

REPORT ON THE JUDICIAL AUDIT CONDUCTED AT THE MCTC #8211; SAPANG DALAGA-CONCEPCION, MISAMIS OCCIDENTAL

A.M. NO. 06-8-279-MCTC. April 27, 2007

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PER CURIAM:

This administrative case arose from a Memorandum[1] submitted by an audit team of the Office of the Court Administrator (OCA), reporting on the judicial audit conducted at the Municipal Circuit Trial Court (MCTC) of Sapang Dalaga-Concepcion, Misamis Occidental (trial court) on 15 March 2006.

Judge Teresita Saa (Judge Saa) used to preside over the trial court in an acting capacity but on 16 February 2006, the Court designated Judge Rio C. Achas (Judge Achas) to replace her. On 28 February 2006, Judge Achas wrote Chief Justice Artemio V. Panganiban requesting that he be allowed to decline the designation due to poor health. The records do not show clearly if Judge Achas had begun to preside over the trial court as of audit date.

The audit team found that the trial court had a total caseload of 61 cases consisting of 32 criminal cases and 29 civil cases. Three criminal cases[2] and three civil cases[3] had not been acted upon from the time of their filing. In 18 criminal cases, a considerable length of time had elapsed from the date of the trial court's last hearing or order, yet the trial court failed to further act or set the case for hearing. Among the civil cases, seven had pending incidents submitted for resolution, with the reglementary period already elapsed as of audit date.[4]

The team also observed that (1) case folders were unpaginated; (2) there was no data on the date of filing of criminal cases, on the date of receipt of motions and other documents, and on which cases were governed by the Rule on Summary Procedure, as mandated by the Rules of Court (Rules); (3) the trial court did not conduct actual inventory of cases, thus the inaccuracies in its Semestral Docket Inventory for July to December 2005; (4) the trial court needed to update its criminal and civil docket books; and (5) the trial court needed to issue certificates of arraignment where the accused had entered a plea.

As the team members conducted the audit, Police Officer Ryan M. Oliveros (PO2 Oliveros) of the local police station approached them, upon instruction from his superior, Police Senior Inspector Elias Derama Hampac (P/SI Hampac). PO2 Oliveros informed the team members that the trial court Branch Clerk, Darryl C. Montealto (Montealto), had misappropriated one Super Colt pistol with Serial No. 64544, forming part of the prosecution's evidence in Criminal Case No. 2000-9 entitled *People v. Lim*. That morning of the audit, 15 March 2006, Montealto was not in the trial court premises and allegedly had gone to the Commission on Audit (COA) in Oroquieta City.

At 4:00 p.m. of the same day, Montealto arrived at the trial court, whereupon an audit team member asked for a cash count of the trial court's funds. Montealto showed the team six P1,000 bills which he failed to deposit as the trial court's passbook was allegedly with the COA. The team advised Montealto to deposit the money the following day. When asked about the missing Super Colt pistol, Montealto showed "three rusty revolvers which were exhibits in Criminal Case Nos. 3-2003, 9-2001, and 12-2004."

On the last day of the audit, 17 March 2006, PO2 Oliveros furnished the team copies of the following documents:

(1) a Certification dated 9 September 1999 from the Misamis Occidental Police Provincial Office, Oroquieta City, stating that it confiscated one Super 38 SN 64544 Colt;[5] (2) the Information in Criminal Case No. 2000-9 referring to the same pistol;[6] (3) Decision of the trial court dated 27 February 2003 in Criminal Case No. 2000-9, ordering the confiscation of the pistol along with other ammunitions;[7] and (4) Memorandum dated 25 January 2006 for Judge Saa from P/SI Hampac, requesting the trial court's coordination in a Re-Security

Evaluation of court room evidence prompted by two incidents of ransacking and robbery of court evidence rooms in Misamis Occidental.[8]

PO2 Oliveros also gave the team a copy of a letter[9] dated 23 February 2006 from Montealto to the Chief of Police of Sapang Dalaga. Montealto requested the Chief of Police to release the accused in Criminal Case No. 10-2005, one Lenie Alvarico (Alvarico), as Alvarico "had already posted today the required bail" of P6,000 and for humanitarian reasons, considering that the trial court "ha[d] no regular judge x x x and it will take time x x x to get the judge['s] order of release outright."

Thus, the team recommended to the OCA that:

- The judge to be appointed or designated as trial court Acting Judge be directed to take appropriate action on the criminal and civil cases wherein the court failed to take any action from the time of filing or take further action for a considerable length of time; to resolve pending incidents in the civil cases where the period for resolution had already lapsed; and to issue orders indicating which cases within the trial court's caseload were governed by the Rule on Summary Procedure.

- Montealto be directed to:

- regularly apprise the Acting Presiding Judge of cases submitted for resolution/decision and those cases that require immediate attention;

- attach the corresponding Certificate of Arraignment on all criminal case folders where the accused had been arraigned, duly signed by both the accused and his/her counsel;

- strictly comply with the provisions of Administrative Circular No. 3-2000 dated 15 June 2000 to immediately deposit collections whenever the amounts collected reach P500;

- strictly comply with the provisions of Administrative Circular No. 10-94 dated 29 June 1994, as amended by Administrative Circular No. 2-2001 dated 2 January 2001, in compliance with the semestral docket inventory procedure;

- order and supervise the pagination of all case folders including their chronological arrangement, the stamping of date of receipt on all documents received by the trial court, and the updating of both the criminal and civil docket book; and

- submit compliance within 60 days from notice, with warning that failure to do the same shall be dealt with more severely.

- Judge Ruben R. A. Cagas (Judge Cagas), Executive Judge and Presiding Judge of the Regional Trial Court of Calamba, Branch 36, Misamis Occidental, be directed to investigate on the missing Super Colt pistol.[10]

Montealto participated in the formal investigation conducted by Judge Cagas, submitting his comment and appearing at the hearing on 5 May 2006. At the hearing, Montealto presented a copy of his letter addressed to the Provincial Director of the Philippine National Police in Oroquieta City, which letter accompanied his turn over to the police on 2 May 2006 of several firearms and ammunition including the Super Colt pistol. Montealto insisted

that the pistol had not been missing. However, he admitted that he turned over the firearms to the police "per instruction of Atty. Tanchoco," leader of the audit team.

As to his act of requesting the police to release Alvarico even before Judge Saa had issued a release order, Montealto narrated that he did so before he left for the town of Aloran to have Alvarico's bail bond approved. Upon his return in the afternoon, he learned that the police had not acted upon his request. The police released Alvarico only upon seeing the bail bond approved by Judge Saa. Montealto admitted that Judge Saa "was not amenable to [the] release [of Alvarico] until such time that the approved bail bond [would] be presented to the police." Nevertheless, Montealto submitted the request upon the consideration that there was then no presiding judge at the trial court and it would take time to secure the signature of a judge for Alvarico's release order. In his testimony before Judge Cagas, Montealto reasoned that there would only be a three-hour gap from the time he submits the letter-request to the police to the time he expects to return to the police station to present the approved bail bond.

In its Memorandum of 4 August 2006, the OCA found that it took Montealto 1,160 days to turn over the Super Colt pistol to the police, counting from the date of the dismissal of Criminal Case No. 2000-9, which was the same date the trial court ordered the firearms and ammunition confiscated. The OCA also found "highly irregular" Montealto's act of requesting the local police to release Alvarico even before the latter's bail bond could be approved. As the OCA explained:

Only a member of the bench has the power to issue an order for the release of an accused. The drawing up of such letter[,] as in this case, is a futile attempt to gain improper advantage and constitutes conduct prejudicial to the best interest of the service.

Mr. Montealto is the custodian of and has control of all records, papers, files, exhibits and public property committed to his charge x x x. His failure for more than three (3) years from the dismissal of the criminal case to transmit to the proper government office/agency the evidence (Colt pistol with serial number 64544 and ammunitions) ordered forfeited by the court constitutes gross neglect of duty.[11]

Thus, the OCA recommended Montealto's suspension for a period of six months for gross neglect of duty and grave misconduct, with a stern warning that the commission of similar acts in the future would be dealt with more severely.

The findings of the OCA are well-taken, except as to the penalty.

Montealto controls and manages all trial court records, exhibits, documents, properties, and supplies as part of his non-adjudicative functions as Branch Clerk of Court.[12] Montealto is required to "safely keep all records, 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." [13] In the case of exhibits consisting of firearms, the safekeeping duty of the Branch Clerk of Court lasts until the case involving such firearms is terminated, after which the Branch Clerk of Court is required to turn over the firearms to the police headquarters in Camp Crame, Metro Manila, or to the nearest police provincial command in the case of courts outside Metro Manila.[14] The Branch Clerk of Court's duty to safekeep the firearms must be considered effectively in place until the custody of the firearms is actually turned over to the police.

The audit team, through the vigilance of the local police, discovered that Montealto failed to turn over to the police one Super Colt pistol which the trial court had ordered confiscated in Criminal Case No. 2000-9. The pistol was not in the trial court premises, as it could not be found during the audit. Instead, Montealto had the pistol in his personal custody, presumably from 27 February 2003, the day the trial court promulgated its Decision on Criminal Case No. 2000-9, until 2 May 2006. While testifying before Judge Cagas, Montealto could only offer a

circuitous explanation for the removal of the pistol from the trial court's custody, citing mainly as reason his lack of "time to check the records." Considering the excessively long period that he failed to surrender the pistol, keeping it in his personal custody for more than three years from the termination of the case and for more than a month from the time of audit by the OCA, Montealto's explanation is unsatisfactory.

Montealto must next answer the well-founded charge that he requested the police to release Alvarico, then in detention at the police headquarters, even though Alvarico's bail bond had not been approved and there was no release order from a judge supporting such request. The letter-request reads:

Please be informed that accused [Alvarico] x x x has already posted today the required bail in the form of CASH BOND x x x.

Considering that we have no regular judge in this Court and it will take time for us to get the judge[s] ORDER OF RELEASE outright, for humanitarian consideration it is requested that the accused be released and rest assured that the judge's ORDER OF RELEASE dated today, February 23, 2006, will be delivered by the undersigned to your office within 72 hours.

Your consideration is highly solicited.[15]

Under Section 19, Rule 114 of the Rules, an "accused must be discharged upon approval of the bail by the judge with whom it was filed in accordance with the requirements for the filing of bail." [16] From the wording of the letter, Montealto's intent to cause the release of Alvarico under circumstances violative of the Rules is clear. Thus, in appealing to the police to act favorably on his letter-request, Montealto had to invoke "humanitarian consideration" and give an assurance that the signed release order, after he shall have obtained it, would be delivered to the police in 72 hours. Moreover, with possibly no other intent than to mask any irregularity, Montealto gave the police an additional assurance that the release order would be dated on the day of release, 23 February 2006, regardless of the actual date of the order's approval. Indeed, the content of the letter-request serves as sufficient basis for a finding of liability against Montealto.

We must remind Branch Clerks of Court that their administrative functions are vital to the proper administration of justice. They perform a sensitive function as designated custodians of the court's funds, revenues, records, properties, and premises. They are specifically tasked to safeguard the integrity of the court as well as to uphold the confidence of the public in the administration of justice.[17] Their failure to fulfill their mandate renders it difficult for the court to maintain its good name and standing as a true temple of justice, for which they should be held administratively liable.

Montealto's willful violation of the Rules and of his duty to safekeep court property cannot be classified other than as grave misconduct. Misconduct is a violation of an established and definite rule of action, more

particularly unlawful behavior as well as gross negligence by the public officer.[18] Grave misconduct is a serious offense punishable under Section 52 of the Revised Uniform Rules on Administrative Cases in the Civil Service with dismissal even for the first offense.

In *Dipolog v. Montealto*, [19] we found Montealto, also as Branch Clerk of Court, guilty of dishonesty and gross neglect of duty. Montealto had certified to the correctness of the Daily Time Records (DTRs) of certain personnel in the trial court fully knowing that they were not always present as they entered in their DTRs. There, we said:

Montealto x x x is liable for dishonesty and gross neglect of duty, both of which are grave offenses penalized with dismissal even for the first offense under the CSC Revised Uniform Rules.

However, the OCA recommends that the penalty of suspension for six (6) months and one (1) day be imposed upon respondents instead of dismissal because the fact that respondents have not been administratively charged

prior to this case may be considered as a mitigating circumstance.

The Court agrees with the recommendation of the OCA.

Section 53 of the CSC Revised Uniform Rules grants the disciplining authority the discretion to consider mitigating circumstances although not pleaded by the respondent.

The Court has, in several cases, refrained from imposing the extreme penalty of dismissal where the erring employee had not been previously charged with an administrative offense. Inasmuch as the respondents in this case (except respondent Bation) have not been administratively charged prior to this case, the Court deems it proper to apply such mitigating circumstance in their favor and accordingly, to reduce the penalty imposable upon each of them to suspension for a period of six (6) months and one (1) day.[20]

The above considerations no longer extant in the present case, we are constrained to apply the letter of the law and impose the full penalty of dismissal.

WHEREFORE, we find Darryl C. Montealto, Branch Clerk of Court of the Municipal Circuit Trial Court of Sapang Dalaga-Concepcion, Misamis Occidental guilty of GRAVE MISCONDUCT. We DISMISS him from the service with forfeiture of all benefits and privileges, except accrued leave credits, if any, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and Nachura, JJ., concur.

[1] Rollo, pp. 5-14.

[2] Including Criminal Case No. 20-2002 filed on 12 December 2002 and Criminal Case No. 2-2004 filed on 15 January 2004.

[3] Civil Case Nos. 5-2004, 4-2004, and 2-2004, all filed on 5 August 2004.

[4] The cases were due for resolution on 11 March 2006.

[5] Rollo, p. 19.

[6] Id. at 21-22.

[7] Id. at 23-30.

[8] Id. at 31.

[9] Id. at 32.

[10] Id. at 10-14.

[11] Id. at 52-53.

[12] The 2002 Revised Manual for Clerks of Court, Vol. I, p. 622.

[13] Section 7, Rule 136, Rules of Court.

[14] Circular No. 2 dated 13 May 1983 addressed to all Clerks of Courts provides:

Forwarded by the Ministry of National Defense to the Honorable Chief Justice, Supreme Court of the Philippines, is a letter, dated April 14, 1983, of the Chief of Constabulary requesting that all Courts in the country be advised to turn over to the nearest Constabulary Command all firearms used as evidence in criminal cases and presently in their custody after the cases involving such firearms shall have been terminated.

In connection therewith and in consonance with the provisions of Executive Order No. 1, dated December 5, 1924, and General Order No. 7, dated September 23, 1972, you are hereby DIRECTED to turn over, effective immediately, to the nearest Constabulary Command all firearms in your custody after the cases involving such firearms shall have been terminated. In Metro Manila, the firearms may be turned over to the Firearms and Explosives Unit at Camp Crame, Quezon City, while in the provinces, the firearms may be turned over to the respective PC Provincial Commands.

Strict compliance herewith is hereby enjoined.

[15] Rollo, p. 32.

[16] The 2000 Rules on Criminal Procedure.

[17] Nieva v. Alvarez-Edad, A.M. No. P-01-1459, 31 January 2005, 450 SCRA 45.

[18] Albior v. Auguis, 452 Phil. 936 (2003).

[19] A.M. No. P-04-190, 23 November 2004, 443 SCRA 465.

[20] Id. at 478.

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