



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

BOBBY CARBONEL y DREZA
 a.k.a “EDGAR”,

Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,

Respondent.

G.R. No. 253090

Present:

LEONEN, *SAJ.*, Chairperson,
 LAZARO-JAVIER,
 LOPEZ, M.
 LOPEZ, J., and
 KHO, JR., *JJ.*

Promulgated:

MAR 01 2023

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DECISION

KHO, JR., J.:

Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court, assailing the Decision² dated December 13, 2019 and the Resolution³ dated July 27, 2020 of the Court of Appeals (CA) in CA-G.R. CR No. 42087, which affirmed with modification the Decision⁴ dated June 25, 2018 of the Regional Trial Court of Guimba, Nueva Ecija, Branch 31 (RTC) in Criminal Case No. 4027-G, finding petitioner Bobby Carbonel y Dreza a.k.a. “Edgar” (petitioner) guilty beyond reasonable doubt of the crime of Illegal Possession of Firearms and Ammunition under Section 28 (a) in relation to Section 28 (e) (1) of Republic Act No. (RA) 10591.⁵

¹ *Rollo*, pp. 14–36.

² *Id.* at 42–54. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Zenaida T. Galapate-Laguilles and Gabriel T. Robeniol.

³ *Id.* at 56–57. Penned by Associate Justice Gabriel T. Robeniol and concurred in by Associate Justices Fernanda Lampas-Peralta and Zenaida T. Galapate-Laguilles.

⁴ *Id.* at 79–81. Penned by Judge Brigando P. Saldivar.

⁵ Entitled “AN ACT PROVIDING FOR A COMPREHENSIVE LAW ON FIREARMS AND AMMUNITION AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF,” approved on May 29, 2013.

The Facts

The case arose from an Information⁶ dated December 14, 2015 filed before the RTC charging petitioner with the aforementioned crime, the accusatory portion of which reads:

That on or about the 8th day of December 2015, about 10:00 o'clock (*sic*) in the evening, in [Barangay] Lennec, Municipality of Guimba, Province of Nueva Ecija, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, control and custody one (1) caliber .38 Revolver marked SMITH and WESSON, without serial number and loaded with five (5) live ammunition, without lawful authority to possess the same.⁷

The prosecution alleged that at around 9:30 p.m. to 10:00 p.m. on December 8, 2015, Police Officer (PO) 1 Donn Carlo Caparas (PO1 Caparas), PO1 Ferdinand P. Morta (PO1 Morta), and their two fellow police officers were conducting a patrol on board their mobile car in Barangay Lennec, Guimba, Nueva Ecija. While they were about to return to their station, they saw petitioner at the carnival rushing towards a group of children and drawing something from his waist. The police officers proceeded towards petitioner and saw a revolver tucked in the right side of his waist. PO1 Caparas asked petitioner if he has a firearm license and permit to carry firearm outside of residence from the Firearms and Explosives Office of the Philippine National Police (FEO-PNP) to which petitioner answered in the negative. He was then arrested and brought to the police station in Cabanatuan City. Consequently, PO1 Caparas confiscated a Smith and Wesson .38 caliber revolver without serial number, as well as five live ammunition and a black holster.⁸

At the police station, PO1 Caparas apprised petitioner of the charge against him and his constitutional rights. Afterwards, he marked the revolver with petitioner's initials "BDC" and the five live ammunition as "BDC 1" to "BDC 5." The documents prepared by the police officers for the proper filing of the case are their *Pinagsamahang Sinumpaang Salaysay*, inventory (confiscation receipt), request for ballistic examination, and request for verification from FEO-PNP. For the meantime, PO1 Caparas took custody of the seized items from the place of arrest to the police station. PO1 Caparas was only able to transmit the same to the crime laboratory after 16 days since the police car had to be repaired. Subsequently, the FEO-PNP issued a Certification dated January 11, 2017 declaring that petitioner is not a licensed/registered firearm holder of any kind of caliber, particularly, one caliber .38 revolver.⁹

⁶ Not attached to the *rollo*.

⁷ *Rollo*, p. 43.

⁸ *Id.*

⁹ *Id.* at 44.

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In his defense, petitioner pleaded not guilty and denied any criminal liability, claiming that he did not own the gun presented against him nor did he know the gun's owner. Petitioner alleged that on the day of his arrest, he was at the plaza to watch the barangay fiesta's bikini contest. A commotion happened and people started running away. When he reached the road, around five police officers blocked his way, including PO1 Caparas and PO1 Morta. He was brought in front of the police car where the police officers searched and took his bag, where they found a damaged DVD disc. Later, petitioner was boarded inside the police car and was told that he caused the commotion. He was then brought to the Provincial Public Safety Company (PPSC) headquarters wherein the police officers frisked him and took his cellphone. Thereafter, they proceeded to the Cabanatuan City police station where petitioner was incarcerated.¹⁰

The RTC Ruling

In a Decision¹¹ dated June 25, 2018, the RTC found petitioner guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) day of *prision mayor*, as minimum, to eight (8) years, eight (8) months, and one (1) day of *prision mayor* medium, as maximum.¹²

The RTC ruled that the prosecution was able to prove the elements of the crime of Illegal Possession of Firearms and Ammunition, considering that: (1) a .38 caliber firearm without serial number and five ammunition were confiscated in the possession of petitioner, which PO1 Caparas positively identified before the court, and (2) a certification from FEO-PNP was issued stating that petitioner is not a licensed or registered firearm holder of any caliber of firearm. The RTC further held that the defense of denial cannot prevail over the positive testimonies of the prosecution's witnesses who had no reason to falsely testify against petitioner.¹³

Aggrieved, petitioner appealed to the CA.

¹⁰ Id.

¹¹ Id. at 79-81.

¹² Id. at 81.

¹³ Id.

The CA Ruling

In a Decision¹⁴ dated December 13, 2019, the CA affirmed the RTC's ruling with modification as to the penalty in that petitioner was sentenced to suffer the penalty of imprisonment for an indeterminate period of nine (9) years of *prision mayor*, as minimum, to eleven (11) years of *prision mayor*, as maximum.¹⁵

Prefatorily, the CA ruled that the warrantless arrest of petitioner was valid, considering that PO1 Caparas and his fellow officers had a reasonable suspicion to arrest him, as he was seen to be drawing something from his waist as he rushed towards a group of children. In this regard, the CA ratiocinated that common sense dictates that the police officers need not wait for a serious crime to be consummated before they move in and make an arrest because it will definitely endanger the lives and safety of the public, as well as their own. The CA further explained that what is necessary was the presence of reasonable sufficient ground to believe the existence of an act having the characteristics of a crime, and that the same grounds exist to believe that the person sought to be detained participated in it. As a result of petitioner's warrantless arrest, the incidental search and seizure of the items in his possession are also valid.¹⁶

Relatedly, the CA found that petitioner failed to rebut the affirmative testimonies of the police officers that he was caught in the act of drawing a revolver from his waist during a barangay fiesta. He also never substantiated his claim that he was arrested without any reason, save for his self-serving account. Petitioner also failed to timely question the supposed irregularity of his arrest, and as such, he is deemed to have waived his constitutional protection against illegal arrest when he actively participated in the arraignment and trial of his case.¹⁷

As to the substantive merits of the case, the CA agreed with the RTC that all the elements constituting the crime charged have been proven beyond reasonable doubt, considering that: (a) PO1 Caparas positively identified before the RTC the revolver labelled as Smith and Wesson loaded with five ammunition; and (b) there is a certification from FEO-PNP that petitioner was not authorized to carry or possess firearms. Hence, the carrying of firearm and ammunition without the requisite authorization is enough basis for the conduct of a valid *in flagrante delicto* warrantless arrest and supports the conviction of petitioner.¹⁸

¹⁴ Id. at 42-54.

¹⁵ Id. at 54.

¹⁶ Id. at 48-49.

¹⁷ Id. at 49-50.

¹⁸ Id. at 50-53.

Finally, since the firearm seized from petitioner was loaded with five live ammunition, the CA adjusted the imposable penalty on petitioner pursuant to Section 28 paragraph (e) (1) of RA 10591, which provides that the penalty one degree higher than *prision mayor* in its medium period shall be imposed.¹⁹

Petitioner moved for reconsideration²⁰ but the same was denied in a Resolution²¹ dated July 27, 2020. Hence, this Petition.²²

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly affirmed petitioner's conviction for the crime charged.

In the instant petition, petitioner maintains that he was not validly arrested without a warrant since PO1 Caparas clearly admitted that he just saw him walking in a rush and was about to draw something from his waist without any conclusive proof that the same was a gun.²³ The said alleged actions of petitioner did not unequivocally arouse suspicion that he committed, was committing, or was about to commit a crime. Clearly, petitioner was not arrested *in flagrante delicto* by PO1 Caparas.²⁴

Moreover, petitioner argues that the search cannot be considered as falling within the plain view doctrine.²⁵ PO1 Caparas failed to disclose the particulars on how he found the gun, whether petitioner held it or the same was tucked in his waist.²⁶ These inconsistencies only highlight the fact that the police officers did not see the commission of the crime in plain sight, hence, the arrest and search of petitioner does not fall within the purview of the plain view doctrine. Thus, the .38 and ammunition allegedly confiscated from petitioner during his illegal arrest is inadmissible. The same cannot be used as evidence against him for being the fruit of a poisonous tree.²⁷

¹⁹ Id. at 53.

²⁰ Id. at 108–117.

²¹ Id. at 56–57.

²² Id. at 14–38.

²³ Id. at 21.

²⁴ Id. at 25.

²⁵ Id. at 26.

²⁶ Id. at 25.

²⁷ Id. at 26–29.

Finally, petitioner claims that the evidence presented by the prosecution failed to establish the crime charged since it failed to present the allegedly seized gun and ammunition during the trial proceeding. The request for ballistics was only submitted to the crime laboratory 16 days after petitioner's arrest. Worse, the certification from FEO-PNP stating that petitioner allegedly had no license to carry a firearm was dated January 11, 2017 or two years after petitioner's arrest. Considering the weak evidence of the prosecution, the guilt of petitioner was not proven beyond reasonable doubt.²⁸

In its Comment,²⁹ respondent People of the Philippines, through the Office of the Solicitor General (OSG), argues that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Hence, the Petition is dismissible as it raised factual issues which have already been passed upon by the RTC and affirmed by the CA.³⁰ Further, there is no showing that the CA, in upholding the RTC Decision, committed any palpable error in appreciating the evidence, flagrantly disregarded applicable laws, or misappreciated the facts presented. Failing on this point, the conviction must be upheld.³¹ In any event, the police officers validly searched and arrested petitioner. Petitioner's act of rushing towards a group of children while drawing something from his waist constituted suspicious behavior, thereby prompting the police officers to stop and frisk him. As an incident to a valid stop and frisk search, petitioner was seen with a gun tucked in his waist even before the police officers could frisk him for weapons. Thus, the police officers validly searched petitioner since the gun was in plain view. Indeed, the police officers validly arrested petitioner when the latter failed to present a license to carry a firearm. Accordingly, the RTC and the CA correctly convicted petitioner of violation of Section 28 (a) in relation to Section 28 (e) (1) of RA 10591.³²

The Court's Ruling

The Petition is without merit.

Validity of warrantless arrest on petitioner

Prefatorily, it is noted that in view of the assertions of petitioner and respondent as seen above, it behooves the Court to ascertain whether there was indeed a valid warrantless arrest on petitioner. At this point, it is further noted that petitioner failed to timely question the legality of his arrest, and in

²⁸ Id. at 29–35.

²⁹ Id. at 128–154.

³⁰ Id. at 133–137.

³¹ Id. at 137.

³² Id. at 139–145.

fact, actively participated in the proceedings before the court *a quo*; and as such, he is deemed to have waived any objection relating to the same.³³ In *People v. Vallejo*,³⁴ the Court, through Retired Associate Justice Angelina Sandoval-Gutierrez, emphasized this rule as follows:

[A]ny objection by the accused to an arrest without a warrant **must be made before he enters his plea, otherwise, the objection is deemed waived.** We have also ruled that **an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the [I]nformation against him before his arraignment.** And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in his arrest may be deemed cured when he voluntarily submitted to the jurisdiction of the trial court as what was done by the appellants in the instant case. Not only did they enter their pleas during arraignment, but they also actively participated during the trial which constitutes a waiver of any irregularity in their arrest.³⁵ (Emphasis and underscoring supplied; citations omitted)

Nonetheless, case law instructs that such waiver only concerns the perceived defects in petitioner's arrest and shall not constitute a waiver with respect to the inadmissibility of the evidence seized during the illegal warrantless arrest.³⁶ In *Vaporoso v. People*,³⁷ the Court, through Retired Associate Justice Estela M. Perlas-Bernabe, reiterated:

We agree with the respondent that the petitioner did not timely object to the irregularity of his arrest before his arraignment as required by the Rules. In addition, he actively participated in the trial of the case. As a result, the petitioner is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest.

However, this waiver to question an illegal arrest only affects the jurisdiction of the court over his person. It is well-settled that a waiver of an illegal, warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.³⁸ (Emphasis and underscoring in the original)

Otherwise stated, a waiver on the illegality of a warrantless arrest due to an accused's failure to timely object to the same does not constitute a waiver on matters regarding the admissibility of items seized on account of such warrantless arrest. In this light, there is a need for the Court to determine whether there was a valid search made on petitioner which led to the consequent seizure of the firearm and ammunitions subject of this case.

³³ See *Vaporoso v. People*, 852 Phil. 508, 516–517 (2019) [Per J. Perlas-Bernabe, Second Division], citing *People v. Bringcula*, 824 Phil. 585, 596 (2018) [Per J. Peralta, Second Division].

³⁴ 461 Phil. 672 (2003) [Per J. Sandoval-Gutierrez, *En Banc*].

³⁵ *Id.* at 686.

³⁶ *Vaporoso v. People*, *supra*.

³⁷ *Id.*

³⁸ *Id.* 685, citing *Sindac v. People*, 794 Phil. 421, 436 (2016) [Per. J. Perlas-Bernabe, First Division].

*Validity of the warrantless search on
the subject firearm and ammunition*

Article III, Section 2 of the Constitution provides for the inviolability of a person's right against unreasonable searches and seizures:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

The general rule is that a search and seizure must be carried out through a judicial warrant, otherwise, the same violates the Constitution.³⁹ To underscore the importance of a person's right against unlawful searches and seizures, Article III, Section 3 (2) of the Constitution considers any evidence obtained in violation of this right as inadmissible.

However, jurisprudence has recognized instances of reasonable warrantless searches and seizures, one of which is when the "plain view" doctrine is applicable. In *People v. Lagman*,⁴⁰ the Court, through Retired Associate Justice Conchita Carpio Morales, laid down the following parameters for its application:

Objects falling in plain view of an officer who has a right to be in a position to have that view are subject to seizure even without a search warrant and may be introduced in evidence. **The "plain view" doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure.** The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent.⁴¹ (Emphasis and underscoring supplied)

Here, a circumspect review of the records would reveal that: (a) the police officers are deemed to have a "prior valid intrusion" into the area as they were patrolling and responded to the commotion which started when

³⁹ *Manibog v. People*, 850 Phil. 103, 113 (2019) [Per J. Leonen, Third Division].

⁴⁰ 593 Phil. 617 (2008) [Per. J. Carpio Morales, *En Banc*].

⁴¹ *Id.* at 628-629.

petitioner rushed into a group of children and acted as if he was about to pull something from his waist; (b) upon arriving at the area, said police officers approached petitioner and readily saw the subject firearm tucked in the latter's waist; and (c) such firearm may be considered as an evidence to a crime, which led PO1 Caparas to inquire if petitioner had the necessary license for it, to which the latter answered in the negative. It was only then that the police officers confiscated the firearm and arrested him. Under these circumstances, the Court rules that the search on petitioner and the subsequent seizure of the firearm and ammunition from him fall under the "plain view" doctrine; and hence, constitutes a valid warrantless search and seizure. Therefore, the same is admissible in evidence.

The admissibility of the subject firearm and ammunition having been settled, the Court now delves into petitioner's guilt for the crime charged.

Existence of all the elements of the crime charged

As enunciated in *Jacaban v. People*,⁴² the essential elements in the prosecution for the crime of Illegal Possession of Firearms and Ammunition are: (1) the existence of subject firearm; and (2) the fact that the accused who possessed or owned the same does not have the corresponding license for it. "The unvarying rule is that ownership is not an essential element of illegal possession of firearms and ammunition. What the law requires is merely possession, which includes not only actual physical possession, but also constructive possession or the subjection of the thing to one's control and management."⁴³

In this case, PO1 Caparas categorically testified that a .38 caliber firearm without serial number and five ammunition were recovered from petitioner. In addition, petitioner's lack of authority or license to carry or possess the same was reinforced by the Certification issued by the FEO-PNP which stated that petitioner had, indeed, no authority to carry or possess any firearm. Even if the certification was belatedly issued, it is undisputed that petitioner had no authority to carry or possess any firearm during the material date stated in the Information. Further, the Court on several occasions ruled that either the testimony of a representative of, or a certification from, the FEO-PNP attesting that a person is not a licensee of any firearm would suffice to prove beyond reasonable doubt the second element of possession of illegal firearms.⁴⁴

⁴² 756 Phil. 523, 531-532 (2015) [Per J. Peralta, Third Division].

⁴³ Id.

⁴⁴ See *Valeroso v. People*, 570 Phil. 58 (2008) [Per J. R.T. Reyes, Third Division]; *People v. Taan*, 536 Phil. 943 (2006) [Per J. Tinga, *En Banc*]; *Ungsod v. People*, 514 Phil. 472 (2005) [Per J. Chico-Nazario, Second Division]; *People v. Lazaro*, 375 Phil. 871 (1999) [Per J. Gonzaga-Reyes, Third Division], citing *Padilla v. Court of Appeals*, 336 Phil. 383 (1997) [Per J. Francisco, Third Division]; *Rosales v. CA*, 325 Phil. 390 (1996) [Per J. Bellosillo, First Division]; *People v. Orehueta*, 302 Phil. 77 (1994) [Per J.

It must also be emphasized that the offense of Illegal Possession of Firearms is *malum prohibitum* punished by special law and, in order that one may be found guilty of a violation of the decree, it is sufficient that the accused had no authority or license to possess a firearm, and that he intended to possess the same, even if such possession was made in good faith and without criminal intent.⁴⁵

Petitioner's contention that the subject firearm and ammunition should have been excluded as evidence because they were not formally offered by the prosecution during the trial has no leg to stand on. Contrary to petitioner's claim, the existence of the subject firearm and ammunition were established through the testimony of PO1 Caparas, as follows:

Q: Will you describe the firearm?

A: Caliber [.38 without serial number but with label as Smith and Wesson, Sir.

Q: Will you describe what kind of firearm it is?

A: *Paltik* with wooden handle, [S]ir.

Q: How about the barrel?

A: Stainless, Sir.

Q: Aside from the firearm, what else did you confiscate from the accused[,] if any?

A: Only the gun and the holster and five ammunitions, Sir.

x x x x

Q: Mr. Witness, if the firearm and live ammunitions that you x x x confiscated from the accused will be shown to you, will you able to recognize it?

A: Yes, Sir.

Q: Again, please tell the Honorable Court what identifying marks did you place on the firearm?

A: On Cal.38, we placed a marking, "BDC."

Q: How about the live ammunitions?

A: "BDC-1 to BDC-5."

Feliciano, Third Division]. See also *Mallari v. CA*, 333 Phil. 289 (1996) [Per J. Francisco, Third Division]; *People v. Solayao*, 330 Phil. 811 (1996) [Per J. Romero, Second Division].

⁴⁵ *Peralta v. People*, 817 Phil. 554, 566 (2017) [Per J. Perlas-Bernabe, Second Division].

Q: Mr. Witness, I would like to inform you that the firearm and ammunitions were already surrendered by the [Nueva Ecija Provincial Crime Lab Office] to this Court. Kindly see if this is the firearm and live ammunitions?

A: Yes, Sir.

Q: Kindly point those markings that you placed.

A: (witness is pointing to the gun with marking "BDC" in the body of the gun near the trigger).

X X X X

Q: Kindly see if what (*sic*) inside of this envelope were the ammunitions?

A: Yes, Sir, there are five (5) live ammunitions.

Q: Kindly point to the markings that you have placed[.]

A: (witness is pointing to the individual markings from "BDC-1 to BDC-5").⁴⁶

Even assuming that the subject firearm and ammunitions were not offered, their existence may be established by testimony, even without its presentation at trial.⁴⁷ In *People vs. Orehuela*,⁴⁸ the non-presentation of the firearm did not prevent the conviction of the accused.⁴⁹

Further, both the RTC and the CA gave credence to the testimony of PO1 Caparas. "As has been repeatedly held, credence shall be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary; moreover in the absence of proof of motive to falsely impute such a serious crime against the accused, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over accused's self-serving and uncorroborated claim of having been framed."⁵⁰

Given the foregoing, the Court finds no reason to deviate from the findings of the RTC, as affirmed by the CA, as there is no indication that it overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case. In fact, the RTC was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same.⁵¹

⁴⁶ *Rollo*, pp. 51–52; TSN, August 7, 2017, p. 2.

⁴⁷ See *Valeroso v. People*, supra note 44, at 75, citing *People v. Malinao*, 467 Phil. 432 (2004) [Per J. Austria-Martinez, *En Banc*]. See also *People v. Taan*, supra note 43, at 957; *People v. Taguba*, 396 Phil. 366 (2000) [Per J. Quisumbing, Second Division].

⁴⁸ 302 Phil. 77 (1994).

⁴⁹ *Id.* See also *People v. Narvasa*, 359 Phil. 168 (1998) [Per J. Panganiban, First Division].

⁵⁰ *People v. Macalaba*, 443 Phil. 565, 578–579 (2003) [Per C.J. Davide, Jr., First Division].

⁵¹ See *Cahulogan v. People*, 828 Phil. 742, 749 (2018) [Per J. Perlas-Bernabe, Second Division], citing *Peralta v. People*, supra note 45, at 563.

*Proper penalty to be imposed on
petitioner*

Petitioner's criminal liability for the crime charged having been established beyond reasonable doubt, the Court now determines the imposable penalty on him.

Section 28 (a) in relation to Section 28 (e) (1) of RA 10591 reads:

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[.]

Since petitioner was caught with an unlicensed firearm loaded with five live ammunition, then the prescribed penalty for his crime is *prision mayor* in its maximum period. Thus, applying the Indeterminate Sentence Law, and further considering the absence of any modifying circumstances in this case, the CA correctly imposed on petitioner the penalty of imprisonment for an indeterminate period of nine (9) years of *prision mayor*, as minimum, to eleven (11) years of *prision mayor*, as maximum.

ACCORDINGLY, the Petition is **DENIED**. The Decision dated December 13, 2019 and the Resolution dated July 27, 2020 of the Court of Appeals in CA-G.R. CR No. 42087 are hereby **AFFIRMED**. Petitioner Bobby Carbonel y Dreza a.k.a. "Edgar" is found **GUILTY** beyond reasonable doubt of the crime of Illegal Possession of Firearms and Ammunition under Section 28 (a) in relation to Section 28 (e) (1) of Republic Act No. 10591. Accordingly, he is sentenced to suffer the penalty of imprisonment for an indeterminate period of nine (9) years of *prision mayor*, as minimum, to eleven (11) years of *prision mayor*, as maximum.


AG

SO ORDERED.



ANTONIO T. KHO, JR.
Associate Justice

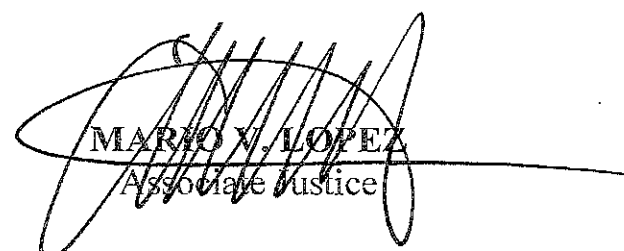
WE CONCUR:



MARVIC M.V.F. LEONEN
Senior Associate Justice
Division Chairperson



AMY C. LAZARO-JAVIER
Associate Justice




MARIO V. LOPEZ
Associate Justice



JHOSEP V. LOPEZ
Associate Justice

ATTESTATION

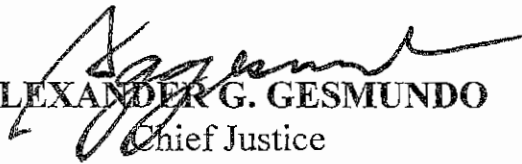
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice

Atty