OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS. RODELIO E. MARCELO AND MA. CORAZON D. ESPAÑOLA, MTCC, SAN JOSE DEL MONTE CITY, BULACAN, RESPONDENTS.

A.M. No. P-06-2221 (FORMERLY A.M. NO. 06-7-215-MTCC). October 05, 2010

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PER CURIAM:

We resolve in this Decision the administrative matter involving Clerk of Court Rodelio E. Marcelo and Ma. Corazon D. Española, Officer-in-Charge, Office of the Clerk of Court, arising from the financial audit conducted at the Municipal Trial Court in Cities (MTCC), San Jose del Monte City, Bulacan.

THE ANTECEDENTS

The financial audit was conducted by the Office of the Court Administrator (OCA) on the MTCC books of accounts for the period May 1991 to April 30, 2005, which covered the terms of several clerks of court.

The report, dated June 28, 2006, of the OCA audit team[1] showed that Marcelo and Española incurred shortages in their collections, pertaining to the court's funds, in the total amount of Seven Hundred Ninety-Two Thousand Two Hundred Thirteen Pesos (P792,213.00), broken down as follows:

NAME OF FUND

AMOUNT OF SHORTAGE

Clerk of Court General Fund

P 75,553.00

Special Allowance for the Judiciary

69,006.00

Judiciary Development Fund

214,929.00

Fiduciary Fund

418,325.00

Marriage Solemnization fees

14,400.00

TOTAL SHORTAGES

P792,213.00

Española, a former clerk of court/officer-in-charge, had a shortage in her collection for the Judiciary Development Fund (JDF), for the period January 18, 1996 to November 8, 1996 amounting to P11,647.00.[2] The shortage was due to the absence of deposit slips evidencing the remittance of the collection. There was also a shortage in Española's collection of marriage solemnization fees in the amount of P200.00. Española was directed to immediately deposit the P11,647.00 to the JDF and the P200.00 to the marriage solemnization fund.

In a letter, dated June 2, 2005,[3] to Dindo Sevilla (the OCA audit team leader), Española complied with the directive by depositing the amounts covering the shortages.[4]

At the recommendation of the OCA, the Court resolved, on August 7, 2006,[5] to: (1) docket the audit team's report as a regular administrative matter; (2) direct Marcelo to pay the amount of P792,213.00, and immediately deposit the payment according to its fund allocations; (3) direct Marcelo and Española to explain, in writing, their failure to deposit the collections on time and why no disciplinary action should be taken against them for the shortages; and (4) refer the matter to Judge Pelagia Dalmacio-Joaquin, MTCC, San Jose del Monte City, Bulacan, for investigation.

Marcelo explained his side through a letter to the MTCC on October 20, 2006.[6] He strongly denied the charge of malversing/pocketing the court's collections. He claimed that he had been frequently on leave of absence starting late 2003 as he has a heart ailment due to stress, anxiety and fear caused by threats to his life and that of his family; sometime in March 2004, he expressed to Judge Joaquin his intention to return to work, but was advised to continue his leave of absence or to report but not as clerk of court, and to perform some other tasks, pending Judge Joaquin's request for the revocation of his designation as acting clerk of court; and he opted to remain on leave instead of doing other tasks.

Marcelo claimed that had Judge Joaquin allowed him to return to work for at least a week, he could have done his work and deposited the court's collections. Marcelo admitted that he entrusted the undeposited court collections to Bernadette Alconiza, supervising stenographer and his mother's secretary, who kept the cash in the vault of the City Prosecutor's Office. The cash were in several bundles, each bundle marked with the amount it contained. While he admitted that he had been remiss in the performance of his duties as clerk of court, he blamed his poor health for his shortcomings.

Judge Joaquin's investigation was cut short as she inhibited herself from the case[7] upon the motion for inhibition filed by Marcelo's mother and counsel, Atty. Lucita E. Marcelo (who claimed she had retired as City Prosecutor of San Jose del Monte City on April 18, 2006).[8]

In a Resolution dated February 28, 2007, the Court referred the case to Judge Mario B. Capellan of the MTCC, Branch 1, Malolos City, Bulacan, whose Report and Recommendation, submitted on October 9, 2007,[9] provides:

The salient features of the said financial audit report revealed the following shortages:

COC General Fund . . . . . P

75,553.00

Special Allowance for the Judiciary (SAJ)

69,006.00

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Judiciary Development Fund (JDF)

214,923.00

Fiduciary Fund (FF)

418,325.00

Marriage Solemnization Fees

14,400.00

P792,213.00

These shortages were incurred greatly in part, during the terms of office of Rodelio E. Marcelo.

x x x x

Respondent Marcelo, through counsel, admitted that the collections for the different funds of the MTCC, San Jose Del Monte, Bulacan during his incumbency as OIC of the said court were not deposited with the Land Bank, Sta. Maria, Bulacan branch; that when he was about to make the said deposit, he was informed of the change in the authorized signatories. Following his mother/counsel's advi[c]e, the latter being then still in active government service (City Prosecutor's Office), respondent Marcelo brought the money to her, which in turn was given to a certain Bernadette Alconiza for safekeeping in the office's vault. Thereafter, all the withdrawals of deposits made during Marcelo's incumbency as OIC were effected through respondent's mother/counsel.

x x x x

Respondent Marcelo's shortages were incurred during his incumbency pertaining to the five (5) accounts of the said court, namely:

- Judiciary Development Fund (JDF)
P214,929.00 (period of collection - August 6, 2002 to December 31, 2004)

- Fiduciary Fund (FF)
P418,325.00 (period of collection - March 5, 2002 to December 31, 2004)

- General Fund (GF)
P75,553.00 (period of collection - August 6, 2002 to November 10, 2002)

- Special Allowance for the Judiciary (SAJ)
P69,006.00 (period of collection - November 11, 2002 to December 3, 2004)

- Marriage Solemnization Fee[s]
P14,400.00 (period [of collection] - August 13, 2002 to November 23, 2004 or a total of 48 uncollected marriage solemnization fees).

The shortages for accounts, numbers I to IV, were incurred in the absence of the requisite deposit slips. For Account No. V, the total of P14,400.00 represents uncollected fees for the forty-eight (48) marriages solemnized during the said period. Respondent Marcelo's total unexplained accountabilities aggregate to P792,213.00.

The explanation advanced by respondent Marcelo is simple - that he failed to deposit the collections with the proper depository bank; that around two (2) years, his collections had accumulated and when he decided to make the deposits, there was already a change in the signatories authorized to make such deposits. What puzzles the mind of the court is - why did it take him that long to make the deposits? Admittedly, he kept the

> money, which he later on turned-over to his mother (his counsel).
>
> x x x x
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> In the case at bar[,] respondent Marcelo having been on AWOL, was already dropped from the rolls effective June 1, 2005. His position was already declared vacant (SC Resolution in case No. AM-06-4-135 dated May 29, 2006).
>
> Be that as it may, respondent Marcelo's severance from the government service should not be as simple as that. Although respondent's declaration of AWOL and eventual severance from the office is in effect a dismissal, however, his ouster merits a more severe penalty for a grave offense of dishonesty. There should be a clear categorical and concise pronouncement of his guilt meriting the aforesaid extreme penalty. Such pronouncement will definitely deter similarly minded accountable officers from following respondent's footsteps. The gross dishonesty, if not per se malversation of public funds, deserves not only severance from service not only from the judiciary but the entire government service.

Judge Capellan recommended Marcelo's dismissal, the cancellation of his eligibilities, the forfeiture of all his benefits, perpetual disqualification from holding any public office, and the payment or restitution of the total amount of P792,213.00. He also recommended that Marcelo's case be indorsed to the Office of the Ombudsman for proper action.

In a Resolution dated November 26, 2007,[10] the Court referred Judge Capellan's report to the OCA for evaluation.

THE OCA REPORT

In a memorandum submitted on October 9, 2008,[11] the OCA advised the Court of its concurrence with the findings of facts, conclusions of law and recommendations of Judge Capellan. Like Judge Capellan, it found the evidence sufficient to hold Marcelo liable for the irregularities he committed during his term as clerk of court of the MTCC, San Jose del Monte City, Bulacan. Accordingly, it recommended that: (1) Marcelo be found guilty of grave misconduct, dishonesty and gross neglect of duty, and be dismissed from the service; (2) Marcelo's retirement and/or separation benefits be forfeited, except accrued leave credits, and that he be disqualified from re-employment in the government; (3) Marcelo be directed to pay P792,213.00; (4) the OCA be directed to process Marcelo's terminal leave pay, dispensing with the usual documentary requirements, and to apply the proceeds to the shortages; (5) the matter be referred to the Office of the Ombudsman for proper action; and (6) Española be warned that the commission of any similar offense shall be dealt with more severely.

THE COURT'S RULING

Without doubt, Marcelo deserves to be sanctioned for the grave transgressions he committed while in office. As clerk of court, he was in charge of the court's funds and was responsible for their collection and safekeeping. He was an accountable officer, a position which carries a degree of trust of the highest order,[12] as Judge Capellan aptly noted. Marcelo violated that trust several times over for a period covering more than two years. He made collections for the court's several funds (JDF, Fiduciary Fund, General Fund, Special Allowance for the Judiciary, between March 5, 2002 and December 31, 2004) and never bothered to deposit these collections in the official court depository bank, the Land Bank of the Philippines (LBP) - a violation of the rule that all clerks of court are required to deposit all collections with the LBP within twenty-four (24) hours upon receipt of the collections.[13]

Marcelo also held on to his collections, thus committing another violation. Clerks of court may not keep funds in their custody.[14] When he could not make the deposit anymore because he was no longer the authorized

signatory, he handed - upon the advice of his mother - the collections to a member of his mother's staff who allegedly kept the funds in the vault of the City Prosecutor's Office. This action, if true, however, made matters worse; it was a classic case of "righting a wrong with another wrong." Again, as Judge Capellan noted, Marcelo's mother/counsel is not the court's depository bank. Oddly, Marcelo likewise failed to collect the marriage solemnization fees for 48 marriages, for which he is also accountable. His accountability totaled P792,213.00.

Marcelo tried to explain away his failure to deposit his collections with the claim that he had a heart condition and had threats to his life and to those of the members of his family.[15] Judge Capellan, however, correctly observed that "[N]o amount of explanation can hide the fact that respondent Marcelo for so many years had at his disposal the huge amount of money which if deposited in the bank could have redounded to the benefit of the government. Malversation of these funds was not therefore remote. It cannot be discounted that respondent benefited from it."[16] The OCA audit team had the same impression. Its report disclosed that "[R]ecords show that Mr. Marcelo was malversing/pocketing the collections of the court when collections in the Fiduciary Fund x x x amounting to P418,325.00 were not deposited by him. It is a willful and a deliberate act on Mr. Marcelo to defraud the court."[17]

While it had not been established that Marcelo malversed court funds, it cannot be disputed that his acts and omissions constitute a betrayal of the trust and confidence the Court reposes on a senior officer. In Re: Report on the Judicial and Financial Audit in RTC, Branch 4, Panabo, Davao del Norte,[18] we stressed -

> The Clerk of Court may not keep funds in his custody as the same should be deposited immediately upon receipt thereof with the City, Municipal or Provincial Treasurer where his court is located should there be no branch of the LBP in the locality. Thus, the failure of Atty. Ginete to remit the funds to the Municipal Treasurer of Panabo, Davao, constitutes gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service.
>
> A public servant, like the Clerk of Court, must exhibit at all times the highest sense of honesty and integrity. By Atty. Ginete's failure to properly remit the cash collections that are public funds he transgressed the trust reposed in him as cashier and disbursement officer of the court.

Marcelo is no different from Atty. Ginete, who was cited in the above ruling. Like Atty. Ginete, Marcelo is liable for gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service. Under Civil Service Rules, these offenses, even if committed by a public servant for the first time, are punishable with dismissal.[19] We, therefore, find the OCA's recommendation that Marcelo be dismissed from the service to be appropriate. We agree with the OCA's observation that Marcelo's dismissal from the service for cause should remain a part of his records.

Española, on the other hand, after being apprised of her shortages amounting to a total of P11,847.00 (P11,647.00 for the JDF and P200.00 solemnization of marriage fees), immediately complied with the OCA audit team's directive to deposit the amount covering the shortages. In recognition of her ready compliance, the OCA recommended that she be merely warned that the commission of a similar offense shall be dealt with more severely. The restitution does not, however, fully exonerate Española who still failed to deposit her collections at the time she was supposed to. For this infraction, we hold that the penalty of reprimand is the appropriate penalty.

WHEREFORE, premises considered, judgment is hereby rendered as follows:

(1)

Respondent Rodelio E. Marcelo, former Clerk of Court/Officer-in-Charge, Municipal Trial Court in Cities, San Jose del Monte City, Bulacan, is found GUILTY of Grave Misconduct, Dishonesty and Gross Neglect of Duty; and is hereby ordered DISMISSED from the service.

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(2)

Marcelo's retirement and/or separation benefits are FORFEITED except for accrued leave credits, and he is disqualified from re-employment in the government service.

(3)

Marcelo is directed to pay P792,213.00, representing the shortages in public funds he incurred during his accountable period.

(4)

The OCA is directed to process Marcelo's terminal leave pay, dispensing with the usual documentary requirements, and to apply the proceeds to the shortages.

(5)

A copy of this Decision is hereby referred to the Office of the Ombudsman for appropriate criminal action, if warranted.

(6)

Respondent Ma. Corazon D. Española, former Officer-in-Charge of the same court, is REPRIMANDED and warned that the commission of a similar offense shall be dealt with more severely.

Let a copy of this Decision be furnished the Office of the Ombudsman for whatever action it may deem appropriate on the possible criminal aspect of this matter.

SO ORDERED.

Corona, C.J., Carpio Morales, Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., Mendoza, and Sereno, JJ., concur.
Carpio, J., on wellness leave.
Velasco, Jr., and Abad, JJ., on official trip.
Perez, J., no part.

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[1] Rollo, pp. 3-13.

[2] Id. at 7.

[3] Id. at 40.

[4] Id. at 41; acknowledgment receipt.

[5] Id. at 62-63.

[6] Id. at 106-110.

[7] Id. at 180-182.

[8] Motion for Inhibition, p. 1, par. 1; id. at 104.

[9] Id. at 265-271.

[10] Id. at 272.

[11] Id. at 275-287.

[12] Judge Fojas v. Rollan, 428 Phil. 22 (2002).

[13] SC Administrative Circular No. 50-95.

[14] Alintana de Pacete v. Judge Garillo, 456 Phil. 666 (2003).

[15] Supra note 6.

[16] Supra note 9.

[17] Supra note 1, H. Summary, par. 2.

[18] A.M. No. 95-4-143-RTC, March 13, 1998, 287 SCRA 510.

[19] Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service provides:

Section 52. Classification of Offenses. - Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

- Dishonesty - 1[st] Offense - Dismissal

- Gross Neglect of Duty - 1[st] Offense - Dismissal

- Grave Misconduct - 1[st] Offense - Dismissal

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