

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



Senate  
Office of the Secretary

'13 AUG 29 P5:14

SENATE  
S. No. 1448

RECEIVED BY: *Jua*

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Introduced by Senator Miriam Defensor Santiago

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EXPLANATORY NOTE

Section 4 of Presidential Decree No. 968, also known as the "Probation Law of 1976," as amended by Presidential Decree No. 1990, 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 when 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 *Francisco v. Court of Appeals*,<sup>1</sup> 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. Iniquitous as this situation may appear, the law as it stands should be followed.

To remedy the iniquitous situation described above, this bill seeks to amend the Probation Law by giving 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.<sup>2</sup>

*Miriam Defensor Santiago*  
MIRIAM DEFENSOR SANTIAGO

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<sup>1</sup> G.R. No. 108747, 16 April 1995.

<sup>2</sup> This bill was originally filed during the Thirteenth Congress, First Regular Session.

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1 AN ACT  
2 AMENDING SECTION 4 OF PRESIDENTIAL DECREE NO. 968,  
3 OTHERWISE KNOWN AS THE "PROBATION LAW OF 1976," AS AMENDED BY  
4 PRESIDENTIAL DECREE NO. 1990

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

5 SECTION 1. Section 4 of Presidential Decree No. 968, otherwise known as the  
6 "Probation Law OF 1976," as amended by Presidential Decree No. 1990, is hereby further  
7 amended to read as follows:

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

22 Probation may be granted whether the sentence imposes a term of  
23 imprisonment or a fine only. An application for probation shall be filed with the

1 trial court. The filing of the application shall be deemed a waiver of the right to  
2 appeal.

3 An order granting or denying probation shall not be appealable.”

4 SECTION 2. *Separability Clause.* – If any provision or part thereof is held invalid or  
5 unconstitutional, the remainder of the law or the provision not otherwise affected shall remain  
6 valid and subsisting.

7 SECTION 3. *Repealing Clause.* – Any law, presidential decree or issuance, executive  
8 order, letter of instruction, administrative order, rule, or regulation contrary to or inconsistent  
9 with the provisions of this Act is hereby repealed, modified, or amended accordingly.

10 SECTION 4. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its  
11 publication in at least two (2) newspapers of general circulation.

Approved,