

**JIMMY R. NAPOLES, PETITIONER, VS. OFFICE OF THE OMBUDSMAN (VISAYAS), NATIONAL BUREAU OF INVESTIGATION (NBI) REGIONAL OFFICE NO. 7 AND ANTONIO G. RUIZ, JR., RESPONDENTS.**

*G.R. No. 183834. November 25, 2009*

Ponente: NACHURA, J.

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**NACHURA, J.:**

This is an appeal by way of a petition for review under Rule 45 of the Rules of Court assailing the August 28, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 01873 as well as its Resolution[2] dated July 9, 2008 upholding the guilty findings of the Office of the Ombudsman against petitioner Jimmy R. Napoles for grave misconduct and dismissing him from the service.

The factual antecedents follow.

On June 21, 2001, private respondent Antonio G. Ruiz, Jr. (Ruiz) went to the Bureau of Internal Revenue (BIR)-VII South District Office for computation of the capital gains tax due him in connection with the sale of his 525-square-meter property in Sitio Antuanga, Quiot, in Pardo, Cebu. Revenue District Officer Estrella Lopez (Lopez) assigned Jimmy Napoles (Napoles), BIR Examiner I, to determine the zonal valuation of the property as basis for the payment of capital gains tax. Using as reference Department Order No. 18-97, Napoles informed Ruiz that the zonal valuation of the property was P4,325.00 per square meter as of 1996 subject to 10% increase per annum. Ruiz disagreed and said that the valuation should only be P3,100.00 per square meter. Ruiz proposed that an ocular inspection be made at his expense. Napoles agreed.[3]

After the ocular inspection, Napoles insisted on the higher zonal valuation, reasoning that the property is situated in an industrial zone. Napoles assessed the capital gains tax due at P136,237.50. Again, Ruiz objected and argued that the tax should only be P97,650.00.[4]

According to Napoles, he advised Ruiz to talk to Lopez, who, in turn, instructed him to accommodate Ruiz' demand to reduce the zonal value to P3,100.00 per square meter on the condition that it shall be subject to the approval of the BIR's Legal Division, and that if the same should be denied, Ruiz must pay the appropriate amount of tax.[5]

Napoles returned to his table and computed the capital gains tax based on the P3,100.00 per square meter zonal value. According to Ruiz, Napoles handed him a written computation of the tax assessment,[6] but demanded, in addition, the amount of P10,000.00.[7] When Ruiz asked what the P10,000.00 was for, Napoles allegedly replied that it was to be used as "grease money" to speed up the processing of the documents and the approval by the BIR Regional Office.[8] Since then, Napoles kept reminding Ruiz about the P10,000.00 grease money.[9]

Irate, Ruiz reported the matter to the National Bureau of Investigation (NBI) Regional Office. An entrapment operation was set, with Ruiz agreeing to a meeting with Napoles.[10]

Ruiz arranged to meet with Napoles inside a fastfood restaurant in Raintree Mall in Cebu City where Ruiz was to

hand to Napoles the P10,000.00. The NBI formed a team composed of Supervising Agent Atty. Jose Ernie Santos and Agents Arnel Pura and Teodoro Saavedra. The team immediately coordinated with the bureau's laboratory department for the purpose of dusting the marked money with ultraviolet powder. The serial numbers of the bills were also duly recorded.[11]

On July 4, 2001, at around 3:30 in the afternoon, Ruiz met with Napoles inside the designated restaurant with NBI agents close by. Ruiz handed the white envelope containing the marked money to Napoles, and the latter placed the envelope inside his pocket. At this juncture, the NBI team arrested Napoles and brought him to the NBI office.[12]

While inside the NBI office, Napoles was subjected to ultraviolet light examination and was found to have yellow fluorescent smudges and specks on the dorsal and palmar aspect of his left and right hands.[13] However, the marked money and the white envelope were not recovered from Napoles. According to the NBI, Napoles threw the money and the envelope out of the window of the car after he was arrested. An hour after the arrest, four (4) P100.00 bills matching the serial numbers of the marked money were recovered from a security guard manning the shopping mall.[14]

The following day, July 5, 2001, the NBI filed a complaint for grave misconduct against Napoles before the Office of the Ombudsman (Visayas).[15] A criminal case was also filed against Napoles for violation of Section 3(b) of Republic Act (R.A.) No. 3019 before the Regional Trial Court of Cebu.[16]

On February 19, 2004, the Office of the Ombudsman (Visayas) rendered a Decision finding Napoles guilty of grave misconduct, and imposed upon him the penalty of dismissal from the service, including all its accessory penalties. Napoles moved for reconsideration, but the same was denied.

Napoles appealed the case to the CA. The appeal was denied, and his subsequent motion for reconsideration was, likewise, denied.

Napoles now comes to this Court maintaining his innocence and raising the following issues:

- WHETHER OR NOT THE COURT OF APPEALS HAD DISREGARDED MATTERS OF VALUE AND SUBSTANCE WHICH[,] IF CONSIDERED[,] WILL CERTAINLY CAUSE THE REVERSAL OF THE DECISION OF THE OFFICE OF THE OMBUDSMAN (VISAYAS)[; AND]
- WHETHER OR NOT, ASSUMING ARGUENDO THAT PETITIONER IS GUILTY OF THE CHARGES HURLED AGAINST HIM, [THE PENALTY IMPOSED UPON HIM] IS TOO HARSH UNDER THE ATTENDANT CIRCUMSTANCES.[17]

The petition is devoid of merit.

It has been repeatedly held that, as a rule, the findings of fact of the CA are final and conclusive and cannot be reviewed on appeal by this Court[18] if they are borne out by the records or are based on substantial evidence.[19] The factual issues raised by Napoles in this petition, specifically the failure of the NBI to recover the marked money from his possession,[20] the presence of fluorescent powder on his hands,[21] and the alleged violation of his constitutional right when he was arrested by the NBI[22] have all been squarely discussed and fairly settled in the appellate court's decision.

More importantly, Napoles failed to show any of the exceptional circumstances enumerated in the rules and jurisprudence whereby a review is permitted, namely: (1) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly absurd, mistaken or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the judgment is premised on a

misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case, and the same are contrary to the admissions of both appellants and appellees; (7) when the findings of fact of the CA are at variance with those of the trial court, in which case this Court has to review the evidence in order to arrive at the correct findings based on the record; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by respondents; (10) when the findings of fact of the CA are premised on the supposed absence of evidence and are contradicted by the evidence on record; and (11) when the trial court has overlooked certain material facts and circumstances which, if taken into account, would alter the result of the case in that they would introduce an element of reasonable doubt entitling the accused to acquittal.[23]

Interestingly, Napoles also utterly failed to provide any legitimate explanation as to why he was meeting with Ruiz outside his office during office hours and under surreptitious circumstances. Thus, the Office of the Ombudsman (Visayas) could not have been more correct when it ratiocinated that:

[R]egardless of the dispute involving the valuation of the property under consideration, the act of [Napoles] in receiving money from the complainant under surreptitious circumstances is plain and simple Misconduct. When considered together with the intention of causing the undervaluation of property for purposes of lowering the tax due to the detriment of the government, then the misconduct takes on a grave and serious character.[24]

When Napoles agreed to meet with Ruiz under such circumstances, he deliberately violated his fundamental and constitutional duty as a public employee, i.e., he must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead a modest life.[25]

WHEREFORE, premises considered, the instant petition is DENIED for lack of merit.

### **SO ORDERED.**

Corona, (Chairperson), Chico-Nazario, Velasco, Jr., and Peralta, JJ., concur.

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[1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Agustin S. Dizon and Stephen C. Cruz, concurring; rollo, 36-50.

[2] Rollo, pp. 51-53.

[3] Id. at 37.

[4] Id. at 37-38.

[5] Id. at 38.

[6] Id. at 95.

[7] Id. at 38.

[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Id. at 38-39.

[13] Id. at 39, 97 and 98.

[14] Id. at 39.

[15] Docketed as OMB-VIS-ADM-2001-0292.

[16] Docketed as CBU-64256.

[17] Rollo, p. 18.

[18] *Amigo v. Teves*, 96 Phil. 252 (1954).

[19] *Nombrefia v. People*, G.R. No. 157919, January 30, 2007, 513 SCRA 369, 375.

[20] Rollo, p. 44.

[21] Id. at 44-45.

[22] Id. at 45-46.

[23] *Nombrefia v. People*, supra note 19, at 375-376.

[24] Rollo, p. 92.

[25] 1987 Constitution, Art. XI, Sec. 1.

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