

EN BANC

[A.M. No. P-10-2793 (Formerly A.M. OCA IPI No. 06-2406-P). March 08, 2016]

SIMPLECIO A. MARSADA, COMPLAINANT, VS. ROMEO M. MONTEROSO, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 34, CABADBARAN, AGUSAN DEL NORTE, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

A sheriff should enforce a writ of execution strictly according to its terms and in the manner provided in the *Rules of Court*. He is administratively liable if he deliberately contravenes the terms thereof, like having the judgment creditor accept an amount less than that stated in the writ of execution as the full and entire satisfaction thereof.

Antecedents

This administrative matter stemmed from the complaint for misconduct and dishonesty dated January 15, 2006^[1] lodged by Simplecio A. Marsada, a winning litigant, against respondent Romeo M. Monteroso in his capacity as Sheriff IV of Branch 34 of the Regional Trial Court (RTC) in Cabadbaran, Agusan del Norte in relation to the latter's conduct in the service of the writ of execution issued under the judgment rendered in Civil Case No. 4658 entitled *Simplecio A. Marsada v. Rolando Ramilo*, an action for the collection of a monetary obligation.^[2]

On October 23, 2001, Presiding Judge Orlando F. Doyon of Branch 34 of the RTC rendered judgment in Civil Case No. 4658 in favor of Marsada, the dispositive portion of which reads:

WHEREFORE, in the light of all the foregoing judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the defendant to pay plaintiff the amount of P151,708.30 representing the unpaid obligation to

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defendant plus 6% interest per annum reckoned from the date of filing of the
complaint and 12% per annum if the amount adjudged remains unpaid, attorney's
fees of P35,000.00, litigation expenses in the amount of P5,000.00 and costs.^[3]

On July 12, 2002, Judge Doyon issued the writ of execution only "as far as the amount of P35,000.00 is concerned."^[4] After the appeal of the defendant did not prosper for failure to file the appellant's brief in the Court of Appeals within the reglementary period, Marsada sought the implementation of the writ of execution by Monteroso. Ultimately, however, Monteroso delivered only P25,000.00 to Marsada, but he requested the latter to sign a prepared typewritten acknowledgment receipt indicating that he received the amount of P25,000.00 as "FULL AND ENTIRE SATISFACTION"^[5] of the defendant's obligation.

Marsada later asked Monteroso for the balance, but the latter informed him that the defendant no longer had any property or money with which to fully satisfy the judgment. Thus, Marsada went to see Judge Doyon to seek another writ of execution for the full satisfaction of the judgment, showing the receipt he had signed at Monteroso's request. At this, Judge Doyon blamed Marsada for signing the receipt as the full and entire satisfaction of the judgment debt.

Based on the foregoing circumstances, Marsada brought his administrative complaint against Monteroso.

In its Memorandum dated March 15, 2010,^[6] the Office of the Court Administrator (OCA) recommended that the administrative complaint be re-docketed as an administrative matter, and be referred to the Executive Judge of the RTC in Cabadbaran, Agusan del Norte for investigation, report and recommendation. It observed that the culpability of Monteroso must be clearly established because this administrative charge, which would be his third offense, could warrant the forfeiture of his retirement benefits by virtue of his having meanwhile retired from the service.

It is relevant to mention that Monteroso was previously suspended from office for one year in *Beltran v. Monteroso* (A.M. No. P-06-2237, December 4, 2008), and for six months in *Cebrian v. Monteroso* (A.M. No. P-08-2461, April 23, 2008).

Report and Recommendation of the Investigating Judge

On January 20, 2012, Investigating RTC Judge Edgar G. Manilag found Monteroso ^{08, 2016} guilty of misconduct for presenting to Marsada the prepared typewritten acknowledgment receipt indicating the amount of P25,000.00 written thereon as the “FULL AND ENTIRE SATISFACTION” despite the total amount stated in the writ of execution being P35,000.00. Judge Manilag observed that it was not for Monteroso as the sheriff to treat and consider the payment of P25,000.00 as the full satisfaction of the writ of execution despite the payment being insufficient. But Judge Manilag pointed out that the lack of substantial evidence to support the elements of corruption, or to show the clear intent to violate the law, or to establish the flagrant disregard of established rule rendered the transgression of Monteroso only as simple, not grave, misconduct.^[7]

Accordingly, Judge Manilag recommended as follows:

The Revised Uniform Rules on Administrative Cases in the Civil Service classifies simple misconduct as a less grave offense. Under Section 52 (B)(2), Rule IV of the Civil Service Rules, the commission of simple misconduct is penalized by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense. Considering that the respondent already retired from the service effective December 7, 2007, the penalty of suspension or dismissal could no longer be imposed. The record shows that respondent was earlier suspended from office for one (1) year in *Beltran vs. Monteroso* (A.M. No. P-06-2237, December 4, 2008) and for six (6) months in *Cebrian vs. Monteroso* (A.M. No. P-08-2461, April 23, 2008).

WHEREFORE, it is respectfully recommended that a fine in the amount of Ten Thousand (P10,000.00) Pesos be imposed upon the respondent.^[8]

Evaluation and Recommendations of the OCA

In its Memorandum dated October 1, 2014,^[9] the OCA rendered its evaluation and recommendation against Monteroso as follows:

After a careful review of the Report, this Office finds the recommendation of the Investigating Judge Manilag to be supported by the evidence on record.

x x x x

Under the circumstances obtaining, this Office agrees with investigating Judge Manilag that the act of respondent Sheriff Monteroso in issuing the typewritten acknowledgment receipt as “full and entire satisfaction” of the Writ of Execution dated 12 July 2002 for P35,750.00 constitutes misconduct as he exceeded his authority in the enforcement of the Writ of Execution. It is not for respondent Sheriff Monteroso to determine whether the payment made, although insufficient, amounted to a full satisfaction of the judgment debt, upon his belief in good faith that defendant Ramilo is incapable of complying with his obligation. Thus, respondent Sheriff Monteroso’s contention that the amount of P25,000.00 was all that defendant Ramilo could offer is not a valid justification to consider the same as fully paid.

As a sheriff and officer of the court charged with the dispensation of justice, respondent Sheriff Monteroso’s conduct and behavior is circumscribed with the heavy burden of responsibility. By the very nature of his functions, respondent Sheriff Monteroso is called upon to discharge his duties with care and utmost diligence and, above all, to be above suspicion. Rather than plainly stating that the sum of P25,000.00 was only partial payment of the obligation pursuant to the Writ of Execution, respondent Sheriff Monteroso exceeded his authority by making it appear that it was already full and complete payment.^[10]

To the OCA, Monteroso was liable for simple misconduct, but considering that he had meanwhile retired from the service on December 7, 2007, the penalty of dismissal from the service could no longer be meted on him; hence, he should be fined P10,000.00, the same to be deducted by the Finance Management Office from his accrued leave credits, if any.^[11]

Ruling of the Court

We declare the findings of the OCA to be in accord with the evidence on record, and consider its recommendation of the penalty to be in consonance with jurisprudence.

The writ of execution should mirror the judgment that it enforces. The form and contents of the writ of execution are specified in Section 8, Rule 39 of the *Rules of Court*, viz.:

Section 8. *Issuance, form and contents of a writ of execution.* — The writ of

execution shall: (1) issue in the name of the Republic of the Philippines from the court which granted the motion; (2) state the name of the court, the case number and title, the dispositive part of the subject judgment or order; and (3) **require the sheriff or other proper officer to whom it is directed to enforce the writ according to its terms, in the manner herein after provided:**

(a) If the execution be against the property of the judgment obligor, to satisfy the judgment, with interest, out of the real or personal property of such judgment obligor;

(b) If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants, or trustees of the judgment obligor, to satisfy the judgment, with interest, out of such properties;

(c) If it be for the sale of real or personal property, to sell such property, describing it, and apply the proceeds in conformity with the judgment, the material parts of which shall be recited in the writ of execution;

(d) If it be for the delivery of the possession of real or personal property, to deliver the possession of the same, describing it, to the party entitled thereto, and to satisfy any costs, damages, rents, or profits covered by the judgment out of the personal property of the person against whom it was rendered, and if sufficient personal property cannot be found, then out of the real property; and

(e) In all cases, the writ of execution shall specifically state the amount of the interest, costs, damages, rents, or profits due as of the date of the issuance of the writ, aside from the principal obligation under the judgment. For this purpose, the motion for execution shall specify the amounts of the foregoing reliefs sought by the movant. (8a) (Emphasis added)

Under this provision of the *Rules of Court*, Monteroso could enforce the writ of execution only “according to its terms, in the manner herein after provided.” However, he was remiss in his duty to enforce the writ by collecting only P25,000.00. Even assuming that he had only been successful in collecting P25,000.00 from the defendant, he still exceeded his authority in requesting Marsada to sign the typewritten acknowledgment receipt reflecting the P25,000.00 as the full and complete satisfaction of the writ of execution. He had neither basis nor reason to have Marsada sign the receipt in that tenor because the text and tenor

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of the writ of execution expressly required the recovery of P35,000.00 from the losing party.

Also, Marsada claimed that Monteroso had represented to him that the defendant could no longer pay the balance. The representation, even if true, did not justify Monteroso's unilateral decision to discontinue the effort to recover the balance. It clearly devolved upon him as the sheriff to levy upon the execution debtor's properties, if any, as well as to garnish the debts due to the latter and the credits belonging to the latter. The duty to exhaust all efforts to recover the balance was laid down in Section 9, Rule 39 of the *Rules of Court*, with special attention to the highlighted portions, to wit:

Section 9. *Execution of judgments for money, how enforced.* — (a) *Immediate payment on demand.* — **The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.**

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amount to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

The clerk of court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no

case shall the executing sheriff demand that any payment by check be made^{08, 2016} payable to him.

(b) *Satisfaction by levy.* — **If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment.** If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

(c) *Garnishment of debts and credits.*— **The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties. Levy shall be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled. The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees.**

The garnishee shall make a written report to the court within five (5) days from service of the notice of garnishment stating whether or not the judgment obligor has sufficient funds or credits to satisfy the amount of the judgment. If not, the report shall state how much funds or credits the garnishee holds for the

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judgment obligor. The garnished amount in cash, or certified bank check issued in the name of the judgment obligee, shall be delivered directly to the judgment obligee within ten (10) working days from service of notice on said garnishing requiring such delivery, except the lawful fees which shall be paid directly to the court.

In the event there are two or more garnishees holding deposits or credits sufficient to satisfy the judgment, the judgment obligor, if available, shall have the right to indicate the garnishee or garnishees who shall be required to deliver the amount due; otherwise, the choice shall be made by the judgment obligee.

The executing sheriff shall observe the same procedure under paragraph (a) with respect to delivery of payment to the judgment obligee. (8a, 15a)

Thus, Monteroso was guilty of misconduct, which the Court has defined in *Dela Cruz v. Malunao*^[12] in the following manner:

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his position or office to procure some benefit for himself or for another person, contrary to duty and the rights of others. Section 2, Canon 1 of the Code of Conduct for Court Personnel states: "Court personnel shall not solicit or accept any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions."

Marsada did not establish that the act complained of was tainted with corruption, willful intent to violate the law, or disregard of established rules. Consequently, Monteroso's liability only amounted to simple misconduct, which is classified under Section 46, D, of the *Revised Uniform Rules on Administrative Cases in the Civil Service* as a less grave offense punishable by suspension of from one month and one day to six months for the first offense, and dismissal from the service for the second offense. As earlier mentioned, Monteroso had

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previously been sanctioned twice. In A.M. No. P-08-2461 (*Cebrian v. Monteroso*, April 23, 2008), he was found guilty of grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service for failure to implement the writs of execution assigned to him, and was meted the penalty of suspension without pay for six (6) months. In A.M. No. P-06-2237 (*Beltran v. Monteroso*, December 4, 2008, 573 SCRA 1), he was declared liable for grave misconduct, dishonesty and conduct prejudicial to the best interest of the service for persistently disregarding the basic rules on execution, and was suspended for one (1) year without pay and other benefits, with a stern warning that another transgression of a similar nature would merit his dismissal from the service. Although his dismissal from the service would have already been warranted under the circumstances, he is only being fined in the amount of P10,000.00 because he had meanwhile retired from the service as of December 7, 2007. The fine shall be paid out of his accrued leaves. In addition, his entire retirement benefits are hereby forfeited.

WHEREFORE, the Court **FINDS** and **DECLARES** respondent **ROMEO MONTEROSO** guilty of **SIMPLE MISCONDUCT**; **FINES** him in the amount of P10,000.00; **DIRECTS** the Employees Leave Division, Office of the Administrative Services, to determine the balance of his earned leave credits, and to deduct therefrom the fine of P10,000.00 imposed herein, if sufficient; and **FORFEITS** his entire retirement benefits.

SO ORDERED.

Sereno, C. J., Carpio, Velasco, Jr., Leonardo-De Castro, Peralta, Del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and Caguioa, JJ., concur.
Brion, J., on leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on March 8, 2016 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled administrative matter, the original of which was received by this Office on May 11, 2016 at 3:05 p.m.

Very truly yours,
(SGD)FELIPA G. BORLONGAN-ANAMA

^[1] *Rollo*, pp. 2-4.

^[2] *Id.* at 18-21.

^[3] *Id.* at 17.

^[4] *Id.* at 22.

^[5] *Id.* at 17.

^[6] *Id.* at 106-108.

^[7] *Id.* at 175-182.

^[8] *Id.* at 183.

^[9] *Id.* at 192-197.

^[10] *Id.* at 195-196.

^[11] *Id.* at 197.

^[12] A.M. No. P-11-3019, March 20, 2012, 668 SCRA 472, 482-483.
