

JAMES BILLOSO Y OBLIGAR PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 257733. January 11, 2023*

Ponente: LOPEZ, J., J.

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This Court resolves a Petition for Review on Certiorari[1] under Rule 45 of the Revised Rules of Court assailing the Decision[2] and Resolution[3] rendered by the Court of Appeals (CA) in CA-G.R. SP No. 12761, which reversed and set aside the Decision[4] and Order[5] issued by the Regional Trial Court (RTC) in Criminal Case Nos. C-224-18 and C-225-18. The RTC approved the plea bargaining proposal of James Billoso y Obligar (Billoso) and found him guilty beyond reasonable doubt of two counts of violation of Article II, Section 12 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

The Antecedents

Billoso and Dave Billoso y Capapas, were charged with violation of Section 5 in relation to Article II, Section 26 of Republic Act No. 9165. The accusatory portion of the Information states that:

That on or about the 10[th] day of July 2018, in the City of Roxas, Philippines, and within the jurisdiction of the Honorable Court, both accused, conspiring and confederating with each other, with deliberate intent and without justifiable motive, did then and there willfully, unlawfully and feloniously, sell and/or deliver to PO2 Rudy Fontenilla, a police [']poseur buyer['], one (1) heat-sealed transparent plastic sachet containing white crystalline substance of Methamphetamine Hydrochloride or shabu, a dangerous drug with marking [']JOB-BB['], containing 0.0200 gram, in consideration of the sum of Five Hundred Pesos (P500.00), in such manner that when accused James Billoso asked the poseur buyer to quote: [']five hundred to kuhaon nyo pre no?['] and the poseur buyer replied positively. Consequently, Dave Billoso asked the money and PO2 Fontenilla took the one piece five hundred peso bill marked money and handed it to him. In exchange, James Billoso took an item on his sling bag and handed PO2 Fontenilla the one (1) piece heat-sealed transparent plastic sachet containing white crystalline substance of suspected shabu.

CONTRARY TO LAW.[6]

Billoso was also charged with violation of Article II, Section 11 of Republic Act No. 9165 in another Information, the accusatory portion of which reads:

That on or about the 10[th] day of July 2018, in the City of Roxas, Philippines and within the jurisdiction of the Honorable Court, the above- named accused, did then and there willfully, unlawfully and feloniously have in his possession, control and custody, four (4) pieces heat-sealed transparent plastic sachets each containing Methamphetamine Hydrochloride or shabu, a dangerous drug with marking [']JOB-01['], (with a weight of 0.2651 grams); JOB-2 (with a weight of 0.0524 grams); JOB-3 (with a weight of 0.0403 grams) and JOB-4 (with a weight of 0.0356 grams)['] with a total weight of 0.3934 grams, without being authorized by law to possess the same.

CONTRARY TO LAW.[7]

During their arraignment on August 1, 2018, Billoso and his co-accused entered a plea of "not guilty" to both charges.[8] On the same day, they submitted their Proposal for Plea Bargaining[9] stating their willingness to plead guilty to the lesser offense of violation of Article II, Section 12 of Republic Act No. 9165 for all charges.[10]

The prosecution filed its Comment/Objection (To Proposal for Plea Bargaining)[11] praying for the denial of the plea bargaining proposal on the grounds that in Criminal Case No. C-224-18: (1) the prosecution is directed not to accept plea bargaining proposals pursuant to Department of Justice (DOJ) Circular No. 027-18 or the "Amended Guidelines on Plea Bargaining for Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002"; and (2) the prosecution's evidence was sufficient to convict petitioner and his co-accused of the crimes charged.[12] For Criminal Case No. C-225-18, the prosecution argued that the evidence was sufficient to convict the accused of the crime charged.[13]

In an Order[14] dated January 24, 2019, the RTC granted Billoso and his co-accused's proposal for plea bargaining and ordered their re-arraignment for the lesser offense of violation of Article II, Section 12 of Republic Act No. 9165.[15] After the plea of "not guilty" to the lesser offense was entered,[16] the RTC rendered its Decision[17] declaring Billoso and his co-accused guilty of the lesser crime, the pertinent portions of which states:

OVER and ABOVE the OBJECTION of the prosecution, the Court resolves to grant the proposals for plea-bargaining of the accused on the following grounds:

1. The total weight of shabu alleged sold and possessed by the accused qualifies him to avail of the benefits of Administrative Matter No. 18-03-16-SC;
2. As stated in *Estipona v. Lobrigo* case, accused is allowed to plea-bargaining during arraignment, the pre-trial or even up to the point when the prosecution already rested its case;
3. The consent of the police officers, or in the instant cases the PDEA agent, is not necessary considering the violation of R.A. 9165 is a public crime and, as such, the state is deemed to be the offended party. The public prosecutor is the representative of the state, thus its comment/opposition to the proposal for plea-bargaining of the accused will suffice; and
4. The primary reason for the prosecution's objection to the proposals for plea-bargaining of the accused is that it is not consistent with Department of Justice Circular No. 027.

Between Administrative Matter No. 18-03-16-SC and Department of Justice Circular No. 027, the former shall prevail as it was adopted in view of the Supreme Court's ruling in *Estipona v. Lobrigo* which forms part of the law of the land. To disallow the accused to plea-bargain because it is not consistent with Department of Justice Circular No. 027 would tantamount to dismissing the Supreme Court's power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, Practice and procedure in all courts, including plea bargaining in drugs cases, as mandated by Section 5(5), Article VIII of the 1987 Constitution.

....

WHEREFORE, the judgement is hereby rendered as follows:

- In Criminal Case No. C-224-18, accused James Billoso y Obligar and Dave Billoso y Capapas are both found GUILTY beyond reasonable doubt of the crime of violation of Section 12, Article II of R.A. No. 9165 and are each sentenced to imprisonment consisting of six (6) months and one (1) day to three (3) years and to pay a fine of P10,000.00.
- In Criminal Case No. C-225-18, accused James Billoso y Obligar is found GUILTY beyond reasonable doubt of the crime of violation of Section 12, Article II of R.A. 9165 and is hereby sentenced to imprisonment consisting of six (6) months and one (1) day to one (1) years and to pay a fine of P10,000.00.

Both accused's detention period shall be credited in their service of sentences.

Unless both accused had already served the maximum penalties imposed, they are advised to avail the benefits of probation and be released on recognizance.

Both accused are mandated to report to the DOH Treatment and Rehabilitation Center, Brgy. Rumbang, Pototan Iloilo for the proper orientation of the terms and conditions of their OUTPATIENT drug treatment and rehabilitation within fifteen (15) days from their release.

The sachets of shabu are confiscated to be turned over to the Philippine Drug Enforcement Agency Region VI, Iloilo City for proper disposal. The buy-bust money shall be turned over to the national treasury.

SO ORDERED.[18] (Emphasis in the original)

The Office of the Solicitor General moved for the reconsideration[19] of the RTC Decision. Thereafter, the RTC issued its Order[20] denying the motion for reconsideration on the ground that it was filed out of time.

The Office of the Solicitor General subsequently filed a Petition for Certiorari[21] praying for the annulment of the RTC's Decision and Order, and for the reinstatement and the continuation of proceedings. In response, Billoso and his co-accused filed their Comment (On the Petition for Certiorari).[22]

In the assailed Decision,[23] the CA granted the Office of the Solicitor General's Petition for Certiorari. The dispositive portion reads:

WHEREFORE, in view of the foregoing, the Petition for Certiorari is GRANTED. The Decision dated January 24, 2019 and Order dated February 22, 2019 of the Regional Trial Court (RTC) of Roxas City, 6[th] Judicial Region, Branch 16, in Criminal Case No. C-224-18 and Criminal Case No. C-225-18, are REVERSED and SET ASIDE. The Regional Trial Court (RTC) of Roxas City, 6[th] Judicial Region, Branch 16, is hereby ORDERED to immediately proceed with the criminal cases filed against James Billoso y Obligar and Dave Billoso y Capapas.

SO ORDERED.[24] (Emphasis in the original)

Billoso and his co-accused moved for reconsideration[25] which was denied by the Court of Appeals in its Resolution,[26] thus:

WHEREFORE, premises considered, private respondents' Motion for Reconsideration is DENIED for lack of merit. The Regional Trial Court of Roxas City, Branch 16 is hereby ORDERED to proceed with the original charges in Criminal Case Nos. C-224-18 and C-225-18 against private respondents James Billoso y Obligar and Dave Billoso y Capapas with both privates (sic) respondents brought back into the custody of the court.

SO ORDERED.[27] (Emphasis in the original)

Thus, Billoso filed this present Petition.

Issue

The lone issue for resolution in this case is whether the CA erred when it annulled the Decision and Order of the RTC, and ordered the reinstatement and continuation of the proceeding of the criminal cases against Billoso.

This Court's Ruling

The Petition is without merit.

To recall, the prosecution's objection to Billoso's plea bargaining proposal was based on two grounds: first, that it is directed not to accept plea bargaining proposals for violation of Section 5 in relation to Section 26, Article II of

Republic Act No. 9165 pursuant to DOJ Circular No. 027-18; and second, that there is supposedly sufficient evidence to convict Billoso of violation of Article II, Section 5, in relation to Section 26, of Republic Act No. 9165 and violation of Article II, Section 11 of Republic Act No. 9165.[28] The RTC granted Billoso's plea bargaining proposal over the prosecution's objection reasoning that the judiciary's Plea Bargaining Framework in Drugs Cases prevails over DOJ Circular No. 027-18. It did not touch upon, much less resolve, the prosecution's claim that there is sufficient evidence to convict Billoso of the offenses originally charged against him.

As to the prosecution's first ground, it was clarified in *People v. Montierro*[29] that insofar as the inconsistency to plea bargaining involving violation of Section 5 of Republic Act No. 9165 is concerned, the same was already reconciled with the issuance of DOJ Circular No. 18 dated May 10, 2022, and thus, any objection based solely on DOJ Circular No. 027-18 can now be considered effectively withdrawn, thus:

At the very outset, the Court takes judicial notice of DOJ Department Circular No. 18 dated May 10, 2022 (DOJ Circular No. 18), which took effect on the same date. It appears that DOJ Circular No. 18 amended DOJ Circular No. 27 to conform to the Court-issued Plea Bargaining Framework in Drugs Cases.

Under DOJ Circular No. 27, an accused charged with violation of Section 5 of RA No. 9165 (for less than 5 grams of shabu or less than 300 grams of marijuana) may plead guilty to a lesser offense under Section 11, paragraph 3 or Possession of Dangerous Drugs; whereas, under the Court's Plea Bargaining Framework in Drugs Cases, the acceptable plea for violation of Section 5 of RA No. 9165 (for 0.01 gram to 0.99 gram of shabu or 0.01 gram to 9.99 grams of marijuana) is the lesser offense of Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs under Section 12 of RA No. 9165. This inconsistency was reconciled in DOJ Circular No. 18, where the acceptable plea for violation of Section 5 of RA No. 9165 is now Section 12 of RA No. 9165, which is in accordance with the Court's Plea Bargaining Framework in Drugs Cases.

With the amendments introduced in DOJ Circular No. 18, the prosecution's objection to *Montierro* and *Baldadera*'s plea bargaining proposals, which was based solely on DOJ Circular No. 27, can now be considered as effectively withdrawn. As such, the issues of whether the RTC erred in declaring DOJ Circular Nos. 61 and 27 invalid and overruling the prosecution's continuing objection to *Montierro* and *Baldadera*'s plea bargaining proposals are now rendered moot and academic.[30]

Per DOJ Circular No. 018-22, the prosecution is no longer mandated to raise an objection to a plea bargain involving violation of Section 5, to a violation of Section 12 of Republic Act No. 9165 provided that the drugs involved are .01 gram to .99 gram of Methamphetamine hydrochloride or "shabu" and/or .01 gram to 9.99 grams of marijuana, which is covered by the instant case.

However, with respect to the prosecution's second ground, jurisprudence and guidelines issued by this Court have consistently provided that trial courts should resolve plea bargaining proposals on the basis of evidence. In *Estipona, Jr. v. Lobjiro*,[31] this Court held that a trial court's ruling on motions for plea bargaining must be grounded on evidence, to wit:

Plea bargaining is allowed during the arraignment, the pre--trial, or even up to the point when the prosecution already rested its case. As regards plea bargaining during the pre-trial stage, the trial court's exercise of discretion should not amount to a grave abuse thereof....

If the accused moved to plead guilty to a lesser offense subsequent to a bail hearing or after the prosecution rested its case, the rules allow such a plea only when the prosecution does not have sufficient evidence to establish the guilt of the crime charged. The only basis on which the prosecutor and the court could rightfully act in allowing change in the former plea of not guilty could be nothing more and nothing less than the evidence on record. As soon as the prosecutor has submitted a comment whether for or against said motion, it

behooves the trial court to assiduously study the prosecution's evidence as well as all the circumstances upon which the accused made his change of plea to the end that the interests of justice and of the public will be served. The ruling on the motion must disclose the strength or weakness of the prosecution's evidence. Absent any finding on the weight of the evidence on hand, the judge's acceptance of the defendant's change of plea is improper and irregular.[32] (Emphasis supplied)

In the same vein, this Court had directed trial courts to resolve plea bargaining proposals in drugs cases based on whether evidence exists that the accused: (1) is a recidivist; (2) is a habitual offender or known in the community as a drug addict and a troublemaker; (3) has undergone rehabilitation but had a relapse; (4) has been charged many times; or (5) is guilty of the crime charged,[33] viz.:

Significantly, plea bargaining is always addressed to the sound discretion of the judge, guided by Court issuances, like A.M. No. 18-03-16-SC dated April 10, 2018. If the objection to the plea bargaining is solely to the effect that it will weaken the drug campaign of the government, the judges may overrule such objections because they are constitutionally bound to settle actual controversies involving rights which are legally demandable and enforceable. Judges must decide cases based on evidence, law and jurisprudence, and they cannot just defer to the policy of another Branch of the government. However, if objections to the plea bargaining are valid and supported by evidence to the effect that the offender is a recidivist, a habitual offender or known in the community as a drug addict and a troublemaker, or one who has undergone rehabilitation but had a relapse, or has been charged many times, or when the evidence of guilt of the charge is strong, courts should not allow plea bargaining, because that will not help keep law and order in the community and the society. And just because the prosecution and the defense agree to enter into a plea bargain, it does not mean the courts will approve the same. The judge must still exercise sound discretion in granting or denying plea bargaining, taking into account relevant circumstances, such as the character of the accused.[34] (Emphasis in the original and citation omitted)

Recently, this Court issued further clarificatory guidelines to trial courts in resolving plea bargaining proposals in drugs cases which further emphasized that trial courts should resolve plea bargaining proposals on the basis of evidence,[35] to wit:

- Offers for plea bargaining must be initiated in writing by way of a formal written motion filed by the accused in court.
- The lesser offense which the accused proposes to plead guilty to must necessarily be included in the offense charged.
- Upon receipt of the proposal for plea bargaining that is compliant with the provisions of the Court's Plea Bargaining Framework in Drugs Cases, the judge shall order that a drug dependency assessment be administered. If the accused admits drug use, or denies it but is found positive after a drug dependency test, then he/she shall undergo treatment and rehabilitation for a period of not less than six (6) months. Said period shall be credited to his/her penalty and the period of his/her after-care and follow-up program if the penalty is still unserved. If the accused is found negative for drug use/dependency, then he/she will be released on time served, otherwise, he/she will serve his/her sentence in jail minus the counselling period at the rehabilitation center.
- As a rule, plea bargaining requires the mutual agreement of the parties and remains subject to the approval of the court. Regardless of the mutual agreement of the parties, the acceptance of the offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the court.
- Though the prosecution and the defense may agree to enter into a plea bargain, it does not follow that the courts will automatically approve the proposal. Judges must still exercise sound discretion in granting or

denying plea bargaining, taking into account the relevant circumstances, including the character of the accused.

- The court shall not allow plea bargaining if the objection to the plea bargaining is valid and supported by evidence to the effect that:

- the offender is a recidivist, habitual offender, known in the community as a drug addict and a troublemaker, has undergone rehabilitation but had a relapse, or has been charged many times; or

- when the evidence of guilt is strong.

- Plea bargaining in drugs cases shall not be allowed when the proposed plea bargain does not conform to the Court-issued Plea Bargaining Framework in Drugs Cases.

- Judges may overrule the objection of the prosecution if it is based solely on the ground that the accused's plea bargaining proposal is inconsistent with the acceptable plea bargain under any internal rules or guidelines of the DOJ, though in accordance with the plea bargaining framework issued by the Court, if any.

- If the prosecution objects to the accused's plea bargaining proposal due to the circumstances enumerated in item no. 5, the trial court is mandated to hear the prosecution's objection and rule on the merits thereof. If the trial court finds the objection meritorious, it shall order the continuation of the criminal proceedings.

- If an accused applies for probation in offenses punishable under RA No. 9165, other than for illegal drug trafficking or pushing under Section 5 in relation to Section 24 thereof, then the law on probation shall apply.[36] (Emphasis supplied)

Grave abuse of discretion is such capricious and whimsical exercise of judgment as equivalent to lack of jurisdiction. The abuse must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. It must also be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[37]

There is also grave abuse of discretion when an act is done: (1) contrary to the Constitution, the law or jurisprudence; (2) whimsically capriciously or arbitrarily, out of malice, ill will or personal bias;[38] or (3) with manifest disregard of the basic rules and procedures.[39]

The foregoing considered, no error was committed by the CA when it ruled for the annulment and setting aside the RTC's Decision and Order, and directed the reinstatement of the criminal cases against Billoso. The RTC indubitably gravely abused its discretion when it, contrary to established jurisprudence and guidelines issued by this Court, approved Billoso's plea bargaining proposal without resolving the prosecution's claim that there is sufficient evidence to convict Billoso of the offenses originally charged against him. As correctly pointed out by the CA, there is no impediment to the trial court continuing with the proceedings in the criminal cases in order to determine whether there is merit in the prosecution's claim that it has sufficient evidence to convict petitioner.[40]

Apropos, We deem it proper and in the interest of justice to direct the RTC to resolve Billoso's proposal for plea bargaining in accordance with the guidelines that We set forth in the consolidated cases of *People v. Montierro, Baldadera v. People*, A.M. No. 21-07-16-SC and A.M. No. 18-03-16-SC.

ACCORDINGLY, the Petition is DENIED for lack of merit. The Decision dated October 28, 2020 and the Resolution dated June 30, 2021 issued by the Court of Appeals in CA-G.R. SP No. 12761 are MODIFIED. The case against James Billoso y Obligar in Criminal Case Nos. C-224-18 and C-225-18 are REMANDED to Branch 16, Regional Trial Court, Roxas City to RESOLVE James Billoso y Obligar's proposal for plea bargaining in accordance with the Montierro guidelines.

SO ORDERED.

Lazaro-Javier and M. Lopez, JJ., concur.

Leonen, SAJ. (Chairperson), see separate concurring opinion.

Kho, Jr., J., please see concurring and dissenting opinion.

[1] Rollo, pp. 10-43.

[2] Id. at 82-96. The October 28, 2020 Decision was penned by Associate Justice Dorothy P. Montejo--Gonzaga, and concurred in by Associate Justices Pamela Ann A. Maxine and Lorenza R. Bordios of the Nineteenth Division, Court of Appeals, Cebu.

[3] Id. at 110-112. The June 30, 2021 Resolution was penned by Associate Justice Dorothy P. Montejo--Gonzaga, and concurred in by Associate Justices Pamela Ann Abella Maxine and Lorenza R. Bordios of the Nineteenth Division, Court of Appeals, Cebu.

[4] Id. at 118-123. The January 24, 2019 Decision was penned by Presiding Judge Kristine B. Tiangco--Vinculado of Branch 16, Regional Trial Court, Roxas City.

[5] Id. at 133. The February 22, 2019 Order was penned by Presiding Judge Kristine B. Tiangco-Vinculado of Branch 16, Regional Trial Court, Roxas City.

[6] Id. at 12-13.

[7] Id.

[8] Id. at 13.

[9] Id. at 113-114.

[10] Id.

[11] Id. at 115-117. Dated September 20, 2018.

[12] Id. at 13-14.

[13] Id. at 14.

[14] Id. at 136.

[15] Id. at 14.

[16] Id. at 134-135.

[17] Id. at 118-123.

[18] Id. at 121-123.

[19] Id. at 124-132

[20] Id. at 133.

[21] Id. at 47-63.

[22] Id. at 67-78.

[23] Id. at 82-96.

[24] Id. at 95.

[25] Id. at 97-105. Dated December 17, 2020.

[26] Id. at 110-112.

[27] Id. at 112.

[28] Rollo, pp. 13-14.

[29] G.R. Nos. 254564, 254974, A.M. No. 21-07-16-SC & A.M. No. 18-03-16-SC, July 26, 2022 [Per J. Caguioa, En Banc].

[30] Id. at 11. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[31] 816 Phil. 789 (2017) [Per J. Peralta, En Banc].

[32] Id. at 816-817.

[33] *People v. Montierro, Baldadera v. People, Re Letter of the Philippine Judges Association Expressing Concern over the Ramifications of the Decision in G.R. No. 247575 and G.R. No. 250295, Re letter of Associate Justice Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association*, G.R. Nos. 254564, 254974, A.M. No. 21-07-16-SC and A.M. No. 18-033-16-SC, July 26, 2002 [Per J. Caguioa, En Banc] at 26. This pinpoint citation refers to the copy uploaded in the Supreme Court website.

[34] Id.

[35] Id. at 27. This pinpoint citation refers to the copy uploaded in the Supreme Court website.

[36] Id. at 31-32.

[37] *United Coconut Planters Bank v. Looyuko*, 560 Phil. 581, 591-592 (2007) [Per J. Austria-Martinez, Third Division].

[38] *Almario v. Executive Secretary*, 714 Phil. 127, 169 (2013) [Per J. Leonardo-de Castro, En Banc].

[39] *Cruz v. People of the Philippines*, 812 Phil. 166, 174 (2017) [Per J. Leonen, Second Division], citing *Crisologo v. JEWAM Agro-Industrial Corporation*, 728 Phil. 315 (2014) [Per J. Mendoza, Third Division].

[40] Rollo, p. 94.

CONCURRING AND DISSENTING OPINION

KHO, JR., J.:

I concur in the ponencia insofar as it remands the case to the court of origin to determine petitioner James Billoso y Obligar's (petitioner) entitlement to avail of the benefits of plea bargaining. I also concur in the ponencia's disquisition that pursuant to the Court En Banc's ruling in *People v. Montierro* (Montierro),^[1] the prosecution's objection in this case — which was based on Department of Justice (DOJ) Circular No. 27 — is deemed withdrawn by the fact of enactment of DOJ Circular No. 18.^[2]

To recall, in *Montierro*, the Court En Banc, through Justice Alfredo Benjamin S. Caguioa, took judicial notice that on May 10, 2022, the DOJ issued DOJ Circular No. 18,^[3] which explicitly revoked the earlier-issued DOJ

Circular No. 27 (and in effect, includes the revocation of the DOJ Circular No. 61 as well). A salient feature of DOJ Circular No. 18 is that the DOJ aligned its plea bargaining framework with that of the Court, i.e., A.M. No. 18-03-16-SC. Recognizing this recent development, the Court En Banc categorically ruled that "[w]ith the amendments introduced in DOJ Circular No. 18, the prosecution's objection to [therein accused's] plea bargaining proposals, which was based solely on DOJ Circular No. 27, can now be considered as effectively withdrawn." [4]

This notwithstanding, the Court En Banc ruled that the trial courts should not have hastily approved therein accused's plea bargaining proposals over the objection of the prosecution. Rather, the trial courts should have first resolved the objection of the prosecution before approving such proposals, which resolution includes a determination of: (a) whether the evidence of guilt against therein accused is strong; and (b) whether therein accused are recidivists, habitual offenders, are known in the community as drug addicts and troublemakers, have undergone rehabilitation but suffered relapses, or have been charged many times. The Court En Banc further instructed that the presence of any of these circumstances would bar therein accused from availing of the benefits of entering into a plea bargain with the State. Given the foregoing, the Court En Banc concluded that the criminal cases against therein accused should be remanded to the court of origin to afford the latter an opportunity to determine whether or not therein accused are qualified to avail of the benefits of plea bargaining. [5]

However, I tender my dissent insofar as it directs the court of origin to "RESOLVE [petitioner's] proposal for plea bargaining in accordance with the Montierro guidelines." [6] In this regard, I find it apropos to reiterate my Separate Concurring and Dissenting Opinion in Montierro where I explained that the guidelines provided by the majority in Montierro "gives the trial courts uninhibited discretion in approving or denying plea bargaining proposals, which in turn, unduly oversteps on the authority of the Executive Department, more particularly, the DOJ — to prosecute crimes." [7]

Pertinent portions of my Opinion in Montierro, which essentially posit that the plea bargaining process is not a purely procedural function within the realm of the Judiciary as it is, in fact, an interplay of the powers of the Judiciary and the Executive, read as follows:

IV.

The Contrary View

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I thus respectfully opine that the plea bargaining process should be viewed in the following prism:

1) Plea bargaining is a process involving multiple parties, namely: (a) the accused who seeks to avail of the process; (b) the private offended party, in certain crimes, whose consent is indispensable to a valid plea bargaining agreement; (c) the handling prosecutor as representative of the DOJ — and in the bigger picture, as representative of the Executive Department — whose task is to prosecute offenses and whose consent is equally indispensable to a valid plea bargaining agreement; and (d) the trial court as representative of the Judicial Department, whose critical task is to ensure that all the requisites of a valid plea bargaining agreement under the Rules are present before approving the same.

2) If the accused wishes to plead guilty to a lesser offense, he should make his intentions known to the handling prosecutor, who in turn should determine whether plea bargaining is proper. In making such determination, the handling prosecutor should take into consideration, among other things: (i) whether the lesser offense to which the accused seeks to plead guilty to is necessarily included in the offense charged or determine the proper lesser charge to which the accused can plea; (ii) internal rules or guidelines within the DOJ that govern plea bargaining and the giving of consent to any plea bargaining agreement; (iii) whether the evidence of guilt is strong; and (iv) the conformity of the private offended party, in proper instances. Further, the handling prosecutor may also consider whether a plea bargaining agreement will serve the interests of justice if the accused is a recidivist, habitual offender, known in the community as a drug dealer and a

troublemaker, had undergone rehabilitation but suffered a relapse, has been charged many times, or any other relevant and material situation, depending on the peculiar circumstances of each case.

3) If the handling prosecutor is not amenable to the offer to plea bargain, he should signify his refusal to give consent in writing. The accused and/or the offended party cannot compel the handling prosecutor to give such consent. However, they may elevate the matter of the handling prosecutor's refusal to give consent to the Prosecutor General/City/Provincial Prosecutor who exercises the power of control and supervision over such handling prosecutor, and later on, to the Secretary of Justice, pursuant to the doctrine of exhaustion of administrative remedies. If such refusal is sustained at the level of the Secretary of Justice, the accused may, if he/she so wishes, assail the same through an appeal to the Office of the President or petition for certiorari on the ground of grave abuse of discretion, whenever appropriate.

4) The refusal of the handling prosecutor all the way to the Secretary of Justice and the Office of the President to give the consent to a plea bargaining agreement does not empower the trial courts to overrule the same, in respect and deference to the DOJ's power to prosecute offenses which is purely an Executive function. The duty of the trial courts in such cases is to proceed to trial.

5) If the handling prosecutor, and the private offended party in proper cases, agree to the offer of the accused to plea bargain, they shall put their agreement in writing. i.e. draft the plea bargaining agreement, and submit the same to the trial court where the case is pending for consideration.

6) Upon submission of the plea bargaining agreement, the trial court shall have the duty and responsibility to determine whether the plea bargaining agreement satisfies all the requisites for a valid plea bargaining agreement under Section 2, Rule 116 of the Revised Rules of Criminal Procedure, including ascertaining whether there is indeed consent from the prosecutor and private offended party in proper cases, and whether their consent were voluntarily and intelligently given. It is also the duty and responsibility of the trial court to ensure that the accused fully understands and accepts the consequences of his plea to a lesser offense including the penalty thereof, as well as to determine whether the lesser offense which the accused shall plead guilty to is necessarily included in the offense charged. Again, owing to the constitutional doctrine of separation of powers and the express provision of Section 2, Rule 116 of the Revised Rules on Criminal Procedure, this is the critical function of the trial courts in the plea bargaining process, consistent with the principle that courts should act as impartial tribunals in the dispensation of justice.

7) If the court handling the criminal case determines that all requisites are dutifully complied with, then it shall approve the plea bargaining agreement, and promulgate a ruling convicting the accused of the lesser offense to which he pleaded guilty to. Otherwise, the court shall reject the plea bargaining agreement and continue with the trial.

V.

Disagreement with the Fourth, Fifth, Sixth, and Seventh Guidelines

Given the foregoing discussions, I now explain my disagreement with the fourth, fifth, sixth, and seventh guidelines, as provided in the ponencia.

To recall, the fourth guideline provides:

4. As a rule, plea bargaining requires the mutual agreement of the parties and remains subject to the approval of the court. Regardless of the mutual agreement of the parties, the acceptance of the offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the court.[8] (Emphasis and underscoring supplied)

Contrary to what the guideline states, the approval to plea bargain is not entirely dependent to the sound discretion of the court. To reiterate, plea bargaining involves an interplay of the great powers of the Executive and Judicial

Departments. It is essentially a two (2)-step process:

First, once the accused submits a plea bargaining proposal, it is up to the Executive Department, through the DOJ and its prosecutors, that wields prosecutorial power, to determine whether it should give its consent to the same; and

Second, once the Executive Department (and the private offended party, in proper cases) gives its consent, it is now up to the Judicial Department to ensure and verify that all requisites for a valid plea bargaining agreement are present. If in the affirmative, then the courts should approve the plea bargaining agreement; otherwise, it should be rejected.

Thus, the first step involves the discretion of the Executive Department, whose discretion in giving or not giving its consent should be respected by the court as a co-equal body. As already adverted to, the involvement of the Judicial Department in the plea bargaining process is only when the accused, the handling prosecutor, and the private offended party in proper cases, have mutually agreed on a plea bargaining agreement and the same is submitted to the court where the criminal case is pending for its approval or disapproval — which is encapsulated in the second step as above-described. Thus, the plea bargaining process is a shared responsibility of the Executive and Judicial Departments.

With respect to the fifth guideline, it reads:

5. The Court shall not allow plea bargaining if the objection to the plea bargaining is valid and supported by evidence to the effect that:

a) the offender is a recidivist, habitual offender, known in the community as a drug addict and a troublemaker, has undergone rehabilitation but had a relapse, or has been charged many times; or

b) where the evidence or guilt is strong.[9]

It is respectfully submitted that the factors affecting the character of the accused, such as, if the accused is a recidivist, habitual offender, known in the community as a drug addict and a troublemaker, has undergone rehabilitation but suffered a relapse, has been charged many times, when the evidence of guilt is strong, or any other relevant and material event or circumstance, should not be considered as automatic disqualifications on the part of the accused to avail the benefits of plea bargaining. This is for the Executive, through the handling prosecutor, to carefully evaluate and determine whether such factors may disqualify the accused from availing plea bargaining. Considering that the right to prosecute belongs to the Executive Department, the prosecution must be given a wide range of discretion — the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors."[10]

Anent the sixth and seventh guidelines, they respectively read:

6. Plea bargaining in drugs cases shall not be allowed when the proposed plea bargain does not conform to the Court-issued Plea Bargaining Framework in Drugs Cases.

7. Judges may overrule the objection of the prosecution if it is based solely on the ground that the accused's plea bargaining proposal is inconsistent with the acceptable plea bargain under any internal rules or guidelines of the DOJ, though in accordance with the plea bargaining framework issued by the Court, if any.[11]

As also discussed above, the determination of which offenses may be plea bargained and what may constitute as "lesser offenses" to which a plea bargain may be made, as well as the giving of consent to a plea bargaining on the part of the prosecutor, are substantive aspects of plea bargaining. These are necessarily part and parcel of the prosecutorial power which rightfully belongs to the prosecutors of the Executive Department, which in turn represents the State — and the People of the Philippines for that matter. Thus, the courts should not be allowed to

overrule the objections of the prosecution to any plea bargaining proposal of the accused or to disapprove any plea bargaining agreement if all the requisites of plea bargaining under the Rules are present, including in drugs cases. For the Court to allow this to happen is tantamount to the authorization of an undue and dangerous intrusion into the powers of the Executive Department.

It bears reiterating that the role of the Judicial Department in a criminal case is not to champion the cause of the State and the People of the Philippines — its critical role is justly limited to being an impartial tribunal that ensures the orderly conduct of proceedings and to adjudicate in accordance with prevailing laws, rules, and jurisprudence.

Thus, the Judicial Department should not arrogate upon itself the substantive power to determine what is an acceptable "lesser offense" to which the accused may plead guilty to in lieu of the original charge against him/her, and to approve the plea bargaining proposal over the objections of the prosecutors or to disapprove the plea bargaining agreement notwithstanding the presence of all the requisites of plea bargaining as contained in Section 2, Rule 116 of the Revised Rules on Criminal Procedure. If allowed to do so, the trial courts will effectively supplant the wisdom of the Executive Department in the prosecution of criminal cases, a responsibility imposed upon it by no less than the Constitution, thereby resulting in an impermissible overreach into the realm of the Executive Department.

For these reasons, and after a circumspect reflection, I respectfully submit that it now appears that the Court's very own plea bargaining framework for drugs cases, i.e., A.M. No. 18-03-16-SC, may have unduly overstepped into the boundaries of Executive power insofar as it provided, among others, a determination as to which violations of RA 9165 may be subject to plea bargaining, including the corresponding lesser offense to which the accused may plead guilty to.

At this juncture, it is acknowledged that the guidelines provided in this case were explicitly made applicable only to plea bargaining in drugs cases. However, I respectfully opine that the Majority's resolution of this case might present a dangerous precedent for the court to intrude into substantive matters of plea bargaining of other crimes, which to again reiterate, are purely within the domain of the Executive Department — under the mistaken notion that all aspects of plea bargaining are purely procedural in nature, particularly in the light of the explicit pronouncement in the ponencia that any plea bargaining framework that the Court may promulgate should be accorded primacy.[12] With all due respect, this should not be countenanced as it is unconstitutional.

The foregoing disquisition notwithstanding, I fully agree with the ponencia, insofar as it orders the remand of the criminal cases against Montierro and Baldadera to the respective courts of origin for further proceedings because said courts approved their respective plea bargaining proposals over the objections of the prosecution. Particularly, the respective courts of origin should be tasked to determine whether or not the prosecution in those cases still have any objections to the plea bargaining proposals of Montierro and Baldadera, taking into consideration the recent issuance of DOJ Circular No. 18 and in the event the prosecution and Montierro and Baldadera would enter into plea bargaining agreements, for the trial courts to determine the presence of all the requisites of plea bargaining on said agreement under the Rules, and pass judgment accordingly.

Thus, and in light of my position in Montierro, it is humbly opined that the ponencia should have limited the ruling in this case to the following: first, the prosecution's objection to petitioner's plea bargaining proposal — which is solely based on DOJ Circular No. 27 — is considered as effectively withdrawn in light of the issuance of DOJ Circular No. 18; and second, the instant case is remanded to the RTC in order to give the latter court the opportunity to ascertain whether or not petitioner is qualified to avail of the benefits of plea bargaining, pursuant to the plea bargaining process stated in my opinion in Montierro and quoted above.

ACCORDINGLY, I VOTE to REMAND Criminal Case Nos. C-224-18 and C-225-18 to the Regional Trial Court of Roxas City, Capiz, Branch 16 to ascertain whether or not petitioner James Billoso y Obligar is entitled to the benefits of plea bargaining.

[1] G.R. No. 254564, July 26, 2022 [Per J. Caguioa, En Banc] (consolidated with *Baldadera v. People*, G.R. No. 254974, July 26, 2022; and Re: Letter of the Philippine Judges Association Expressing its Concern over the Ramifications of the Decisions in G.R. No. 247575 and G.R. No. 250295, A.M. No. 21-07-16- SC, July 26, 2022).

[2] See ponencia, p. 6.

[3] Entitled "REVISED AMENDED GUIDELINES ON PLEA BARGAINING FOR REPUBLIC ACT NO. 9165 OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.'"

[4] See ponencia, p. 6.

[5] Id. at 7-8.

[6] See ponencia, pp. 8-10.

[7] My Separate Concurring and Dissenting Opinion in *People v. Montierro*, G.R. No. 254564, July 26, 2022 (consolidated with *Baldadera v. People*, G.R. No. 254974, July 26, 2022; and Re: Letter of the Philippine Judges Association Expressing its Concern over the Ramifications of the Decisions in G.R. No. 247575 and G.R. No. 250295, A.M. No. 21-07-16-SC, July 26, 2022), p. 9.

[8] See *People v. Montierro*, supra note 1, at 30.

[9] See id. at 31.

[10] *Montelibano v. Yap*, 822 Phil. 262, 273 (2017) [Per J. Martires, Third Division], citing *Bumatay v. Bumatay*, 809 Phil. 302, (2017) [Per J. Caguioa, First Division].

[11] See *People v. Montierro*, supra note 1, at 31.

[12] See *People v. Montierro*, supra note 1, at 20.

SEPARATE CONCURRING OPINION

LEONEN, SAJ.:

I concur with the ponencia's denial of the Petition and would like to offer the following as additional basis for the ponencia's ruling.

As aptly phrased by my esteemed colleague Associate Justice Antonio T. Kho Jr., the plea-bargaining process is "an interplay of the powers of the Judiciary and the Executive,"[1] with the prosecutor representing the State in the prosecution of the criminal case and the trial court overseeing the criminal proceedings. In light of the different functions at play, it is crucial to identify the powers exercised by the branch of government involved to ensure that no overreaching or encroaching occurs.

Plea bargaining is the process where both the accused and the prosecution agree to "a mutually satisfactory disposition of the case subject to court approval." [2] As a rule of procedure, plea bargaining falls within this

Court's exclusive rule-making power and is provided for in Rule 116, Section 2 of the Rules of Court:

SECTION 2. Plea of guilty to a lesser offense. – At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.

Rule 118, Section 1(a) of the Rules of Court also mandates the courts to consider plea bargaining during pre-trial:

SECTION 1. Pre-trial; mandatory in criminal cases. – In all criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall[,] after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

- (a) plea bargaining;
 - (b) stipulation of facts;
 - (c) marking for identification of evidence of the parties;
 - (d) waiver of objections to admissibility of evidence;
 - (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
 - (f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.
- (Emphasis supplied)

However, the Rules of Court do not direct the prosecutor to consent to a plea deal. Neither is the court empowered to override the parties' mutual agreement or impose a plea bargain deal, despite the prosecutor's objections. This tacit recognition of the separation of powers between the Executive and the Judiciary was explained in a separate opinion in *Sayre v. Xenos*:^[3]

A plain reading of [Rule 116, Section 2 of the Rules of Court] shows only one (1) part of the plea bargaining process: the plea of the lesser offense before the court. This presupposes that the courts only participate in the plea bargaining process once the accused has presented [their] offer and the prosecution and the private offended party has consented to the offer.

....

The mandate to consider plea bargaining after arraignment does not necessarily mean that the accused must always plead guilty to the lesser offense in all criminal cases. It simply means that if the accused and the prosecution come to court with a plea bargain deal during pre-trial, the court must consider the plea bargain deal.

There is, thus, a part of the plea bargaining process that is solely within the realm of prosecutorial discretion.^[4] (Emphasis supplied)

The power to prosecute is purely an Executive function, and the prosecutor, as the State's representative, has a wide discretion of "whether, what[,] and whom to charge"^[5] due to the range of variables present when pursuing a criminal case.^[6] While jurisdiction over a criminal case is transferred to the Judiciary once a prosecutor files information with a trial court, court action is generally limited to remedial measures that may occur during trial.^[7] The prosecutor is still the one who directly steers the criminal case.^[8]

Judicial deference of prosecutorial discretion in the plea bargaining process was also emphasized in *Estipona Jr. v. Lobrigo*,^[9] where this Court stated:

Yet a defendant has no constitutional right to plea bargain. No basic rights are infringed by trying him rather

than accepting a plea of guilty; the prosecutor need not do so if he prefers to go to trial. Under the present Rules, the acceptance of an offer to plead guilty is not a demandable right but depends on the consent of the offended party and the prosecutor, which is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged. The reason for this is that the prosecutor has full control of the prosecution of criminal actions, his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain.

[Courts] normally must defer to prosecutorial decisions as to whom to prosecute. The reasons for judicial deference are well known. Prosecutorial charging decisions are rarely simple. In addition to assessing the strength and importance of a case, prosecutors also must consider other tangible and intangible factors, such as government enforcement priorities. Finally, they also must decide how best to allocate the scarce resources of a criminal justice system that simply cannot accommodate the litigation of every serious criminal charge. Because these decisions "are not readily susceptible to the kind of analysis the courts are competent to undertake," we have been "properly hesitant to examine the decision whether to prosecute." [10] (Citations omitted)

In *People v. Montierro*, [11] this Court stressed its power to promulgate the rules on plea bargaining but still nonetheless recognized the prosecution's exclusive mandate of steering the criminal proceeding:

Furthermore, and lest it be mistaken, the exclusivity of the power to promulgate rules on plea bargaining only recognizes the role of the judiciary under our Constitutional framework as the impartial tribunals that try to balance the right of the State to prosecute offenders of its laws, on the one hand, and the right of individuals to be presumed innocent until proven guilty, on the other. This in no way undermines the prosecutorial power of the DOJ, which has the mandate to prosecute suspected criminals to the full extent of the law. In discharging this role, the prosecutor, representing one of the parties to the negotiation, cannot thus be expected to fully see the "middle ground." It is here where the courts are therefore in the best position to determine what is fair and reasonable under the circumstances. Ultimately, it is the Court which has the power to promulgate the rules on plea bargaining. [12] (Emphasis in the original)

Thus, the trial court's participation in the plea bargaining process only comes about after the parties have agreed to a plea deal, with the court ensuring the mutual agreement of the parties and that all legal requirements are met. [13]

The mutual acceptance of the plea deal by the parties as a condition precedent, but subject to the court's sound discretion, was likewise emphasized in *Montierro* where this Court stated:

Indeed, Section 2 [Rule 116 of the Rules of Court] requires the mutuality of agreement of the parties because consent of the prosecution and the offended party must be obtained in order for the accused to successfully plead guilty to a lesser offense. However, it should not be overlooked that Section 2 also uses the word "may," which signifies discretion on the part of the trial court on whether to allow the accused to make such plea. As such, while plea bargaining requires the consent of the parties, the approval of a plea bargaining proposal is ultimately subject to the sound discretion of the court.

To be sure, jurisprudence had since emphasized the extent of the trial court's discretion in approving a plea bargain.

In the case of *People v. Villarama, Jr. (Villarama)*, while it was expressed that the consent of the Fiscal and the offended party is a condition precedent for a valid plea of guilty to a lesser offense because "[t]he Fiscal has full control of the prosecution of criminal actions," the Court also underscored that acceptance of an offer to plead guilty to a lesser offense is a matter addressed entirely to the sound discretion of the trial court. Underscoring the trial court's duty to review the circumstances of a case before it may act on an application to plea bargain. [14] (Emphasis in the original, citations omitted)

Here, the prosecution's objection to the accused's plea bargaining proposal was based on: (1) the directive in Department of Justice Circular No. 027-18 only to consider a plea bargain involving a violation of Section 5 in relation to Section 26 of Republic Act No. 9165; and (2) sufficiency of evidence to convict accused of violation of Section 5 in relation to Section 26 and Section 11 of Republic Act No. 9165.[15]

The ponencia correctly pointed out that any objection based on Department of Justice Circular No. 027-18 has effectively been withdrawn with the issuance of Department of Justice Circular No. 018-22.[16] However, the second objection based on the supposed sufficiency of evidence still needs to be proven, with the trial court obligated to look into and weigh the prosecution's evidence and decide if the accused is qualified to enter a plea bargain.[17]

Considering the foregoing, I concur with the ponencia's remand of the case to the court of origin to resolve the plea bargaining proposal based on evidence.

ACCORDINGLY, I vote to DENY the Petition for lack of merit and to REMAND the case to the court of origin.

[1] J. Kho, Jr., Concurring and Dissenting Opinion, in *Billoso v. People*, G.R. No. 257733, p. 2.

[2] *People v. Villarama, Jr.*, 285 Phil. 723, 730 (1992) [Per J. Medialdea, First Division], citing BLACK'S LAW DICTIONARY, 1037, (5[th] ed. 1979).

[3] G.R. Nos. 244413, 244415-16, February 18, 2020, [Per. J. Carandang, En Banc].

[4] J. Leonen, Concurring Opinion in *Sayre v. Xenos*, G.R. Nos. 244413, 244415-16, February 18, 2020 [Per J. Carandang, En Banc].

[5] *Webb v. De Leon*, 317 Phil 758, 800 (1995) [Per J. Puno, Second Division].

[6] *Id.*

[7] *Rural Bank of Mabitac, Laguna, Inc. v. Canon*, 834 Phil. 346, 365 (2018) [Per J. Jardeleza, First Division].

[8] RULES OF COURT, Rule 110, sec. 5 provides:

SECTION 5. Who must prosecute criminal action. – All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.

[9] 816 Phil. 789 (2017) [Per J. Peralta, En Banc].

[10] *Id.* at 814-815.

[11] G.R. No. 254564, July 26, 2022 [Per J. Caguioa, En Banc].

[12] *People v. Montierro*, G.R. No. 254564, July 26, 2022 [Per J. Caguioa, En Banc].

[13] J. Leonen Separate Concurring Opinion in *People of the Philippines v. Montierro*, G.R. No. 254564, July 26, 2022 [Per J. Caguioa, En Banc].

[14] *People of the Philippines v. Montierro*, G.R. No. 254564, July 26, 2022 [Per J. Caguioa, En Banc].

[15] Ponencia, p. 5.

[16] Id. at 6.

[17] Id. at 7-8.

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