

THIRTEENTH CONGRESS OF THE REPUBLIC)  
OF THE PHILIPPINES )  
First Regular Session )

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SENATE

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S.B. No. **1447**

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Introduced by Senator Miriam Defensor Santiago

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**EXPLANATORY NOTE**

Section 4 of the Probation Law provides that "no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction." The effect of such provision is to deny to one who appeals the right to apply for probation.

There are, however, instances where the judgment of conviction erroneously imposes a non-probationable penalty, in which case the accused appeals the judgment for the sole purpose of reducing the penalty within probationable limits. In one case, *Francisco v. Court of Appeals*, G.R. No. 108747, 16 April 1995, the Supreme Court, while conceding that in such cases the appeal "should not bar the accused from applying for probation," nevertheless held that under the present state of the law, "appeal and probation are considered mutually exclusive" and, therefore, probation would still be unavailable to the accused. Inequitous as this situation may appear, the law as it stands should be followed.

To remedy the inequitous situation described above, this bill seeks to amend the Probation Law by adding an excepting clause in Par. 1, Sec. 4 thereof. The proposed amendment will give an accused the right to apply for probation despite his appeal from the judgment of conviction, if his appeal is for the sole purpose of reducing the penalty within probationable limits and the appellate court modifies the judgment by imposing a probationable penalty.

  
MIRIAM DEFENSOR SANTIAGO

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DEPT. OF THE SECRETARY

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**AN ACT**  
**AMENDING SECTION 4 OF THE PROBATION LAW OF 1976,**  
**OTHERWISE KNOWN AS PRESIDENTIAL DECREE NO. 968, AS AMENDED**

*Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:*

SECTION 1. Section 4, Par. 1, of the Probation Law, as amended, is hereby further amended to read as follows:

“Section 4. *Grant of Probation.* – Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant, and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best: *Provided*, That no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment or conviction, EXCEPT, HOWEVER, WHEN THE APPEAL IS FOR THE SOLE PURPOSE OF REDUCING THE PENALTY WITHIN THE PROBATIONABLE LIMIT AND THE APPELLATE COURT MODIFIES THE APPEALED JUDGMENT BY IMPOSING A PROBATIONABLE PENALTY, IN WHICH CASE THE RECORDS OF THE CASE SHALL BE TRANSMITTED TO THE LOWER COURT WHERE THE APPLICATION FOR PROBATION MAY BE FILED.

“xx xx xx”

SECTION 2. This Act shall take effect fifteen (15) days from the date of its publication in at least two (2) newspapers of general circulation.

Approved.

FN: 285