

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
RUDY ESCARE, DEFENDANT AND APPELLANT.***G.R. No. L-16938. October 27, 1961*

Ponente: BAUTISTA ANGELO, J.

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Rudy Escare was charged with serious slander before the Court of First Instance of Iloilo. On the date of his arraignment, he asked the court to allow him to plead guilty to a lesser offense which was denied in view of the opposition of the city fiscal. When the information was read to him in the presence of his counsel, he pleaded guilty to the offense as charged therein. On the same date, the court rendered a judgment of conviction of which he was notified several days later.

On February 23, 1960, three days after his arraignment, he filed a motion praying that he be allowed to withdraw his plea of guilty and substitute it for one of not guilty, but because of the opposition of the fiscal, the court resolved to deny the motion. On March 14, 1960, the decision was read to him, and being one of conviction, he gave notice to appeal not only from said decision but from the order dismissing his motion for substitution. The case is now before us because only questions of law are involved.

The reason alleged by appellant for the withdrawal of his previous plea is "that after mulling over the first plea he entered, he realized that he would take the risk of a trial instead of pleading to all the material allegations of the complaint inasmuch as his first desire of pleading guilty to a lesser offense was not accepted by the city fiscal." He claims that, since he moved for substitution of plea before the judgment was promulgated, it is a matter of right on his part to withdraw his plea of guilty and substitute it for that of not guilty for then it cannot be said that he decided to change his mind in view of the penalty imposed.

With this claim we disagree in view of the well settled rule that a matter which involves the substitution of a plea of guilty for that of not guilty is one that is addressed to the sound discretion of the trial court and unless there is clear showing that such discretion has been abused, we are not justified in interfering with the ruling of the trial court.[1] A parallel case is *People vs. Nueno*, 70 Phil., 556, wherein this Court said:

"It is contended by the defendant appellant that the trial court abused its discretion in refusing to allow him to change his plea of guilty to that of not guilty. Considering the fact that the defendant appellant is a member of the bar and as such is well aware of the consequences of a plea of guilty, we are of the opinion that the trial court committed no abuse of discretion in declining to accede to his petition. On the other hand, the withdrawal of a plea of guilty is not a matter of absolute right on the part of the defendant appellant but lies entirely within the sound discretion of the trial court."

While appellant is not a member of the bar as in the *Nueno* case he was however assisted by a counsel when the information was read to him and so he cannot claim that he entered his plea without being informed of the nature and import of the charge against him. His reason that he has to substitute his plea because the court denied his first desire to plead guilty to a lesser offense is insubstantial and devoid of merit.

Wherefore, the order and decision appealed from are affirmed, with costs against appellant.

Bengzon, C. J., Padilla, Labrador, Conception, Reyes, J.B.L., Paredes, and De Leon, JJ., concur.

[1] U.S. vs. Neri, 8m Phil., 669; U.S. vs. Paquit, 5 Phil., 635; U.S. vs. Mold 5 Phil., 412; People vs. Quinta 51 Phil., 820; People vs. Serrano y Sandoval, 85 Phil., 835; 47 Off. Gaz., 5106.

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