IN RE: SANDRA L. MINO V. JUDGE DONATO SOTERO A. NAVARRO, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 6, CEBU CITY.

A.M. No. MTJ-06-1645 [Formerly A.M. OCA IPI No. 05-1702-MTJ]. August 28, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

By letter of March 7, 2005[1] addressed to the Court Administrator which was received by the Office of the Court Administrator (OCA) on March 14, 2005, Sandra Mino (complainant) charged Judge Donato Sotero A. Navarro (respondent), Presiding Judge of Branch 6 of the Municipal Trial Court in Cities in Cebu City, with gross inexcusable negligence arising from his failure to issue a warrant of arrest, within the period prescribed by the Rules of Court, in Criminal Case No. 124511-R, People of the Philippines v. Allan Arcilla, for Attempted Homicide.

It appears that the above-said criminal case was raffled to the sala of respondent on October 21, 2003. Despite repeated requests for the issuance of a warrant for the arrest of the accused, respondent did not grant the same.

After ninety seven (97) days from the raffling of the case to his sala or on February 5, 2004, respondent issued an Order[2] declaring that on the basis of the affidavits of the offended party and his witness, "the accused may actually be charged only with Grave Threats, as there is no probable cause to believe that the accused had acted with intent to kill, not having persisted in his threat against the offended party."

Respondent accordingly ordered the remand of the record of the case to the Office of the City Prosecutor "so that the information may be amended to reflect the proper crime."[3]

To the February 5, 2004 Order of respondent, the prosecution filed on March 8, 2004 an Ex-Parte Motion for Reconsideration with Motion for Inhibition,[4] alleging that the prosecution was not given a chance to be heard before the Order was issued.

In the same Ex-Parte Motion, the Prosecution argued that amending the Information was no longer proper, the Office of the Cebu City Prosecutor having already issued a resolution "after a preliminary investigation" finding probable cause against the accused for Attempted Homicide from which no appeal, either to the Office of the Regional State Prosecutor or to the Department of Justice, was taken.[5]

The Prosecution further argued that the Order is contrary to law and jurisprudence since respondent practically conducted his own preliminary investigation of the case which he has no authority to do as it is exclusively lodged with the Office of the Prosecutor.[6]

Eighty seven (87) days from the filing on March 8, 2004 by the Prosecution of its Ex-Parte Motion or on June 3, 2004, respondent issued an Order[7] refuting the arguments of the Prosecution, but nevertheless recusing himself and leaving the resolution of the said motion "to what branch of th[e] [c]ourt the case maybe raffled," thus:

> The prosecutors making the instant motion should be thoroughly familiar with the 2000 Rules on Criminal Procedure by now that requires judges to make a determination of probable cause before issuing warrants, in

> effect reviewing the sufficiency of the allegations in the record of preliminary investigation filed by the Office of the City Prosecutor so that the Court may even dismiss the case outright without any motion from the accused. There is actually no basis for the Judge of this Court to recuse himself from this case.
>
> The Court is deeply disturbed by the actuations of the three prosecutors who filed the motion for inhibition, " particularly as they would insist that the Court issue a warrant for the arrest of the accused when the Court has determined that this case falls only under the rule on summary procedure, so that the issuance of a warrant is completely unnecessary. Something is not right.
>
> x x x x
>
> The Court shall leave the resolution of the motion for reconsideration to whatever branch of this Court the case may be raffled to.
>
> Remand the record of this case to the Clerk of Court so that it may be so raffled. (Underscoring supplied)

To complainant, respondent has been trifling with the findings of the Office of the City Prosecutor, to show a pattern of which she submitted a copy of respondent's October 12, 2004 Order[8] in another criminal case, Criminal Case No. 122800-R, People of the Philippines v. J. Walter Palacio, also for Attempted Homicide. In this criminal case, respondent downgraded the crime to Grave Threats and ordered the remand of the case to the Office of the City Prosecutor "for the amendment of the Information." The said Order, complainant informs, was issued forty five (45) days from the time the case was raffled to his sala.

In his Letter-Comment dated September 19, 2005,[9] respondent maintains that the determination of probable cause is no longer considered the exclusive domain of prosecutors, he justifying his February 5, 2004 Order in this wise:

> It was important for the respondent that the prosecution show clear probable cause for the crime charged because the effect of doing so would be for the respondent to issue a warrant of arrest. The liberty of the accused is at stake! As the record of preliminary investigation does not support such a finding, respondent had no choice but to dismiss the case, ask for additional evidence, or remand the record as he did so that the prosecution had the option of submitting additional evidence or amending the information. This was the best course of action among the options left to the respondent.[10] (Italics in the original)

In its Report dated May 8, 2006,[11] the OCA came up with the following:

> EVALUATION: Paragraph (a), Section 6, Rule 112 of the Revised Rules on Criminal Procedure, which is applicable to first level courts when the preliminary investigation was conducted by the public prosecutor, provides, thus:
>
> SEC. 6. When warrant of arrest may issue. - (a) By the Regional Trial Court. - Within ten (10) days from the filing of the compliant or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to [S]ection 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecution to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.[12]
>
> From the foregoing, the judge is required to personally evaluate the resolution of the prosecutor and its supporting evidence within ten (10) days from the filing of the complaint or information, and to forthwith issue a warrant of arrest or dismiss the case, as the evidence may warrant. In fact, a maximum period of thirty (30)

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> days from the filing of the complaint or information was set for the court to resolve the issue on the existence of probable cause, should the prosecution be required to submit additional evidence.
>
> Criminal Case No.124511-R was raffled to Branch 6, presided over by respondent judge, on October 21, 2003. However, it took respondent judge ninety-seven (97) days longer than the prescribed period to issue the questioned February 5, 2004 Order. The delay was further exacerbated when respondent judge did not immediately rule on the Ex-Parte Motion for Reconsideration with Motion for Inhibition filed by the prosecution on March 8, 2004. It was only on June 3, 2004, or after almost three months from the time the motion was filed, that he inhibited himself from the case.
>
> On the issue of downgrading the crime charged from attempted homicide to grave threats, respondent judge manifested ignorance of the rule mentioned above. When the preliminary investigation was conducted by the prosecutor, the judge has three options after the filing of the information and upon evaluation of the prosecutor's resolution and its supporting evidence. He/she may (a) dismiss the case, (b) issue a warrant of arrest or a commitment order, as the case may be, against the accused, or (c) require the prosecution to submit additional evidence to support the existence of probable cause. Nowhere in the rule was the judge authorized to determine the proper crime that the accused should be charged with. The options given to the judge are exclusive, and preclude him/her from interfering with the discretion of the public prosecutor in evaluating the offense charged.
>
> x x x x
>
> Respondent judge's clarification that his Order returning the records of the preliminary investigation to the Office of the City Prosecutor so that the information "may be amended" gave the prosecution an option to submit additional evidence does not inspire belief. Nothing in the questioned Order suggests that the prosecution may exercise that option. He could have expressly ordered the prosecution to present additional evidence in support of its earlier findings, pursuant to Section 6(a), Rule 112, Revised Rules on Criminal Procedure, had he so intended. In fact, this is not the first time that he ordered the downgrading of the crime charged. In People of the Philippines vs. J. Walter Palacio, docketed as Criminal Case No. 122800-R for attempted homicide, he also ordered the crime charged to be reduced to grave threats, and directed the prosecution to amend the information accordingly in an Order dated October 12, 2004.[13] (Italics in the original, emphasis and underscoring supplied)

The OCA, noting that respondent's actions in the two criminal cases "fell short of the standards set by the New Code of Judicial Conduct, not to mention that he [had been previously] sanctioned by this Court in two other cases,"[14] recommended that he be suspended for six (6) months without salary and benefits.

By Resolution of July 31, 2006,[15] this case was re-docketed as a regular administrative matter following which the parties were directed to manifest whether they are willing to submit the case for decision on the basis of the pleadings already filed.

Respondent, in his Manifestation of October 6, 2006, responded as follows:

> 2. The respondent is willing to have this case submitted for decision on the basis of the pleadings/records already submitted provided the following are taken into consideration:
>
> a. The only basis for the filing of the charges in Criminal Case No. 124511-R is the affidavit of the offended party, sadly now deceased Alvin Mino, that appears in the record of preliminary investigation;
>
> b. Only the second and third paragraphs of the affidavit of the offended party in the record of [the] preliminary investigation is relevant to the crime charged, to wit;
>
> 2. That on or about 5:30 P.M. of the same date . . . That upon going out from our house I noticed that somebody was behind me when I look at back (sic) it was my brother in law Allan Arcilla. That on that

> juncture he was holding his bolo and without any apparent reason struck me but I was not hit for I was able to wave (sic). That I ran for my life and I heard him uttered (sic) "Pangagi pamo dinhi kay pamungotan tamo ug ulo." (If you continue to pass here, I will chop off your heads);
>
> 3. That my wife Sandra . . . stopped and confronted Allan Arcilla by saying "Nganong man imo mang harason ang akong bana wala man ka hilabti. (Why do you harass my husband although he has not bothered you?) X x x x[16]

By imposing the above-quoted qualification to his willingness to submit the case for decision on the basis of the pleadings/records already submitted, respondent betrays his gross failure to understand the main issue in the present administrative complaint, which is whether he is aware of and complied with Rule 112, Sec. 6(a).

Under Section 6(a) of Rule 112, a judge, upon the filing of an Information, has the following options: (1) dismiss the case if the evidence on record clearly failed to establish probable cause; (2) if he or she finds probable cause, issue a warrant of arrest; and (3) in case of doubt as to the existence of probable cause, order the prosecutor to present additional evidence within five days from notice, the issue to be resolved by the court within thirty days from the filing of the information.

Contrary to respondent's assertion, he did not have the option of remanding the case to the prosecutor "so that the prosecution had the option of submitting additional evidence or amending the information."[17] (Italics in the original)

At all events, by acting on the Information only after the lapse of 97 days following its filing, and taking him 87 days or almost three months to resolve the Prosecution's Ex-Parte Motion for Reconsideration and Motion for Inhibition, respondent did not comply with the reglementary periods prescribed by Section 6(a) of Rule 112.

Particularly with respect to his delay in resolving the Prosecution's motion, it reflects respondent's lack of awareness that immediate resolution thereof was essential to setting the case in motion in order not to frustrate the parties" right to a speedy disposition of their case and thus avoid inflaming distrust and discontent in the judiciary as a whole.[18]

Respondent is reminded of Canon 6 of the New Code of Judicial Conduct, which took effect on June 1, 2004, reading:

Canon 6
COMPETENCE AND DILIGENCE

> Competence and diligence are prerequisites to the due performance of judicial office.
>
> x x x x
>
> SEC.3. Judges shall take reasonable steps to maintain and enhance their knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
>
> x x x x
>
> SEC. 5. Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness. (Emphasis supplied)

He is reminded too of Rule 3.05 of the Code of Judicial Conduct, which is applied in suppletory character, requiring judges to dispose of the court's business promptly and decide cases within the required periods.

In fine, since the law or procedure violated is so elementary for respondent not to know it or act as if he does not

know, he is guilty of gross ignorance.[19]

Section 8, Rule 140 of the Rules of Court classifies gross ignorance of the law or procedure a serious charge for which a penalty of (1) fine of more than P20,000 but not exceeding P40,000, or (2) suspension from office without salary and other benefits for more than three but not exceeding six months, or (3) dismissal from service.[20]

Aside from committing gross ignorance of law or procedure, respondent committed unjust delay in rendering a decision or order, classified as a less serious charge under Section 9, Rule 140 of the Rules of Court which is punishable by suspension from office, without salary and other benefits, for not less than one (1) nor more than three (3) months or a fine of more than P10,000 but not exceeding P20,000.

The penalty recommended by the OCA for respondent's gross ignorance of the law " suspension from the service for a period of six months without salary and benefits " merits this Court's approval. Respondent being guilty also of unjust delay, this Court imposes on him a fine of P10,000.

WHEREFORE, Judge Donato Sotero A. Navarro, Presiding Judge, Municipal Trial Court in Cities, Branch 6, Cebu City who has been previously sanctioned by this Court in two other cases, is, for gross ignorance of the law or procedure, SUSPENDED from the service for a period of six months without salary and benefits. And for unjust delay in resolving a motion, he is FINED the amount of Ten Thousand (P10,000) Pesos.

He is WARNED that a commission of any further administrative offense will be dealt with more severely.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, and Tinga, JJ., concur.
Velasco, Jr., J., no part due to prior action in OCA.

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[1] Rollo, pp. 1-2.

[2] Id. at 9.

[3] Ibid.

[4] Id. at 12-14.

[5] Id. at 13.

[6] Ibid.

[7] Id. at 7-8.

[8] Id. at 6.

[9] Id. at 25-29.

[10] Id. at 28.

[11] Id. at 31-36.

[12] Section 6 (b) of Rule 112 provides:

(b) By the Municipal Trial Court. - When required pursuant to the second paragraph of section 1 of this Rule, the preliminary investigation of cases falling under the original jurisdiction of the Metropolitan Trial Court,

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Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court may be conducted by either the judge or the prosecutor. When conducted by the prosecutor, the procedure for the issuance of a warrant of arrest by the judge shall be governed by paragraph (a) of this section. x x x (Emphasis supplied)

[13] Rollo, pp. 33-35.

[14] In the Resolution dated September 21, 2004, the Court in A.M. No. OCA IPI No. 03-1476-MTJ, Fernandez v. Navarro, respondent was cited for contempt for failure to comply with the directives of the Court to submit his comment despite several directives. He was fined in the amount of P20,000. In A.M. No. OCA IPI No. 04-1579-MTJ, Fernandez v. Navarro, the Court in a Resolution dated February 22, 2006 admonished respondent to be more circumspect in the performance of his judicial and administrative responsibilities.

[15] Rollo, pp. 41-42.

[16] Id. at 43-44.

[17] Id. at 23.

[18] Vide Custodio v. Judge Quitain, 450 Phil. 70, 76 (2003).

[19] Vide Ligaya Santos v. Judge Rolando G. How, A.M. No. RTJ-05-1946, January 26, 2007, 513 SCRA 25, 37; Dantes v. Caguioa, A.M. No. RTJ-05-1919, June 27, 2005, 461 SCRA 236, 246.

[20] Section 11 (A), Rule 140.

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