

SPO4 REYNALDO ALCALA MATILLANO, PETITIONER, VS. ATTY. MEDARDO G. DE LEMOS, REGIONAL DIRECTOR, NATIONAL BUREAU OF INVESTIGATION, CENTRAL VISAYAS REGIONAL OFFICE, AND RONNIE BACUS...

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

THE CASE

This is a petition filed under Rule 43 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[1] of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices rendered on 16 December 2009, and its Order denying reconsideration dated 18 April 2011.

THE ANTECEDENTS

This controversy has its roots from a complaint-affidavit^[2] executed on March 17, 2008 by Pinky Hernani y Nacion (Pinky Hernani hereinafter) against PNP-CIDG operatives headed by SPO4 Reynaldo Matillano. In her complaint sworn before Atty. Bernardo A. Dela Cruz, Pinky Hernani alleged in the main that SPO4 Matillano and the two other police officers, namely: Balaba, Perea and Tumakay, Jr. demanded money from her and her husband, Ronio Hernani y Bacus, in exchange for non-filing of case for illegal possession of firearm against the latter. Pinky Hernani continued that the said police officers also demanded money in the amount of P20,000.00 to pay off the prosecutor in-charge so that no Information would be filed against her husband. All in all, she was only able to produce P70,000.00 for the police officers, which she personally handed to Police Officer Peria. and P15,000.00 for the fiscal, which she handed to SPO4 Matillano. Despite, however, the money she gave to the said police officers, which was against her will, these police officers still filed a case against his husband; and a corresponding Information was also filed. That, she posted bail for the temporary release^[3] of her husband on 11 March 2008, but the police officers released him on the following day only.

On the basis of the complaint^[4] dated March 14, 2008 and affidavit filed by Ronnie Hernani, Agents/Special Investigators of the National Bureau of Investigation, Central Visayas, Regional Office (NBI-CEVRO)^[5] conducted an entrapment operation against SPO4 Matillano at one of the fastfood chains situated in North Reclamation Area in Mandaue City. During the entrapment operation, SPO4 Matillano was caught redhanded receiving money in the amount of P15,000.00 (including the three P100.00^[6] bills dusted with fluorescent powder) from Ronnie Hernani. Recovered from SPO4 Matillano was the pay-off money and a .45 caliber pistol with serial No. 9842001 including three magazines containing five live ammunition and one (1) magazine of an M16 rifle. Thereafter, SPO4 Matillano was brought to the NBI-CEVRO where he was examined for the presence of fluorescent powder, which tested positive;^[7] then, he was booked,^[8] fingerprinted^[9] and photographed.^[10]

By its Order^[11] dated 25 April 2008, Director Eulogio S. Cecilio of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices, directed SPO4 Matillano, PI Elmer Roberto Balaba, SPO4 Rodrigo Perez, SPO2 Pedro Tan and PO3 Artemio Tumakay, Jr. to file their respective counter-affidavit and those of their

witnesses, if any, and such other controverting evidence, within ten (10) days from notice. Failing which, shall be deemed a waiver on their part, and consequently, the case shall be considered submitted for resolution without further notice.

SPO4 Matillano filed his Counter-Affidavit,[12] averring, primarily, that he is neither criminally nor administratively liable and the administrative case filed against him be dismissed on the following grounds: (1) That, the criminal case against him was prematurely filed. That, in order to preclude any contradiction to whatever findings may be rendered by the trial court in the criminal case filed against him for the same acts charged in the administrative case, the latter case should be dismissed. (2) That, he violated no law, rule or regulation as he was only exercising his duties as police officer. (3) That, the administrative case is not supported by substantial evidence. Attached to this counter-affidavit are the following: (1) Letter[13] dated May 8, 2008 to City Prosecutor Nicolas Sellon – manifesting intent to file a case for perjury against Ronnie B. Hernani; (2) Affidavit[14] of SPO4 Reynaldo Matillano; (3) Affidavit[15] of Ma. Janeta T. Matillano; (4) Affidavit[16] of Elfred Ricabo y Pasquil; (5) Affidavit[17] of Vicente Mañalac; (6) Entry No. 5303[18] showing that on 09 March at 140_H, a team led by PI Elmer Roberto Balaba returned to the station with Ronnie Bacus Hernani, who was arrested for violation of RA 8294; (7) Statement of Account[19] dated March 18, 2008 issued by [20]Leslie B. Salva showing the charges, payment made, and remaining balance; (8) Sales Invoice;[21] (9) makro serial No. 443482;[22] and (10) undated Joint-Affidavit[23] executed by PI Elmer Roberto S. Balaba, SPO4 Reynaldo A. Matillano, SPO4 Rodrigo C. Perez, SPO2 Edgar O. Perea, SPO2 Pedro E. Tan and PO Artemio B. Tumakay, Jr., attesting in the main that Ronnie Hernani failed to present pertinent documents to possess or carry firearms outside of his residence.

THE DECISION[24] OF THE OMBUDSMAN

The fallo of the decision reads, to wit:

“WHEREFORE, premises considered, it is respectfully recommended that the instant administrative case against respondents Police Inspector Elmer Roberto Sabandal Balaba, SPO4 Rodrigo Cruz Perez, SPO2 Pedro Eder Tan and PO3 Artemio B. Tumakay, Jr. be DISMISSED.

However, finding substantial evidence, respondents SPO4 Reynaldo Alcala Matillano and SPO2 Edgar Olaer Perea are hereby found guilty of Grave Misconduct and are meted out the penalty of Dismissal from the service.

The Secretary, Department of Interior and Local Government, and the Chief, Philippine National Police, are hereby directed to implement this Decision in accordance with law and to promptly inform this Office of the compliance therewith.”[25]

The Office of the Ombudsman ratiocinated in its decision, that,

“The entrapment procedure conducted on March 14, 2008 by the NBI against respondent SPO4 Matillano produced credible evidence against him. The three pieces Three Hundred Peso bills, part of the Fifteen Thousand Pesos, used were previously marked '2008-P-2503, NBI, CEVRO, RDP, 3-14-2008' with invisible ink and dusted with fluorescent powder and his hands tested positive with this chemicals. He was caught in flagrante delicto and the documentary evidence cannot lie.

As a result, a criminal case for Direct Bribery against him has been filed by the Office of the Ombudsman for Visayas in the RTC of Cebu City and docketed as Criminal Case No. CBU-82706.

x x x x

On the other hand, aside from being part of the team which arrested complainant Hernani on March 9, 2008, we found no evidence against respondents PINSP. Balaba, SPO4 Perez, SPO2 Tan and PO3 Tumakay, Jr. linking them with the separate extortions made by respondents SPO4 Matillano and SPO2 Perea. In our mind,

the complaint failed to establish conspiracy between and among the respondents.”[26]

Not satisfied, SPO4 Matillano moved for the reconsideration[27] of the decision. By its Order[28] dated 18 April 2011, the Ombudsman denied SPO4 Matillano's motion in this wise,

‘WHEREFORE, premises considered, it is respectfully recommended that Motion for Reconsideration dated 13 September 2010 and the Motion to Recall the Implementation of the Decision dated 28 October 2010, filed by respondent SPO4 Reynaldo A. Matillano as well as the Motion for Reconsideration dated 29 October 2010 filed by SPO2 Edgar O. Perea are hereby DENIED for lack of merit. The Decision dated 16 December 2009 is hereby AFFIRMED.

SO ORDERED.”[29]

Hence, this petition ascribing the following errors to the Office of the Ombudsman, viz -

“I.

The Deputy Ombudsman gravely erred in finding SPO4 Matillano administratively liable for Misconduct and in ordering his dismissal from service because –

- The alleged demand and the charge of misconduct was not proven by substantial evidence;
- The Deputy Ombudsman failed to recognize that the administrative charge against SPO4 Matillano is clearly intended as leverage for Hernani's own criminal case for illegal possession of firearms; and
- SPO4 Matillano's act of heeding the incessant pleas for help of Hernani does not constitute grave misconduct as to justify his dismissal from service.

II.

The Deputy Ombudsman gravely erred in proceeding with the resolution of the administrative case notwithstanding that the criminal case for bribery based on the same incident, the same act, and on the same allegations is pending with the regular courts and may lead to a different finding altogether; and

III.

The Deputy Ombudsman committed a serious error in denying SPO4 Matillano's motion to recall implementation of decision dated 16 December 2009 because his motion for reconsideration was still pending at the time of the implementation of the decision.”

ARGUMENTS

Petitioner's

Considering the nature of the administrative charge of misconduct based on extortion and bribery filed against him, the quantum of proof required should be more than substantial. Reliance on the entrapment procedure conducted on him is not enough basis for finding him guilty of misconduct. Save for the private respondent's allegations, no evidence was adduced regarding his supposed demand for P15,000.00 which was allegedly intended to secure a license, not even of the text messages he allegedly sent to the private respondent of such demand.

That, in the individual affidavit of Pinky Hernani and Alexon Loon, nothing was mentioned about the alleged demand. Too, the NBI agents who arrested him did not have any personal knowledge of the alleged demand because as can be gleaned from their Joint Affidavit of Arrest dated March 14, 2008, they merely relied on the

private respondent's allegations thereon. What should have been considered, too, is the fact that the private respondent has an axe to grind against him and his fellow arresting officers.

What is more, evidence to be believed must not only come from a credible source but must also be credible in itself. In this instance, the private respondent's allegations are contrary to human nature and experience. In private respondent's March 14, 2008 affidavit, the private respondent alleged that he refused to receive the amount of P15,000.00, which was supposedly to cover the legal fees of Atty. Leslie Salva, in public. Yet, in the private respondent's supplemental affidavit executed on the same date, the private respondent alleged that he demanded the payment of Php15,000.00 at the Jollibee outlet in Makro Cebu Department Store, Mandaue City. That, granting without admitting that he, indeed, demanded the amount of P15,000.00 from the private respondent this was for the payment of securing a gun license and not for any illegal purpose.

That, in *Boyboy v. Yabut*, Adm. Case No. 5225, April 29, 2003, it was held that -

“x x x. In the case before us, it is enough for respondent to deny complicity in the alleged blackmail or extortion, without more, for he is not under obligation to prove his negative averment, much less to disprove what has not been proved by complainants. Thus, we have consistently held that if the complainant/plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which he bases his claim, the respondent/defendant is under no obligation to prove his exception or defense.”

That, the administrative case filed against him is clearly intended as leverage for the private respondent's own criminal case for “Illegal Possession of Firearms”. In fact, the private respondent did not deny his arrest on March 9, 2009 by him and some other police officers, and which arrest led to the filing of the criminal case before the Regional Trial Court, Branch 56 in Mandaue City.

That, he only tried to help the private respondent secure a firearm license. Yet, the Deputy Ombudsman considered this as not only unethical but in conflict with his interest and that of the institution he represents. What is more, to warrant one's removal, the act complained of must have a direct relation to and be connected with the performance of official duties amounting to, either, mis-administration or willful, intentional neglect and failure to discharge the duties of the office. In this case, his office has no relation, function or duty at all about the procurement of licenses for firearms. Hence, the complaint filed against him is neither related or connected with his official functions to make him liable for misconduct.

That, the criminal case pending before the RTC is based on the same incident, same act and same allegations as the administrative case. That is why, to avoid contradictory findings, any administrative disciplinary proceedings for the same act must await the outcome of the criminal case. It is settled rule that “pre-emption of the regular courts by an administrative case is a worrisome spectacle.”

Moreover, the Ombudsman committed serious error when it denied his motion to recall the implementation of the December 16, 2009 decision because his motion for reconsideration of the said decision is still pending therewith. Such denial is contrary to the provision of its own Administrative Order No. 17-03, specifically Sections 7 and 8 thereof. To stress, the purpose of a motion for reconsideration is to request the court or quasi-judicial body to take a second look at its judgment and to correct any errors it may have committed therein. If the intent of the Ombudsman is to make final and executory its decision despite the filing of a timely motion for reconsideration then Adm. Order No. 17-03 should have so stated in clear and unmistakable terms. Indeed, where the law is clear and categorical, there is no room for any other interpretation, and what is left to be done is only to apply it. The rule is well entrenched that “an administrative agency tasked to implement a statute may not construe it by expanding its meaning where the provisions are clear and unambiguous.” (*Lokin, Jr. v. COMELEC*, G.R. Nos.

179432-32, June 22, 2010)

To conclude, the Ombudsman's findings and conclusion are replete with errors that must be corrected on appeal.

As there was no Comment or Memorandum of Authorities filed by the respondents NBI[30] and Office of the Ombudsman,[31] the instant case was submitted for decision. It may be well to note that while the Office of the Ombudsman is not impleaded in the caption of the petition, the said Office has always been furnished with a copy of the petition,[32] of this court's September 29, 2011 Minute Resolution,[33] Motion for Reconsideration[34] of the September 29, 2011 Minute Resolution filed by the petitioner, and of this court's September 27, 2012 Minute Resolution,[35] February 26, 2013 Resolution,[36] October 10, 2013 Minute Resolution,[37] and March 24, 2014 Minute Resolution³⁸ submitting this case for decision.

THE ISSUES

The issues we are faced to resolve are the following, to wit:

(1)

whether the pendency or dismissal of the criminal case would result to the dismissal of the administrative case.

(2)

whether the petitioner was denied due process.

(3)

whether the petitioner was wrongfully dismissed.

(4)

whether the petitioner's motion for reconsideration of the Ombudsman's decision stayed its execution.

OUR RULING

The petition lacks merit.

Criminal case vis-a-vis administrative case

The petitioner theorizes that since the criminal complaint filed against him arose from the same incident, the same act and the same allegations, the respondent Ombudsman should not have proceeded with the instant administrative case so as not to preempt whatever decision or resolution the trial court may render therein.

On this point, the respondent Ombudsman ratiocinated that,

“Contrary to the claim of respondent Matillano, the decision is not premature because administrative liability is separate and distinct from criminal and civil liabilities. The administrative case may proceed independently of the criminal or civil cases filed against the respondent. Recently, in the case of Benito vs. Balindong, the Supreme Court ruled that the decision of the Office of the Ombudsman in administrative case shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer. In light of said ruling, the motion to hold in abeyance the implementation of the decision must be denied for lack of merit.”[39]

We agree with the respondent Ombudsman.

True, by its Order^[40] dated 24 February 2011, the criminal case for “Direct Bribery” filed against the petitioner with the Regional Trial Court, 7th Judicial Region, Br. 55, docketed as Crim. Case No. DU-16834 was dismissed by the trial court, thus -

“IN VIEW THEREOF, the court orders the case DISMISSED for the delay in the conduct of preliminary investigation violated the accused's constitutional right to due process.

Furnish copy to the Office of the Deputy Ombudsman for Military Affairs and Other Law Enforcement Offices, to Atty. Eduardo B. Kangleon of the Office of the Ombudsman-Visayas, to Ronnie B. Hernani, the accused and his counsel.

SO ORDERED.”^[41]

The dismissal was grounded on the long delay by the Office of the Deputy Ombudsman for Military Affairs and Other Law Enforcement Office to file with the RTC a report of its preliminary investigation. The same Order likewise stated that:

“The effect of the long delay in the conduct of preliminary investigation is violative of the constitutional right to due process. Substantial adherence to the requirements of law governing preliminary investigation is part of procedural due process. (Tatad v. SB, G.R. No. 72335-39, March 21, 1988).”

Nevertheless, following settled jurisprudence, the dismissal of the criminal case will not foreclose the administrative action filed against the accused in the said criminal case. Instructive is the case of Apolinario v. Flores,^[42] wherein the Supreme Court held, viz -

In *Tecson v. Sandiganbayan*,^[43] we ruled that:

[I]t is a basic principle of the law on public officers that a public official or employee is under a three-fold responsibility for violation of a duty or for a wrongful act or omission. This simply means that a public officer may be held civilly, criminally, and administratively liable for a wrongful doing. Thus, if such violation or wrongful act results in damages to an individual, the public officer may be held civilly liable to reimburse the injured party. If the law violated attaches a penal sanction, the erring officer may be punished criminally. Finally, such violation may also lead to suspension, removal from office, or other administrative sanctions. This administrative liability is separate and distinct from the penal and civil liabilities. (*Italics in the original.*)

Thus, the dismissal of the criminal complaint did not necessarily foreclose the continuation of the administrative action or carry with it relief from administrative liability. The Office of the Ombudsman did not err when it proceeded with the determination of petitioner's administrative liability despite the dismissal of the criminal complaint. (Footnoting ours)

Was the petitioner denied due process?

The petitioner argues that he was not given the opportunity to cross-examine the witnesses. This, according to him is tantamount to denial of due process.

For its part, the respondent Ombudsman stated in its Order denying reconsideration, that,

“x x x. It is well-settled that the essence of due process in administrative proceedings is that a party be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense. Deprivation of due process cannot be successfully invoked where a party was given the chance to be heard and given the opportunity to present his side. In *Samalio v. Court of Appeals*, the Supreme Court held:

'x x x x'

Based on the evidence on record and in the light of the foregoing principles. The respondents in this case were

accorded administrative due process.”[44]

Vis-a-vis the respondent Ombudsman's finding, the petitioner's argument does not sway us. It is well-ingrained in our jurisdiction that:

“Due process in an administrative context does not require trial-type proceedings similar to those in courts of justice. Where opportunity to be heard either through oral arguments or through pleadings is accorded, there is no denial of procedural due process. A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored. In other words, it is not legally objectionable for being violative of due process for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties as affidavits of witnesses may take the place of their direct testimony.” [45]

In the present case, it can be inferred from the record that the petitioner was informed of the charge against him. By its Order[46] dated 25 April 2008, the respondent Ombudsman directed the petitioner to answer the charge. It is worthy to note that the petitioner presented evidence in his defense by submitting the following: his letter[47] dated May 8, 2008 addressed to Hon. Nicolas Sellon manifesting his intent to file a case for perjury against the private respondent; the individual affidavit of his wife, Ma. Janeta T. Matillano[48] and Elfred Ricabo Y. Pasquil;[49] Joint-Affidavit of the arresting police officers, Affidavit[50] of Prosecutor Vicente Mañalac attesting to the fact of the private respondent's investigation for illegal possession of firearm and non-appearance of Atty. Leslie Salva therein; Statement of Account[51] dated March 13, 2008 supposedly prepared by ___[52] B. Salva showing the following: under the item “Reference” is the word “Hernani” but the word immediately written before it is not legible; under the item “Charges” is the amount of P50,000.00; under the item “Payments” is the amount of P15,000.00; and under the item “Balance” is the amount of P35,000.00; and entry in the police blotter.[53] After receipt of the assailed decision, the petitioner filed a motion for reconsideration thereof. Viewed in this light, the petitioner was given more than adequate opportunity to explain his side. Hence, there was no violation of his right to due process.

Did the respondent Ombudsman err
in holding the petitioner administratively
liable for Grave Misconduct?

The petitioner claims that the respondent Ombudsman merely relied on the private respondent's allegations of extortion and bribery sans any substantial evidence in support thereof. He adds that what the private respondent presented are all lies, a contrived story coming from a person who has an axe to grind against the police officer who arrested him for illegal possession of firearm. He adds that even granting without admitting that he demanded the amount of P15,000.00, this amount was not for any illegal purpose – it was for the payment of securing a firearm license as admitted by the private respondent himself. He claims that he only heeded the private respondent's incessant plea for assistance to secure a firearm license; and that, there is nothing illegal about it.

For its part, the respondent Ombudsman found and held, that,

“The entrapment procedure conducted on March 14, 2008 by the NBI against respondent SPO4 Matillano produced credible evidence against him. The three pieces Three Hundred Peso bills, part of the Fifteen Thousand Pesos, used were previously marked '2008-P-2504, NBI, CEVRO, RDP, 3-14-200' with invisible ink and dusted with fluorescent powder and his hands tested positive with this chemicals. He was caught in flagrante delicto and the documentary evidence cannot lie.”[54]

Additionally, in denying reconsideration, the respondent Ombudsman reasoned, to wit -

“Matillano's defense that the P15,000.00 was not for an illegal purpose but for securing the firearm license of Ronnie Hernani is incredulous. It must be emphasized that respondent Matillano was among the arresting officers who arrested Ronnie for illegal possession of firearm. For Matillano to entertain Ronnie's alleged request to assist him for securing a firearm license is not only unethical but runs in conflict with the interest of respondent Matillano and the institution that he represents. Moreover, respondent's contention that the amount was only for securing a firearm license deserves no merit because respondent demanded P15,000.00 when upon inquiry from the Permit to Carry Firearms Outside of Residence (PTCFOR) Secretariat, Office of the Chief, PNP, Camp Crame, Quezon City, the fee to be paid by businessmen/private individuals/professionals for a permit to carry is only P4,150.00.”[55]

Mindful of Hon. Primo C. Miro v. Dosono,[56] we find the herein petitioner's claim of innocence hardly persuasive.

The case of Hon. Primo C. Miro v. Dosono, supra, involves respondent Dosono – an examiner of the Bureau of Internal Revenue (BIR) at its district office in Mandaue City, Cebu. An entrapment operation was conducted against respondent Dosono after a complaint was filed against him for extortion. Boodle money dusted with ultraviolet fluorescent powder was used as pay-off money. Immediately after respondent Dosono received the marked boodle money and placed it under his drawer, he was apprehended. The Ombudsman found respondent Dosono administratively liable for grave misconduct giving credence to the complainants' allegation. Therein the Ombudsman found pivotal the presence of fluorescent powder on respondent Dosono's hands. Pertinently, the Ombudsman rejected respondent Dosono's unsubstantiated frame-up theory finding it inadequate to overcome the presumption of regularity in the performance by the arresting police officers of their official duties. On appeal, this Court reversed the Ombudsman's ruling. In absolving respondent Dosono, this Court found the Ombudsman's findings not supported by substantial evidence. Moreover, this Court found merit in respondent Dosono's claim of frame-up. On review, the Supreme Court reversed this court's ruling, and accordingly, reinstated the Ombudsman's decision. Viz -

We affirm the Ombudsman's ruling. To a reasonable — as opposed to a suspicious — mind, the circumstances leading to the filing of the complaint against respondent, his arrest following his entrapment, and the results from the laboratory tests are more than adequate to support the conclusion that respondent illegally solicited money from complainants and was caught red-handed receiving the pay-off money. This is clear-cut grave misconduct — corrupt conduct inspired by an intention to violate the law, or constituting flagrant disregard of well-known legal rules.

x x x x

The presence of ultraviolet powder in respondent's hands anchors his administrative liability; thus, respondent had to discredit Yape and Calzada's statement in their joint affidavit that complainants "handed [to respondent] the envelope containing the marked 'boodle' money" and respondent "received the marked 'boodle' money." Respondent does so by alleging frame-up: a rogue member of the arresting team snatched his handkerchief at Camp Sotero Cabahug, rubbed it against the dusted envelope to contaminate it with ultraviolet powder and gave it back to respondent who, in his absentminded state, received the handkerchief. (In an ancillary, less-sinister tale, respondent claimed he was further contaminated when he was later made to pose before mediamen holding the envelope).

Instead of taking respondent's story for a fact, the Court of Appeals should have accorded greater weight to the following findings of the Ombudsman rejecting respondent's untenable story, being the fact-finding body which saw and heard respondent testify:

x x x 'In order for the defense of frame-up to prosper, the evidence adduced must be clear and convincing.' . . . Moreover, the said contentions are found to be more fictional than real because during the formal investigation

of the case, the respondent could not even identify, when required to do so, who among the apprehending police officers did the same to him. . . . (Emphasis supplied; internal citations omitted)

x x x x

On the testimonies of Yape and Calzada (that upon receiving payment during the entrapment, respondent immediately placed in his table drawer the folder containing the dusted envelope without opening it), it was error for the Court of Appeals to treat this as added proof of respondent's innocence. First, both the bills and the envelope were dusted with ultraviolet fluorescent powder. Anyone who touches the envelope would be contaminated with the powder even if the envelope is not opened. Second, the Court of Appeals overlooked the fact that Yape and Calzada declared under oath in their joint affidavit that complainants "handed [to respondent] the envelope containing the marked 'boodle' money" and that respondent "received the marked 'boodle' money." The records do not show that Yape and Calzada were confronted with this statement when they took the stand thus depriving them of the chance to reconcile the seeming variation between their statement and testimonies. As the party seeking to exploit this fact, it was incumbent on respondent to have done so. We cannot allow respondent to capitalize on his omission. Yape and Calzada's statement that complainants "handed [to respondent] the envelope containing the marked 'boodle' money" and respondent "received the marked 'boodle' money," coupled with the presence of the fluorescent powder in respondent's hands and the inconceivability of respondent's frame-up defense lead to no other conclusion: respondent was contaminated during the entrapment.

Indeed, it is a self-evident fact that our law enforcement officers are sworn to uphold the law, not to invent crimes. The imperative of ensuring the smooth functioning of the government machinery grounds the evidentiary presumption that public officers have performed their duties regularly. True, this presumption is not conclusive, but it is also not meaningless. It takes more than a bare tale of malfeasance by an unidentified perpetrator to overcome it. To accept as presumption-overcoming dubious tales of the likes respondent purveyed is to leave the smooth functioning of our government to the mercy of the fertile imagination of litigants, free to concoct all sorts of devious plots and attribute them to unnamed civil servants. We could not imagine a more insidious way to slowly paralyze state apparatuses of governance.

x x x x

Suffering from substantially the same defect, *Boyboy v. Yabut* pitted the bare allegations of the complainants charging the respondent with extortion against the respondent's denial of the charge. Again, unlike here, no entrapment operation was conducted in *Boyboy* and no laboratory findings implicated the respondent there. Thus, we held in *Boyboy* that the failure of the investigating body to hold hearings, which would have tested the parties' credibility, undermined the veracity of the complainants' case.

In this instance, the private respondent filed a complaint[57] with the Central Visayas Regional Office of the National Bureau of Investigation against the petitioner and his companions. The private respondent then executed an affidavit[58] wherein he attested, among others, that the petitioner demanded the amount of P15,000.00 from him in exchange for the processing of the permit for his gun that was seized from him by the petitioner and his companions and dismissal of the case filed against him for illegal possession of firearm. The private respondent further attested that after receiving several messages from the petitioner and for fear of being arrested again, he filed a complaint with the NBI.

The record will bear that the private respondent's allegations are supported by the arresting NBI officers' Joint Affidavit.[59] Therein, the arresting NBI officers attested that the petitioner was arrested after he was caught in flagrante delicto counting the marked money dusted[60] with fluorescent powder. That, the petitioner was apprised of his rights. That, recovered from the petitioner was the Fifteen Thousand Pesos (P15,000.00) including the marked three (3)-P100.00 bills.[61] That, after forensic examination for presence of fluorescent powder residue, the petitioner tested positive[62] therefor.

Clearly, the Ombudsman did not simply rely upon the private respondent's allegations. It considered, too, the sworn statements of the arresting NBI officers and the physical report showing that the petitioner tested positive for fluorescent powder residue.

What is more, the defense of frame-up has not been substantiated by the petitioner. "Frame-up as a defense has been invariably viewed by this Court with disfavor for it can just easily be concocted but is quite difficult to prove. And the defense of frame-up must be proved by clear and convincing evidence because it is of the same category as alibi." [63]

In the instant case, the petitioner failed to adduce evidence of any intent on the part of the arresting NBI officers to falsely impu te such a serious crime against him. In the absence of such ill motive, it is presumed that none exists. Too, the sworn statements of the arresting NBI officers carry with it the presumption of regularity in the performance of official functions. On these considerations, we uphold the presumption of regularity in the performance of duty by the NBI officers.

Significantly, the petitioner's claim that the amount of P15,000.00 which the private respondent allegedly handed to him on the day of the entrapment was intended for the processing of private respondent's application for firearm license does not inspire belief. This is because the private respondent was already arrested for illegal possession of firearm, thus, the confiscated should be condemned in favor of the State. In fact, the private respondent's name appears in the police blotter. So what good would the belatedly-acquired license/permit do the private respondent when his violation for illegal possession of firearm is already recorded in the police blotter? Would the belatedly-acquired license/permit erase the private respondent's record with the police? Would the belatedly-acquired license/permit stop the government prosecutors from running after the private respondent? The record [64] even shows that the private respondent was already investigated by the prosecutors' office for 'Illegal Possession of Firearm and Ammunitions (Violation of RA No. 8294), docketed as I.S. No. 08-00339; and accordingly, on 11 March 2008, an Information [65] for "Violation of RA 8294 (Illegal Possession of Firearm and ammunitions) was filed against the private respondent with the Regional Trial Court, 7[th] Judicial Region, Br. 56., Mandaue City docketed as Criminal Case No. DU-15967.

In other words, if indeed the amount of P15,000.00 was for the processing of private respondent's application for firearm license after he was arrested, investigated and charged for illegal possession of the unlicensed firearm, then it must have been intended to secure an antedated license, which is illegal. Thus, by accepting the P15,000.00 for that purpose the petitioner in effect, agreed to do an illegal act. That is, to cover-up the illegal possession allegedly committed by the private respondent.

Re: motion for reconsideration shall not stay
the execution of the Ombudsman's decision

The petitioner argues that the respondent Ombudsman erred when it implemented its decision dismissing him from service without first resolving his motion for reconsideration thereof.

We find the petitioner's argument to be specious.

Applicable on this matter is Ombudsman Memorandum Circular No. 01, Series of 2006, in relation to paragraph 1, Section 27 of R.A. 6770, and Section 7, Rule III, Administrative Order No. 7, Rules of Procedure of the Office of the Ombudsman, as amended.

Pertinently, Memorandum Circular No. 01, Series of 2006 provides that:

"x x x x

The filing of a motion for reconsideration or a petition for review before the Office of the Ombudsman does not operate to stay the immediate implementation of the foregoing Ombudsman decisions, orders or resolutions.

x x x x.”

Par. 1, Section 27 of RA 6770 reads, as follows:

Section 27. Effectivity and Finality of Decisions. — (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

(1)

New evidence has been discovered which materially affects the order, directive or decision;

(2)

Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: Provided, That only one motion for reconsideration shall be entertained.”

And Section 7, Rule III of A.O. No. 7, Rules of Procedure of the Office of the Ombudsman, as amended, states:

Section 7. Finality and execution of decision. - Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.

The foregoing considered, the respondent Ombudsman can, therefore, implement its decision even during the pendency of a motion for reconsideration thereof.

It may be well to stress at this juncture that the petitioner's motion for reconsideration was already resolved before the filing of the instant petition.

Clearly, the decision and order assailed in this petition are based on the facts extant in the record and pertinent law and jurisprudence.

WHEREFORE, the petition is DENIED, the Decision dated December 16, 2009 of the Office of the Ombudsman and its Order denying reconsideration dated April 18, 2011 in OMB-P-A-08-0363-D are hereby AFFIRMED.

SO ORDERED.

Maxino, P.A.A., and Francisco, R.C., JJ., concur.

- [1] Rollo, pp. 35-38 and 215-218.
- [2] Rollo, pp. 57-58.
- [3] Order of Release, Rollo, p. 77.
- [4] Complaint Sheet, Rollo, p. 65; and Affidavit, Rollo, pp. 66-67.
- [5] Rollo, pp. 59-61.
- [6] Rollo, p. 70.
- [7] Physics Report No. 2008-P-2503, Rollo, p. 71.
- [8] Booking Sheet and Arrest Report, Rollo, pp. 63-64.
- [9] Rollo, p. 67.
- [10] Rollo, p. 69.
- [11] Rollo, p. 48.
- [12] Rollo, pp. 91-98.
- [13] Rollo, p. 99.
- [14] Rollo, pp. 100-103.
- [15] Rollo, pp. 104-106.
- [16] Rollo, pp. 107-108.
- [17] Rollo, p. 109.
- [18] Rollo, p. 115.
- [19] Rollo, p. 111.
- [20] Not legible.
- [21] Rollo, p. 112.
- [22] Rollo, p. 113.
- [23] Rollo, p. 114.
- [24] Rollo, pp. 215-218.
- [25] Rollo, p. 218.
- [26] Rollo, pp. 217-218.
- [27] Rollo, pp. 116-131.
- [28] Rollo, pp. 39-46.

[29] Rollo, pp. 44-45.

[30] Per JRD Report dated January 27, 2014, Rollo, at the back of p. 255.

[31] Per JRD Report dated March 11, 2014, Ibid.

[32] Rollo, p. 33.

[33] Rollo, p. 200.

[34] Rollo, 211.

[35] Rollo, p. 236.

[36] Rollo, p. 237.

[37] Rollo, p. 244.

[38] Rollo, p. 256.

[39] Rollo, p. 42.

[40] Rollo, pp. 198-199.

[41] Rollo, p. 199.

[42] Ligaya M. Apolinario v. Desiree B. Flores, G.R. No. 152780, January 22, 2007. Citing Office of the Court Administrator v. Enriquez, A.M. No. P-89-290, January 29, 1993, 218 SCRA 1 and The Police Commission v. Lood, No. L-34230, March 31, 1980, 96 SCRA 819.

[43] 376 Phil. 191 (1999).

[44] Rollo, pp. 42-43.

[45] Deputy Director General Roberto Lastimoso, Acting Chief Philippine National Police (PNP), et, al. v. P/Senior Inspector Jose J. Asayo, G.R. No. 154243, December 4, 2007. Citing Samalio v. Court of Appeals, G.R. No. 140079, March 31, 2005, 454 SCRA 462.

[46] Rollo, p. 48.

[47] Rollo, p. 99.

[48] Rollo, pp. 104-106.

[49] Rollo, pp. 107-108.

[50] Rollo, p. 109.

[51] Rollo, p. 111.

[52] Not legible.

[53] Rollo, pages 110 and 115.

[54] Rollo, p. 37.

[55] Rollo, p. 42.

[56] Hon. Primo C. Miro, Deputy Ombudsman for the Visayas v. Reynaldo M. Dosono, G.R. No. 170697. April

30, 2010.

[57] Rollo, p. 65.

[58] Rollo, pp. 66-67.

[59] Rollo, pp. 59-61.

[60] Physics Report No. 2008-P-2503, Rollo, p. 71.

[61] Rollo, p. 70.

[62] Physics Report No. 2008-P-2603, Rollo, p. 72.

[63] En Banc. Office of the Court Administrator (OCA) v. Florencio S. Barron, Presiding Judge, Branch 35, Regional Trial Court of Dumaguete City, A.M. No. RTJ 98-1420, October 8, 1998.

[64] Affidavit of ARSP-7 Vicente Mañalac. Rollo, p. 109.

[65] Rollo, pp. 195-196.

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