

SMITH BELL & COMPANY, COMPLAINANT, VS. MARIO P. SAUR, RESPONDENT.

A.M. No. P-1142. March 31, 1980

Ponente: MELENCIO-HERRERA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/cc07201d4a2e/>

MELENCIO-HERRERA, J.:

In a letter-complaint, dated December 3, 1974, filed by Atty. Augusto Brevia on behalf of his client, Smith Bell & Co., Inc., he charged respondent Deputy Provincial Sheriff of Cotabato with having failed to render a return on a Writ of Execution issued by the City Court of Davao City.

Investigation by Executive Judge Pedro Samson C. Animas of the Court of First Instance of South Cotabato at General Santos City, pursuant to this Court's Resolution of August 1, 1979, disclosed the following background facts:

"xxx

" In Civil Case No. 2303-C, entitled 'Smith Bell & Company (Phil.), Inc., plaintiff, versus Antonio F. Baysa, Jr., et al., defendants', in the City Court of Davao City, Branch III, a judgment rendered under date of October 19, 1973 against defendant, ordering him to pay to the plaintiff the sum of P1,120.00 plus interest at the legal rate from July 17, 1974, P300.00 as attorney's fees, litigation expenses and P39.00 as cost of the suit. The judgment having become final, a writ of execution was issued on February 18, 1974 by Honorable Gumer-cindo Arcilla, Presiding Judge of the said Court (Exh. 'A'). This was forwarded to the Provincial Sheriff, Court of First Instance of Cotabato City, on July 26, 1974 (Exh. 'B'). On the same date, respondent as Deputy Sheriff of the Office of the Provincial Sheriff of Cotabato City received the writ of execution as well as the sum of P100.00 for Sheriff fees and incidental expenses (Exh. 'C'). The writ had never been returned to the Clerk of Court or the Judge of the Court issuing it within a period of sixty (60) days from receipt thereof. Until date, there is no such return as required by law, and as of August 29, 1979, the record of the City Court of Davao shows that the writ of execution had never been returned and the judgment had not been satisfied whether in whole or in part (Exh. 'D'). x x x x"

Required to comment, respondent alleged that the claim of Smith Bell & Co. in Civil Case No. 2303-C had already been satisfied; that the full amount of P1,120.00 was paid through Associated Banking Corporation check No. 50337 in favor of the company, which check was sent to Atty. Brevia at Tomas Claudio St., Davao City, on September 12, 1974 through Mr. Domingo Nadela, authorized representative of the company.

Replying to said Comment, Atty. Brevia explained that what respondent personally received for implementation was not a "claim" but a Writ of Execution not only for P1,120.00 but also for interest thereon plus attorney's fees and costs; that he had not received the check allegedly sent to him through Domingo Nadela, the latter not being his authorized representative nor that of Smith Bell & Co.; that he seriously doubted the veracity of respondent's allegations as the Associated Banking Corporation had no Branch in Davao City and, hence, could not have issued a bank draft in favor of the company.

Atty. Brevia's Reply was sent to respondent for comment. However, despite four tracer letters sent to him on June 5, 1975, August 25, 1975, December 11, 1975 and May 6, 1976, respondent remained silent. Neither did he appear before the Investigating Judge during the investigation conducted by the latter despite due notice.

From the evidence adduced by complainant before the Investigating Judge, and as found by the latter, there is no question that respondent had failed to make any return on the Writ of Execution received by him for implementation on July 26, 1974 within the period of sixty days as prescribed in section 11, Rule 39 of the Rules of Court. In fact, even as late as September 24, 1979 when this case was investigated, or a period of more than five years from the time he had received the Writ for implementation, respondent had failed to make any return at all. Respondent's bare assertion that he had sent a bank draft in the amount of P1,120.00 to Atty. Brevia on September 12, 1974 has been categorically denied by the latter. It is evident then that respondent's failure to levy on the property of the judgment debtor to satisfy the judgment against the latter, as correctly pointed out by the Investigating Judge, constitutes malicious non-feasance in office.[1]

The Investigating Judge has recommended two (2) months suspension without pay considering that there is no evidence shown that respondent has misappropriated any amount in connection with the instant Writ of Execution, his length of service, and apparently that this is his first case. Deputy Court Administrator Leo D. Medialdea, for his part, recommends a penalty of six (6) months' suspension without pay considering the gravity of his offense, "not to mention the seemingly discourteous acts committed against this Court." We find both recommendations not commensurate with the infraction committed. Respondent failed to account for the sum of P100.00 he had received for sheriff's fees and incidental expenses. He had misrepresented in his Comment that the complainant's "claim" of P1,120.00 had already been satisfied. He had ignored the several tracers sent by this Court giving him a chance to refute Atty. Brevia's denial of the receipt of the check which he (respondent) had allegedly sent.

Respondent should bear in mind that when a Writ is placed in his hands as a Sheriff, it is his duty, in the absence of instruction, to proceed with reasonable celerity and promptness to execute it in accordance with its mandates.[2] He had no discretion whether to execute it or not.[3] It is essential to the effective administration of justice that the processes of the Courts be obeyed. Upon no one else does this obligation of obedience rest with more binding force than a judicial officer such as respondent sheriff.[4]

WHEREFORE, this Court would have found respondent guilty of malicious nonfeasance in office and would have ordered his dismissal except that he has already been dismissed for serious misconduct and malfeasance in office, with prejudice to reemployment, in Administrative Matter No. P-1337,[5] and a second dismissal would be moot and academic.

SO ORDERED.

Teehankee, Acting C.J., (Chairman), Makasiar, Fernandez, Guerrero, and De Castro, JJ., concur.

[1] Abejaron vs. Panes, 84 SCRA 494 (1978).

[2] Swantz v. Pillow 7 SW 167, 7 Am St Rep 98; Hinman v. Borden, 25 Am Dec 568 and other cases, cited in 47 American Jurisprudence p. 855, subsection 46.

[3] Cole v. Parker, 71 Am Dec 439, *ibid*.

[4] Pacis vs. Averia, 18 SCRA 907 (1966).

[5] Manzano vs. Mario P. Saur, Second Division, per Guillermo Santos, J., promulgated on January 22, 1980.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.