



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **11 March 2020** which reads as follows:*

“G.R. No. 250656 (*Hector Magpantay y Gonzales v. People of the Philippines*). - Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the Decision dated August 28, 2019 and Resolution dated November 25, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 41919. The CA had affirmed the Decision of the Regional Trial Court (RTC) of Tanauan City, Batangas, Branch 83 in Criminal Case No. CR-14-01-6995 finding Hector Magpantay y Gonzales (Magpantay) guilty beyond reasonable doubt of violation of Section 28(a) and (e-1) of Republic Act (RA) No. 10591, otherwise known as the “Comprehensive Firearms and Ammunition Regulation Act.”

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

Magpantay was charged under the following Information:

That on or about the 29th day of December, 2013 at about 9:30 x x in the evening at along President Jose P. Laurel National Highway, Barangay San Pioquinto, Municipality of Malvar, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously keep, possess and have under his custody and control one (1) Magnum Revolver 357 (a small arm) without serial number loaded with six (6) live ammunitions, without having secured the necessary license and/or permit to possess the same from the proper authorities.

Contrary to law.¹

Magpantay pleaded not guilty. Trial on the merits ensued.

The evidence of the prosecution disclosed that on December 29, 2013 at around 9:30 PM, Police Officer 1 Aldrin Aquino (PO1 Aquino), Senior

¹ *Rollo*, pp. 44-45.

Police Officer 1 Glorious Camacho (SPO1 Camacho) and other police officers were manning a checkpoint in San Pioquinto, Malvar, Batangas. They flagged down a red Honda motorcycle driven by Magpantay. Magpantay initially sped off but he was blocked by SPO1 Camacho. When the motorcycle came to a halt, PO1 Aquino approached Magpantay and noticed the handle of a gun bulging at the right side of the latter's waist. PO1 Aquino asked Magpantay point blank if he was carrying a firearm. Magpantay replied in the affirmative. PO1 Aquino immediately confiscated Magpantay's magnum .357 caliber firearm loaded with six live ammunitions. PO1 Aquino marked the seized firearm and turned it over to PO2 Alexander Micoso (PO2 Micoso). Magpantay was brought to the police station.

Based on the Certification issued by the Chief of the Records Section of the Firearms and Explosives Office at Camp Crame, Magpantay is not a registered firearm holder of any kind and caliber.

For his defense, Magpantay claimed that on December 29, 2013 at around 8:00 PM, he was walking towards his motorcycle from the house of his cousin in San Pioquinto, Malvar, Batangas, when police officers suddenly surrounded and handcuffed him. He was apparently asked if he knew of a certain Marlon Umali who was missing. He was asked to board a mobile patrol while the rest of the police officers went to his house. Thereafter, Magpantay was brought to the police station and detained. He was asked once again if he killed one Marlon Umali and he denied.

The Ruling of the RTC

In its May 4, 2018 Decision, the RTC of Tanauan City, Batangas, Branch 83 found Magpantay guilty as charged. He was sentenced as follows:

WHEREFORE in view of the foregoing, the court hereby finds accused Hector Magpantay y Gonzales guilty as the prosecution have proven the guilt of the accused beyond reasonable doubt of the crime of violating Section 28 paragraphs (a) and (e-1) of Republic Act No. 10591 and hereby sentences him to suffer the indeterminate penalty of imprisonment of nine (9) years, four (4) months and one (1) day to ten (10) years of prision mayor in its medium period.

SO ORDERED.²

The trial court upheld the validity of Magpantay's arrest as a result of a valid search effected by law enforcers. The trial court found that by possession of an unlicensed firearm, Magpantay committed an offense in the presence of the police officers which was the basis for his subsequent arrest.

Magpantay interposed an appeal with the CA.

² Id. at 45-46.

The Ruling of the Court of Appeals

In a Decision³ dated August 28, 2019, the CA affirmed the ruling of the RTC.

The appellate court affirmed the finding of the trial court on the validity of a warrantless search of a moving vehicle. In particular, the appellate court had mentioned that the Supreme Court has upheld the validity of a warrantless arrest made upon the accused who, while on board a motorcycle, sped past a checkpoint, as in this case. The appellate court classified the seizure of Magpantay's firearm without a search warrant as falling under the plain view doctrine. Lastly, on the issue of non-compliance with the chain of custody rule, the appellate court dismissed the same for raising the issue for the first time on appeal.

Magpantay filed a Motion for Reconsideration but the same was denied by the CA in a Resolution dated November 25, 2019.

Hence, this Petition for Review.

The grounds relied upon in the instant petition were a rehash of the arguments of Magpantay's appeal before the CA. These arguments have already been thoroughly discussed and threshed out by the CA, which eventually affirmed Magpantay's conviction. There is no cogent reason to overturn the ruling of the CA.

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.⁴ The prosecution was able to sufficiently establish all the elements of the crime of illegal possession of firearm and ammunition. Magpantay was caught in possession of the firearm, a .357 caliber magnum revolver, during a checkpoint. The seizure of the firearm was justified under the plain view doctrine when it was PO1 Aquino who saw the handle of the gun bulging at the waist of Magpantay. A certification issued by the Firearms and Explosives Office in Camp Crame confirmed that Magpantay had no authority or license to possess such firearm.

We, however, modify the penalty imposed by the trial court.

Considering that the firearm was loaded with live ammunitions, a penalty one degree higher should be imposed pursuant to Section 28(a) and (e-1), thus:

³ Id. at 43-55; penned by Associate Justice Jhosep Y. Lopez with Associate Justices Stephen C. Cruz and Perpetua Susana T. Atal Paño concurring.

⁴ *Jacaban v. People*, G.R. No. 184355, March 23, 2015.

Section 28. *Unlawful Acquisition, or Possession of Firearms and Ammunition.* – The unlawful acquisition, possession of firearms and ammunition shall be penalized as follows:

(a) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a small arm;

x x x x

(e) The penalty of one (1) degree higher than that provided in paragraphs (a) to (c) in this section shall be imposed upon any person who shall unlawfully possess any firearm under any or combination of the following conditions:

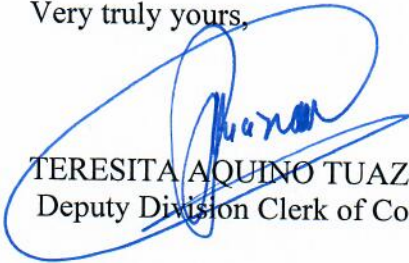
(1) Loaded with ammunition or inserted with a loaded magazine[.]

The imposable penalty in this case is *prision mayor* in its maximum period. There being no aggravating or mitigating circumstances, the penalty shall be within the medium range of *prision mayor* in its maximum period or 10 years, 8 months and 1 day to 11 years and 4 months. Applying the Indeterminate Sentence Law, the minimum period should be the penalty next lower in degree, which is *prision mayor* in its medium period or from 8 years and 1 day to 10 years. Thus, Magpantay must suffer the indeterminate prison term of 8 years, 8 months and 1 day of *prision mayor* in its medium period, as minimum, to 10 years, 8 months and 1 day of *prision mayor* in its maximum period, as maximum.

WHEREFORE, the Petition for Review is **DENIED**. The August 28, 2019 Decision and November 25, 2019 Resolution of the Court of Appeals in CA-G.R. CR No. 41919 finding petitioner Hector Magpantay y Gonzales **GUILTY** beyond reasonable doubt for violation of Section 28(a) and (e-1) of Republic Act No. 10591 is **AFFIRMED with MODIFICATION** of the penalty to eight (8) years, eight (8) months and one (1) day of *prision mayor* in its medium period, as minimum, to ten (10) years, eight (8) months and one (1) day of *prision mayor* in its maximum period, as maximum.

SO ORDERED.”

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *ruc 06/09*

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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 83
Tanauan City, Batangas
(Crim. Case No. CR-14-01-6995)

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Supreme Court, Manila

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Please notify the Court of any change in your address.
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