

EDMAR D. GARCISO, COMPLAINANT, VS. ARVIN A. OCA, PROCESS SERVER, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 1, CEBU CITY, RESPONDENT.

A.M. No. P-09-2705. June 16, 2015

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PER CURIAM:

These administrative matters sprang from the entrapment operation conducted by the National Bureau of Investigation (NBI) based on the complaint-affidavit dated September 4, 2008^[1] filed by Edmar D. Garciso (Garciso) denouncing the extortion committed against him by respondent Arvin A. Oca, Process Server of the Municipal Trial Court in Cities, Branch 1, in Cebu City.

In the ensuing report dated September 5, 2008 on the entrapment operation, addressed to the Deputy Ombudsman for the Visayas, Hon. Pelagio Apostol, the NBI summarized the following factual findings, viz.:

Our investigation disclosed that on August 31, 2008, Complainant received a text message from Subject, a Process Server assigned at Municipal Trial Court in Cities (MTCC), Cebu City, seeking an urgent meeting as he (OCA) has a pressing concern to reveal. Anxious of what was it all about, GARCISO met OCA at the parking area of Gaisano Tabunok Mall where the former was informed by the latter that there was a pending Application for Search Warrant for violation of R.A. 9165 filed by PDEA 7 awaiting approval at the Court of a certain "Judge BELARMINO" of RTC Cebu City. In their conversation, OCA vouched that he could cause the denial of the application by the Judge or the withdrawal or suppression of the application by the PDEA because he has a friend working in the said court and that the PDEA officer applicant is his friend, all for a fee of P150,000. Further, that failure on his part to settle the matter would eventually lead to the execution of the Search Warrant by PDEA Agents and his arrest as well.

Complainant was troubled upon knowing this especially on the prospect that he might be arrested anytime. As days progressed, Subject heightened the pressure on the Complainant thru text messages. On September 3, 2008, at around 1:00 o'clock in the afternoon, Complainant, upon instruction of Subject, met again at San Carlos Heights in Quiot, Pardo, Cebu City where he (GARCISO) was shown a four page document with a heading "Application for Search Warrant". Believing the existence of the same to be a fact plus the continued intimidation by Subject created fear, anxiety, and mental distress upon the Complainant that he finally sought the assistance of Bureau.

In an entrapment operation conducted on September 4, 2008 at round 2:45 o'clock in the afternoon at the vicinity of Provincial Capitol Building, Subject was arrested after he received from GARCISO the demanded amount laced with fluorescent powder. Recovered from his person was the marked bills and his Nokia Mobile Phone containing the txt (sic) messages he received from the Complainant and his replies thereof (sic) immediately prior to his arrest.

Subject was found positive for fluorescent powder on his hands. A certification obtained from the sala of Hon. Judge ENRIQUITA BELARMINO, Presiding Judge Branch 57, RTC, Cebu City disclosed that there is no pending application for Search Warrant filed before her sala against Subject. Further, in reply to the request from the Office of PDEA 7 Officer in Charge RANDY RAMBOA PEDROSO, it was also officially certified

that there is no pending application for Search Warrant initiated by his Office and filed before any court against Complainant.

In view of the foregoing, it is respectfully recommended that Subject be criminally prosecuted for ROBBERY EXTORTION, defined and penalized under Art. 294 of the Revised Penal Code and violation of R.A. 6713 otherwise known as "The Code of Conduct and Ethical Standard for Public Employees", respectively. Further, that he be likewise administratively charge (sic) in connection with this case.

In support of our recommendation, we are attaching herewith the following documentary and testimonial evidence, to wit:

- Affidavit Complaint of EDMAR GARCISO y DADULA;
- Supplementary Complaint Affidavit of EDMAR GARCISO y DADULA
- Affidavit of SILVERIA JAKOSALEM DE GARCISO y INSO;
- Affidavit of NBI Agent BERNARD DE LA CRUZ;
- Joint Affidavit of Arrest of NBI Agents ARNEL E. PURA, et(.) al;
- NBI Physics Report No. 2008-P-4609;
- NBI Physics Report No. 2008-P-4709;
- Certification issued by Hon. Judge ENRIQUITA L. BELARMINO RTC, Branch 57, Cebu City dated September 5, 2008;
- Certification issued by RANDY R. PEDROSO, PDEA 7, Cebu City;
- Transcript of Messages sent to ARVIN OCA by Complainant EDMAR GARCISO y DADULA consisting of two (2) pages;
- Transcript of Messages sent to EDMAR GARCISO y DADULA by ARVIN OCA;
- Booking Sheet and Arrest Report;
- One (1) pc. NOKIA Cellular Phone with the following description Model 3120, IC:661U-RH19, IMEI No.: 356649/00/346309/2;
- two (2) pieces of Sim Pack namely SMART Buddy (LXJO903) and GLOBE (3073340711192090);
- Employment Identification Card of Subject;

Early action taken hereon is highly appreciated.[2]

The Office of the Ombudsman (Visayas) referred the matter to the Office of the Court Administrator (OCA) for appropriate action because it involved a trial court employee under the exclusive administrative supervision of the Supreme Court.[3] The matter was initially docketed as OCA I.P.I. No. 08-2955-P.

On September 12, 2008, the OCA received the letter dated September 5, 2008 from Judge Enriqueta L. Belarmino, Presiding Judge of Branch 57 of the Regional Trial Court in Cebu City (RTC),[4] charging the respondent with extortion and grave misconduct in relation to Criminal Case No. CBU-84275, a criminal prosecution for estafa that had been filed by the Graft Investigation and Prosecution Officer of the Office of the Ombudsman (Visayas) on September 5, 2008.[5] Criminal Case No. CBU-84275 involved the same incident subject of the September 4, 2008 NBI entrapment of the respondent. The letter was docketed as OCA I.P.I. No.08-2998-P.

In the meantime, the respondent was separately required to submit his comments on the administrative complaints brought against him. In his comment dated March 16, 2009 filed in OCA I.P.I. No.08-2998-P,[6] and in his comment dated May 20, 2009 submitted in OCA I.P.I. No. 08-2955-P,[7] he denied the accusations, stating that Garciso had orchestrated the entrapment; that he and Garciso were more than casual acquaintances because they had been introduced to each other by a common friend, Alson Cabrillos; that it had been Garciso who was eager to meet him on the day of the entrapment, even setting the time and place of the meeting; that he could not have met with Garciso at 3:00 p.m. of September 1, 2008 because he was then serving summons at Holy Cross, Basak, Cebu City relative to Civil Case No. R-54060; and that he dropped by at Gaisano Fiesta Mall to meet Garciso on his way home only around 5:20 p.m. of September 1, 2008.

The respondent explained that during their meeting on September 1, 2008, Garciso requested his assistance to secure from the National Statistics Office certified copies of the birth certificates of Marianne Mae, Garciso's illegitimate child with Silveria Jakosalem, and of Shaina Marijoh Jakosalem, Silveria's legitimate child with Raul Mujeres; that he also learned then that Garciso had a serious conflict with Cabrillos' friend, one Micmic Cortes, whom he owed P60,000.00 that he was being required to pay within a week; that Garciso borrowed and used his phone to send text messages to Garciso's phone and vice versa; and that it was Garciso who had secured a fabricated search warrant from his brother, a police officer, on the belief that this could help him obtain money from a financier.

Considering that the facts and issues were the same, the OCA recommended the consolidation of OCA I.P.I. No. 08-2955-P with OCA I.P.I. No.08-2998-P, and their re-docketing as regular administrative matters.[8] The cases were then referred to Executive Judge Meinrado P. Paredes of the RTC for investigation, report and recommendation.[9]

On May 14, 2010, Executive Judge Paredes submitted his Investigation Report and Recommendation,[10] whereby he recommended the dismissal of the respondent from the service with forfeiture of all the benefits he was expected to receive.[11] Executive Judge Paredes concluded as follows:

Although the quantum of proof in administrative cases is only substantial evidence, in the instant case there is proof beyond reasonable doubt that respondent Oca is liable for gross misconduct. He was arrested in an entrapment operation for robbery/extortion conducted by the NBI-7. Although the ombudsman case for robbery/extortion was provisionally dismissed because the private complainant failed to appear, the fact remains that an NBI Agent who led the entrapment operation testified against the respondent. His testimony was clear, frank, honest and convincing. He had no ill motive to testify against the respondent. Complainant Honorable Judge Enriqueta L. Belarmino also testified.

Respondent Oca took advantage of his position as a court employee. He made complainant believed (sic) that he had friends in the RTC, Branch 57 and in the PDEA. He also made complainant Garciso believed (sic) that he has influence over the judge and the court personnel of RTC, Branch 57 and that he can influence the applicant from PDEA to withdraw the application for search warrant. He also made complainant Garciso believed (sic) that there was a pending search warrant for Violation of the Dangerous Drugs Law against the latter.

The truth of the matter is that the PDEA did not file an application for the issuance of the search warrant for Violation of the Dangerous Drugs Law (RA9165). It is not also true that he could influence the judge and the court personnel in withholding the issuance of the search warrant. In fact, the Presiding Judge of RTC, Branch 57, did not know respondent Oca before the instant Administrative case was served.

This incident caused the Presiding Judge of RTC 57 so much pain and anguish because she had an unblemished record as a prosecutor and a judge for the past twenty (20) years.

WHEREFORE, it is hereby recommended that respondent Arvin A. Oca, Process Server of MTCC, Branch 1, but temporarily assigned at Municipal Trial Court, Minglanilla, Cebu, be dismissed from the service with forfeiture of all benefits he is expected to earn.

SO ORDERED.[12]

Ruling of the Court

We affirm the recommendation of Executive Judge Paredes.

It was sufficiently established that the respondent solicited P150,000.00 from Garciso in exchange for the assistance he could extend towards the withdrawal by the PDEA of its non-existent application for search warrant, or the denial of the non-existent application for search warrant by Judge Belarmino; and that the respondent was then arrested in the course of the entrapment operation upon accepting the amount he had demanded. Proof of his actual handling of the marked money was validated by the physics reports rendered by the Forensics Chemistry Section of the NBI. The respondent thereby took advantage of his position as an employee of the Judiciary in order to mislead Garciso into believing that the latter was the object of the non-existent application for a search warrant by the PDEA for violation of the Comprehensive Drugs Act of 2002, and that he could influence Judge Belarmino, before whom the application had been supposedly filed, to deny the application, or he could have the PDEA withdraw the application. Such acts and actuations amounted to extortion, even if based on falsehoods, and his deliberate misrepresentation of his influence and capacity to cause the denial and withdrawal of the application for the search warrant was obviously designed to engender in the mind of Garciso the immediate and sufficient fear to force him to come up with the amount demanded to forestall his arrest and embarrassment.

We take note that Investigating Judge Paredes found that Garciso and the NBI had no ill-motive to fabricate the incrimination of the respondent through the entrapment.[13] Hence, we hold and declare that the provisional dismissal of Criminal Case No. CBU-84275 because of Garciso's intervening loss of interest in its prosecution did not bear any impact on the respondent's administrative liability because such dismissal did not yet constitute the determination of the merits of the case. We reiterate that the dismissal of a criminal case brought against a public employee like the respondent should not be a ground to dismiss the administrative case stemming from the same set of facts or transactions in view of the distinct standards of proof for the criminal and the administrative cases.[14] Verily, the guilt of the respondent for grave misconduct was supported by substantial evidence, or that amount of relevant evidence that a reasonable man may accept as adequate to justify a conclusion.[15]

The respondent's extortion amounted to grave misconduct. As the Court explained in *Dela Cruz v. Malunao*:[16]

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his position or office to procure some benefit for himself or for another person, contrary to duty and the rights of others. Section 2, Canon 1 of the Code of Conduct for Court Personnel states: "Court personnel shall not solicit or accept any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions."

In Rule IV, Section 52(A)(11) of the Uniform Rules on Administrative Cases in the Civil Service, soliciting or accepting, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value which in the course of an employee's official duties may affect the functions of his office merits the penalty of dismissal for the first offense. Grave misconduct under Section 52(A)(3) of Rule IV is also punishable by dismissal for the first offense.

Moreover, Section 2, Canon 1 of the Code of Conduct for Court Personnel has enjoined all court personnel against soliciting or accepting "any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions."

Grave misconduct is punishable by the ultimate penalty of dismissal from the service. Section 46, A, of the Revised Rules on Administrative Cases in the Civil Service, Series of 2011, provides thusly:

Section 46. Classification of Offenses. - Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following grave offenses shall be punishable by dismissal from the service:

1. Serious Dishonesty;
2. Gross Neglect of Duty;
3. Grave Misconduct;

x x x x x x x x

In closing, we issue yet another stern reminder that no court official or employee is exempt from the obligation to maintain the highest standard of conduct while serving in the Judiciary. Every person who serves in the Judiciary should be mindful of the following pronouncement in *Office of the Court Administrator v. Juan*:^[17]

xxx [C]ourt employees, from the presiding judge to the lowliest clerk, being public servants in an office dispensing justice, should always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law and court regulations. No position demands greater moral righteousness and uprightness from its holder than an office in the judiciary. Court employees should be models of uprightness, fairness and honesty to maintain the people's respect and faith in the judiciary. They should avoid any act or conduct that would diminish public trust and confidence in the courts. Indeed, those connected with dispensing justice bear a heavy burden of responsibility.

WHEREFORE, the Court FINDS and PRONOUNCES respondent Arvin A. Oca, Process Server of the Municipal Trial Court in Cities, Branch 1, in Cebu City GUILTY of GRAVE MISCONDUCT, and, ACCORDINGLY, DISMISSES him from the service, with FORFEITURE of all benefits, except accrued leave credits, and WITH PREJUDICE TO RE-EMPLOYMENT in any branch or instrumentality of the Government including government-owned or government-controlled corporations.

This decision is IMMEDIATELY EXECUTORY.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Bersamin, Del Castillo, Villarama, Jr., Mendoza, Reyes, Perlas-Bernabe, and Jardeleza, JJ., concur.

Perez, J., no part, acted in matter as Crt. Adm.

Peralta and Leonen, JJ., on official leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on June 16, 2015 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled administrative matters, the original of which was received by this Office on September 4, 2015 at 1:45 p.m.

Very truly yours,

(SGD.)

FELIPA G. BORLONGAN-ANAMA

Clerk of Court

[1] Rollo (A.M. No. P-09-2705), pp. 6-7.

[2] Id. at 3-5.

[3] Id. at 2.

[4] Rollo (A.M. No. P-09-2737), pp. 3-4.

[5] Id. at 6-8.

[6] Id. at 75-92.

[7] Rollo (A.M. No. P-09-2705), pp. 60-67.

[8] Id. at 150.

[9] Id.

[10] Id. at 217-229.

[11] Id. at 229.

[12] Id. at 228-229.

[13] Id. at 223-226.

[14] Office of the Court Administrator v. Lopez, A.M. No. P-10-2788, January 18, 2011, 639 SCRA 633, 634.

[15] Section 5, Rule 133 of the Rules of Court.

[16] A.M. No. P-11-3019, March 20, 2012, 668 SCRA 472, 482-483.

[17] A.M. No. P-03-1726 (Formerly A.M. No. 03-7-403-RTC), July 22, 2004, 434 SCRA 654, 659.

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