ROLLY PENTECOSTES, COMPLAINANT, VS. ATTY. HERMENEGILDO MARASIGAN, CLERK OF COURT VI, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, KABACAN, NORTH COTABATO, RESPONDENT.

A.M. NO. P-07-2337 (FORMERLY A.M. OCA IPI NO. 04-2060-P). August 03, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Atty. Hermenegildo Marasigan (respondent), Clerk of Court VI of the Office of the Clerk of Court of the Regional Trial Court (RTC) of Kabacan, North Cotabato, stands administratively charged with grave misconduct and conduct unbecoming a public officer for the loss of a motorcycle-subject matter of a criminal case which was placed under his care and custody.

The administrative case against respondent stemmed from a sworn affidavit-complaint[1] filed on November 11, 2004 by Rolly Pentecostes (Pentecostes), the owner of a Kawasaki motorcycle, which was recovered by members of the Philippine National Police (PNP) of M'lang, North Cotabato from suspected carnappers against whom a criminal case for carnapping, Criminal Case No. 1010, was lodged at Branch 22, RTC, Kabacan, North Cotabato.

On the order of the trial court, the chief of police of M'lang, North Cotabato turned over the motorcycle to respondent who acknowledged receipt thereof on August 1, 1995.

After the conduct of hearings to determine the true owner of the motorcycle, the trial court issued an Order[2] of November 15, 2000 for its release to Pentecostes.

Pentecostes immediately asked respondent to release the motorcycle to him. Respondent, however, told him to wait and come back repeatedly from 2001 up to the filing of the complaint.

In his Comment[3] filed on February 9, 2005, respondent gave the following explanation:

After the motorcycle was delivered to him by the M'lang chief of police on August 1, 1995, he requested Alex Pedroso, a utility worker, to inspect the engine, chassis, and make, after which he issued an acknowledgement receipt thereof.

He thereafter instructed Pedroso to bring the motorcycle to the Kabacan police station for which he (respondent) prepared a receipt.

He and Pedroso visited and inspected the motorcycle every time a hearing on the criminal case was conducted. When the court finally ordered the release of the motorcycle to Pentecostes on November 15, 2000, the latter refused to receive it, claiming that it was already "cannibalized" and unserviceable.

From that time on until 2003, Pentecostes harassed him, demanding that he be responsible for reconditioning the vehicle. During the latter part of 2004, upon the advice of the executive judge, he accompanied Pentecostes to the

Kabacan police station only to discover that the motorcycle was missing.

As no explanation could be offered by then Kabacan police chief Nestor Bastareche for the loss, he prepared a letter-complaint requesting for assistance in the recovery of the motorcycle and for the conduct of an investigation. Pentecostes refused to sign the letter, however.

He later discovered that the turnover receipt attached to the record of the criminal case and the page of the blotter where the turnover was recorded were missing. Hence, he submitted the sworn statements of Pedroso[4] and SPO4 Alex Ocampo[5] who confirmed the transfer of the vehicle from his custody to that of the Kabacan chief of police.

Belying respondent's averments, Pentecostes, in his "Rejoinder,"[6] contended as follows:

The vehicle was in good running condition when it was delivered to respondent by police operatives[7] of M'lang.

Respondent's act of passing the blame to the PNP of Kabacan was a clear case of hand washing as the records showed that respondent was responsible for the safekeeping of the motorcycle. It was for this reason that he (Pentecostes) refused to sign the letter to the chief of police of Kabacan protesting the loss. Moreover, the police blotter of PNP Kabacan has no entry or record of the alleged turn over.

By Resolution of October 19, 2005,[8] this Court referred the case to the Executive Judge of RTC, Kabacan, North Cotabato, for investigation, report and recommendation.

Then Executive Judge Francisco G. Rabang, Jr. of the RTC, Kabacan, North Cotabato submitted on January 16, 2006 his findings and recommendation for the dismissal of the administrative complaint against respondent.[9]

In his report, Judge Rabang noted that Pentecostes denied any knowledge about the turnover of the motorcycle to the PNP of Kabacan.

On the evidence for the defense, the investigating judge found that the motorcycle was delivered by the PNP of M'lang, North Cotabato to respondent who in turn transferred it to the PNP of Kabacan.

To Judge Rabang, what remained an issue was the actual physical condition of the motorcycle when it was turned over to the PNP of Kabacan. The judge noted that there was no proof of Pentecostes' claim that the vehicle was "cannibalized" from the time it was under respondent's custody until its transfer to the PNP of Kabacan.

In light of the peace and order situation in Kabacan in the late 1990s and in the early part of 2000 and the absence of a suitable courthouse then, Judge Rabang believed that respondent had made a wise decision in turning over the custody of the vehicle to the PNP of Kabacan.

To Judge Rabang's report and recommendation, Pentecostes filed a Motion for Reconsideration[10] in which he assailed the conclusion that the motorcycle was no longer roadworthy and was already "cannibalized" when it was delivered to the office of the clerk of court from the M'lang police station.

Moreover, Pentecostes maintained that the alleged turnover of the motorcycle to the police station of Kabacan was irrelevant because the proper custodian of the vehicle was respondent who should be held responsible for its eventual loss.

The Office of the Court Administrator (OCA) found the investigating judge's recommendation to be sufficiently supported by the evidence.[11]

The OCA thus concurred with Judge Rabang's recommendation for the dismissal of the complaint against respondent, subject to certain qualifications with respect to the physical condition of the vehicle upon its delivery

to respondent and the latter's lack of authority for the turn over of the vehicle to the PNP of Kabacan.

While the investigating judge found no evidence to show the actual condition of the motorcycle at the time it was turned over to respondent, the OCA observed that the evidence presented during the investigation supported a finding that the vehicle had missing parts when it was delivered to respondent.

From the testimony of Pentecostes' witness SPO2 Servando Guadalupe, the OCA noted, the motorcycle was loaded into a service vehicle for delivery to respondent. This fact, according to the OCA, could only mean that the vehicle could not run by itself.

Although the OCA agreed with the investigating judge that the evidence sufficiently proved that the vehicle was turned over to the PNP of Kabacan where it got lost, it noted that respondent failed to ask prior authority from the trial court to transfer its custody. Only when respondent was having problems with Pentecostes did he bring the matter to the attention of the executive judge, the OCA added.

Accordingly, the OCA recommended that respondent be reminded to secure prior authority from the court before evidence is turned over to any authorized government office or agency and that he be warned to be more careful to prevent any similar incident from arising in the future.

The finding of the OCA insofar as respondent's lack of authority to transfer the motorcycle is well taken, on account of which respondent is administratively liable for simple misconduct.

It is the duty of the clerk of court to keep safely all records, papers, files, exhibits and public property committed to his charge.[12] Section D (4), Chapter VII of the 1991 Manual For Clerks of Court (now Section E[2], paragraph 2.2.3, Chapter VI of the 2002 Revised Manual for Clerks of Court) provides:

> All exhibits used as evidence and turned over to the court and before the case/s involving such evidence shall have been terminated shall be under the custody and safekeeping of the Clerk of Court.
>
> Similarly, Section 7 of Rule 136 of the Rules of Court, provides:
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> SEC. 7. Safekeeping of property. - The clerk shall safely keep all record, papers, files, exhibits and public property committed to his charge, including the library of the court, and the seals and furniture belonging to his office.

From the above provisions, it is clear that as clerk of court of the RTC, Kabacan, respondent was charged with the custody and safekeeping of Pentecostes' motorcycle, and to keep it until the termination of the case, barring circumstances that would justify its safekeeping elsewhere, and upon the prior authority of the trial court.

No explanation was offered by respondent, however, for turning over the motorcycle. But whatever the reason was, respondent was mandated to secure prior consultations with and approval of the trial court.

Moreover disconcerting is the fact that the acknowledgment receipt evidencing the turnover of the motorcycle from the trial court to the Kabacan police station was lost from the records of Criminal Case No. 1010,[13] with nary a lead as to who was responsible for it. This circumstance is viewed with disfavor as it reflects badly on the safekeeping of court records, a duty entrusted to respondent as clerk of court.

With regard to the condition of the vehicle upon its delivery to respondent, the evidence indicates that it was still serviceable when it was delivered by the M'lang police to respondent and at the time it was turned over by respondent to the Kabacan police station. The Joint Affidavit[14] of SPO2 Guadalupe and Police Inspector Romeo Banaybanay categorically stated that the motorcycle was in "good running condition" when they delivered it to respondent. Later during his testimony, Guadalupe narrated that he was the "the driver of the service jeep

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while Chief Banaybanay was on board the motorcycle" when the vehicle was turned over to respondent on August 1, 1995.[15]

Even respondent's following testimony that:

> "x x x when x x x [he] received the motorcycle for safekeeping, he immediately delivered together with Alex Pedroso [sic] because it could be noted that respondent do[es] not know how to drive a motorcycle, I requested x x x Alex Pedroso to accompany me and deliver [it] to [the] chief of police of Kabacan"[16] (Italics supplied)

suggests that the vehicle was in running condition when respondent took and subsequently transferred its custody to the Kabacan police.

This Court has repeatedly emphasized that clerks of court are essential and ranking officers of our judicial system who perform delicate functions vital to the prompt and proper administration of justice.[17] Their duties include the efficient recording, filing and management of court records and, as previously pointed out, the safekeeping of exhibits and public property committed to their charge.

Clearly, they play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another.[18] They cannot err without affecting the integrity of the court or the efficient administration of justice.[19]

The same responsibility bears upon all court personnel in view of their exalted positions as keepers of public faith.[20] The exacting standards of ethics and morality imposed upon court employees are reflective of the premium placed on the image of the court of justice, and that image is necessarily mirrored in the conduct, official or otherwise, of court personnel.[21] It becomes the imperative and sacred duty of everyone charged with the dispensation of justice, from the judge to the lowliest clerk, to maintain the courts' good name and standing as true temples of justice.[22]

By transferring Pentecostes' motorcycle without authority, respondent failed to give premium to his avowed duty of keeping it under his care and possession. He must, therefore, suffer the consequences of his act or omission, which is akin to misconduct.

Misconduct is a transgression of some established or definite rule of action; more particularly, it is an unlawful behavior by the public officer.[23] 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, which must be proved by substantial evidence. Otherwise, the misconduct is only simple, as in this case.

The Revised Uniform Rules on Administrative Cases in the Civil Service (Memorandum Circular No. 19, Series of 1999) classifies simple misconduct as a less grave offense, punishable by suspension of One Month and One Day to Six Months. Considering that this is respondent's first offense and no taint of bad faith has been shown by his actuations, a 15-day suspension without pay is deemed appropriate.

WHEREFORE, respondent, Clerk of Court Hermenegildo Marasigan, is found guilty of Simple Misconduct. He is SUSPENDED for 15 days without pay, with a stern WARNING that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Quisumbing, Carpio, Tinga, and Velasco, Jr., JJ., concur.

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[1] Rollo, pp. 2-3.

[2] Id. at 6.

[3] Id. at 9-11.

[4] Id. at 14; Annex 3 of respondent's Comment.

[5] Id. at 13; Annex 2 of respondent's Comment.

[6] Id. at 15-16; should be REPLY.

[7] SPO2 Servando V. Guadalupe and P/Insp. Romeo A. Banaybanay. Their Joint Affidavit was attached as Annex "A" to the Rejoinder.

[8] Id. at 23.

[9] Id. at 27-30. The report was received by the Office of the Court Administrator on January 30, 2006.

[10] Id. at 100-101. The Motion for Reconsideration was dated February 3, 2006.

[11] Id. at 102-107.

[12] Office of the Court Administrator v. Sheriff IV Gabe, 389 Phil. 685, 696 (2000); Cruz v. Tantay, 364 Phil. 602, 605 (1999); Cañete v. Rabosa, 344 Phil. 9, 11 (1997).

[13] Rollo, pp. 82-83; Transcript of Stenographic Notes (TSN) dated December 21, 2005, pp. 22-23.

[14] Id. at 18; Exhibit "B."

[15] TSN, Dec. 21, 2005, p. 16. Id. at 76.

[16] Id. at 79-80.

[17] Vilar v. Angeles, A.M. No. P-06-2276, February 5, 2007; Ramirez v. Racho, 329 Phil. 1, 7 (1996); Basco v. Atty. Gregorio, 315 Phil. 681, 687 (1995); Angeles v. Bantug, A.M. No. P-89-295, May 29, 1992, 209 SCRA 413, 422-423.

[18] Ramirez v. Racho, supra; Lloveras v. Sanchez, A.M. No. P-93-817, January 18, 1994, 229 SCRA 302, 307.

[19] Salvador v. Serrano, A.M. No. P-06-2104, January 31, 2006, 481 SCRA 55, 73; Becina v. Vivero, A.M. No. P-04-1797, March 25, 2004, 426 SCRA 261, 265; Office of the Court Administrator v. Corpuz, 458 Phil. 571, 580 (2003).

[20] Office of the Court Administrator v. Sheriff IV Gabe, supra note 12 at 698.

[21] Vilar v. Angeles, supra note 17; Legaspi, Jr. v. Montero III, A.M. No. P-05-1986, April 15, 2005, 456 SCRA 137, 144.

[22] Re: Withholding of all the Salaries and Allowances of Mr. Datu Ashary M. Alauya, Clerk of Court, 4th Shari'a District Court, Marawi City, A.M. No. 02-4-03-SDC, May 27, 2004, 429 SCRA 202, 210; Biag v. Gubatanga, 376 Phil. 870, 876 (1999).

[23] Miñoso v. Pamulag, A.M. No. P-05-2067, August 31, 2005, 468 SCRA 407, 418; Office of the Court Administrator v. Bucoy, A.M. No. P-93-953, August 25, 1994, 235 SCRA 588, 595.

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