

RE: REPORT ON THE ARREST OF MR. OLIVER B. MAXINO, UTILITY WORKER I, MUNICIPAL CIRCUIT TRIAL COURT, TRINIDAD-SAN MIGUEL-BIEN UNIDO, BOHOL FOR VIOLATION OF SECTIONS 5 AND 11 OF RE...*A.M. No. 16-01-3-MCTC. June 09, 2020*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-m-no-16-01-3/>**PER CURIAM:**

The mere conduct of a buy-bust operation cannot, by itself, be evidence of grave misconduct in an administrative case against a court employee. There must be sufficient basis to conclude that the buy-bust operation was valid and there must be a strong probability that he or she committed the crime. However, he or she may still be found guilty of gross neglect of duty if, even before the conduct of the buy-bust operation, he or she attends to his or her duties in an unsatisfactory manner and was frequently absent without any leave.

This is an administrative case against Oliver B. Maxino (Maxino), Utility Worker I, Municipal Circuit Trial Court, Trinidad-San Miguel-Bien Unido, Bohol, for grave misconduct, gross neglect of duty, and habitual absenteeism.

On December 1, 2015, Maxino was arrested by police officers in a buy-bust operation for possessing and selling plastic sachets containing 0.05 gram of shabu. An Information was filed against him for violation of Section 5[1] and Section 11[2] of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.[3]

On December 21, 2015, Judge Azucena C. Macalolot-Credo (Judge Macalolot-Credo), Presiding Judge of the Municipal Circuit Trial Court, Trinidad-San Miguel-Bien Unido, Bohol, submitted a Report[4] stating that prior to his arrest, Maxino neither reported to work for the whole month of November 2015 nor filed any leave applications. He also did not submit his daily time records for the months of September and October 2015, and had incurred several absences without leave.[5]

Judge Macalolot-Credo found that Maxino obtained five (5) consecutive "Unsatisfactory" ratings from July 2012 to June 2015, as reflected in his Performance Rating Forms.[6] She also discovered that Maxino had been involved in an incident regarding the loss of a stenographer's salary check in the amount of P4,625.00. In view of these findings, Judge Macalolot-Credo strongly recommended the imposition of disciplinary action and the appropriate sanction against Maxino.[7]

The Office of the Court Administrator asked Maxino to comment on Judge Macalolot-Credo's Report.[8] He, however, failed to file any comment despite receipt of notice.[9] On July 14, 2016, this Court sent a Tracer reiterating its directive to comply with the submission of a comment.[10]

In an August 25, 2016 Letter, Flora Mae Maxino, who stated that she was Maxino's wife, explained that her husband's detention was due to "fabricated and planted evidence"[11] and that he would like the opportunity to defend himself on the claims regarding his office performance, absences without leave, and nonsubmission of daily time reports, but was incapable of doing so since he was under detention.[12]

In a November 16, 2016 Letter, Acting Executive and Presiding Judge Marivic Tabajo-Daray of the Regional Trial Court of Talibon, Bohol, Branch 52, informed the Office of the Court Administrator that Maxino: (1) faces charges of violation of Section 5 and Section 11 of Republic Act No. 9165; (2) was arraigned on January 14, 2016;^[13] and (3) was currently detained at the BJMP District Jail in Talibon, Bohol.^[14]

In a January 22, 2020 Memorandum,^[15] the Office of the Court Administrator recommended that Maxino be found guilty of habitual absenteeism, gross neglect of duty, and grave misconduct.

According to the Office of the Court Administrator, Maxino, prior to his arrest, failed to report for office for the entire month of November 2015 and was absent without leave for nine (9) days in September 2015 and for 16 days in October 2015.^[16]

The Office of the Court Administrator likewise found that although the criminal case was still pending, there was substantial evidence to find that Maxino was guilty of grave misconduct because his "illicit activities resulted in his apprehension by the police authorities in a buy-bust operation."^[17] Thus, considering Maxino's numerous infractions, the Office of the Court Administrator recommended that he be dismissed from service, with forfeiture of his retirement benefits except for accrued leave credits, and with prejudice to his reinstatement or re-employment in any agency of government, including government-owned and controlled corporations.^[18]

This Court adopts the findings of fact of the Office of the Court Administrator. However, its conclusions require further examination.

According to the Office of the Court Administrator, Maxino was guilty of grave misconduct since his "illicit activities resulted in his apprehension by the police authorities in a buy-bust operation"^[19] and that "in entrapment operations [like buy-bust operations,] ways and means are resorted to for the purpose of ensuring and capturing law-breakers in the execution of their criminal plan."^[20] Simply put, the Office of the Court Administrator opines that the mere conduct of the buy-bust operation on Maxino constituted substantial evidence to find him guilty of grave misconduct.

Misconduct has been defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."^[21] Misconduct is considered grave "if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules."^[22]

Unlike criminal cases where the quantum of evidence requires proof beyond reasonable doubt, only substantial evidence is required to prove misconduct in administrative cases. In *Office of the Court Administrator v. Lopez*.^[23]

[T]o sustain a finding of administrative culpability, only substantial evidence is required. The present case is an administrative case, not a criminal case, against respondent. Therefore, the quantum of proof required is only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. Evidence to support a conviction in a criminal case is not necessary, and the dismissal of the criminal case against the respondent in an administrative case is not a ground for the dismissal of the administrative case. We emphasize the well-settled rule that a criminal case is different from an administrative case and each must be disposed of according to the facts and the law applicable to each case.^[24]

Thus, the proper issue before this Court is whether or not the mere conduct of a buy-bust operation against a court employee may be considered substantial evidence of grave misconduct.

A buy-bust operation is generally considered a valid means of entrapment. Law enforcers often use this method in order to catch offenders in the act of committing drugs offenses. To be considered valid, the offender must not be induced to commit the offense.^[25] Certain procedural requirements under the law must also be strictly complied

with.[26]

In this case, there is insufficient information in the records to show if the buy-bust operation against Maxino was valid. As trial had not yet commenced, the prosecution has yet to introduce evidence tending to show that Maxino did indeed commit the crime. In *Paredes v. Padua*:[27]

As a general rule, this Court prefers to defer final action in an administrative case when there is a pending criminal case against the respondent based on the same set of facts as those obtaining in the administrative case. The purpose of the rule is not to preempt and influence the trial court in judging the merits of the defenses put up by the accused.[28]

If this Court concludes that Maxino is guilty of grave misconduct for having been caught in flagrante, then it would be tantamount to preempting the trial court's conclusion on the validity of the buy-bust operation. There are no other facts, other than Maxino's arrest, that would strongly support a conclusion that he probably committed grave misconduct.

In contrast, this Court in *Office of the Court Administrator v. Lopez*[29] found substantial evidence to conclude that respondent was guilty of grave misconduct despite the pendency of the criminal case. The respondent in *Lopez* was a process server in a Municipal Trial Court. By virtue of a search warrant, law enforcement agents seized 790.6 grams of marijuana fruiting tops under respondent's bed, which led to his arrest. Unlike the present case, in *Lopez*, an investigating judge was first assigned to the administrative matter in order to gather the substantial evidence required. Thus, the Court's ruling on grave misconduct did not merely emanate from respondent's arrest but rather from the findings of the investigating judge.

There have likewise been several instances where entrapment operations against court employees have been found to be valid. These are usually in complaints of bribery and extortion, where information is provided by either the trial court or the Office of the Court Administrator to law enforcement agents before the actual conduct of the entrapment operation.[30]

In this case, the only evidence to support the conclusion that Maxino committed grave misconduct is his arrest from the conduct of a buy-bust operation. There is no other information, such as prior surveillance of alleged drug activities or proof of the validity of the conduct of the buy-bust operation that would prove that Maxino is guilty of selling illegal drugs. Thus, he cannot be conclusively found guilty of grave misconduct.

However, it would be remiss of this Court to disregard that Maxino is also charged with gross neglect of duty and habitual absenteeism.

According to Rule 10, Section 46 (A) (2) of the Revised Rules on Administrative Cases in the Civil Service, gross neglect of duty is considered a grave offense with the corresponding punishment of dismissal from service.

In *Escaño v. Manaois*:[31]

Neglect of duty is the failure of an employee to give one's attention to a task expected of him. Section 1, Canon IV of the Code of Conduct for Court Personnel commands court personnel to perform their official duties properly and diligently at all times. Since the image of the courts, as the administrators and dispensers of justice, is not only reflected in their decisions, resolutions or orders but also mirrored in the conduct of court personnel, it is incumbent upon every court personnel to observe the highest degree of efficiency and competency in his or her assigned tasks. The failure to meet these standards warrants the imposition of administrative sanctions.[32]

Frequent unauthorized absences are also grave offenses punishable by "suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense." [33]

Here, Maxino was given five (5) consecutive "unsatisfactory" ratings from July 2012 to June 2015, as shown in his Performance Rating Forms.[34] Under the Revised Rules on Administrative Cases in the Civil Service, an employee who is given two (2) consecutive "unsatisfactory" ratings may be dropped from the rolls after due notice.[35] Considering that Maxino received no less than five (5) consecutive "unsatisfactory" ratings from 2012 to 2015, he should have been dropped from the rolls since 2015.

Maxino was also reported to have stolen a fellow court employee's salary check in April 2014,[36] although no criminal complaint was filed as he later returned the money taken. Prior to his arrest, he also failed to report to office for the entire month of November 2015, and was absent without leave for nine (9) days in September 2015 and for 16 days in October 2015.[37]

These undeniably show that Maxino was grossly inefficient and incompetent in the conduct of his tasks, to the detriment of the Municipal Circuit Trial Court, Trinidad-San Miguel-Bien Unido, Bohol. He has also cavalierly failed to report for work for long periods of time, without any valid reasons.

Maxino, thus, is guilty of gross neglect of duty and frequent unauthorized absences. His dismissal from service is in order.

Maxino's wife laments that her husband was deprived of due process when he was rendered unable to refute the charges against him due to his arrest. On the contrary, the deprivation of liberty does not equate to the deprivation of due process. Maxino is not being held incommunicado. He was free to submit his comment on the charges in any form that could be available to him, whether in a handwritten letter or as assisted by counsel. He could even have requested for as much time as he needed to formulate his comment. He did none of these. He, therefore, chose to forego his opportunity to be heard.

In any case, and as proven by substantial evidence, Maxino is found guilty of gross neglect of duty and habitual absenteeism. "If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances." [38] This Court, therefore, adopts the Office of the Court Administrator's recommended penalty of dismissal from service.

WHEREFORE, Oliver B. Maxino, Utility Worker I, Municipal Circuit Trial Court, Trinidad-San Miguel-Bien Unido, Bohol, is found GUILTY of gross neglect of duty and habitual absenteeism. He is, thus, meted the penalty of DISMISSAL from the service with the accessory penalty of forfeiture of retirement benefits, except for accrued leave credits, with prejudice to reinstatement or re-employment in any agency of government, including government-owned and controlled corporations.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, J. Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, and Gaerlan, JJ., concur.
De los Santos, J., on leave.

[1] Sale of Illegal Drugs.

[2] Possession of Illegal Drugs.

[3] Rollo, p. 7, Police Report.

[4] Id. at 1-4.

[5] Id. at 1-3.

[6] Id. at 2-3.

[7] Id. at 3.

[8] Id. at 55.

[9] Dorsal side of rollo, p. 55.

[10] Rollo, p. 56.

[11] Id. at 57.

[12] Id.

[13] Id. at 60-61.

[14] Id. at 67.

[15] Id. at 79-84.

[16] Id. at 79-80.

[17] Id. at 83.

[18] Id.

[19] Id.

[20] Id.

[21] Office of the Court Administrator v. Lopez, 654 Phil. 602, 608 (2011) [Per Curiam, En Banc] citing Arcenio v. Pagorogon, 296 Phil. 67 (1993) [Per Curiam, En Banc].

[22] Id.

[23] 654 Phil. 602 (2011) [Per Curiam, En Banc].

[24] Id. at 607 citing Velasco v. Judge Angeles, 557 Phil. 1 (2007) [Per J. Carpio, En Banc].

[25] See People v. Bartolome, 703 Phil. 148 (2013) [Per J. Bersamin, First Division].

[26] See People v. Holgado, 741 Phil. 78 (2014) [Per J. Leonen, First Division].

[27] 294 Phil. 92 (1993) [Per Curiam, En Banc].

[28] Id. at 92 and 95.

[29] 654 Phil. 602 (2011) [Per Curiam, En Banc].

[30] See Dela Cruz v. Malunao, 684 Phil. 493 (2012) [Per Curiam, En Banc] and Office of the Court Administrator v. Bautista, 456 Phil. 193 (2003) [Per Curiam, En Banc].

[31] 799 Phil. 622 (2016) [Per Curiam, En Banc].

[32] Id. at 635-636 citing Marquez v. Pablico, A.M. No. P-06-2201, June 30, 2008, 556 SCRA 531, 537 and Office of the Court Administrator v. Gaspar, 659 Phil. 437 (2011) [Per J. Brion, Third Division].

[33] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule 10, sec. 46(B)(5).

[34] Rollo, pp. 2-3.

[35] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule 19, Section 93 (b) (1).

[36] Rollo, pp. 17 and 53.

[37] *Id.* at 81.

[38] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule 10, Sec. 50.

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