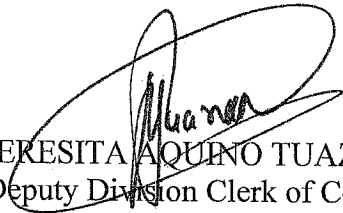
The elements of Illegal Possession of Firearms and Ammunition are: (1) the subject firearm exists; and (2) the person who possessed or owned the same does not have the corresponding license.¹⁸ In this case, petitioner was in constructive possession of a .45 caliber pistol and a magazine containing ten (10) live ammunitions and he had no license or authority to possess or own them.

We, however, modify the penalty imposed by the trial court with respect to the crime of illegal possession of firearms and ammunition. Section 28(a) of R.A. No. 10591 imposes the penalty of *prision mayor* in its medium period or from eight (8) years and one (1) day to ten (10) years. Applying the Indeterminate Sentence Law, the minimum period should be the penalty next lower in degree, or *prision mayor* in its minimum period, which is six (6) years and one (1) day to eight (8) years. The maximum period should be anywhere between eight (8) years and one (1) day to ten (10) years. Therefore, the penalty of six (6) years, eight (8) months and one (1) day as minimum, to eight (8) years, eight (8) months and one (1) day of *prision mayor* as maximum, is proper.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The February 28, 2019 Decision and July 22, 2019 Resolution of the Court of Appeals in CA-G.R. CR No. 01611-MIN finding petitioner Muhammad Hajeh Amen guilty beyond reasonable doubt for violations of Section 11, Article II of Republic Act No. 9165 and Section 28(a) of Republic Act No. 10591 are **AFFIRMED with MODIFICATION** in that the penalty for violation of Section 28(a) of Republic Act No. 10591 is six (6) years, eight (8) months and one (1) day as minimum, to eight (8) years, eight (8) months and one (1) day of *prision mayor* as maximum.

SO ORDERED. Perlas-Bernabe, *J.*, on official business. Zalameda, *J.*, on official leave.¹¹

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court p 1/23
23 JAN 2020

¹⁸ *Jacaban v. People*, 756 Phil. 523, 531 (2015).

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(Crim. Case Nos. 2015-6145 and 2015-6146)

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CA-G.R. CR No. 01611-MIN

*with copy of CA Decision dated 28 Feb. 2019
and Resolution dated 22 July 2019
Please notify the Court of any change in your address.
GR248903. 12/04/19A(7)URES *klw*