HILARIO P. SORIANO, PETITIONER, VS. OMBUDSMAN SIMEON V. MARCELO, HON. MARILOU B. ANCHETA-MEJIA, GRAFT INVESTIGATION OFFICER II, AND ATTY. CELEDONIO P. BALASBAS, RESPONDENTS.

G.R. No. 160772. July 13, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before this Court is a petition for certiorari under Rule 65 filed by Hilario P. Soriano (petitioner) seeking to set aside the Resolution dated 29 July 2002,[1] which dismissed the complaint against Assistant City Prosecutor Celedenio P. Balasbas (Balasbas), and the Order dated 14 July 2003,[2] which denied the motion for reconsideration, both issued by the Office of the Ombudsman in OMB-C-C-02-0246-E.

The Antecedent Facts

On 1 June 2001, petitioner filed an affidavit-complaint against Mely S. Palad (Palad), a bank examiner of the Bangko Sentral ng Pilipinas, for Falsification of Public Documents and Use of Falsified Document punishable under Article 172 of the Revised Penal Code. The complaint was filed with the Office of the City Prosecutor of Manila and was docketed as I.S. No. 01-F-22547. Acting on the complaint, Balasbas issued a Resolution on 27 August 2001 recommending that Palad be charged in court with Falsification of Public Documents and that the charge of Use of Falsified Document be dropped for lack of merit.

The Resolution of 27 August 2001 was forwarded to 2[nd] Assistant City Prosecutor Leoncia R. Dimagiba (Dimagiba) who recommended the filing of the information. This Resolution was forwarded to the City Prosecutor for approval.

Meanwhile, on 25 January 2002, Palad filed a Motion to Re-Open Case on the ground that she was not given a copy of the subpoena or any notice regarding the complaint filed against her.

On 27 February 2002, Dimagiba recommended the reopening of the case. City Prosecutor Ramon R. Garcia (City Prosecutor) approved the recommendation. Thus, on 26 March 2002, Balasbas issued a subpoena to the parties setting the case for investigation.

The reopening of the case prompted petitioner to file on 18 April 2002 with the Office of the Ombudsman a criminal complaint against Balasbas for violation of Section 3(e) of Republic Act No. 3019 (RA 3019), otherwise known as the Anti-Graft and Corrupt Practices Act. Petitioner alleged that in the reopening of I.S. No. 01-F-22547, Palad received an unwarranted advantage or preference, through manifest partiality, evident bad faith and gross inexcusable negligence, causing undue injury to petitioner.

In the Resolution dated 29 July 2002, Graft Investigation Officer Charity Grace A. Rico of the Office of the

Ombudsman recommended the dismissal of petitioner's complaint for want of sufficient basis. This recommendation was approved by Ombudsman Simeon V. Marcelo. The Motion for Reconsideration was denied in the Order of 14 July 2003,[3] for lack of merit.

Hence, the present petition for certiorari.

The Issue

Petitioner raises the sole issue of whether or not the Office of the Ombudsman acted with grave abuse of discretion, amounting to lack or in excess of jurisdiction, in dismissing the complaint against Balasbas.

The Court's Ruling

The instant petition is a special civil action for certiorari which is a remedy meant to correct only errors of jurisdiction, not errors of judgment. Petitioner assails the resolution of the Office of the Ombudsman dismissing the criminal case against Balasbas. Petitioner claims that the subordinates were not supposed to blindly follow illegal orders of their superiors. He insists that Balasbas is still liable for the reopening of the case without lawful reasons, for no law gives his superiors the right to indiscriminately order the reopening of a case. Petitioner argues that Balasbas could have opted not to issue a subpoena knowing that the directive of the City Prosecutor to reopen the case of Palad was not warranted. Thus, for giving unwarranted advantage or preference to Palad that caused undue injury to petitioner, Balasbas must be held liable for violation of Section 3(e) of RA 3019.

The arguments raised by petitioner are not errors involving jurisdiction but one of judgment, which is beyond the province of the extraordinary remedy of certiorari. As we have ruled in First Corporation v. Former Sixth Division of the Court of Appeals,[4] to wit:

> It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of certiorari, which is extra ordinem - beyond the ambit of appeal. In certiorari proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by certiorari. An error of judgment is one which the court may commit in the exercise of its jurisdiction. An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of certiorari. Certiorari will not be issued to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. It is not for this Court to re- examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court a quo.

This notwithstanding, may this Court review the findings of the Office of the Ombudsman? The general rule has been that the courts will not interfere with the discretion of the prosecutor or the Ombudsman, in the exercise of his investigative power, to determine the specificity and adequacy of the averments of the offense charged.[5] As we have explained in Esquivel v. Ombudsman:[6]

> The Ombudsman is empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. Settled is the rule that the Supreme Court will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons to indicate otherwise. Said exercise of powers is based upon the constitutional mandate and the court will not interfere in its exercise. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will

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> grievously hamper the functions of the office and the courts, in much the same way that courts will be swamped if they had to review the exercise of discretion on the part of public prosecutors each time they decided to file an information or dismiss a complaint by a private complainant.

In Presidential Commission on Good Government v. Desierto,[7] we discussed the value of the Ombudsman's independence, thus:

> Case law has it that the determination of probable cause against those in public office during a preliminary investigation is a function that belongs to the Office of the Ombudsman. The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form or substance, or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance. We have consistently refrained from interfering with the constitutionally mandated investigatory and prosecutorial powers of the Ombudsman. Thus, if the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings, unless the exercise of such discretionary powers is tainted by grave abuse of discretion.

The Ombudsman has the full discretion to determine whether or not a criminal case should be filed. Nonetheless, this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[8] An examination of the records would show that the Office of the Ombudsman did not act with grave abuse of discretion, amounting to lack or in excess of jurisdiction, in dismissing the complaint against Balasbas.

Balasbas, as Assistant City Prosecutor, was charged with violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act which provides, thus:

> SEC. 3. Corrupt practices of public officers. -- In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> x x x
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of the offense of violation of Section 3(e) of RA 3019, as amended, are as follows:

1) The accused must be a public officer discharging administrative, judicial or official functions;

2) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and

3) That his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[9]

In Albert v. Sandiganbayan,[10] we discussed the second element, to wit:

> There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and

> patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

And, as we explained in Collantes v. Marcelo,[11]

> Well-settled is the rule that good faith is always presumed and the Chapter on Human Relations of the Civil Code directs every person, inter alia, to observe good faith which springs from the fountain of good conscience. Specifically, a public officer is presumed to have acted in good faith in the performance of his duties. Mistakes committed by a public officer are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith. "Bad faith" does not simply connote bad moral judgment or negligence. There must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent or ill will. It partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.
>
> The law also requires that the public officer's action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. x x x

Petitioner failed to show that Balasbas acted with manifest partiality, evident bad faith or inexcusable negligence in issuing the subpoena. As further pointed out by the Office of the Ombudsman in its Resolution of 29 July 2002, there was no undue injury because petitioner "had suffered no actual damage."

Although Balasbas initially recommended the filing of a criminal case against Palad, this recommendation was still subject to the approval of his superiors, Dimagiba and the City Prosecutor. Balasbas, as investigating prosecutor, had no power or control over the final disposition of Palad's motion to reopen the case. Conducting a preliminary investigation for the purpose of determining whether there exists probable cause to prosecute a person for the commission of a crime, including the determination of whether to conclude, reopen or dismiss the criminal complaint subject of the preliminary investigation, is a matter that rests within the sound discretion of the provincial or city prosecutor. This is clear from the provision of Section 4, Rule 112 of the Revised Rules on Criminal Procedure which specifically states that no complaint or information may be filed or dismissed by an investigating fiscal without the prior written authority of the provincial or city fiscal or chief state prosecutor or the Ombudsman or his deputy, thus:

> SEC. 4. Resolution of investigating prosecutor and its review. If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.
>
> Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.
>
> No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written

> authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.
>
> Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.
>
> If upon petition by a proper party under such rules as the Department of Justice may prescribe or motu proprio, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same Rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman. (Emphasis supplied)

Palad filed a motion to reopen the case because she was not given any notice or subpoena relative to the criminal case filed against her, invoking her basic constitutional right to due process of law. When asked to comment on Palad's motion to reopen, Balasbas even objected to the reopening of the case as this would "only result to the delay in the final disposition of the case."[12] It was Dimagiba, his superior, who recommended that the motion to reopen be granted "in the interest of justice and considering that only 1 subpoena containing 2 scheduled dates was sent to respondent, and there being no return thereof, attached to the records." Dimagiba's recommendation was approved by the City Prosecutor.[13] Consonant with Section 4, Rule 112, Balasbas had no other recourse but to follow the recommendation of his superior. The subpoena he issued to the parties setting the case for investigation was in pursuance to that recommendation which was finally approved by the City Prosecutor.

As regards petitioner's claim that Balasbas "blindly followed the illegal orders of his superiors," it is worthy to note that petitioner filed a similar case for violation of Section 3(e) of RA 3019, as amended, this time against Dimagiba involving the same Resolution dated 27 August 2001 submitted by Balasbas. This Court, in Soriano v. Marcelo,[14] dismissed that petition for lack of merit and held that petitioner was not able to show that Dimagiba was motivated by self-interest or ill-will in reopening the preliminary investigation stage of Palad's case. The Court further ruled that Dimagiba acted in good faith, as he believed that a denial of the motion to reopen the preliminary investigation due to the accused's failure to submit her counter-affidavit would only lead to more delays.

We reiterate the ruling in Collantes,[15] thus:

> Agencies tasked with the preliminary investigation and prosecution of crimes should never forget that the purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect one from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the State from useless and expensive trials. It is, therefore, imperative upon such agencies to relieve any person from the trauma of going through a trial once it is ascertained that the evidence is insufficient to sustain a prima facie case or that no probable cause exists to form a sufficient belief as to the guilt of the accused.

We find that the Office of the Ombudsman, acting within the bounds of its constitutionally mandated duty, did not commit grave abuse of discretion in dismissing the complaint against Balasbas.

WHEREFORE, we DISMISS the petition. We AFFIRM the Resolution dated 29 July 2002 and the Order dated 14 July 2003 of the Office of the Ombudsman in OMB-C-C-02-0246-E. Costs against petitioner.

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SO ORDERED.

Puno, C.J., (Chairperson), Corona, Leonardo-De Carpio, and Bersamin, JJ., concur.

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[1] Rollo, pp. 16-18.

[2] Id. at 19-23.

[3] Issued by Graft Investigation Officer II Marilou B. Ancheta-Mejica and approved by Deputy Ombudsman for Luzon, Victor C. Fernandez (as per Delegation of Authority by the Ombudsman dated 8 September 2003).

[4] G.R. No. 171989, 4 July 2007, 526 SCRA 564, 578.

[5] Ocampo IV v. Ombudsman, G.R. No. 103446-47, 30 August 1993, 225 SCRA 725.

[6] 437 Phil. 702, 711-712 (2002).

[7] G.R. No. 139296, 23 November 2007, 538 SCRA 207, 215-216.

[8] Presidential Commission on Good Government v. Desierto, G.R. No. 139296, 23 November 2007, 538 SCRA 207.

[9] Albert v. Sandiganbayan, G.R. No. 164015, 26 February 2009; Collantes v. Marcelo, G.R. Nos. 167006-07, 14 August 2007, 530 SCRA 142.

[10] G.R. No. 164015, 26 February 2009.

[11] G.R. Nos. 167006-07, 14 August 2007, 530 SCRA 142, 155.

[12] Rollo, p. 60.

[13] Id. at 61.

[14] G.R. No. 163017, 18 June 2008, 555 SCRA 85.

[15] Supra note 9 at 156-157, citing Baylon v. Office of the Ombudsman, 423 Phil. 705, 709 (2001) and Venus v. Desierto, 358 Phil. 675, 699-700 (1998).

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