

ROEL R. DEGAMO, PETITIONER, V. OFFICE OF THE OMBUDSMAN AND MARIO L. RELAMPAGOS, RESPONDENTS.

G.R. No. 212416. December 05, 2018

Ponente: LEONEN, J.

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LEONEN, J.:

For this Court's resolution is a Petition for Certiorari[1] assailing the Office of the Ombudsman's April 19, 2013 Resolution[2] and January 8, 2014 Order[3] in OMB-C-C-13-0010. This case originated from the December 26, 2012 Affidavit-Complaint[4] filed by Negros Oriental Governor Roel R. Degamo (Degamo) against Department of Budget and Management (Department) Undersecretary Mario L. Relampagos (Relampagos).

The National Disaster Risk Reduction and Management Council (Council) requested the release of P961,550,000.00 to the Negros Oriental province (provincial government) to finance the rehabilitation of various infrastructures[5] damaged by Typhoon Sendong and a 6.9-magnitude earthquake.[6] The Office of the President, through Executive Secretary Paquito Ochoa, Jr., approved the request, charging the amount against the Calamity Fund for Fiscal Year 2012, subject to availability.[7]

The Department, through its Regional Office No. VII, issued on June 5, 2012 Special Allotment Release Order No. ROVII-12-0009202,[8] which covered the approved amount. It also issued a Notice of Cash Allocation[9] worth P480,775,000.00, or 50% of the approved sum.[10]

In a June 18, 2012 letter[11] to Budget and Management Secretary Florencio Abad (Abad), Public Works and Highways Secretary Rogelio L. Singson requested the Department not to indicate the recipient local government unit in the Special Allotment Release Order yet, since the Department of Public Works and Highways needed to evaluate the local government units' capability to implement projects prior to the release of a fund. Thus, Abad ordered Relampagos to withdraw the previously issued Special Allotment Release Order and Notice of Cash Allocation.[12]

In a June 19, 2012 letter-advice,[13] Relampagos informed Degamo that the Department is withdrawing the Special Allotment Release Order because its release did not comply with the guidelines on large-scale fund releases for infrastructure projects. He said this withdrawal was effective until the Department of Public Works and Highways could determine that the local government units are able to implement the projects.[14]

On June 29, 2012, the Department's Regional Office VII Director advised[15] Degamo that the Special Allotment Release Order had been withdrawn,[16] and ordered the provincial government to return and deposit P480,775,000.00, the previously released amount, to the National Treasury.[17]

On July 16, 2012, Degamo informed[18] Relampagos that the provincial government would not be returning the funds, and claimed that he was illegally withdrawing funds unbeknownst to higher authorities.[19]

On December 26, 2012, Degamo filed before the Office of the Ombudsman a Complaint for Usurpation of Authority or Official Functions against Relampagos. He alleged that when Relampagos wrote the June 19, 2012

letter-advice, Relampagos falsely posed himself to have been authorized by President Benigno Simeon C. Aquino III. Degamo added that Relampagos usurped the official functions of the Executive Secretary, who had the sole authority to write and speak for and on behalf of the President.[20]

In his Counter-Affidavit,[21] Relampagos maintained that he wrote the letter as the Department's Undersecretary for Operations.[22] He claimed that he acted upon Abad's instructions, and that the Office of the President was informed of the withdrawal.[23]

In its April 19, 2013 Resolution,[24] the Office of the Ombudsman dismissed the Complaint.[25] It found no probable cause to charge Relampagos with Usurpation of Authority or Official Functions[26] since he signed the letter in his own name and under the words, "By Authority of the Secretary." [27] There was also no positive express, and explicit representation made.[28] Neither did Relampagos act under pretense of official position, nor without legal authority.[29]

The dispositive portion of the Office of the Ombudsman's April 19, 2013 Resolution read:

WHEREFORE, the present complaint against MARIO L. RELAMPAGOS is hereby DISMISSED for lack of probable cause.

SO RESOLVED.[30] (Emphasis in the original)

In its January 8, 2014 Order,[31] the Office of the Ombudsman denied Degamo's Motion for Reconsideration.[32]

Hence, on May 7, 2014, Degamo filed this Petition for Certiorari,[33] arguing that public respondent, the Office of the Ombudsman, gravely abused its discretion when it held that there was no probable cause to indict private respondent Relampagos of the crime charged.[34]

Petitioner does not dispute the Department's authority in approving or disapproving Special Allotment Release Orders; however, it must be under the law.[35] According to him, the funding assistance was a calamity fund governed by Republic Act No. 10121, or the Philippine Disaster Risk Reduction and Management Act of 2010, and the special provisions of Republic Act No. 10155 or the General Appropriations Act of 2012 (2012 GAA),[36] as provided in the Department's Budget Circular No. 2012-2.[37] Per these laws, releasing funds to the implementing agency requires the approval of the President with favorable recommendation of the Council.[38] Hence, there was no need for the Department of Public Works and Highways' prior determination before the Special Allotment Release Order could be released.[39]

In his Comment,[40] private respondent counters that he withdrew the Special Allotment Release Order as the Undersecretary for Operations,[41] under the August 18, 2011 Department Order No. 2011-11.[42] He claims that nowhere in his letter did he assume acting [on] behalf of the President or the Executive Secretary[43] as he signed it under his name, using the words, "By Authority of the Secretary." [44] He contends that he acted upon Abad's orders, whom the President instructed to comply with the 2012 GAA provision "allowing delegation of nationally[-]funded infrastructure projects [only] to [local government units] with the capability to implement the projects by themselves." [45] The President was duly informed of the reasons for the withdrawal, and has neither rejected nor reversed it.[46]

In its Comment,[47] public respondent argued that it did not commit grave abuse of discretion in dismissing the complaint against private respondent.[48] It invoked the same department order which authorized private respondent to sign for and on behalf of Abad.[49] Moreover, it argued that it "has the ultimate and unfettered discretion to determine whether a criminal case should be filed against an erring public official, except only upon a clear showing of grave abuse of discretion which petitioner utterly failed to establish." [50]

On February 24, 2015, petitioner filed his Consolidated Reply.[51] He avers that public respondent's findings are subject to this Court's power of judicial review.[52] He maintains that private respondent's cancellation of the Special Allotment Release Order and Notice of Cash Allocation is contrary to law[53] and the rulings in *Belgica v. Ochoa, Jr.* and *Araullo v. Aquino*. [54] The Department, he asserts, "relinquishes its jurisdiction, disposition[,] and control of public funds once a [Notice of Cash Allocation] is issued." [55] Thus, private respondent no longer had authority to cancel both documents pertaining to the calamity fund already deposited to the provincial government's account.[56] Additionally, private respondent allegedly usurped the "sole prerogative of the President to suspend or stop further expenditures under Section 38 of the Administrative Code of 1987." [57]

The sole issue for this Court's resolution is whether or not public respondent committed grave abuse of discretion in dismissing the Complaint for usurpation of authority or official functions, which petitioner filed against private respondent, for lack of probable cause.

The Petition is dismissed.

I

This Court has adopted a policy of non-interference with public respondent's determination of probable cause.[58] In *Dichaves v. Office of the Ombudsman, et al.*: [59]

As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman.

An independent constitutional body, the Office of the Ombudsman is beholden to no one, acts as the champion of the people, and is the preserver of the integrity of the public service. Thus, it has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is executive in nature.

. . . .

The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.[60] (Citations omitted)

Moreover, in a special civil action for certiorari, this Court cannot correct errors of fact or law not amounting to grave abuse of discretion.[61] This Court may review public respondent's exercise of its investigative and prosecutorial powers, but only upon a clear showing that it abused its discretion in an "arbitrary, capricious, whimsical, or despotic manner," [62] as held in *Joson v. Office of the Ombudsman*:

[A]n allegation of grave abuse of discretion must be substantiated before this Court can exercise its power of judicial review. As held in *Tetangco v. Ombudsman*:

It is well-settled that the Court will not ordinarily interfere with the Ombudsman's determination of whether or not probable cause exists except when it commits grave abuse of discretion. Grave abuse of discretion exists where a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law.[63] (Citation omitted)

Without proof of grave abuse of discretion, this Court shall not interfere with public respondent's determination of

probable cause.

II

Invoking the exception, petitioner alleges that public respondent acted with grave abuse of discretion in finding no probable cause to indict private respondent.[64] In his Complaint, petitioner charged private respondent with violation of Article 177 of the Revised Penal Code, as amended, which states:

ARTICLE 177. Usurpation of authority or official functions. — Any person who shall knowingly and falsely represent himself to be an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government, or who, under pretense of official position, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or of any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of prison correccional in its minimum and medium periods.[65]

This law provision penalizes the crimes of usurpation of authority and usurpation of official functions.[66]

As worded, any person who commits the punishable acts enumerated can be held liable. This was upheld in *People v. Hilvano*,[67] where the Court denied the appellant public official's attempt to restrict Article 177's application to private individuals only.[68] The same case held that good faith is a defense against a charge under it.[69]

II (A)

The crime of usurpation of authority punishes the act of knowingly and falsely representing oneself to be an officer, agent, or representative of any department or agency of the government.[70]

In *Gigantoni y Javier v. People*,[71] this Court acquitted the petitioner- accused, a former Philippine Constabulary-CIS agent convicted in the trial court, for usurpation of authority. This Court found that there was no proof that he was duly notified of his dismissal from the service.[72] It held that he cannot be said to have knowingly and falsely represented himself as a Philippine Constabulary-CIS agent without competent and credible proof that he knew of his dismissal when he committed the alleged offense. Thus, presumption of innocence prevailed.[73]

In his Complaint, petitioner alleged that private respondent "falsely and knowingly represented himself to have the authority of President Benigno Simeon C. Aquino III"[74] when he wrote the June 19, 2012 letter--advice revoking the issuance of the Special Allotment Release Order.

What petitioner posits is that by signing the letter, private respondent led the addressee to believe that he had the authority to do so when he did not, which constitutes usurpation of authority. He is incorrect. The punishable act in usurpation of authority is false and knowing representation, i.e. the malicious misrepresentation as an agent, officer, or representative of the government.

Private respondent did not maliciously misrepresent himself as an agent, officer, or representative of the government. He is a public official himself,[75] the Department's Undersecretary for Operations, whom public respondent had found to have signed the letter in his own name and under the words, "By Authority of the Secretary." [76]

Clearly, the facts presented by petitioner do not constitute the crime of usurpation of authority. Public respondent was not in grave abuse of discretion when it found that there was no sufficient evidence to support an indictment for usurpation of authority against private respondent.

II (B)

The crime of usurpation of official functions punishes any person who, under pretense of official position, performs any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, without being lawfully entitled to do so.[77]

Under Article 177 of the Revised Penal Code, as amended,[78] the elements of the crime of usurpation of official functions are when a person: (1) performs any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof; (2) acts under pretense of official position; and (3) acts without being lawfully entitled to do so.

The assailed act is the private respondent's withdrawal of the Special Allotment Release Order through the June 19, 2012 letter-advice. This constitutes the first element, that a person performs an act pertaining to a person in authority or public officer.

As discussed, the public respondent found that private respondent signed the letter in his own name as the Undersecretary for Operations, and under the words, "By Authority of the Secretary." Petitioner did not dispute this finding. However, he argues that respondent acted without legal authority and usurped the Executive Secretary's function, as the latter is the only one who can write and speak for and on behalf of the President.

At the onset, private respondent did not claim to write for and on behalf of the President in the letter. This Court fails to see how he usurped the Executive Secretary's function when there was no attempt to represent the President in the letter. In any case, petitioner insists that only the President can withdraw the Special Allotment Release Order from his provincial government.

In *Ruzol v. Sandiganbayan*,[79] this Court acquitted Leovegildo R. Ruzol (Ruzol), then Mayor of Nakar, Quezon, who issued 221 permits for the transportation of salvaged products. The Sandiganbayan convicted him of usurpation of official functions of the Department of Environment and Natural Resources. However, this Court found that the government agency did not have the sole authority to issue the questioned permits, and that local government units may likewise exercise such power under the general welfare clause. Moreover, the permit that Ruzol issued was not intended to replace the one required by the government agency. He was found to have acted in good faith and was acquitted.

Following *Ruzol*, an inquiry must be made on whether private respondent may exercise the power to withdraw the Special Allotment Release Order through a letter-advice, and whether he acted in good faith.

Private respondent argues that he acted under Abad's authority, under the August 18, 2011 Department Order No. 2011-11.[80] A scrutiny of this document confirms that private respondent himself was designated to sign documents on Abad's behalf, which explicitly includes the Special Allotment Release Order, the Notice of Cash Allocation, and the letter-advice to agencies.

While petitioner does not dispute the Department's authority in approving or disapproving Special Allotment Release Orders,[81] he claims that this power does not include revoking, canceling, or suspending what has been approved by the President.[82]

However, petitioner failed to refute private respondent's allegations that the act was upon the instructions of the President:

31. As a final point, it must be recalled that the President, during the update on the Calamity Fund releases, verbally called [the] attention of [Budget and Management] Secretary Abad to strictly enforce the GAA provision allowing delegation of nationally[-]funded infrastructure projects ONLY to [local government units]

with the capability to implement the projects by themselves. Incidentally, [Department of Public Works and Highways] Secretary Singson in his letter dated June 18, 2012 requested the [Department] not to indicate the [local government unit] recipient of the Calamity Fund in the [Special Allotment Release Order] as it would need to priorly (sic) determine if the [local government unit] has the capability to implement the projects.

32. The foregoing events prompted [Budget and Management] Secretary Abad to inquire on the compliance by the [local government unit] recipients of the Calamity Fund. Accordingly, Secretary Abad made instructions for [private respondent] to withdraw the [Special Allotment Release Order] and [Notice of Cash Allocation] issued to the [p]rovince as a precautionary measure[,] who did so in compliance with the reminder of no less than the President of the Philippines to strictly enforce the GAA provision allowing delegation of nationally[-]funded infrastructure projects ONLY to [local government units] with the capability to implement the projects by themselves.[83] (Emphasis in the original, citation omitted)

It appears that private respondent was acting on behalf of Abad, upon the instructions of the President. Under the doctrine of qualified political agency, department secretaries may act for and on behalf of the President on matters where the President is required to exercise authority in their respective departments.[84]

Thus, this Court rules that private respondent, under Abad's authority, may exercise the power to withdraw the Special Allotment Release Order through the letter-advice sent to petitioner.

Finally, this Court finds that private respondent acted in good faith. In *Ruzol*:

It bears stressing at this point that in *People v. Hilvano*, this Court enunciated that good faith is a defense in criminal prosecutions for usurpation of official functions. The term "good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts[,] which render transaction unconscientious." Good faith is actually a question of intention and although something internal, it can be ascertained by relying not on one's self-serving protestations of good faith but on evidence of his conduct and outward acts.[85] (Citations omitted)

The records fail to show that private respondent acted in bad faith in withdrawing the Special Allotment Release Order. On the contrary, it appears it was petitioner who acted in bad faith. Private respondent claims that despite the notice of withdrawal and the directive to return the public fund to the National Treasury pending compliance with the rules, petitioner brazenly procured various infrastructure projects. Petitioner was the only one among the local chief executives who disregarded the order from the Executive Department.[86]

Thus, without proof that public respondent acted with grave abuse of discretion in finding no probable cause to indict private respondent, this Petition is dismissed.

WHEREFORE, the Petition for Certiorari is DISMISSED for lack of merit. The April 19, 2013 Resolution and January 8, 2014 Order of the Office of the Ombudsman in OMB-C-C-13-0010 are AFFIRMED.

SO ORDERED.

Peralta (Chairperson), Gesmundo, J. Reyes, Jr., and Hernando, JJ., concur.

[1] Rollo, pp. 3-25.

[2] *Id.* at 26-36. The Resolution, docketed as OMB-C-C-13-0010, was penned by Graft Investigation and Prosecution Officer I Rachel Rueve M. T. Barroso-Jamiro and approved by Ombudsman Conchita Carpio Morales.

[3] Id. at 37-39. The Order, docketed as OMB-C-C-13-0010, was penned by Graft Investigation and Prosecution Officer I Rachel Rueve M. T. Barroso-Jamiro and approved by Ombudsman Conchita Carpio Morales.

[4] Rollo, pp. 40-42.

[5] Id. at 27, Office of the Ombudsman's Resolution.

[6] Id. at 6.

[7] Id. at 27.

[8] Id. at 47.

[9] Id. at 48.

[10] Id. at 27.

[11] Id. at 72.

[12] Id. at 28.

[13] Id. at 49-50.

[14] Id. at 28.

[15] Id. at 51-52.

[16] Id. at 28.

[17] Id. at 28-29.

[18] Id. at 53-55.

[19] Id.

[20] Id. at 29-30.

[21] Id. at 378-386.

[22] Id. at 382.

[23] Id. at 384.

[24] Id. at 26-36.

[25] Id. at 36.

[26] Id. at 31.

[27] Id. at 32.

[28] Id.

[29] Id. at 33.

[30] Id. at 36.

[31] Id. at 37-39.

[32] Id. at 100-113.

[33] Id. at 3-25.

[34] Id. at 8.

[35] Id.

[36] Id. at 9.

[37] Id. at 9-10.

[38] Id. at 10-12.

[39] Id. at 13.

[40] Id. at 328-344.

[41] Id. at 335.

[42] Id. at 338.

[43] Id. at 335.

[44] Id. at 338.

[45] Id. at 338.

[46] Id.

[47] Id. at 494-509.

[48] Id. at 498.

[49] Id. at 499.

[50] Id. at 502.

[51] Id. at 519-543, Consolidated Reply to Separate Comments of the Respondents on the Petition.

[52] Id. at 520.

[53] Id. at 521.

[54] Id. at 522.

[55] Id. at 525.

[56] Id. at 526.

[57] Id. at 533.

[58] *Joson v. Office of the Ombudsman*, G.R. Nos. 197433 and 197435, August 9, 2017, < <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/197433.pdf> > [Per J. Leonen, Second Division].

[59] 802 Phil. 564 (2016) (Per J. Leonen, Second Division).

[60] Id. at 589-590.

[61] *Miranda v. Sandiganbayan*, 502 Phil. 423, 441 (2005) (Per J. Puno, En Banc).

[62] *Joson v. Office of the Ombudsman*, G.R. Nos. 197433 and 197435, August 9, 2017, < <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/197433.pdf> > [Per J. Leonen, Second Division] citing *Tetangco v. Office of the Ombudsman*, 515 Phil. 230-236,234 (2006) [Per J. Quisumbing, Third Division].

[63] *Id.* at 23.

[64] *Rollo*, p. 520.

[65] Republic Act No. 379 (1949), sec. 1.

[66] *Gigantoni y Javier v. People*, 245 Phil. 133 (1988) [Per C.J. Yap, Second Division]. See also *People v. Lidres*, 108 Phil. 995 (1960) [Per J. Barrera, First Division] where the Court acquitted the appellant charged with usurpation of official functions on the ground that the facts alleged in the information failed to constitute an offense. The Court held that neither can the appellant be convicted of usurpation of authority, as distinguished from usurpation of official functions, penalized under the same article, since the information did not charge appellant with the former crime.

[67] 99 Phil. 655 (1956) [Per J. Bengzon, En Banc].

[68] *Id.* The Court, in holding that there is no reason to restrict the operation of Article 177 to private individuals, explained: "For one thing it applies to 'any person,' and where the law does not distinguish, we should not distinguish."

[69] *Ruzol v. Sandiganbayan*, 709 Phil. 708 (2013) [Per J. Velasco, Jr., Third Division].

[70] Republic Act No. 379 (1949), sec.1.

[71] 245 Phil. 133 (1988) [Per C.J. Yap, Second Division].

[72] *Gigantoni y Javier v. People*, 245 Phil. 133, 137 (1988) [Per C.J. Yap, Second Division].

[73] *Id.*

[74] *Rollo*, p. 29.

[75] Republic Act No. 6713 (1989), sec. 3. Definition of terms. —

...

"Public Officials" includes elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount.

[76] *Rollo*, p. 32.

[77] REV. PEN. CODE, art. 177.

[78] Republic Act No. 379 (1949), sec. 1.

[79] 709 Phil. 708 (2013) [Per J. Velasco, Jr., Third Division].

[80] *Rollo*, p. 260.

[81] *Id.* at 8.

[82] *Id.* at 16.

[83] Id. at 338.

[84] *Joson v. Torres*, 352 Phil. 888 (1998) [Per J. Puno, Second Division].

[85] *Ruzol v. Sandiganbayan*, 709 Phil. 708, 752-753 (2013) [Per J. Velasco, Jr., Third Division] citing *People v. Hilvano*, 99 Phil. 655, 657 (1956) [Per J. Bengzon, En Banc].

[86] *Rollo*, p. 336.

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