

**OSCAR M. POSO, COMPLAINANT, VS. JUDGE JOSE H. MIJARES,
RTC-BR. 21, LAOANG, NORTHERN SAMAR AND FLOR SERIO, OIC
CLERK OF COURT, OFFICE OF THE CLERK OF COURT,
RESPONDENTS.**

A.M. No. RTJ-02-1693. August 21, 2002

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PER CURIAM:

THIS IS NOT THE FIRST TIME that respondent Judge Jose H. Mijares, RTC-Br. 21, Laoang, Northern Samar, is hailed to Court to defend his integrity and competence. Previously, for dismissing a petition for mandamus even long after a final and executory judgment thereon had been rendered based on a compromise agreement executed by the parties, and his open admission of negligence and lack of care in attending to incidents brought before him for adjudication, this Court found him guilty of gross ignorance of the law. We meted him a fine of P5,000.00 with stern warning that repetition of the same or similar infractions complained of would be dealt with more severely.[1] Obviously, by then, particularly after our stern warning intended to be taken seriously and committed to both heart and memory, he should have been more solicitous in his task to steer clear of blunders, especially their repetitions, and to satisfy claims in a manner which, although late in coming, he could have rightfully and lawfully done.

Unfortunately, except for the inclusion of respondent Flor Serio, OIC Clerk of Court, RTC, Northern Samar, the instant complaint for administrative sanctions against Judge Mijares for allegedly railroading the criminal case against a self-confessed killer and admitting him to probation, which unduly obviated the accused's otherwise definite date with prison, reflects the same incompetence earlier established on his part. Worse, the complaint demonstrates his apparent incorrigibility as exhibited by documents on record showing *res ipsa loquitur*, a sinister pattern of bad faith to favor the accused therein with a mere slap on the wrist and to foist fraud upon this Court. While the rules excuse honest errors of discretion as acceptable professional hazards, a defense ardently raised by respondent Judge, the series of his unbelievable mistakes in the application of basic legal principles on probation and criminal penalties together with his clear attempt at deception ought to be exposed, and punished, despite his pretensions of uprightness and sincerity.

The instant administrative case stemmed from the proceedings in Crim. Case No. 2477 for murder, "People v. Virgilio de Guia," where the victim, a certain Lito M. Galupo, was a relative of complainant Oscar M. Poso. On 6 February 1995 the criminal case was raffled to RTC-Br. 21, Laoang, Northern Samar,[2] presided over by respondent Judge Jose H. Mijares in an acting capacity by detail from his regular station at RTC-Br. 26, San Juan, Southern Leyte.[3] On 16 October 1995 the accused was arraigned and pleaded not guilty to the charge. Accordingly, the case was set for pre-trial and trial on 10 November 1995 but the proceedings were reset to 27 November 1995.[4]

On 27 November 1995, in the course of the pre-trial conference in Crim. Case No. 2477,[5] the accused withdrew his plea of not guilty[6] and pleaded guilty to the lesser offense of homicide.[7] This was done with the open consent of handling Public Prosecutor Napoleon C. Lagrimas and the private offended parties therein including

complainant Oscar Poso.[8] Parenthetically, it is surprising for respondent Judge to testify that even before he assumed over RTC-Br. 21 in an acting capacity in 1994, the Information in Crim. Case No. 2477 had already been amended to homicide by crudely crossing out the original caption of murder and writing the amended charge by hand when the same Information was filed only in 1995 and other relevant proceedings therein took place not later than the same year.[9] On the same day and occasion of the pre-trial conference and without receiving evidence of aggravating or mitigating circumstances, respondent Judge promulgated the judgment or “Sentence,” finding the accused guilty of homicide.[10] Curiously, Judge Mijares made allowance for three (3) mitigating circumstances, i.e., plea of guilty, voluntary surrender and intoxication, and accordingly sentenced the accused to four (4) years, two (2) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum and ordered him to indemnify the heirs of the victim at P40,000.00.[11]

Subsequent events in Crim. Case No. 2477 however complicated the otherwise uneventful conviction of the accused. To begin with, there was dispute as to whether the accused truly moved for reconsideration of the penalty imposed on him by respondent Judge Mijares. Complainant averred that respondent Judge had acted upon an unsigned motion which the accused did not even file with RTC-Br. 21. To prove his point he offered a two (2)-page unsigned document entitled “Motion for Reconsideration” bearing no date of receipt by RTC-Br. 21.[12] On the other hand, respondent Judge presented a different motion for reconsideration which was stamped received by RTC-Br. 21 with due notice to Public Prosecutor Napoleon C. Lagrimas together with the Branch Clerk of Court,[13] as well as the trial court’s notice of hearing of the motion duly addressed to and received by the Public Prosecutor and the Public Attorney’s Office.[14] Judge Mijares further asserted that the motion was actually heard on 28 December 1995 with both the prosecution and the defense in attendance. There is however no question that the prayer in the motion for reconsideration, whether the copy held by complainant Poso or respondent Judge’s record on file, was invariably for the reduction of the penalty from four (4) years, two (2) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum, to only two (2) years, four (4) months and one (1) day of prision correccional as minimum to six (6) years and one (1) day of prision mayor as maximum, and not to any penalty below this.

Judge Mijares granted the motion for reconsideration in a Resolution dated 10 January 1996. Unfortunately however two (2) versions of the same Resolution, one being the alleged draft version, and the other, a final copy thereof, although both were penned by respondent Judge, surfaced and found circulation but each imposing different maximum terms of the indeterminate sentence. Complainant submitted a copy of the Resolution, Exh. “D,” reducing the penalty from four (4) years, two (2) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum, to two (2) years, four (4) months and one (1) day of prision correccional as minimum to six (6) years and one (1) day of prision mayor as maximum.

In contrast, the Resolution dated 10 January 1996 proffered by respondent Judge, Exh. “6,” for no apparent reason, deviated from the motion for reconsideration, oddly pegged both the minimum and the maximum ranges of the indeterminate sentence at prision correccional in violation of the Indeterminate Sentence Law, and ludicrously decreased the penalty to only two (2) years four (4) months and one (1) day of prision correccional as minimum to six (6) years of prision correccional as maximum. It is at once apparent from the two (2) resolutions that respondent Judge erased the words “and one (1) day of prision mayor” in the dispositive portion of complainant’s copy thereof[15] and replaced them with “of prision correccional” as appearing in Judge Mijares’ version of Resolution dated 10 January 1996.[16] Respondent Judge admitted that complainant’s copy was actually only a draft of his Resolution dated 10 January 1996 which in its final form was allegedly the document in the judge’s custody.[17]

On 11 January 1996, taking his cue from the reduced penalty in Crim. Case No. 2477 and on the very day that the

accused filed his application for probation and release on recognizance, even before respondent Judge could act upon the application for probation, he ordered the provisional discharge of the accused from detention upon the recognizance of OIC Clerk of Court Flor Serio without hearing the prosecution or giving any opportunity for the private complainants to object.[18] It was only the next day, or on 12 January 1996, that Judge Mijares ordered the Probation Officer to initiate and conclude the necessary case study and investigation on the application for probation. On 3 July 1996, upon the favorable recommendation of the Probation Officer, respondent Judge placed the accused on probation without objection from Public Prosecutor Napoleon C. Lagrimas in a hearing called for this purpose.[19]

On 1 February 2001 the Office of the Ombudsman referred to this Court the Complaint-Affidavit of Oscar M. Poso concerning the turn of events in Crim. Case No. 2477 and charging respondent Judge Mijares with Knowingly Rendering an Unjust Judgment, Issuing Unjust Interlocutory Orders, Concealment of Documents and Commission of Acts punishable under Sec. 3, pars. (e) and (f) of RA 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and respondent OIC Clerk of Court Flor Serio with conspiracy to commit the foregoing acts and concealment of documents.

Specifically, complainant alleged that respondent judge unjustly and to the prejudice of the People of the Philippines and the private complainants committed the following acts in the course of the criminal case: (a) convicted the accused of homicide, after he had pleaded guilty to this lesser offense, when the charge was for murder of which he should have been convicted; (b) acted favorably on 10 January 1996 on an unsigned Motion for Reconsideration filed by the accused for the reduction of the prison term imposed on him, i.e., from four (4) years, two (2) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum, to two (2) years, four (4) months and one (1) day of prision correccional as minimum to six (6) years and one (1) day of prision mayor as maximum, without notice to the handling Public Prosecutor Napoleon C. Lagrimas; (c) unjustly released the accused on 11 January 1996 on the recognizance of OIC Clerk of Court, respondent Flor Serio, without notice and hearing; (d) gave due course to the application of the accused for probation in his Order of 12 January 1996 without hearing and in violation of Sec. 9 of the Probation Law which provides that the benefits of the law do not extend to those sentenced to serve a maximum term of imprisonment of more than six (6) years; and, (e) barred the issuance of certified copies of relevant documents in Crim. Case No. 2477 requested by complainant for purposes of his appeal, in conspiracy with the OIC Clerk of Court Flor Serio. Complainant contended that respondent Judge violated Sec. 3, pars. (e) and (f), RA 3019, punishing the acts of causing any undue injury to any party including the government or giving any private party any unwarranted benefits, advantage or preference as well as neglecting or refusing, after due request and without sufficient justification, to act within a reasonable time on any matter pending for the purpose of discriminating against any interested party.

With respect to respondent Flor Serio, complainant alleged that the latter unjustly refused, in violation of Sec. 3, par. (f), RA 3019, to furnish him with certified copies of the following documents relative to Crim. Case No. 2477 which were requested for purposes of perfecting an appeal, to wit: (a) Information; (b) Pre-Trial Conference Order; (c) Sentence promulgated on 27 November 1995 finding the accused guilty of homicide after he pleaded guilty to this lesser offense; (d) Resolution dated 10 January 1996 acting on accused's Motion for Reconsideration praying for reduction of his penalty; and, (e) Order dated 12 January 1996 acting upon the application for probation despite the absence of notice and hearing and the appropriate penalty exceeding six (6) years.

On 11 April 2001 respondent Judge filed his Comment denying the charges against him, particularly, that he granted probation to one clearly disqualified under the Probation Law. As proof thereof, respondent attached to

his Comment the allegedly genuine copy of the accused's Motion for Reconsideration dated 12 December 1995[20] and the supposedly authentic copy of his Resolution dated 10 January 1996[21] wherein he reduced the penalty imposed upon the accused from four (4) years, two (2) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum, to only two (2) years, four (4) months and one (1) day of prision correccional as minimum to six (6) years of prision correccional as maximum. He disclaimed the due execution of complainant's copy of Resolution dated 10 January 1996, and refuted the allegation of complainant that the penalty he imposed upon the accused was six (6) years and one (1) day of prision mayor as maximum which would have otherwise disqualified the accused from probation. Respondent Judge also averred that the prosecution and the defense were duly notified of the hearing of the motion for reconsideration and were actually present thereat before he issued the assailed resolution.

In a Letter-Comment dated 6 April 2001 respondent Flor Serio denied that she had refused to issue certified copies of the documents requested by complainant Poso for the sole reason that as the OIC Clerk of Court of the RTC of Northern Samar she had no custody of the requested documents which were allegedly still in the possession of the Clerk of Court for Branch 21 where Crim. Case No. 2477 was pending.

In a Reply-Affidavit dated 23 May 2001 complainant branded as falsified respondent Judge's copy of Resolution dated 10 January 1996; prayed that Judge Mijares be preventively suspended pending resolution of this case to prevent further falsification of the records in Crim. Case No. 2477; and, insisted that respondent Judge acted upon the Motion for Reconsideration filed by the accused without notice to handling Prosecutor Lagrimas, a fact allegedly admitted by the prosecutor himself in his Counter-Affidavit[22] filed with the Office of the Ombudsman, and that the records in Crim. Case No. 2477 were in the custody of OIC Clerk of Court Flor Serio at the time the request for certified true copies thereof was made.

On 22 August 2001, confronted with two (2) conflicting versions of the pivotal Resolution dated 10 January 1996, and the apparent mishandling of Crim. Case No. 2477, we referred the instant case to Associate Justice Edgardo P. Cruz of the Court of Appeals for an exhaustive investigation, report and recommendation. On 25 October 2001 Justice Cruz summoned the complainant and his adversaries, Judge Mijares and OIC Clerk of Court Serio, for pre-trial conference. Evidence for the parties was received in several hearings held for this purpose.[23] Thereafter complainant Poso and respondent Judge submitted their respective Memoranda while respondent Serio opted to file a Manifestation adopting in toto the arguments and evidence of her co-respondent.

On 14 May 2002 Justice Cruz submitted to this Court his Report and Recommendation of even date. His report called attention to the reprehensible actuations of respondent Judge when he reduced the penalty to ridiculous terms so as to qualify the accused for probation; hastily ordered the discharge of the accused from jail on recognizance without the benefit of notice and hearing afforded the prosecution and the aggrieved parties, and even before he could order the Probation Officer to conduct the requisite post-sentence investigation on the accused in violation of the Probation Law; illegally admitted the accused to probation despite the appropriate maximum penalty for homicide exceeding six (6) years which he should have been sentenced to serve; and, ignorantly awarded civil indemnity of P40,000.00 to the heirs of the victim of homicide when the amount should have been P50,000.00.

Justice Cruz found him guilty of violating Sec. 3, par. (e), of RA 3019 or, at the very least, gross ignorance of the law to the prejudice of the prosecution and the private offended parties in Crim. Case No. 2477. He however recommended the dismissal of the charges for Knowingly Rendering an Unjust Judgment and Issuing Unjust Interlocutory Orders since the questioned judgment and orders had not been found in appropriate proceedings to be unjust or unfair. Also recommended for dismissal was the count for Concealment of Documents on the ground that there was no factual basis for tasking Judge Mijares with custody of the requested documents. For the same

reason, the investigating Justice recommended the dismissal of the complaint as against OIC Clerk of Court Flor Serio. The appropriate penalty for the culpable acts of respondent Judge, according to Justice Cruz, was suspension from office for four (4) months without pay with warning that repetition of the same or similar offenses would be penalized more severely.

We find the investigation and report of Justice Cruz to be well-taken, but the penalty he recommends appears to be disproportionate to the gravity of the offenses. As has been painstakingly observed, respondent Judge Mijares had been sternly warned in *Dadap-Malinao v. Mijares*[24] that repetition of his mistakes, more so aggravations thereof, would be dealt with more severely. Apparently the warning did not work and hence we see no reason in employing it again for purposes of this disciplinary case. Clearly, public interest in an adept and honest judiciary dictates that notice of future harsher penalties should not be followed by another forewarning of the same kind, *ad infinitum*, but by discipline through appropriate penalties. This understanding should leave no doubt that, unless completely absolved of the charges, respondent Judge faces a grimmer sentence than the four (4) -month suspension and warning recommended by Justice Cruz.

First. We are not convinced that the two (2) copies of the 10 January 1996 Resolution penned by respondent Judge consist of the draft and the final versions thereof. The fact that complainant received a signed copy of the Resolution, Exh. "D," in the ordinary course of court proceedings only shows that Exh. "D" was the official and final determination of the motion for reduction of penalty sought by the accused in Crim. Case No. 2477. Quite obviously, in offering Exh. "6" as the supposedly final version of the Resolution dated 10 January 1996; respondent Judge is vainly attempting to justify the subsequent erroneous grant of probation to the same accused since the penalty imposed under Exh. "D" absolutely disqualifies him from probation. Exhibit "6" is clearly an afterthought meant by Judge Mijares to deceive this Court into excusing him from his patently flawed decision to allow probation and to practice fraud in the fair and accurate disposition of the instant administrative case.

His lack of candor and outright dishonesty are not without recorded precedent. In his previous administrative case, *Dadap-Malinao v. Mijares*,[25] he already tried to mislead this Court into believing that his assailed order therein actually dismissed a mere motion and not the main petition itself, which would have been irregular, by passing the blame upon his hapless typist for supposedly keying in the word "petition" instead of "motion," and by issuing another order two (2) years later still claiming that he did not dismiss the petition in question. Significantly, in our review of the record, we eventually found out that the object of his order was indeed to dismiss the petition and not the supposedly insignificant motion, and that his alleged honest error was in reality a cover up to escape the disciplinary consequences of his foiled attempt to dismiss the petition in flagrant violation of established precedents.

Second. Even if we are to believe as true the allegation of respondent Judge that Exh. "D" was merely a draft of Exh. "6" and proceed from this theory, his degenerate professional character would nonetheless be unmistakable. For, whether by design or out of sheer negligence, his inefficiency allowed the circulation of a mere draft of his 10 January 1996 Resolution in Crim. Case No. 2477, as he would himself admit, which pegged the maximum term of the indefinite sentence to more than six (6) years, when it was his intention to lower further the penalty imposed therein as he in fact did in the allegedly official copy of the 10 January 1996 Resolution.

The ineptitude and incompetence of Judge Mijares and his sloven management of court records are, to say the least, deplorable. As shown by complainant Poso's possession of Exh. "D," the premature publication of a distinct version of the Resolution has no doubt compromised the sanctity and confidentiality of the judgment process to the detriment of every effort to promote trust and confidence in the decisions of judges. Verily, an unrestricted glance into undeveloped and tentative opinions of a judge, as he weighs the arguments of concerned parties, dangerously opens avenues to pressure him to rule one way or the other and, falsely or not, invites cynical

attention to his shifts of opinions while judgment is being purposely perfected as ostensible badges of partiality and impropriety. Consequently, while a judge may have just stated an exploratory ruling in the case, it becomes difficult for him to backtrack and change his opinion in the final decision without losing his credibility and never recovering it in the eyes of a distrustful litigant and the wary public.

As did happen in the instant case, the divergent penalties in the draft and final 10 January 1996 Resolutions caused complainant Poso to believe that he and his relatives, who were the private offended parties in Crim. Case No. 2477, got the raw end of the deal. Their suspicion was bolstered no end by the grant of probation to the accused, an exercise of judicial discretion emanating precisely from the questioned Resolution. The error of respondent Judge, more accurately his misconduct, veritably flaunted Rule 3.07 of the Code of Judicial Conduct prohibiting judges from making public comments on any pending or impending case when he allowed the public, i.e., complainant Poso, access to a draft version of his 10 January 1996 Resolution. Unfortunately his flip-flopping dispositions ruined every opportunity to appear credible and to project an image of probity.

As administrators of courts, judges should adopt a fail-safe system of confidential records management which is ever ready to fend off unhampered scavenging of a judge's ideas and assessments from the glare and gore of publicity and pressure by interested parties.[26] Not least of all this mechanism is essential to protect the independence of decision-making by those tasked to exercise judicial power. In the present case, the indiscriminate availability of even a draft resolution indicates no less than gross inexcusable negligence on the part of respondent Judge and a violation of Rule 3.08 of the Code of Judicial Conduct directing judges to perform administrative responsibilities diligently and to maintain professional competence assiduously in court management.

Third. But contrary to the allegations of complainant Poso, respondent Judge Mijares did not err when he convicted the accused in Crim. Case No. 2477 of homicide and not of the original charge of murder. The conviction was the result of plea bargaining whereby the accused pleaded guilty to the lesser offense of homicide with the admitted consent of both handling Public Prosecutor Napoleon C. Lagrimas and the private offended parties including herein complainant.

There was also no error in respondent Judge's action to disregard in the computation of the imposable penalty the aggravating circumstances of treachery and evident premeditation alleged in the Information in Crim. Case No. 2477. Simply because the accused pleaded guilty does not necessarily imply his wholesale admission of the presence of aggravating circumstances. This is especially true in the instant case where the plea of guilty to the lesser offense of homicide was preceded by a plea of not guilty to murder, thus indicating the intention of the accused to deny the existence of evident premeditation and treachery.[27] At any rate, as we have held in *People v. Latupan*,[28] qualifying and aggravating circumstances, which are taken into consideration for the purpose of increasing the degree of penalty to be imposed, must be proved with equal certainty as the commission of the act charged and cannot be considered as being integrated with the plea of guilty.

Fourth. In his "Sentence," despite the correct initial assessment made by respondent Judge, he however egregiously credited the accused with three (3) mitigating circumstances, i.e., plea of guilty, voluntary surrender and intoxication, without receiving evidence to warrant the action.[29] While respondent Judge could have plausibly appreciated the plea of guilty of the accused as a mitigating circumstance, since the guilty plea was entered and the sentence immediately promulgated without any prosecution evidence having been offered,[30] we cannot say this of his treatment of the other mitigating circumstances which violates basic legal principles.

It is elementary that voluntary surrender and intoxication cannot be admitted without evidence of factual requisites.[31] For voluntary surrender to be appreciated, effort must be made to present evidence showing the

interest of the accused to surrender unconditionally to the authorities either because he acknowledges his guilt or because he wishes to save them the trouble and expenses necessarily incurred in his search and capture.[32] In intoxication, it is necessary that the accused present proof of having taken a quantity of alcoholic beverage prior to the commission of the crime sufficient to produce the effect of obfuscating reason.[33] At the same time, he must prove that he is not a habitual drinker and that he did not take the alcoholic drink purposely to reinforce his resolve to commit the crime.[34]

We need not belabor jurisprudence to accommodate respondent Judge's argument which in effect posits that not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanctions. So we have ruled and acted consistently, for to decide otherwise would be nothing short of harassing judges to take the fantastic and impossible oath of rendering infallible judgments.

However, in the present case, the rule shielding honest errors of opinion from punishment does not apply. Admittedly judges cannot be held to account for erroneous judgments rendered in good faith but this defense has been all too frequently cited to the point of staleness. In truth, good faith in situations of fallible discretion inheres only within the parameters of tolerable judgment and does not apply where the issues are so simple and the applicable legal principle evident and basic as to be beyond permissible margins of error.[35]

In the case at bar, Judge Mijares was faced with the plain task of comprehending mitigating circumstances, a topic in freshman criminal law. For a judge of respondent Judge's stature and experience of twenty-three (23) years of service in the judiciary, to still err thereon must quite obviously be ignorance of the law or even a subterfuge for an unworthy and corrupt purpose. While it may be true that the handling public prosecutor did not object to his appreciation of the mitigating circumstances, respondent Judge was no less excused from his judicial duty to observe the law he was bound to know and sworn to uphold. A judge owes it to himself and his office to know by heart basic legal principles and to harness his legal know-how correctly and justly. Anything less than that, as respondent Judge exhibited in *Crim. Case No. 2477*, is constitutive of the serious charge of gross ignorance of the law, perhaps, grave misconduct.

Fifth. While we do not give credence to complainant's accusation that Judge Mijares acted upon an unsigned motion for reconsideration and that he granted the same without notice and hearing to the prosecution, for the documents on record indubitably prove otherwise, we find several glaring irregularities in the rendition of the 10 January 1996 Resolution. To begin with, there was confusion as to which version of the Resolution, Exh. "6" or Exh. "D," was authentic, a matter made worse not only by the public's improvident access to a draft version of the Resolution, if respondent's account were true, but also the deception foisted upon this Court in the form of the devious Exh. "6." Equally lamentable and incriminating is the penalty appearing in the allegedly official and final copy of the 10 January 1996 Resolution granting the motion for reduction of penalty in *Crim. Case No. 2477*.

The Resolution speaks for its own monstrosity: "two (2) years, four (4) months and one (1) day of prision correccional as minimum to six (6) years of prision correccional as maximum." Evidently, this penalty upon which the accused applied for and was granted probation is contrary to the mandate of the Indeterminate Sentence Law. If only to illustrate the rudimentary character of this principle and its obvious misapplication, we quote from a freshman criminal law textbook-

If the offense is punished by the Revised Penal Code, the court shall sentence the accused to an indeterminate penalty the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the Revised Penal Code, and the minimum term of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense (Sec. 1, Act No. 4103 as amended by Act No. 4225). The court cannot put the minimum penalty in the same period and the same degree as the maximum penalty, because the minimum penalty "shall be within the range of the penalty next lower to

that prescribed by the Code for the offense” (underscoring supplied).[36]

Moreover, the penalty fixed by respondent Judge does not conform to the sentence which the accused sought in his motion for reduction of penalty from four (4) years, two (2) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum, to two (2) years, four (4) months and one (1) day of prision correccional as minimum to six (6) years and one (1) day of prision mayor as maximum, and not to a prison term below this as was ordered by respondent Judge. While a judge as a rule is not barred from granting relief other than or even more beneficial than the relief prayed for, the disposition must be consistent with law and equity. This certainly is not the situation here. In violating the Indeterminate Sentence Law to grant a relief more favorable to the accused than what the accused himself asked for and ostensibly in preparation for other legal maneuvers, i.e., probation to assure his unfettered pass from detention, respondent Judge indubitably acted with grave abuse of discretion and caused undue injury to complainant Poso and the other private offended parties.

The grievous exercise of discretion by respondent judge constitutes desecration of his sacred oath to do impartial justice to every one and an infringement of Sec. 3, par. (e), RA 3019 or the Anti-Graft and Corrupt Practices Act, penalizing the criminal act of causing any undue injury to any party including the government or giving any private party any unwarranted benefits, advantage or preference. His manifest partiality in granting the precipitate discharge of the accused from jail is notoriously remarkable. No doubt the elements of the offense are present in the instant case: (1) the respondent is a public officer or a private person charged in conspiracy with the former; (2) the public officer committed the prohibited acts in the performance of his official duties or in relation to his or her public positions; (3) he caused undue injury to any party, whether the government or a private party; and, (4) the public officer acted with manifest partiality, evident bad faith, or gross inexcusable negligence.[37]

Sixth. On 11 January 1996, with undue and irresponsible haste, respondent Judge allowed the accused in Crim. Case No. 2477 the privilege of temporary liberty under the recognizance of respondent Flor Serio even before he could act on the application for probation and without the benefit of notice and hearing for both the prosecution and the private complainants. His unwarranted eagerness to free the accused from jail is even more manifest from the fact that the application for probation was filed also on the same day that he directed the release of the accused on recognizance. Under the Probation Law, i.e., P.D. 968 as amended by P.D. 1990, respondent Judge could have authorized the temporary liberty of the accused only while “[p]ending submission of the investigation report and the resolution of the petition.”[38] This was evidently contravened for it was only on 12 January 1996 that Judge Mijares instructed the Probation Officer to initiate and conduct the necessary case study and investigation on the application for probation.

It must be stressed that the statutory sequence of actions, i.e., order to conduct case study prior to action on application for release on recognizance, was prescribed precisely to underscore the interim character of the provisional liberty envisioned under the Probation Law. Stated differently, the temporary liberty of an applicant for probation is effective no longer than the period for awaiting the submission of the investigation report and the resolution of the petition, which the law mandates as no more than sixty (60) days to finish the case study and report and a maximum of fifteen (15) days from receipt of the report for the trial judge to resolve the application for probation.[39] By allowing the temporary liberty of the accused even before the order to submit the case study and report, respondent Judge unceremoniously extended the pro tem discharge of the accused to the detriment of the prosecution and the private complainants.

Furthermore, it is apparent that respondent Judge ordered the release of the accused even before he could assess that the latter was not a “disqualified offender” under Sec. 9 of the Probation Law, i.e., “sentenced to serve a maximum term of imprisonment of more than six years,” which he could have otherwise done had he ordered the

release only after he had instructed the accomplishment of the case study. Putting the discharge of the accused on hold would have allowed Judge Mijares more time to pass upon the request for provisional liberty. In addition, the unsolicited fervor to release the accused significantly deprived the prosecution and the private complainants of their right to due process. Contrary to the argument of respondent Judge, the prosecution along with the private complainants has every right to be heard on the application of the accused for temporary liberty upon recognizance. To stress, probation is a mere privilege and discretionary upon the court, to be exercised primarily for justice and public interest and merely incidentally for the benefit of the accused.[40] Certainly, if respondent Judge's discretion is to be exercised soundly, as he should have done, he had no better witnesses to hear than the prosecution and the private complainants who, having definitely greater stakes than others in the untimely liberty of the accused, could have disproved the propriety of his provisional discharge of the accused for being disadvantageous to society.

More than anything else, respondent-Judge has shown either utter disregard for or total ignorance of the basic provisions of the Probation Law. It need not be underscored that one of his basic obligations is to understand the law fully and uphold it conscientiously. When the law is sufficiently basic, a judge owes it to his office to know and simply apply it for anything less is constitutive of gross ignorance of the law and manifest partiality punishable under Sec. 3, par. (e), RA 3019.[41]

Seventh. Respondent Judge abused the mandate of his office when he granted probation to the accused in Crim. Case No. 2477. Obviously, the accused was a "disqualified offender" under Sec. 9 of the Probation Law, since under the undisputed facts of the case the impossible maximum term of imprisonment upon him is more than six (6) years.[42] The penalty for homicide, the crime to which the accused confessed guilt, is reclusion temporal.[43] Even if respondent Judge were correct in appreciating three (3) mitigating circumstances, i.e., plea of guilty, voluntary surrender and intoxication, the impossible maximum prison term would nonetheless be prision mayor which carries a period of incarceration ranging from six (6) years and one (1) day to twelve (12) years.[44]

There is no merit in respondent Judge's view, citing *Del Rosario v. Rosero*[45] and BP 76 amending the Probation Law,[46] that a conviction for six (6) years and one (1) day of prision mayor did not have the effect of disqualifying the accused from probation. Due diligence should have elicited the indispensable information that *Del Rosario* had been superceded and that BP 76 had been modified in relevant parts. In *Amandy v. People*,[47] wherein the accused was sentenced to six (6) years and one (1) day, we held that PD 1990 had amended BP 76 so as to disqualify offenders sentenced to more than six (6) years as maximum term of imprisonment.[48] Clearly, as the facts demonstrate, respondent Judge wrongly granted probation to an ineligible applicant in a manner embarrassing to his vocation as judge of a court of justice.

Eighth. We agree with the findings of the Investigating Justice that no evidence adequately proves the charge that OIC Clerk of Court Flor Serio conspired with respondent Judge to cause any undue injury to complainant and the other private offended parties in Crim. Case No. 2477 or to give the accused therein the unwarranted benefit of probation, it being clear from the evidence that only Judge Mijares perpetrated the act. Neither did they refuse to issue certified true copies of relevant documents in Crim. Case No. 2477 since it was established that the custody of the requested documents was not with respondents so that they could not have refused the request. Something more had to be presented than complainant's loose statements. However, we do not agree with the other conclusion in the report that the offense of Knowingly Rendering an Unjust Judgment or Issuing Unjust Interlocutory Orders has not been established since, according to Justice Cruz, the basic fact of injustice must still be determined a priori by a competent court in an appropriate proceeding, thus implying that the present administrative case is not suited for this purpose.

We stress that the instant proceeding is itself an appropriate process to assail the injustice caused by respondent

Judge's orders and to penalize him for it. In *De Vera v. Pelayo*[49] we said that a decision or order may be pronounced "unjust" in the same administrative proceeding where a judge is taken to task for promulgating an allegedly unjust judgment or order. Particularly, to prove the transgression in the administrative proceeding, it must be established that the respondent rendered judgment or decision without basis in law and/or evidence and in a manner actuated by hatred, envy, revenge, greed or some other similar motive.[50] Stated otherwise, if in rendering judgment the judge fully knew or could not but have known that the same is unjust in the sense aforesaid then he must have acted maliciously. Bad faith in the sense of a dishonest purpose, not the error, bad judgment or negligence per se, is the cause for liability as well as the ground for penalty.

It is crystal clear that the assailed orders of respondent Judge are contrary to law and are motivated by premeditated efforts to cause injustice. To recall, by his own admission, he lowered the penalty imposed upon the accused in Crim. Case No. 2477 to absurd limits and later authorized his pass from jail, first provisionally then permanently, to the prejudice of the prosecution and the private offended parties. Downgrading the penalty to a range lower than the prison term prescribed by law enabled the accused to elude incarceration and apply for probation as he in fact did. In so deciding, respondent Judge trifled with express provisions of our penal laws. Not only did he display gross ignorance of the law, he also capriciously tinkered with established legal precepts.

The protestations of respondent Judge that the error committed can only be an honest error of judgment precluding administrative sanction are errant and insipid. In the first place, he ought to have known that his authority to fix penalties in accordance with his actual findings is circumscribed by law. More than that, a visible thread of partiality for the accused runs through the entire proceedings, particularly during the last stages. Truly, the severity of the divergence between his hurried, although calculated, actions and the indubitable principles as well as precedents governing criminal penalties suggests no other conclusion than that he deliberately wanted to set the accused free regardless of the dictates of conscience and the imperatives of law.

Res ipsa loquitur. The questioned actuations of respondent Judge and the attendant circumstances brook no explanation consistent with good faith or lack of malice and must be counted as constitutive of serious misconduct. On the face of the assailed orders, there was an inexplicable series of grave errors bereft of any redeeming feature and signifying an unjust decision. Indeed, when the inefficiency springs from failure to consider so basic and elemental a rule, law or principle in the discharge of duties, the judge is either insufferably incompetent and undeserving of the position and title he holds, or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. This is the case here. Moreover, the absence of credible explanation from respondent Judge to disprove or otherwise mitigate the strong inference of malicious design unfortunately exacerbates the situation. When asked to explain, he was unable to give any rational justification for his actions even as his explanations, off-tangent as they were, only reinforced the depths of the injustice he had created. It is therefore our finding that he perpetrated the offense of Knowingly Issuing Unjust Orders.

Ninth. It will not do, however, to dispose of the controversy by simply declaring the administrative culpability of respondent Judge upon a matter literally dealing with life and death. To maintain the status quo in Crim. Case No. 2477 would surely leave hanging or in suspended animation the underlying issue of justice not only in the instant proceeding but in the criminal action as well.

Clearly, we cannot stop short of annulling the tainted proceedings in Crim. Case No. 2477 and in the process enshrine an appearance of doing justice only by halves. Marred by what is obviously a miscarriage of judicial ethics, the proceedings beginning with the issuance of the controversial 10 January 1996 Resolution are patently void and therefore produce no legal effects whatsoever. From the lowering of the penalty to qualify the accused for probation, the authorization for temporary liberty on recognizance, and finally the grant of probation, the

orders of respondent Judge arising from these proceedings do not compel respectability and finality to constitute res judicata or even double jeopardy.

A judgment rendered with grave abuse of discretion or without due process does not exist in legal contemplation and cannot be considered to have attained finality for the simple reason that a void judgment has no legality from its inception.[51] It may be attacked directly or collaterally and set aside as in the instant case. To be sure, it has been said that probation is not a sentence but is in effect a suspended sentence or an interlocutory judgment,[52] for which reason, it cannot be argued that courts are barred from correcting manifest injustice in the improvident and corrupt grant of probation. At any rate, and without tinge of doubt, bare technical adherence to the letter of the law and jurisprudence should not excuse our obligation in settings attended by unusual circumstances to rectify evident iniquity.

We recognize the general rule that this Court does not review a trial court's decision in an administrative proceeding since its main concern therein is to determine the ethical responsibilities of judicial conduct.[53] Nonetheless, in the instant case, it is our considered opinion that the salutary principle is not controlling. Under clear considerations before us, the situation calls for the exercise of our equity jurisdiction to the end that we render complete justice to all affected parties. As we have said, "Equity as the complement of legal jurisdiction seeks to reach and do complete justice where courts, of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent so to do. Equity regards the spirit of and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts." [54] Indeed, a court of equity which has taken jurisdiction and cognizance of a cause for any purpose will ordinarily retain jurisdiction for all purposes and award relief so as to accomplish full justice between the party litigants, prevent future litigation and make performance of the court's decree perfectly safe to those who may be compelled to obey it.[55]

In this regard, we instruct RTC-Br. 21, Laoang, Northern Samar, in Crim. Case No. 2477 to call the case once again taking stock of our pronouncements in the instant case. The trial court shall order the arrest of accused Virgilio de Guia to restore the status quo ante prior to his release on recognizance. It shall forthwith hear the accused and the prosecution solely for the purpose of establishing the mitigating or aggravating circumstances, as the case may be. The trial court shall then promulgate judgment paying particular attention to the proper application of the Indeterminate Sentence Law and the plea of guilty of the accused to homicide. From thereon, let justice take its proper course.

Faith in the administration of justice exists only if every party-litigant is assured that the occupants of the bench are rich in moral fiber and strong in their grasp of legal principles. Unfortunately, respondent Judge failed to exhibit these qualities in both his discharge of sworn duties and his manner of defending himself before this Court in the instant proceedings. The brazen flaunting of our disciplining authority through the fraudulent imposition of the doctored 10 January 1996 Resolution along with the persistent and deliberate heedlessness of key precedents and elementary legal precepts is palpable from his actions. Having been judge for twenty-three (23) years, he should have appreciated by now that no position in government service exacts greater demand on honesty and integrity upon the individual than a seat in the judiciary. He should have taken this lesson to heart if not for the fact of his status as judge then for the consideration that a previous administrative case had once been decided against him.

WHEREFORE, the Court finds respondent JUDGE JOSE H. MIJARES, detailed to RTC-Br. 21, Laoang, Northern Samar, with permanent station at RTC-Br. 26, San Juan, Southern Leyte, guilty Gross Dishonesty for foisting upon this Court a fraudulent copy of his 10 January 1996 Resolution, or otherwise, of Gross Inexcusable Negligence for allowing a draft of his 10 January 1996 Resolution to circulate freely and unhampered, in violation

of the rule of strict confidentiality, and of Gross Ignorance of the Law, Knowingly Issuing Unjust Orders and Commission of Acts punishable under Sec. 3, par. (e) of RA 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, as a result of his actions in Crim. Case No. 2477 entitled, “People v. Virgilio de Guia” for lowering the penalty upon the accused to absurd limits in order that the latter may avail of, as he was indeed granted, temporary liberty on recognizance and thereafter probation.

Consequently, JUDGE JOSE H. MIJARES is ordered DISMISSED from the service effective immediately with prejudice to re-employment in any branch or instrumentality of the government including government-owned or controlled corporations, with forfeiture of all his retirement benefits, except the value of his earned leave credits which he shall be paid in full. He is further ordered to IMMEDIATELY CEASE AND DESIST from discharging the functions of the office from which he is removed. Moreover, RTC-Br. 21, Laoang, Northern Samar, in connection with Crim. Case No. 2477, is directed to ORDER THE ARREST of accused Virgilio de Guia in order to restore the status quo ante prior to his release on recognizance. Forthwith the trial court shall CALL A HEARING for the sole purpose of affording the accused and the prosecution an opportunity to present evidence proving mitigating or aggravating circumstances as the case may be. The trial court shall then RE-PROMULGATE JUDGMENT in Crim. Case No. 2477 paying particular attention to the proper application of the Indeterminate Sentence Law and the plea of guilty of the accused to homicide. The Administrative Complaint against respondent Judge for concealment of documents, and against respondent Flor Serio, OIC Clerk of Court, RTC, Northern Samar, for concealment of documents and conspiracy to commit the foregoing acts is DISMISSED for lack of merit.

SO ORDERED.

Bellosillo (Acting C. J.), Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, and Corona, JJ., concur. Davide, Jr., C.J., on official leave. Sandoval-Gutierrez J., on leave.

[1] Dadap-Malinao v. Mijares, A.M. No. RTJ-99-1475, 12 December 2001.

[2] Report and Recommendation dated 14 May 2002, P. 4.

[3] TSN, 10 January 2002, p. 30.

[4] Id., p. 41.

[5] TSN, 10 January 2002, pp. 42-45; TSN, 12 December 2001, p. 31; Complaint-Affidavit, pp. 2-3; Rollo, p. 29.

[6] See Note 2.

[7] Exhs. “B” and “3.”

[8] Complaint-Affidavit, p. 2; Rollo, p. 29.

[9] See Note 4.

[10] See Note 7.

[11] Ibid.

[12] Exh. “C.”

[13] Exh. “4.”

[14] Exh. “5.”

[15] Exh. “D.”

[16] Exh “6.”

[17] TSN, 10 January 2002, pp. 61, 66-69.

[18] Order dated 11 January 1996; Exhs. “E,” “F” and “G.”

[19] TSN, 10 January 2002, pp. 72, 77-78; Exh. “9.”

[20] Annexes “1” and “1-A” of Comment; Exh. “4.”

- [21] Annexes “3” and “3-A,” id.; Exh. “6.”
- [22] Annex “A” of Reply-Affidavit.
- [23] Hearings were conducted on 30 October 2001, 27 November 2001, 12 December 2001, 8 January 2002, and 10 January 2002.
- [24] See Note 1.
- [25] Ibid.
- [26] Tolentino v. Cabral, A.M. No. RTJ-00-1528, 28 March 2000, 329 SCRA 1.
- [27] See People v. De Luna, G.R. No. 77969, 22 June 1989, 174 SCRA 204.
- [28] G.R. Nos. 112453-56, 28 June 2001; People vs. Derilo, G.R. No. 117818, 18 April 1997, 271 SCRA 633; People v. Tampus, No. L-44690, 28 March 1980, 96 SCRA 624.
- [29] The indemnity of P40,000.00 awarded in Crim. Case No. 2477 may be excused as exercise of respondent Judge’s permissible discretion.
- [30] People v. Intal, 101 Phil. 306 (1957).
- [31] People v. Kayanan, No. L-30355, 31 May 1978, 83 SCRA 437.
- [32] Id.; People v. Noble, 77 Phil. 104 (1946).
- [33] People v. Cortes, G.R. No. 137050, 11 July 2001.
- [34] Ibid.
- [35] Daracan v. Natividad, A.M. No. RTJ-99-1447, 27 September 2000, 341 SCRA 161.
- [36] L.B. Reyes, The Revised Penal Code: Book One (1993), p. 774.
- [37] Arroyo v. Alcantara, A.M. No. P-01-1518, 14 November 2001.
- [38] Sec. 7.
- [39] Ibid.
- [40] Bala v. Martinez, G.R. No. 67301, 29 January 1990, 181 SCRA 459.
- [41] Creer v. Fabillar, A.M. No. MTJ-99-1218, 14 August 2000, 337 SCRA 632.
- [42] Sec. 9 reads in part: “The benefits of this Decree shall not be extended to those x x x (a) sentenced to serve a maximum term of imprisonment of more than six years.”
- [43] Art. 249, The Revised Penal Code.
- [44] Under Art. 64, par. 5, id., “[w]hen there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.”
- [45] 211 Phil. 406 (1983).
- [46] In 1980, BP 76 amended Sec. 9 of PD 968 by stating that the benefits of the Decree shall not be extended to those “sentenced to serve a maximum term of imprisonment of more than six years and one day.”
- [47] G.R. No. 76258, 23 May 1988, 161 SCRA 436; see Palo v. Militante, G.R. No. 76100, 18 April 1990, 184 SCRA 395.
- [48] Thus we said: “Subsequently, in 1985 then President Marcos promulgated PD 1990 which amended BP 76 and returned to the earlier formulation in PD 968. The latest decree on the matter excludes from the benefits of the Probation Law any applicant who has been ‘sentenced to serve a maximum term of imprisonment of more than six years.’”
- [49] G.R. No. 137354, 6 July 2000, 335 SCRA 281; In Re Joaquin T. Borromeo, A.M. No. 93-7-696-0, 21 February 1995, 241 SCRA 405.
- [50] See Note 35.
- [51] People v. Velasco, G.R. No. 127444, 13 September 2000, 340 SCRA 207; People v. Magat, G.R. No. 130026, 31 May 2000, 332 SCRA 517; People v. Court of Appeals, G.R. No. 128986, 21 June 1999, 308 SCRA 687.

[52] See Note 40.

[53] *Belga v. Buban*, A.M. No. RTJ-99-1512, 9 May 2000, 331 SCRA 531; *Ng v. Alfaro*, A.M. No. P-93-959, 1 December 1994, 238 SCRA 486.

[54] *Agcaoili v. Government Service Insurance System*, No. L-30056, 30 August 1988, 165 SCRA 1, quoting *Air Manila, Inc. v. Court of Industrial Relations*, 83 SCRA 579, 589 (1978).

[55] *Armamento v. Guerrero*, No. L-34228, 21 February 1980, 96 SCRA 178, citations omitted.

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