



Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 250979
Petitioner,

Present:

CAGUIOA, J., *Chairperson,*
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH, JJ.

- versus -

Promulgated:

RENE ESMA y JOVEN,
Respondent.

January 11, 2023

X-----X

RESOLUTION

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Consolidated Decision² dated November 22, 2019 of the Court of Appeals (CA) in CA-G.R. CEB SP No. 12227. The CA affirmed the Joint Order³ dated July 30, 2018 of Branch 8, Regional Trial Court (RTC), Tacloban City that approved Rene Esma y Joven’s (respondent) plea bargain to a lower offense: from violation of Sections 5⁴ and 11,⁵ Article

¹ Rollo, pp. 12-35.

² Id. at 41-88. Penned by Associate Justice Gabriel T. Ingles with Associate Justices Marilyn B. Lagura-Yap and Carlito B. Calpatura, concurring.

³ Id. at 100-103.

⁴ Section 5 of Republic Act No. (RA) 9165 provides:

SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

⁵ Section 11 of RA 9165 provides:

SECTION 11. *Possession of Dangerous Drugs.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos

II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, to violation of Section 12⁶ thereof.

The Antecedents

The public prosecutor charged respondent with violation of Sections 5 and 11, Article II of RA 9165, in two (2) Informations,⁷ the dispositive portions of which read:

Criminal Case No. R-TAC-15-00331-CR

That on or about the 23rd day of September 2015 in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any lawful authority did then and there willfully, unlawfully, and feloniously sell and deliver one (1) piece heat-sealed transparent plastic sachet containing white crystalline substance. “shabu”, a dangerous drug weighing 0.0416 gram, to poseur-buyer IO1 SILAS S. AURELIA, a member of the PDEA, in exchange of two (2) pieces five hundred peso bills with serial numbers WH107980 and DY517709, marked money.

Contrary to law.⁸

Criminal Case No. R-TAC-15-00332-CR

That on or about the 23rd day of September 2015 in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court,

(₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or “shabu”, or other dangerous drugs such as, but not limited to, MDMA or “ecstasy”, PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

⁶ Section 12 of RA 9165 provides:

SECTION 12. *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.* — The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: Provided, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

⁷ *Rollo*, pp. 89-90 and 91-92.

⁸ *Id.* at 89.

the above-named accused, without any lawful authority did then and there willfully, unlawfully, and feloniously have in his possession and control two (2) heat-sealed transparent plastic sachets containing white crystalline substance known as shabu weighing a total of 0.0694 gram, a dangerous drug.

Contrary to law.⁹

Respondent was charged with: (a) selling one heat-sealed transparent plastic sachet containing 0.0416 grams of white crystalline substance; and (b) possessing two heat-sealed transparent sachets containing 0.0694 grams of white crystalline substance which were later confirmed to be *shabu*.¹⁰

During the trial, respondent filed a Motion to Allow Accused to Plea Bargain¹¹ dated July 21, 2018 praying that he be allowed to plea to the lower offense of “*Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs*” under Section 12, Article II of RA 9165 in lieu of Illegal Sale and Illegal Possession of Dangerous Drugs under Sections 5 and 11, respectively, Article II of RA 9165.

The prosecution opposed respondent’s motion.¹² It averred that under Department of Justice (DOJ) Department Circular No. 27,¹³ where the offense charged is violation of Section 5, Article II of RA 9165 and the quantity of *shabu* is less than five grams, the acceptable plea bargain is violation of Section 11, Article II of RA 9165. As for Criminal Case No. R-TAC-15-00332-CR, where respondent was charged with violation of Section 11, Article II of RA 9165, the prosecution requested for time to study the motion to plea bargain because trial on the merits had already commenced.¹⁴

Ruling of the RTC

Finding the plea bargain to be in accord with the rationale behind the law and the wisdom of A.M. No. 18-03-16-SC,¹⁵ or the Adoption of the Plea Bargaining Framework in Drugs Cases, the RTC issued a Joint Order¹⁶ dated

⁹ Id. at 91.

¹⁰ Id. at 61.

¹¹ Id. at 95-97.

¹² See Comment to Motion for Plea Bargaining dated July 26, 2018, id. at 98-99.

¹³ Re: Amended Guidelines on Plea Bargaining for Republic Act No. 9165 otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” dated June 26, 2018.

¹⁴ *Rollo*, p. 99.

¹⁵ Entitled, “Adoption of the Plea Bargaining Framework in Drugs Cases,” approved on April 10, 2018.

¹⁶ *Rollo*, pp. 100-103.

July 30, 2018 approving it. The RTC held that the Rules drafted by the Philippine Judges Association and adopted by the Court precisely adhere to the purposes of RA 9165. It emphasized that the Rules mandate a drug dependency examination; and that thereafter, the accused shall undergo rehabilitation and counseling as a condition to plea bargaining.¹⁷

The RTC ruled that the prosecution's opposition failed to show that allowing plea bargaining would negate the purposes for which RA 9165 was enacted. On the contrary, it held that a resort to plea bargain would benefit public order as it would result in respondent's conviction and he will be given the chance to be rehabilitated and reintegrated into the mainstream society as a productive individual.¹⁸

The dispositive portion of the RTC Joint Order provides:

WHEREFORE, over the vehement objection of the prosecution, the court finds the plea-bargaining to be in accord with [the] rationale of the law and the wisdom of A.M. No. 18-03-16-SC. Consequently, the plea-bargaining is approve[d] subject to the following conditions, to wit:

a. The accused shall undergo [drug dependency examination (DDE)] at the [Eastern Visayas Regional Medical Center]. The latter to submit a report on it thereafter. The Jail Warden of BJMP is directed to bring the accused to such facility for the requisite examination before the next hearing;

b. Depending on the result of the DDE, the accused shall undergo rehabilitation, whether out of patient or in house as recommended or counseling if the accused turns out negative for drug dependency.

Let, therefore, the accused be re-arraigned on January 22, 2019 at 8:30 o'clock in the morning under the original Informations qualified by the approved lesser offenses as plea bargained. Counsels are notified in open court. Accused to be brought along by the jail warden on said date. Silas Aurelia is likewise notified.

SO ORDERED.¹⁹

¹⁷ Id. at 101.

¹⁸ Id. at 102.

¹⁹ Id. at 102-103.



The public prosecutor filed a Motion for Reconsideration,²⁰ but the RTC denied it in its Order²¹ dated August 30, 2018. Consequently, the People, represented by the Office of the Solicitor General (OSG), filed a Petition for *Certiorari*²² under Rule 65 of the Rules of Court before the CA asserting that the RTC gravely abused its discretion in approving respondent's motion to plea bargain.

Ruling of the CA

On November 22, 2019, the CA rendered the assailed Consolidated Decision²³ upholding the RTC's approval of respondent's plea bargain. The CA disposed of the case as follows:

WHEREFORE, for want of merit, the Court RESOLVES to DISMISS the following petitions:

x x x x

7. CA-G.R. CEB SP. No. 12227

x x x x

SO ORDERED.²⁴

The CA pointed out that the power and authority to promulgate the rules of procedure is lodged exclusively with the Supreme Court. It cited OCA Circular No. 80-2019²⁵ which stresses that plea bargaining is always addressed to the sound discretion of the judge, guided by the Court's issuances, such as A.M. No. 18-03-16-SC. Thus, it ruled that the RTC did not gravely abuse its discretion when it approved respondent's plea bargain.

Hence, the present petition.

Issues

²⁰ Id. at 104-105.

²¹ Id. at 106-107.

²² Id. at 108-121.

²³ Id. at 41-88.

²⁴ Id. at 86-87.

²⁵ With the subject, "Minute Resolution dated April 2, 2019 in A.M. No. 18-03-16-SC entitled, Re: Letter of Associate Justice Diosdado M. Peralta on the Suggested Plea-Bargaining Framework Submitted by the Philippine Judges Association," dated May 30, 2019.



1. Whether the CA seriously erred in disregarding the principles of mutuality and consensuality in plea bargaining agreements.

2. Whether the approval of the plea bargaining agreement over the objection of the prosecution violated petitioner's right to procedural due process.

Our Ruling

After a perusal of the records of the case, the Court resolves to deny the petition for review on *certiorari* for failure of petitioner to show that the CA committed a reversible error in affirming the findings of the RTC approving respondent's plea bargain.

The OSG argues as follows: *First*, its consent is an indispensable requirement in plea bargaining and to suggest otherwise would relegate the acceptance of a plea bargain offer to a mere ministerial duty on the part of petitioner and the RTC.²⁶ *Second*, failure to obtain its consent will effectively render nugatory the requirement of consent expressly contained in Section 2,²⁷ Rule 116 of the Rules of Court, rendering inutile the spirit of plea bargaining. *Third*, the approval of the plea bargaining agreement without the prosecution's consent violates the latter's right to procedural due process.

The Court is not convinced.

At the outset, the Court takes judicial notice of DOJ Department Circular No. 18²⁸ dated May 10, 2022, which effectively revoked DOJ Circular No. 27. Under the recent DOJ Circular No. 18, where the subject of the illegal sale is 0.01 gram to .99 gram of *shabu*, the accused may plea to the

²⁶ *Rollo*, p. 25.

²⁷ Section 2, Rule 116 of the Rules of Court provides:

SEC. 2. Plea of guilty to a lesser offense. — At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.

²⁸ Revised Amended Guidelines on Plea Bargaining for Republic Act No. 9165, Otherwise Known as the Comprehensive Dangerous Drugs Act of 2002.

lesser offense of Illegal Possession of Drug Paraphernalia under Section 12, Article II of RA 9165. This is the same with the plea bargaining framework in A.M. No. 18-03-16-SC.

Thus, the acceptable plea bargain for the *Illegal Sale of Dangerous Drugs*²⁹ and paragraph 3 of Section 11 or Illegal Possession of Dangerous Drugs³⁰ is Section 12 or *Illegal Possession of Equipment, Instrument, Apparatus and other Paraphernalia for Dangerous Drugs* for which the penalty of six (6) months and one (1) day to four (4) years and a fine ranging from ₱10,000.00 to ₱50,000.00 is imposed.

In the case, respondent prayed that he be allowed to plea bargain to the lower offense under Section 12, Article II of RA 9165 in lieu of the aforementioned charges, *i.e.*, Illegal Sale and Illegal Possession of Dangerous Drugs. Undeniably, respondent's plea bargain is in accordance with A.M. No. 18-03-16-SC and DOJ Circular No. 18.

While the Court takes judicial notice of the efforts of the DOJ to amend DOJ Circular No. 27 to conform to the Court's framework for plea bargaining in drugs cases as set forth in A.M. No. 18-03-16-SC, it bears emphasizing that plea bargaining in criminal cases is a rule of procedure that falls within the exclusive rule-making power of the Court under Section 5(5),³¹ Article VIII of the 1987 Constitution.³²

Also, while the issuance of DOJ Circular No. 18 has admittedly rendered moot the issues in the present case, the Court is not precluded from examining and ruling on the merits thereof especially if: (1) there is a need to stress the exclusive rule-making power of the Court; (2) the decision will guide the bench and the bar in resolving issues concerning plea bargaining

²⁹ .01 gram to .99 grams of shabu and .01 gram to 9.99 grams of marijuana

³⁰ where quantity of shabu, opium, morphine, heroin, cocaine is less than 5 grams

³¹ Section 5(5), Rule VIII of the 1987 Philippine Constitution provides:

Section 5. The Supreme Court shall have the following powers:

x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights.

Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

³² See *Estipona v. Judge Lobrigo*, 816 Phil. 789 (2017).

agreements in drugs cases; and (3) the issue is capable of repetition yet evading judicial review.

As correctly held by the CA, the power and authority to promulgate the rules of procedure, such as the procedure on plea bargaining, is lodged exclusively with the Court. It is no longer shared with the executive and legislative departments.³³

The Court is mindful that in *Sayre v. Xenos*³⁴ (*Sayre*), the constitutionality of DOJ Department Circular No. 27 was upheld and found to be in consonance with the plea bargaining framework in A.M. No. 18-03-16-SC. However, it was clarified that DOJ Department Circular No. 27 merely serves as an internal guideline for prosecutors to observe before they may give their consent to the proposed plea bargains. The Court declared that the circular does not in any way repeal, alter, or modify the plea bargaining framework in A.M. No. 18-03-16-SC; and if it did, it would have violated the Court's exclusive power to promulgate the rules of procedure, including the procedure on plea bargaining. The Court likewise reiterated the discretionary authority of the trial courts to grant or deny the proposals for plea bargain.³⁵

Likewise, in *People v. Reafor*³⁶ (*Reafor*), the Court voided the RTC order granting therein accused Edwin C. Reafor's (Reafor) motion to plea bargain from the charge of Section 5, Article II of RA 9165 to Section 12, Article II of RA 9165 because the latter's plea of guilty to a lesser offense was made without the prosecution's consent.³⁷ In contrast to the present case, the RTC in *Reafor* immediately granted Reafor's Motion to Plea Bargain despite the opposition of the prosecution. Then, in no time, the RTC rendered judgment convicting Reafor based on his motion to plead guilty to a lesser offense.³⁸

Here, the RTC considered the submissions of both parties before issuing the Joint Order approving the plea bargain in accordance with the rationale behind the law and the wisdom of A.M. No. 18-03-16-SC.

³³ *Echegaray v. Secretary of Justice*, 361 Phil. 73, 88 (1999).

³⁴ G.R. Nos. 244413 & 244415-16, February 18, 2020.

³⁵ *Id.*

³⁶ G.R. No. 247575, November 16, 2020.

³⁷ *Id.*

³⁸ *Id.*



Notably, the Court in *Reafor* emphasized that although a plea bargain requires the mutual agreement of the parties, it is subject to the approval of the trial court; and the acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right because it is a matter addressed entirely to the sound discretion of the trial court.³⁹ Citing *Sayre*, the Court held:

This notwithstanding, in the recent case of *Sayre v. Xenos (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.

xxx xxx xxx

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. x x x

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 AM. No. 18-03-16-SC as a continuing objection that 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.

x x x x⁴⁰ (Emphases and underscoring in the original.)

As can be gleaned in *Reafor*, the prosecution’s opposition to the motion to plea bargain of the accused should be treated as a continuing objection that should be resolved by the trial court. The decision to deny or

³⁹ Id.

⁴⁰ Id., citing *Sayre v. Xenos*, supra note 34.

sustain the prosecution's objection to the plea bargaining offer of the accused is still subject to the trial court's sound discretion.

Finally, in the recent consolidated cases of *People v. Montierro*,⁴¹ *Baldadera v. People*,⁴² *Re: Letter of the Philippine Judges Association Expressing its Concern over the Ramifications of the Decisions*⁴³ and *RE: Letter of Associate Justice Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association*,⁴⁴ the Court underscored its crucial role in checking and balancing the exercise of the powerful machinery of the State and came up with the following clarificatory guidelines for plea bargaining in drugs cases, *viz.*:

1. Offers for plea bargaining must be initiated in writing by way of a formal written motion filed by the accused in court.
2. The lesser offense which the accused proposes to plead guilty to must necessarily be included in the offense charged.
3. Upon receipt of the proposal for plea bargaining that is compliant with the provisions of the Plea Bargaining Framework in Drugs Cases, the judge shall order that a drug dependency assessment be administered. If the accused admits drug use, or denies it but is found positive after a drug dependency test, then he/she shall undergo treatment and rehabilitation for a period of not less than six (6) months. Said period shall be credited to his/her penalty and the period of his/her after-care and follow-up program if the penalty is still unserved. If the accused is found negative for drug use/dependency, then he/she will be released on time served, otherwise, he/she will serve his/her sentence in jail minus the counselling period at rehabilitation center.
4. As a rule, plea bargaining requires the mutual agreement of the parties and remains subject to the approval of the court. Regardless of the mutual agreement of the parties, the acceptance of the 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 court.
 - a. Though the prosecution and the defense may agree to enter into a plea bargain, it does not follow that the courts will automatically approve the proposal. Judges must still exercise sound discretion in granting or denying plea

⁴¹ G.R. No. 254564/G.R. No. 254974 July 26, 2022

⁴² G.R. No. 254974, July 26, 2022.

⁴³ A.M. No. 21-07-16-SC, July 26, 2022

⁴⁴ A.M. No. 18-03-16-SC, July 26, 2022.

bargaining, taking into account the relevant circumstances, including the character of the accused.

5. The court shall not allow plea bargaining if the objection to the plea bargaining is valid and supported by evidence to the effect that:
 - a. the offender is a recidivist, habitual offender, known in the community as a drug addict and a troublemaker, has undergone rehabilitation but had a relapse, or has been charged many times; or
 - b. when the evidence of guilt is strong.
6. Plea bargaining in drugs cases shall not be allowed when the proposed plea bargain does not conform to the Court-issued Plea Bargaining Framework in Drugs Cases.
7. Judges may overrule the objection of the prosecution if it is based solely on the ground that the accused's plea bargaining proposal is inconsistent with the acceptable plea bargain under any internal rules or guidelines of the DOJ, though in accordance with the plea bargaining framework issued by the Court, if any.
8. If the prosecution objects to the accused's plea bargaining proposal due to the circumstances enumerated in item no. 5, the trial court is mandated to hear the prosecution's objection and rule on the merits thereof. If the trial court finds the objection meritorious, it shall order the continuation of the criminal proceedings.
9. If an accused applies for probation in offenses punishable under RA No. 9165, other than for illegal drug trafficking or pushing under Section 5 in relation to Section 24 thereof, then the law on probation shall apply.⁴⁵

Finding respondent's plea to be in accordance with DOJ Circular No. 18, A.M. No. 18-03-16-SC, and the above-stated guidelines, the Court finds no reason to reverse and set aside the assailed CA Consolidated Decision.

WHEREFORE, the petition is **DENIED**. The Consolidated Decision dated November 22, 2019 of the Court of Appeals in CA-G.R. CEB SP No. 12227 is **AFFIRMED** *in toto*.

⁴⁵ Id.




SO ORDERED.




HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:



ALFREDO BENJANN S. CAGUIOA
Associate Justice
Chairperson



SAMUEL H. GAERLAN
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice

See Dissenting Opinion

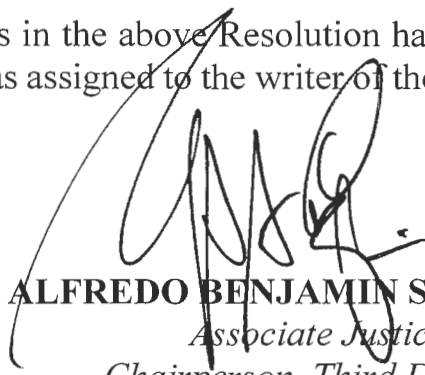


MARIA FILOMENA D. SINGH
Associate Justice



ATTESTATION

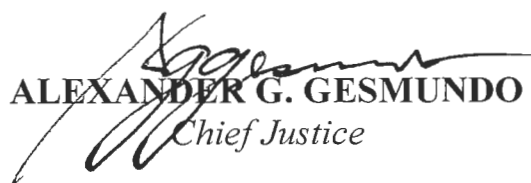
I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third 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 Resolution 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

