

PEREZ, Sinfroso S.

Re: Opinion; Retirement

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RESOLUTION No. 002401

Minerva F. Perez, in behalf of his father, Sinfroso S. Perez, a Janitor-Watchman, Pasong Tamo Elementary School, Tandang Sora, Quezon City, seeks the opinion of the Commission relative to his father's retirement from the service.

In her letter to the Chairman, Civil Service Commission, she expressed the following sentiments, as follows:

"On July 21, 1997, my father was convicted of the crime of Attempted Homicide by Judge Percival Mandar Lopez of the Regional Trial Court (RTC) Branch 78, Quezon City, and was meted out the penalty imprisonment of two (2) years, as minimum, to four (4) years, two months and one day as maximum of prision correccional.

'On July 25, 1997, my father applied for probation which was denied on September 22, 1997 based on the letter of the probation officer that the address of the accused was fictitious.

'On February 24, 2000, after more than two (2) years, my father tried to secure a clearance from the Court (RTC Branch 78) regarding his case so that he may process his retirement.

'On February 28, 2000, my father was arrested and he was committed to the National Penitentiary (NSP), Muntinlupa City, in an order dated February 24, 2000 issued by Judge Lopez.

'On March 2, 2000, a motion to reconsider denial of Application for Probation as stated in the Order of February 24, 2000 was filed and the same was granted in a resolution dated March 9, 2000 issued by Judge Lopez.

'My father is already 60 years old and last December 28, 1999, he suffered a stroke and up this date, has not yet fully recovered from said stroke.

'My father wants to retire from the government service. In fact, we are processing the requirements for

his retirement but Atty. Hipe of DECS Division Office, Kamuning said that they can not decide on the retirement of my father because of his case.

"In this regard, I would like to ask for an opinion whether or not my father can retire and get the benefits due him despite the fact that he was convicted of a crime of Attempted Homicide and still reporting to his Probation Officer."

The sole issue for resolution in the instant case is whether or not Sinfroso S. Perez may be allowed to retire and receive the benefits due him while undergoing probation as a result of his conviction of the offense of Attempted Homicide.

Records show that Perez was convicted of a criminal offense of Attempted Homicide under the Revised Penal Code and he was sentenced to suffer imprisonment of Two (2) years, as minimum, to Four (4) years, Two (2) months and One (1) day, as maximum, of prision correccional. On March 9, 2000, Perez was placed under probation. As of this date, Perez is still reporting to his Probation Officer. He is now sixty (60) years old and wishes to retire.

A careful perusal of the pertinent retirement laws and rules reveals that a government employee who meet all the conditions set forth therein may retire and shall be entitled for retirement benefits provided by law.

Records show that Sinfroso Perez has been in the government service since 1962 and up to the present. He represented that he is already sixty (60) years old. Sufficiently, Perez is entitled to retire under applicable retirement law.

The conviction of a criminal offense is not an obstacle for Perez to retire. A careful reading of the retirement laws reveals that there is nothing in the said laws that would prevent Perez to retire so long as he meets the conditions set forth by law for retirement. Neither his criminal conviction for a felony works against his right to enjoy the benefits available under the retirement laws.

Perez was convicted of Attempted Homicide, a felony punishable by *prision correccional* with all its accessory penalties under the Revised Penal Code, as follows:

"Art. 43 – Prision Correccional – Its accessory penalties. – The penalty of prision correccional shall carry with it that of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from right of suffrage, if the duration of such imprisonment shall exceed 18 months x x x ".(Underscoring supplied)

From the aforequoted provision, it is clear that forfeiture of benefits is not among the accessory penalties of prision correccional. The accessory penalties therein cannot be equated to forfeiture of retirement and other benefits. Moreover, Perez was not even charged of any administrative case where the accessory penalty of forfeiture of benefits may be

imposed.

In sum, the conviction of Perez in the criminal case for Attempted Homicide does not disqualify him from retiring from the government service, neither said conviction justifies the withholding of the retirement and other benefits that are rightfully due to Perez unless the latter is convicted of an administrative offense where forfeiture of benefits is imposed as an accessory penalty.

WHEREFORE, the Commission hereby holds that Sinfroso Perez may be allowed to retire from the government service notwithstanding his conviction of the criminal offense subject to existing retirement laws and rules.

Quezon City. OCT 18 2000

O.B.
JOSE F. ERESTAIN, JR
Commissioner

(SGD.)
J. WALDEMAR V. VALMORES
Commissioner

(SGD.)
CORAZON ALMA G. DE LEON
Chairman

Attested by:

(SGD.)
ARIEL G. RONQUILLO
Director III

jjc/rtm/abr/xw/y14
CPS/mine/disc "J"