



**Republic of the Philippines  
Supreme Court  
Manila**

**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,** **G.R. No. 247575**

Petitioner, Present:

- versus -

**EDWIN REAFOR y**  
**COMPRADO,**

Respondent.

**PERLAS-BERNABE, S.A.J.,**  
Chairperson,  
**GESMUNDO,**  
**LAZARO-JAVIER,**  
**LOPEZ, and**  
**ROSARIO,\* JJ.**

Promulgated:

**NOV 16 2020**

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**DECISION**

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Resolutions<sup>2</sup> dated December 17, 2018 and May 24, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 158535, which dismissed the petition for *certiorari*, prohibition, and mandamus under Rule 65 of the Rules of Court (Rule 65 Petition) filed before it due to several procedural infirmities.

\* Designated Additional Member per Special Order No. 2797 dated November 5, 2020.

<sup>1</sup> *Rollo*, pp. 12-43.

<sup>2</sup> *Id.* at 49-51 and 55-56, respectively. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Maria Elisa Sempio Diy and Gabriel T. Robeniol, concurring.

### The Facts

On January 21, 2017, respondent Edwin Reafor y Comprado (respondent) was charged before the Regional Trial Court of Naga City, Branch 24 (RTC) of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of Republic Act No. (RA) 9165, for allegedly selling two (2) heat-sealed transparent sachets containing a total of 0.149 gram of *shabu*.<sup>3</sup> During the presentation of the prosecution's evidence, respondent filed a Motion to Plea Bargain<sup>4</sup> dated July 26, 2018, contending that as per A.M. No. 18-03-16-SC,<sup>5</sup> he may be allowed to plead guilty to a lesser offense of violation of Section 12, Article II of RA 9165, which is punishable only by imprisonment ranging from six (6) months and one (1) day to four (4) years, and a fine ranging from ₱10,000.00 to ₱50,000.00. The prosecution opposed the motion, invoking Department of Justice (DOJ) Circular No. 27,<sup>6</sup> which provides, *inter alia*, that for the crime charged against respondent, the acceptable plea bargain is for violation of Section 11 (3), Article II of RA 9165, punishable by imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years, and a fine ranging from ₱300,000.00 to ₱400,000.00.<sup>7</sup>

In an Order<sup>8</sup> dated August 24, 2018, the RTC granted respondent's motion over the opposition of the prosecution. It opined that since it is only the Supreme Court that has the power to promulgate rules of procedure, "A.M. No. 18-03-16-SC dated April 10, 2018, which now forms part of the procedure in all courts[,] must prevail over the said DOJ Circular [No.] 27."<sup>9</sup> Thereafter, respondent was re-arraigned and pled guilty to violation of Section 12, Article II of RA 9165 over the objection of the prosecution,<sup>10</sup> and was subsequently convicted therefor through a Judgment<sup>11</sup> dated September 6, 2018.

Aggrieved, on November 26, 2018, petitioner People of the Philippines, through the Office of the Solicitor General (OSG), filed a petition for *certiorari*<sup>12</sup> under Rule 65 of the Rules of Court before the CA, assailing: (a) the RTC Order dated August 24, 2018 granting respondent's Motion to Plea Bargain; (b) the RTC Order dated August 29, 2018 allowing respondent to plead guilty to violation of Section 12, Article II of RA 9165; and (c) the RTC Judgment dated September 6, 2018 convicting respondent of the aforesaid crime. The OSG argues that the RTC gravely abused its discretion in allowing respondent to undergo plea bargaining without the consent of the prosecution.

<sup>3</sup> See Information, records, p. 1.

<sup>4</sup> CA *rollo*, pp. 47-48.

<sup>5</sup> Entitled "ADOPTION OF THE PLEA BARGAINING FRAMEWORK IN DRUGS CASES" dated April 10, 2018.

<sup>6</sup> Entitled "Amended Guidelines on Plea Bargaining for Republic Act No. 9165 otherwise known as the 'Comprehensive Dangerous Drugs Act of 2002.'"

<sup>7</sup> See Comment dated August 22, 2018, *rollo*, pp. 80-81.

<sup>8</sup> Id. at 52. Penned by Acting Presiding Judge Leo L. Intia.

<sup>9</sup> Id.

<sup>10</sup> See Order dated August 29, 2018; id. at 53.

<sup>11</sup> Id. at 82-83.

<sup>12</sup> Id. at 85-122.

respondent to undergo plea bargaining without the consent of the prosecution. Thus, it prayed that a temporary restraining order be issued enjoining the implementation of the assailed Judgment, and that the case be remanded to the RTC for continuation of proceedings.<sup>13</sup>

### The CA Ruling

In a Resolution<sup>14</sup> dated December 17, 2018, the CA dismissed the petition on purely procedural grounds. It held that while the OSG admitted that the last day to file the petition was on October 28, 2018, it failed to provide sufficient justification as to why it took them nearly one (1) month to file the same. Moreover, it found that the OSG failed to offer any explanation as to why no motion for reconsideration (MR) was filed before the RTC prior to the filing of the said petition, which is a condition precedent before filing a Rule 65 Petition.<sup>15</sup>

Dissatisfied, petitioner moved for reconsideration, which was denied in a Resolution<sup>16</sup> dated May 24, 2019; hence, the instant petition.

### The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA erred in dismissing the petition for *certiorari* filed before it.

### The Court's Ruling

At the outset, the CA correctly pointed out that the petition filed before it suffers from procedural defects, in that no prior MR was filed before the RTC, and that the same was filed out of time. Nonetheless, there have been numerous cases wherein the Court disregarded procedural lapses in order to resolve a case on the merits. In this regard, case law instructs that "the rules of procedure need not always be applied in a strict technical sense, since they were adopted to help secure and not override substantial justice. 'In clearly meritorious cases, the higher demands of substantial justice must transcend rigid observance of procedural rules.'"<sup>17</sup> As will be explained hereunder, the assailed Orders and Judgment of the RTC – all involving respondent's plea bargain to a lesser offense of violation of Section 12, Article II of RA 9165 – are void; hence, they can never be final and executory and may be assailed at any time.<sup>18</sup>

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<sup>13</sup> Id. at 116-117.

<sup>14</sup> Id. at 49-51.

<sup>15</sup> Id. at 50-51.

<sup>16</sup> Id. at 55-56.

<sup>17</sup> *Heirs of Babai Guiambangan v. Municipality of Kalamansig, Sultan Kudarat*, 791 Phil. 518, 534, citing *Abdulrahman v. Ombudsman*, 716 Phil. 592, 604 (2013).

<sup>18</sup> See *Ga v. Spouses Tubungan*, 616 Phil. 709, 717 (2009).

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Plea bargaining to a lesser offense is governed by Section 2, Rule 116 of the Revised Rules of Criminal Procedure, which reads:

Section 2. *Plea of guilty to a lesser offense.* — The accused, with the consent of the offended party and the fiscal, may be allowed by the trial court to plead guilty to a lesser offense, regardless of whether or not it is necessarily included in the crime charged, or is cognizable by a court of lesser jurisdiction than the trial court. No amendment of the complaint or information is necessary.

“Plea bargaining in criminal cases is a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge.”<sup>19</sup> Essentially, it is a give-and-take negotiation wherein both the prosecution and the defense make concessions in order to avoid potential losses. The rules on plea bargaining neither creates nor takes away a right; rather, it operates as a means to implement an existing right by regulating the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them.<sup>20</sup>

Nonetheless, it is well to clarify that “a defendant has no constitutional right to plea bargain. No basic rights are infringed by trying him rather than accepting a plea of guilty; the prosecutor need not do so if he prefers to go to trial. Under the present Rules, the acceptance of an offer to plead guilty is not a demandable right but depends on the consent of the offended party and the prosecutor, which is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged. The reason for this is that the prosecutor has full control of the prosecution of criminal actions; his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain.”<sup>21</sup>

In view of the foregoing, the basic requisites of plea bargaining are: (a) consent of the offended party; (b) consent of the prosecutor; (c) plea of guilty to a lesser offense which is necessarily included in the offense charged; and (d) approval of the court.<sup>22</sup>

In drugs cases, plea bargaining was recently allowed through the Court’s promulgation of *Estipona, Jr. v. Lobrigo*,<sup>23</sup> which declared the provision in RA 9165 expressly disallowing plea bargaining in drugs cases,

<sup>19</sup> *Fernandez v. People*, G.R. No. 224708, October 2, 2019, citing *Daan v. Sandiganbayan*, 573 Phil. 368, 375 (2008).

<sup>20</sup> See *Estipona, Jr. v. Lobrigo*, 816 Phil. 789, 813 (2017).

<sup>21</sup> *Id.* at 814-815; citations omitted.

<sup>22</sup> See *Fernandez v. People*, *supra* note 19.

<sup>23</sup> *Supra* note 20.

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*i.e.*, Section 23,<sup>24</sup> Article II thereof, unconstitutional, for contravening the rule-making authority of the Supreme Court. Following this pronouncement, the Court issued A.M. No. 18-03-16-SC providing for a plea bargaining framework in drugs cases, which was required to be adopted by all trial courts handling drugs cases.<sup>25</sup> In response to A.M. No. 18-03-16-SC, the Secretary of Justice issued DOJ Circular No. 27 as a guideline to be observed by the trial prosecutors nationwide in entertaining plea bargaining offers in drugs cases.

Notably, while both A.M. No. 18-03-16-SC and DOJ Circular No. 27 enumerate in table format several violations of RA 9165 which could be subject to plea bargaining, they differ in the acceptable plea bargain, *i.e.*, the lesser offense to which the accused may plead guilty. Naturally, these differences would result in plea bargaining deadlocks, especially in light of DOJ Circular No. 27's explicit mandate that "if the proposed plea bargain is not allowed or goes beyond what is allowed under these guidelines, the trial prosecutor shall reject the proposed plea bargain outright and continue with the proceedings." This notwithstanding, in the recent case of *Sayre v. Xenos*<sup>26</sup> (*Sayre*), the Court ruled in favor of the validity of DOJ Circular No. 27, holding that the same does not contravene the rule-making authority of the Court, *viz.*:

In this petition, A.M. No. 18-03-16-SC is a rule of procedure established pursuant to the rule-making power of the Supreme Court that serves as a framework and guide to the trial courts in plea bargaining violations of [RA] 9165.

**Nonetheless, a plea bargain still requires mutual agreement of the parties and remains subject to the approval of the court. The acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the trial court.**

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The use of the word "may" signifies that the trial court has discretion whether to allow the accused to make a plea of guilty to a lesser offense. **Moreover, plea bargaining requires the consent of the accused, offended party, and the prosecutor.** It is also essential that the lesser offense is necessarily included in the offense charged.

Taking into consideration the requirements in pleading guilty to a lesser offense, We find it proper to treat the refusal of the prosecution to adopt the acceptable plea bargain for the charge of Illegal Sale of Dangerous Drugs provided in A.M. No. 18-03-16-SC as a **continuing objection that**

<sup>24</sup> Section 23, Article II of RA 9165 reads:

Section 23. *Plea-Bargaining Provision.* — Any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining.

<sup>25</sup> *Pascua v. People*, G.R. No. 250578, September 7, 2020; citations omitted.

<sup>26</sup> G.R. Nos. 244413 and 244415-16, February 18, 2020.

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**should be resolved by the RTC.** This harmonizes the constitutional provision on the rule-making power of the Court under the Constitution and the nature of plea bargaining in Dangerous Drugs cases. DOJ Circular No. 27 did not repeal, alter or modify the Plea Bargaining Framework in A.M. No. 18-03-16-SC.

Therefore, the DOJ Circular No. 27 provision pertaining to acceptable plea bargain for Section 5 of [RA] 9165 did not violate the rule-making authority of the Court. **DOJ Circular No. 27 merely serves as an internal guideline for prosecutors to observe before they may give their consent to proposed plea bargains.**<sup>27</sup> (Emphases and underscoring supplied)

In *Sayre*, the Court concluded that the continuing objection on the part of the prosecution based on DOJ Circular No. 27 will necessarily result in the parties' failure to arrive at a mutually satisfactory disposition of the case that may be submitted for the trial court's approval. In light of the absence of a mutual agreement to plea bargain, the proper course of action would be the continuation of the proceedings.

In this case, the RTC gravely abused its discretion in granting respondent's motion to plea bargain notwithstanding the prosecution's opposition to the same which is grounded on DOJ Circular No. 27. Effectively, respondent's plea of guilty to a lesser offense (to which he was convicted of) was made **without the consent of the prosecution.** Since respondent's plea of guilt and subsequent conviction for a lesser offense clearly lack one of the requisites of a valid plea bargain, the plea bargaining is void. Resultantly, the judgment rendered by the RTC which was based on a void plea bargaining is also **void ab initio** and cannot be considered to have attained finality for the simple reason that a void judgment has no legality from its inception.<sup>28</sup> Thus, since the judgment of conviction rendered against respondent is void, it is only proper to resume with the trial of Criminal Case No. 2017-0053 – which prior to respondent's filing of his motion to plea bargain, was at the stage of the prosecution's presentation of evidence – without violating respondent's right against double jeopardy.<sup>29</sup>

**WHEREFORE**, the petition is **GRANTED**. The Resolutions dated December 17, 2018 and May 24, 2019 of the Court of Appeals in CA-G.R. SP No. 158535 are **REVERSED** and **SET ASIDE**. The Orders dated August 24, 2018 and August 29, 2018 and the Judgment dated September 6, 2018 are hereby **ANNULLED** and **SET ASIDE**. Accordingly, Criminal Case No. 2017-0053 is **REMANDED** to the Regional Trial Court of Naga City, Branch 24 for further proceedings as indicated in this Decision.

**SO ORDERED.**

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<sup>27</sup> Id.

<sup>28</sup> See *People v. Magat*, 388 Phil. 311, 321 (2000).

<sup>29</sup> See id. See also *People v. Villarama, Jr.*, 285 Phil. 723, 732-733 (1992).

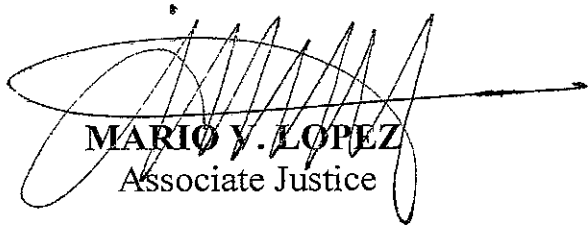
**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
 Senior Associate Justice

**WE CONCUR:**

  
**ALEXANDER G. GESMUNDO**  
 Associate Justice


  
**AMY C. LAZARO-JAVIER**  
 Associate Justice

  
**MARIO Y. LOPEZ**  
 Associate Justice

  
**RICARDO R. ROSARIO**  
 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.

  
**ESTELA M. PERLAS-BERNABE**  
 Senior Associate Justice  
 Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Special 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.

  
**DIOSDADO M. PERALTA**  
 Chief Justice